

LEGISLATIVE COUNCIL BRIEF

ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) BILL 2014

INTRODUCTION

At the meeting of the Executive Council on 15 April 2014, the Council ADVISED and the Chief Executive ORDERED that the Administration of Justice (Miscellaneous Provisions) Bill 2014 (the Bill), at **Annex A**, should be introduced into the Legislative Council to improve various court operations.

JUSTIFICATIONS

2. After an internal review, the Judiciary has proposed legislative amendments to improve the court operations in the following areas –

- (a) appeals in civil causes or matters to the Court of Final Appeal (the CFA);
- (b) evidence-taking by live television links for criminal proceedings;
- (c) the mode of delivery of reasons for verdicts in criminal proceedings in the District Court;
- (d) the calculation of qualifying experience for appointment of Permanent Magistrates;
- (e) the operation of the Labour Tribunal; and
- (f) the administration of suitors' funds at various courts/tribunals.

Detailed justifications for the proposals in each of the above areas are set out in the following paragraphs.

(A) Appeals in Civil Causes or Matters to the CFA

3. According to section 22(1)(a) and (b) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (the HKCFAO), an appeal from any final judgment of the Court of Appeal in any civil cause or matter lies to the CFA as of right where the matter in dispute amounts to or is of the value of \$1 million or more. For other cases, leave to appeal to the CFA will only be allowed if, in the opinion of the Court of Appeal or the CFA, the question involved is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the CFA for decision.

4. The present system is objectionable as a matter of principle. Linking a right of appeal to the CFA by reference to an arbitrary financial limit means that litigants involved in litigation with a claim of monetary value of or beyond the threshold limit in effect have more rights than other litigants with smaller claims, regardless of the merits of their cases. The Judiciary considers it important and timely to amend the law so that all appeals in civil causes or matters to the CFA become subject to discretionary leave of the Court of Appeal or the CFA. The detailed justifications for the amendment are set out at **Annex B**.

B

(B) Evidence-Taking by Live Television Links for Criminal Proceedings

5. At present, Part IIIA of the Criminal Procedure Ordinance (Cap. 221) provides for special procedures for vulnerable witnesses in criminal proceedings. Section 79B (in Part IIIA) sets out the circumstances in which a child, a mentally incapacitated person or a witness in fear is permitted to give evidence or be examined by way of a live television link, and the term “live television link” is defined in section 79A (in Part IIIA) in a rather narrow way to be a system in which a courtroom and another room located in the same premises as the courtroom are equipped with, and linked by, a “closed circuit television system”. With the advancement of technologies, the Judiciary proposes to amend the law to enable other suitable audio-visual facilities, such as video conferencing facilities, to be adopted. The Judiciary will also ensure that any such technologies that may be used will satisfy the Judiciary’s requirements in terms of, for example, security (say by encryption) and reliability.

(C) Mode of Delivery of Reasons for Verdicts in Criminal Proceedings in the District Court

6. At present, under section 80 of the District Court Ordinance (Cap. 336), a District Judge is required to orally deliver the verdict and any sentence, as well as the reasons, in criminal proceedings. The Judge is also required to reduce the reasons to writing within 21 days after the hearing or the trial. There is currently no flexibility for a District Judge to directly hand down the reasons for a verdict in writing. They have to deliver the reasons orally first. This is unnecessary and represents a waste of legal costs and court resources in many cases. For example, in a case in 2011, ten counsel sat for two days listening to a District Judge reading out the reasons for a verdict. The fees of the ten counsel and their instructing solicitors, the public expense and the two days' time of the District Judge were unnecessarily spent.

7. The Judiciary proposes to amend section 80 of the District Court Ordinance to dispense with the requirement for a District Judge to orally deliver the reasons for the verdict. As such, the Judges would have the flexibility to hand down the reasons in writing direct in appropriate cases. The present arrangement for a District Judge to deliver oral reasons for sentence before reducing them to writing will continue. Under the proposed amendments, the reasons for the verdict will always have to be delivered together with the verdict at the same time. If the reasons for a verdict are handed down in written form direct, the Judiciary will ensure that the defendant is given sufficient time to examine them and put forward any submissions on costs and/or mitigation. Moreover, to ensure that the defendant understands the written reasons so handed down, similar to the present arrangements of the higher courts, if necessary, the Judiciary will make arrangements for a court interpreter to interpret the reasons in a language understood by the defendant on the day of the handing down of the reasons for the verdict.

8. The reasons for verdicts will remain accessible to the public in future when they are handed down in written form direct. Apart from continuing with the present arrangement for uploading the written reasons onto the Judiciary's website, the written reasons will be given to each of the parties and lodged in the High Court Library. They will also be made available for public inspection in the Registry of the District Court.

(D) Calculation of Qualifying Experience for Appointment of Permanent Magistrates

9. At present, pursuant to section 5AA of the Magistrates Ordinance (Cap. 227), a person who is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters (legally qualified person) is eligible to be appointed as a Permanent Magistrate if he has the required professional experience of no less than five years.

10. Under section 5AA(1) of the Magistrates Ordinance, a legally qualified person is eligible for appointment as a Permanent Magistrate if that person has, for a period of or periods totalling not less than five years, (a) practised as a barrister, solicitor or advocate; or (b) served as a legal officer or taken up the offices specified in section 5AA(1)(b)(iii) to (v) of the Magistrates Ordinance. Alternatively, a legally qualified person is eligible to be appointed as a Permanent Magistrate pursuant to section 5AA(2) of the Magistrates Ordinance if he has been a Special Magistrate for a period of or periods totalling not less than five years.

11. Section 5AA(3) of the Magistrates Ordinance provides that in calculating the five-year period of legal practice or service in the offices specified in section 5AA(1)(b) of the Magistrates Ordinance, periods of less than five years of such practice or service may be combined. The legislation does not, however, allow period(s) of being a Special Magistrate to be combined with other period(s) of legal practice or service.

12. The existing arrangement does not accord with the Judiciary's policy intent that periods of less than five years of all types of legal practice or service, be it the legal experience under section 5AA(1) or the judicial experience under section 5AA(2), should be allowed to be combined. To rationalise the above arrangements, the Judiciary proposes to amend section 5AA of the Magistrates Ordinance to allow a person's period(s) of experience as a Special Magistrate to be combined with period(s) of other types of legal practice or service to fulfill the requisite minimum five-year period eligibility requirement to be appointed as a Permanent Magistrate.

(E) Operation of the Labour Tribunal

13. The Labour Tribunal seeks to provide a quick, simple, cheap and informal forum for resolving disputes between employers and employees. The Judiciary has reviewed the operation of the Labour Tribunal, and considers that there is room to improve its operation in a few areas,

including clarifying its jurisdiction, enhancing its case management powers and aligning the time limit for enforcing its awards or orders with other civil claims. Details of the proposed improvements are set out at **Annex C**.

C

(F) Administration of Suitors' Funds

14. Suitors are parties to suits in a court of law. They may need to pay or transfer funds into court (including tribunals) or deposit funds in court for various purposes, for example, as security against possible default on legal costs, or in satisfaction of claims or judgment debts etc. Depending on the outcome of the lawsuits, the funds may have to be paid out of court to the persons entitled to such payment as the court orders. In general, suitors' funds may be accepted in the form of money, securities and/or movable properties.

15. Suitors' funds rules are now provided in the legislation to govern the administration of such funds, including how suitors' funds are lodged in and paid out of court, investment of the funds, provision of interest for individual suitors' accounts and preparation of annual audited financial statements for the funds. At present, suitors' funds are administered in the CFA, the High Court, the District Court, the Lands Tribunal, the Labour Tribunal and the Small Claims Tribunal. While most of them are being operated on the basis of the respective dedicated suitors' funds rules in the subsidiary legislation¹, the suitors' funds for the CFA and the Lands Tribunal have been operated administratively and guided by the rules of the other similar courts.

16. To provide a clearer legal basis for the administration of the suitors' funds of the CFA and the Lands Tribunal like the other courts and tribunals, the Judiciary proposes to introduce dedicated suitors' funds rules for the CFA and the Lands Tribunal, to be supported by specific rule-making powers for this purpose in the respective principal legislation. For the sake of clarity and consistency, the opportunity is also taken to provide for specific rule-making powers concerning suitors' funds for the

¹ The suitors' funds rules are spelt out in the following subsidiary legislation :
(a) the High Court Suitors' Funds Rules (Cap. 4B);
(b) the District Court Suitors' Funds Rules (Cap. 336E);
(c) the Labour Tribunal (Suitors' Funds) Rules (Cap. 25D); and
(d) the Small Claims Tribunal (Suitors' Funds) Rules (Cap. 338D).

Labour Tribunal and the Small Claims Tribunal², similar to those for the High Court and the District Court.

17. The Judiciary proposes to amend the following relevant principal legislation to provide for specific rule-making powers concerning suitors' funds for the various courts and tribunals, and to make other related amendments –

- (a) HKCFAO;
- (b) High Court Ordinance (Cap. 4);
- (c) District Court Ordinance;
- (d) Lands Tribunal Ordinance (Cap. 17);
- (e) Labour Tribunal Ordinance (Cap. 25) (the LTO); and
- (f) Small Claims Tribunal Ordinance (Cap. 338).

18. After the above amendments to the ordinances have been enacted, the Judiciary will amend the existing suitors' funds rules for various courts and tribunals to refine the operations. Similar changes would also be adopted for the new dedicated suitors' funds rules for the CFA and the Lands Tribunal.

OTHER OPTIONS

19. The Judiciary must amend the relevant Ordinances and subsidiary legislation in order to bring the above proposals into effect. There are no other options.

THE BILL

20. The key provisions of the Bill are –

- (a) Clause 3 amends the definition of “live television link” in the existing section 79A of the Criminal Procedure Ordinance to allow for the modernisation of equipment in the special procedures for vulnerable witnesses from closed circuit television systems to audio-visual facilities.

² The present general rule-making powers for the Labour Tribunal and the Small Claims Tribunal are set out respectively in section 45 of the Labour Tribunal Ordinance (Cap. 25) and section 36 of the Small Claims Tribunal Ordinance (Cap. 338).

- (b) Clause 4 amends the existing section 5AA of the Magistrates Ordinance so that the period(s) of a person's appointment as a Special Magistrate may be combined with the period(s) of other specified legal practice or service for the purpose of calculating the five years' experience in legal practice or service required to be eligible to be appointed as a Permanent Magistrate.
- (c) Clause 5 substitutes the existing section 80(2) of the District Court Ordinance to provide for the delivery of reasons for verdicts and sentences of criminal cases in the District Court.
- (d) Clause 7 repeals the existing section 22(1)(a) of the HKCFAO to abolish civil appeals to the CFA as of right.
- (e) Clause 12 amends the existing section 30 of the LTO so that the power of the Labour Tribunal to require security for payment of an award or order is extended.
- (f) Clause 13 substitutes the existing section 31(4) of the LTO to provide for a general power of a presiding officer of the Labour Tribunal, in hearing an application for a review of an award or order, to require security for the payment of an award or order.
- (g) Clause 16 amends the existing Schedule to the LTO to make clear that jurisdiction of the Labour Tribunal covers a claim for a sum of money arising in specified circumstances whether the sum is liquidated or unliquidated.
- (h) Part 7 amends the relevant principal legislation to provide expressly for the power for the making of suitors' funds rules for various courts and tribunals.

LEGISLATIVE TIMETABLE

21. The legislative timetable will be –

Publication in the Gazette	25 April 2014
First Reading and commencement of Second Reading Debate	7 May 2014

Resumption of Second Reading Debate, To be notified
Committee Stage and Third Reading

IMPLICATIONS OF THE PROPOSAL

22. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. They have no economic, productivity, sustainability, environmental or family implications. The amendments proposed in the Bill will not affect the binding effect of the existing provisions of the relevant Ordinances and subsidiary legislation.

23. As for the financial implications, the Judiciary would need additional resources to implement the IT functions for the suitors' funds and install suitable audio-visual facilities for vulnerable witnesses. It is estimated that about \$4 million will be required in the first two years or so to implement the necessary functions to cater for the dedicated suitors' funds rules of respective courts as well as the increased demand for audio-visual facilities. In terms of civil service implications, two additional posts for support staff³ will be required to manage the suitors' funds for certain levels of court separately. Additional resources will be sought through the established mechanism as necessary.

PUBLIC CONSULTATION

24. The Judiciary has consulted various stakeholders including the Hong Kong Bar Association, the Law Society of Hong Kong and the Labour Advisory Board. The two legal professional bodies are generally supportive of our proposed legislative amendments. The Judiciary has also provided them with clarifications of the points which they raised and made changes to the Bill in the light of their comments. The other stakeholders have also indicated general support to the Bill.

25. The Administration and the Judiciary consulted the LegCo Panel on Administration of Justice and Legal Services on the proposed legislative amendments at its two meetings held on 23 July 2013 and 28 January 2014. The Panel agreed at the second meeting that the Bill, with the refinements

³ The two support staff posts are likely to be an Accounting Officer II and an Assistant Clerical Officer.

proposed by some members of the Panel incorporated, would be ready for introduction.

PUBLICITY

26. A press release will be issued on 25 April 2014. A spokesperson will be available to answer media and public enquiries.

ENQUIRIES

27. For enquiries on this brief, please contact Ms Wendy CHEUNG, Assistant Judiciary Administrator (Development), at 2825 4244 or Mr Howard LEE, Assistant Director of Administration, at 2810 3946.

Administration Wing
Chief Secretary for Administration's Office

Judiciary Administration
22 April 2014

Administration of Justice (Miscellaneous Provisions) Bill 2014

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A BILL

To

Amend various legislation to make provisions concerning audio-visual facilities in criminal proceedings, permanent magistrates' professional qualifications, the delivery of reasons for verdicts and sentences of criminal cases in the District Court, civil appeals to the Hong Kong Court of Final Appeal as of right, the Labour Tribunal's jurisdiction and powers, and suitors' funds in various courts and tribunals; and to make minor amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Administration of Justice (Miscellaneous Provisions) Ordinance 2014.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) Part 7 comes into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 to 7 are amended as set out in those Parts.

Part 2

Amendment to Criminal Procedure Ordinance (Cap. 221)

3. Section 79A amended (interpretation)

Section 79A, definition of *live television link*—

Repeal

“a closed circuit television system”

Substitute

“audio-visual facilities”.

Part 3**Amendments to Magistrates Ordinance (Cap. 227)****4. Section 5AA amended (professional qualifications of permanent magistrates)****(1) Section 5AA—****Repeal subsections (1) and (2)****Substitute**

“(1) A person is eligible to be appointed as a permanent magistrate if the person—

- (a) is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
- (b) has the required experience as specified in subsection (2).

(2) For subsection (1)(b), a person has the required experience if, for a period of or periods totalling not less than 5 years—

- (a) since becoming qualified as described in subsection (1)(a), the person—
 - (i) has practised as a barrister, solicitor or advocate in such a court;
 - (ii) has been a legal officer;
 - (iii) has been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);

(iv) has been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or

(v) has been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412); or

(b) whether before or since becoming qualified as described in subsection (1)(a), the person has been a special magistrate appointed in accordance with section 5.”.

(2) Section 5AA(3)—**Repeal**

“For the purposes of calculating the period of 5 years referred to in subsection (1)(b)”

Substitute

“In calculating the period of 5 years referred to in subsection (2)”.

(3) Section 5AA(3)(a)—**Repeal**

“subparagraphs”

Substitute

“paragraphs or subparagraphs”.

(4) Section 5AA(3)(b), before “periods”—

Add

“for the purposes of paragraph (a) of that subsection,”.

Part 4

Amendment to District Court Ordinance (Cap. 336)

5. Section 80 amended (verdict)

Section 80—

Repeal subsection (2)

Substitute

- “(2) The reasons for the verdict must be delivered—
- (a) together with the verdict; and
 - (b) either orally or in writing.
- (3) The reasons for any sentence must be delivered—
- (a) together with the sentence; and
 - (b) orally.
- (4) Reasons delivered orally under subsection (2) or (3) must be reduced to writing within 21 days after the hearing or the trial.
- (5) The reasons reduced to writing must be signed by the judge.
- (6) For reasons delivered in writing under subsection (2), the Court must—
- (a) deliver a copy of the reasons to each of the parties;
 - (b) lodge a copy of the reasons in the High Court Library; and
 - (c) make a copy of the reasons available for public inspection in the Registry of the Court.”.
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Part 5**Amendments to Hong Kong Court of Final Appeal
Ordinance (Cap. 484)****6. Application**

This Part applies in relation to a final judgment of the Court of Appeal if the date of the final judgment (whether pronounced orally or delivered in writing) falls on or after the commencement date of this Part.

7. Section 22 amended (civil appeals)

(1) Section 22(1)—

Repeal paragraph (a).

(2) Section 22(1)(b)—

Repeal

“any other judgment”

Substitute

“any judgment”.

(3) Section 22—

Repeal subsection (2).

8. Section 23 amended (leave to appeal)

Section 23—

Repeal subsection (2).

9. Section 25 amended (grant of leave to appeal)

Section 25(1)—

Repeal

“or is required”.

Part 6

Amendments Relating to Jurisdiction and Powers of Labour Tribunal

Division 1—Labour Tribunal Ordinance (Cap. 25)

10. Section 12 amended (contents of claims)

Section 12(c)—

Repeal

“money”

Substitute

“money (whether liquidated or unliquidated)”.

11. Section 15 amended (conciliation certificate to be filed)

Section 15(3)—

Repeal

“sections 16 and 30”

Substitute

“section 16”.

12. Section 30 substituted

Section 30—

Repeal the section

Substitute

“30. Security for awards and orders

- (1) The tribunal may order a party to give security for the payment of an award or order that has been or may be

made if the tribunal considers it just and expedient to do so.

- (2) The tribunal may make the order either of its own motion or on the application of a party.
- (3) The order may require security to be given—
- (a) by payment into the tribunal a sum of money that the tribunal considers sufficient; or
- (b) in any other form and manner that the tribunal considers appropriate.
- (4) Without limiting subsection (1), the tribunal may make an order under that subsection against a party if—
- (a) the tribunal is satisfied that there is a real risk that the payment of an award or order that has been or may be made will be obstructed or delayed because—
- (i) the party has disposed of, removed from Hong Kong or lost control of assets belonging to the party;
- (ii) the party is about to dispose of, remove from Hong Kong or lose control of assets belonging to the party; or
- (iii) there is a real risk of the party disposing of, removing from Hong Kong or losing control of assets belonging to the party;
- (b) the tribunal is satisfied that—
- (i) the party has conducted the proceedings in a manner that delays the determination of the case; or
- (ii) the party’s conduct otherwise constitutes an abuse of the process; or

- (c) the tribunal is satisfied that the party has, without reasonable excuse, failed to comply with any award, order or direction.
- (5) If a party fails to comply with an order under subsection (1), the tribunal may—
 - (a) dismiss the party's claim;
 - (b) stay the proceedings; or
 - (c) enter judgment on the claim against the party.
- (6) On a party's failure to comply with an order under subsection (1), the tribunal may exercise the powers referred to in subsection (5) without further hearing or considering the party's case if the order expressly indicates the tribunal's intention to do so on such non-compliance without further hearing or consideration.”.

13. Section 31 amended (review of awards and orders)

Section 31—

Repeal subsection (4)

Substitute

- “(4) After a party has applied for a review of an award or order, the presiding officer may order the applicant to give security for the payment of any award or order that has been or may be made if the presiding officer considers it just and expedient to do so.
- (4A) The presiding officer may make the order either of the presiding officer's own motion or on the application of a party.
- (4B) The order may require security to be given—
 - (a) by payment into the tribunal a sum of money that the presiding officer considers sufficient; or

- (b) in any other form and manner that the presiding officer considers appropriate.
- (4C) Without limiting subsection (4), the presiding officer may exercise the power under that subsection if the presiding officer is satisfied that—
 - (a) the application for a review of an award or order—
 - (i) is devoid of merit; or
 - (ii) is made to delay the process; or
 - (b) assets that may be available to satisfy an award or order may be disposed of to the prejudice of any party.
- (4D) If a party fails to comply with an order under subsection (4), the presiding officer may dismiss the application for review.
- (4E) On a party's failure to comply with an order under subsection (4), the presiding officer may dismiss the application for review under subsection (4D) without further hearing or considering the party's case if the order expressly indicates the presiding officer's intention to do so on such non-compliance without further hearing or consideration.”.

14. Section 38 substituted

Section 38—

Repeal the section

Substitute

“38. Awards and orders may be registered in District Court

- (1) A final award or order of the tribunal may be registered in the District Court in the prescribed manner.

- (2) On registration, the final award or order—
- (a) becomes for all purposes a judgment of the District Court made on the date on which the final award or order was made by the tribunal; and
- (b) subject to section 40, may be enforced accordingly.
- (3) The final award or order may be enforced under subsection (2)(b) even though the award or order has been given for an amount that is beyond the jurisdiction of the District Court.”.

15. Section 48 added

After section 47—

Add

“48. Proceedings to which amendments made by Administration of Justice (Miscellaneous Provisions) Ordinance 2014 apply

The amendments made to this Ordinance by the Administration of Justice (Miscellaneous Provisions) Ordinance 2014 (of 2014) apply in relation to all proceedings to which this Ordinance relates irrespective of when those proceedings were commenced.”.

16. Schedule amended

- (1) The Schedule, paragraph 1—

Repeal

“money”

Substitute

“money, whether liquidated or unliquidated,”.

- (2) The Schedule, paragraph 3—

Repeal

“money,”

Substitute

“money (whether liquidated or unliquidated),”.

Division 2—Labour Tribunal (General) Rules (Cap. 25 sub. leg. A)

17. Rule 12 amended (registration of award or order in District Court)

Rule 12(2)—

Repeal

“shall, on the production of a certificate of award or order, and a copy thereof to him within 12 months after the date of the award or order,”

Substitute

“must, on the production of a certificate of award or order and a copy of it to the registrar,”.

Division 3—Labour Tribunal (Forms) Rules (Cap. 25 sub. leg. C)

18. Schedule amended

- (1) The Schedule, Form 1—

Repeal

“Claim No. of 19”

Substitute

“Claim No. of ”.

- (2) The Schedule, Forms 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14—

Repeal

“day of 19.....” (wherever appearing)

Substitute

“day of”.

- (3) The Schedule, Form 15A—

Repeal

“dated 19.....”

Substitute

“dated”.

- (4) The Schedule, Form 15A—

Repeal

“day of 19.....” (wherever appearing)

Substitute

“day of”.

- (5) The Schedule, Form 16—

Repeal

“day of 19.....” (wherever appearing)

Substitute

“day of”.

- (6) The Schedule, Form 17—

Repeal

“day of 19.....” (wherever appearing)

Substitute

“day of”.

- (7) The Schedule, Form 17—

Repeal

“(c) Dated”

Substitute

“Dated”.

- (8) The Schedule, Form 17—

Repeal Note (c).

- (9) The Schedule, Forms 18, 19 and 20—

Repeal

“day of 19.....” (wherever appearing)

Substitute

“day of”.

Division 4—Labour Tribunal (Suitors’ Funds) Rules (Cap. 25 sub. leg. D)

19. Rule 4 amended (registrar to give receipt)

Rule 4(2)(b)—

Repeal

“day of 19”

Substitute

“day of”.

20. Schedule amended

- (1) The Schedule, Form 1—

Repeal

“No. of 19”

Substitute

- “No. of ”.
- (2) The Schedule, Form 1—
Repeal
 “day of 19”
Substitute
 “day of ”.
- (3) The Schedule, Form 2—
Repeal
 “No. of 19”
Substitute
 “No. of ”.
- (4) The Schedule, Form 2—
Repeal
 “dated the 19”
Substitute
 “dated the ”.
- (5) The Schedule, Form 2—
Repeal
 “day of 19”
Substitute
 “day of ”.
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Part 7

Amendments Relating to Suitors’ Funds

Division 1—High Court Ordinance (Cap. 4)

21. **Section 20A amended (property which may be charged)**
 Section 20A(4), Chinese text, definition of 證券—
Repeal
 “保證物”
Substitute
 “證券”.
22. **Section 57 amended (rules concerning deposit, etc. of moneys, etc. in High Court)**
 (1) Section 57, heading—
Repeal
 “Rules concerning deposit, etc. of moneys, etc. in High Court”
Substitute
 “Suitors’ Funds Rules”.
- (2) Section 57(1)(a), (b) and (d), Chinese text—
Repeal
 “保證物”
Substitute
 “證券”.
- (3) Section 57(2)(e), Chinese text—
Repeal

“保證物”

Substitute

“證券”.

- (4) Section 57(2)(f)—

Repeal

everything after “disposing of money”

Substitute

“remaining unclaimed in court.”.

- (5) Section 57—

Repeal subsection (3)

Substitute

“(3) In this section—

securities (證券) includes shares;

suitors (訴訟人) includes any party to arbitral proceedings who makes payment of money into the Court of First Instance in accordance with rules of court.”.

Division 2—Lands Tribunal Ordinance (Cap. 17)

23. Section 10AA added

After section 10—

Add

“10AA. Suitors’ Funds Rules

- (1) The Chief Justice may, after consulting the President, make rules for regulating the following matters—
- (a) the deposit, payment, delivery, and transfer in, into, and out of the Tribunal of money, securities and movable property of suitors;

- (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money, securities and movable property in the Tribunal;

- (c) the execution of the orders of the Tribunal; and

- (d) the powers and duties of the registrar with reference to such money, securities and movable property.

- (2) Without limiting subsection (1), rules made under that subsection may provide for—

- (a) regulating the placing on and withdrawal from deposit of money in the Tribunal, and the payment or crediting of interest on money placed on deposit;

- (b) determining the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;

- (c) determining the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;

- (d) determining the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;

- (e) determining the cases in which interest on money placed on deposit is, and the dividends on any securities standing in the name of the registrar are, to be placed on deposit; and

- (f) disposing of money remaining unclaimed in the Tribunal.

- (3) In this section—

securities (證券) includes shares.”.

Division 3—Labour Tribunal Ordinance (Cap. 25)

24. **Section 45 amended (Chief Justice may make rules)**

(1) Section 45—

Renumber the section as section 45(1).

(2) After section 45(1)—

Add

“(2) Without limiting subsection (1), the Chief Justice may make rules for regulating the following matters—

- (a) the deposit, payment, delivery, and transfer in, into, and out of the tribunal of money and movable property of suitors;
- (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money and movable property in the tribunal; and
- (c) the powers and duties of the registrar with reference to such money and movable property.

(3) Without limiting subsection (2), rules made under that subsection may provide for—

- (a) regulating the placing on and withdrawal from deposit of money in the tribunal, and the payment or crediting of interest on money placed on deposit;
- (b) determining the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
- (c) determining the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;

- (d) determining the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
- (e) determining the cases in which interest on money placed on deposit is to be placed on deposit; and
- (f) disposing of money remaining unclaimed in the tribunal.”.

Division 4—District Court Ordinance (Cap. 336)

25. **Section 52AA amended (property which may be charged)**

Section 52AA(4), Chinese text, definition of 證券—

Repeal

“保證物” (wherever appearing)

Substitute

“證券”.

26. **Section 73 amended (Suitors’ Funds Rules)**

(1) Section 73(1)(a), (b) and (d), Chinese text—

Repeal

“保證物”

Substitute

“證券”.

(2) Section 73(2)(e), Chinese text—

Repeal

“保證物”

Substitute

“證券”.

- (3) Section 73(2)(f)—

Repeal

everything after “disposing of money”

Substitute

“remaining unclaimed in court.”.

- (4) After section 73(2)—

Add

“(3) In this section—

securities (證券) includes shares.”.

Division 5—Small Claims Tribunal Ordinance (Cap. 338)

27. Section 36 amended (Chief Justice may make rules)

- (1) Section 36—

Renumber the section as section 36(1).

- (2) After section 36(1)—

Add

“(2) Without limiting subsection (1), the Chief Justice may make rules for regulating the following matters—

- (a) the deposit, payment, delivery, and transfer in, into, and out of the tribunal of money of suitors;
- (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money in the tribunal; and
- (c) the powers and duties of the registrar with reference to such money.

- (3) Without limiting subsection (2), rules made under that subsection may provide for—

- (a) regulating the placing on and withdrawal from deposit of money in the tribunal, and the payment or crediting of interest on money placed on deposit;
- (b) determining the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
- (c) determining the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
- (d) determining the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
- (e) determining the cases in which interest on money placed on deposit is to be placed on deposit; and
- (f) disposing of money remaining unclaimed in the tribunal.”.

Division 6—Hong Kong Court of Final Appeal Ordinance (Cap. 484)

28. Section 40A added

After section 40—

Add

“40A. Suitors’ Funds Rules

- (1) The Chief Justice may make rules for regulating the following matters—
 - (a) the deposit, payment, delivery, and transfer in, into, and out of the Court of money of suitors;

- (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money in the Court;
 - (c) the execution of the orders of the Court; and
 - (d) the powers and duties of the Registrar with reference to such money.
- (2) Without limiting subsection (1), rules made under that subsection may provide for—
- (a) regulating the placing on and withdrawal from deposit of money in the Court, and the payment or crediting of interest on money placed on deposit;
 - (b) determining the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
 - (c) determining the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (d) determining the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (e) determining the cases in which interest on money placed on deposit is to be placed on deposit; and
 - (f) disposing of money remaining unclaimed in the Court.”.
-

Explanatory Memorandum

The object of this Bill is to make miscellaneous amendments to various pieces of legislation relating to the administration of justice.

2. The Bill is divided into 7 Parts.

Part 1

3. Clause 1 sets out the short title and provides for commencement.

Part 2

4. Part 2 (clause 3) amends the definition of *live television link* in section 79A of the Criminal Procedure Ordinance (Cap. 221) to allow for the modernization of equipment in the special procedures for vulnerable witnesses from closed circuit television systems to audio-visual facilities.

Part 3

5. Part 3 (clause 4) amends section 5AA of the Magistrates Ordinance (Cap. 227) so that a person’s appointment as a special magistrate may be combined with any other specified legal practice or service in calculating the 5 years’ required experience for being eligible to be appointed as a permanent magistrate.

Part 4

6. Part 4 (clause 5) amends section 80 of the District Court Ordinance (Cap. 336) to provide for the delivery of reasons for verdicts and sentences of criminal cases in the District Court.

Part 5

7. Part 5 (clauses 6 to 9) repeals section 22(1)(a) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) to abolish civil appeals

to the Hong Kong Court of Final Appeal as of right, makes certain consequential amendments to that Ordinance and provides for the application of the amendments.

Part 6

8. Part 6 (clauses 10 to 20) contains amendments relating to the jurisdiction and powers of the Labour Tribunal.
9. Clauses 10 to 16 provide for amendments to the Labour Tribunal Ordinance (Cap. 25).
10. Clause 12 amends section 30 of the Labour Tribunal Ordinance so that the power of the Labour Tribunal to require security for payment of an award or order is no longer confined to the occasion of adjournment and new grounds for requiring security are added (including the defendant removing assets from Hong Kong, a party abusing the process or failing, without reasonable excuse, to comply with an award, order or direction). A party's failure to give security as ordered may result in the party's claim being dismissed, the proceedings being stayed or judgment being entered against the party. Since the power to require security is no longer confined to the occasion of adjournment, the reference to section 30 in section 15 of that Ordinance is deleted (clause 11).
11. Clause 13 replaces section 31(4) of the Labour Tribunal Ordinance by section 31(4) to (4E) to provide for a general power of a presiding officer, in hearing an application for a review of an award or order, to require security for the payment of an award or order. The power may be exercised, for example, if the application for review is devoid of merit or is made to delay the process. A party's failure to give security as ordered may result in the application for review being dismissed.
12. Clause 14 substitutes a new section 38 of the Labour Tribunal Ordinance to make it clear that a final award or order on registration in the District Court becomes a judgment of that court

made on the same date as the date on which the final award or order was made by the Labour Tribunal.

13. Clause 15 adds a new section 48 to the Labour Tribunal Ordinance so that the amendments apply to proceedings in the Labour Tribunal, irrespective of when the proceedings were commenced.
14. Clause 16 amends the Schedule to the Labour Tribunal Ordinance to make it clear that jurisdiction of the Labour Tribunal covers a claim for a sum of money arising in specified circumstances whether the sum is liquidated or unliquidated. Section 12 of that Ordinance is consequentially amended (clause 10).
15. Rule 12(2) of the Labour Tribunal (General) Rules (Cap. 25 sub. leg. A) is amended to remove the 12-month limitation on registration of award or order in the District Court (clause 17). The relevant note in Form 17 in the Schedule to the Labour Tribunal (Forms) Rules (Cap. 25 sub. leg. C) is deleted consequentially (clause 18(8)).
16. Other provisions of clauses 18, 19 and 20 contain other minor amendments.

Part 7

17. Part 7 (clauses 21 to 28) contains amendments relating to suitors' funds.
18. Clauses 21 and 22 make certain technical amendments to sections 20A and 57 of the High Court Ordinance (Cap. 4) respectively.
19. Clause 23 adds a new section 10AA to the Lands Tribunal Ordinance (Cap. 17) to provide for the making of suitors' funds rules for the Lands Tribunal.
20. Clause 24 amends section 45 of the Labour Tribunal Ordinance to provide expressly for the making of suitors' funds rules for the Labour Tribunal.

21. Clauses 25 and 26 make certain technical amendments to sections 52AA and 73 of the District Court Ordinance respectively.
22. Clause 27 amends section 36 of the Small Claims Tribunal Ordinance (Cap. 338) to provide expressly for the making of suitors' funds rules for the Small Claims Tribunal.
23. Clause 28 adds a new section 40A to the Hong Kong Court of Final Appeal Ordinance to provide for the making of suitors' funds rules for the Hong Kong Court of Final Appeal.

Legislative Amendments relating to Appeals in Civil Matters to the Court of Final Appeal (CFA)

Present Position

According to section 22(1)(a) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (the HKCFAO)¹, an appeal from any final judgment of the Court of Appeal in any civil cause or matter lies to the CFA as of right² where the matter in dispute amounts to or is of the value of \$1 million or more. For other cases, as provided under section 22(1)(b) of the HKCFAO³, leave to appeal to the CFA will only be allowed if, in the opinion of the Court of Appeal or the CFA, as the case may be, the question involved is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the CFA for decision.

Inadequacies of the Present System

Objectionable as a Matter of Principle

2. The present system is objectionable as a matter of principle; linking a right of appeal to the CFA by reference to an arbitrary financial limit means that litigants involved in litigation with a claim of monetary value of or beyond the threshold limit in effect have more rights than other litigants with smaller claims, regardless of the merits of their cases. For claims of or above

¹ Section 22(1)(a) of the HKCFAO in essence provides that an appeal lies to the CFA as of right from any final judgment of the Court of Appeal, where the matter in dispute amounts to or is of the value of HK\$1 million or more.

² Even "as of right" appeals require conditional leave to appeal under section 23(2) of the HKCFAO which provides that:

“Where an appeal lies of right, leave to appeal shall not be refused but shall, in the first instance, be granted as conditional leave in accordance with section 25.”

³ Section 22(1)(b) of the HKCFAO in essence provides that for other Court of Appeal judgments, appeals to the CFA will only be allowed if, in the opinion of the Court of Appeal or the CFA, the question involved is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the CFA for decision.

the limit, appeals are as of right; for claims under the limit, discretionary leave of the Court of Appeal or the CFA is required.

Ineffective System of Appeals

3. Allowing appeals to be lodged to the CFA as of right leads to situations where unmeritorious appeals have to be heard by the CFA. This leads to uncertainty, delay and worst of all, justice being denied (or delayed) to the party who has merits in a case⁴.

4. In other words, allowing unmeritorious appeals to lie as of right to the CFA is not conducive to an effective system of appeals. Unmeritorious appeals do not benefit the appellants either, not to mention the respondents. Such appeals serve only to saddle the litigating parties with more legal costs to pay⁵.

Waste of Judicial Resources

5. Both the Chief Justice and Permanent Judges of the CFA have frequently remarked on section 22(1)(a) of the HKCFAO as being anachronistic. There are instances where the appeals as of right were devoid of merit, and if leave had been required, there would have been no prospect of such leave being granted⁶. However, they were listed before the CFA for a full hearing making use of the existing mechanism. Such cases are inherently wasteful of judicial resources. Following the Civil Justice Reform introduced in 2009, this kind of wastage should no longer be tolerated.

⁴ As stated by the Appeal Committee of the CFA in *China Field Ltd v Appeal Tribunal (Buildings)* (2009) 12 HKCFAR 68, at paragraph 16 (Ribeiro PJ), “*the role of the Court of Final Appeal is not to permit a third bite of the cherry to any litigant who wishes to have another go. An appeal to the Court as of right is in principle oppressive to the party who has won in the Court of Appeal where the further appeal is without substance. Unless the appeal involves a point of law of public importance or unless grievous injustice would be done if the final court does not intervene, a successful litigant should not be dragged before a third tier of court. This approach does not, of course, argue against the Court retaining discretion to grant leave to appeal in appropriate cases.*”

⁵ *Wealth Duke Ltd and Others v Bank of China (Hong Kong) Ltd* (2011) 14 HKCFAR 863, at paragraph 1 per Bokhary PJ (as he then was).

⁶ A recent example is *Kwok Chin Wing v 21 Holdings Ltd & others*, (FACV 9/2012, judgment handed down on 30 September 2013).

6. Unmeritorious appeals prevent the CFA from hearing in good time genuine and much more meritorious appeals (often in the public law sphere). It is unfair to not only the successful parties in litigation of the particular appeal case, but also litigants in other cases who have deserving causes before the CFA. It is ultimately unfair to the community as well. For cases in other areas such as those relating to applications for judicial review, which invariably involve constitutional and/or public law issues, the Court of First Instance has to be satisfied that there are issues or questions which are reasonably arguable before granting leave to apply for judicial review⁷.

7. As a matter of fact, the workload and resources for dealing with a leave application and a substantive appeal by the CFA are different. As regards leave applications, they may be disposed of on papers under the procedures of rule 7 of the Hong Kong Court of Final Appeal Rules (Cap. 484A)⁸. If the Appeal Committee of the CFA directs a hearing of the leave application, the hearing time normally lasts for about one to two hours (though the amount of time needed by the Judges to prepare for the hearing is much longer) and only three Judges are involved. For substantive appeals, apart from the judicial and administrative time spent on those pre-hearing procedural matters, the hearing bundles involved are normally much more substantial and the hearing time normally lasts for one or more days and five Judges are involved.

An Anomaly in a Modern Judicial System

8. Almost every other common law jurisdiction to which Hong Kong has a closer affinity requires that “leave” be obtained before appeals can be made to their highest appellate court. They include appeals from the judgments of the local Courts in Australia to the Australian High Court, those

⁷ See Order 53, Rule 3 of the Rules of the High Court (Cap. 4A).

⁸ Rule 7 of the Hong Kong Court of Final Appeal Rules (Cap. 484A) provides:

- “(1) Where the Registrar is of the opinion either on the application of the Respondent or of his own motion that an application discloses no reasonable grounds for leave to appeal, or is frivolous or fails to comply with these Rules, he may issue a summons to the applicant calling upon him to show cause before the Appeal Committee why the application should not be dismissed.
- (2) The Appeal Committee may, after considering the matter, order that the application be dismissed or give such other directions as the justice of the case may require.”

in New Zealand to the Supreme Court of New Zealand, and those in England and Wales to the Supreme Court of the United Kingdom. As for those appeals in Canada to the Canadian Supreme Court, leave to appeal is required in most cases.

9. Details of the common law jurisdictions are shown at the Enclosure⁹.

Raising the Financial Limit is not an Option

10. Raising the financial limit of HK\$1 million would not be able to remove the anomaly of or the objection to the present appeal mechanism linking the right of appeal of a litigant to an arbitrary financial limit (see paragraphs 2 and 6 above), and therefore should not be an option. In any event, it is doubtful whether raising the financial limit could in practice significantly reduce the number of unmeritorious appeals to the CFA, let alone eliminating them.

11. In this regard, the Canadian experience may be a useful reference for us. Appeals in Canada to the Canadian Supreme Court could in the past be made as of right by reference to a financial/monetary limit. In 1973, the Canadian Bar Association (CBA) found that the overloading of cases at the Supreme Court was not acceptable as a result of the sharp increase in the number of appeals as of right. The CBA then recommended abolishing appeals as of right in civil cases to the Supreme Court. Consideration was initially given to simply raising the monetary minimum for such cases from C\$10,000 to some higher figure, but this solution was ultimately decided to be objectionable in principle. Money or property alone, at any figure of monetary value, was simply not acceptable as the basis of an exclusive privilege to appeal as a matter of right to the Supreme Court¹⁰.

Proposed Legislative Amendments

12. For the reasons highlighted above, the existing as of right appeal

⁹ In Singapore, appeals in civil matters above a certain monetary threshold lie as of right from their High Court to the Court of Appeal (being its highest appellate court). Appeals as of right to the highest appellate court are also allowed in Ireland.

¹⁰ Anne Roland, "Appeals to the Judicial Committee of the Privy Council: A Canadian Perspective", *Commonwealth Law Bulletin* Vol 32 No. 4 (December 2006), 569, at 580.

mechanism to the CFA is highly unsatisfactory. The Judiciary considers it important and timely to amend the law so that all appeals in civil matters to the CFA become subject to discretionary leave of the Court of Appeal or the CFA.

13. It is proposed that all appeals in civil matters, whether or not the matter in dispute amounts to or is worth \$1 million or more, should only lie at the discretion of the Court of Appeal or the CFA. All such appeals should be allowed to be made only if, in the opinion of the Court of Appeal or the CFA, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the CFA for decision. This can be achieved by repealing section 22(1)(a) of the HKCFAO with other consequential amendments.

14. It is important to note that the Judiciary's proposal is to repeal the "as of right" limb, without affecting other existing aspects of the leave requirement in section 22(1)(b) of the HKCFAO. As such, there would be no question of any substantive erosion of the rights of appellants under the proposal.

15. It has also to be emphasised that the CFA is the final appellate court in Hong Kong. It does not operate as a second court of appeal operating on the same basis as the Court of Appeal. While the CFA primarily deals with questions of "great general or public importance", there is also an "or otherwise" provision. Existing case law has established the "or otherwise" limb as an exceptional one with a limited scope of application, for example, when there is perceived grave injustice. Instead of rigidly setting out the considerations for approving or rejecting an application for leave under this limb, the Judiciary considers it more appropriate to let the jurisprudence on this limb further develop on its own, just like all case law. If the Judiciary spells out other factors such as "general commercial significance" in the legislation like some other jurisdictions, it would still offend the matter of principle set out in paragraph 2 above in that commercial cases with a higher monetary value would then seem to enjoy more rights.

16. Under the legislative proposal, the Court of Appeal or the CFA will have discretion to decide whether to grant leave to appeal to the CFA in all cases involving civil causes or matters. Where neither the "great general or public importance" nor the "or otherwise" grounds are engaged, leave to appeal to the CFA will be refused. The proposal would enable the Court of

Appeal or the CFA to look at all the relevant circumstances of the case including its merits in deciding whether leave to appeal should be granted.

17. Separately, it should be noted that at present, all criminal appeals to the CFA are subject to the discretionary leave granted by the CFA. There is no as of right ground for criminal appeals. Abolishing the as of right ground for civil appeals will bring such appeals in line with the criminal appeal process. All appeals to the CFA should be subject to the discretionary leave of the Court of Appeal or the CFA which may be granted on the basis of their merits, and all litigants or parties should be treated equally in terms of their right to appeal.

**Appeal in Civil Matters to the Highest Appellate Court
in other Comparable Common Law Jurisdictions**

Australia

The High Court of Australia is the highest court in the Australian judicial system, and is the final court of appeal in Australia. The High Court has both original and appellate jurisdiction.

2. The appellate jurisdiction of the High Court originates from section 73 of the Australian Constitution, which stipulates that the High Court can hear appeals from the Supreme Courts of the States and from any federal court or court exercising federal jurisdiction. Section 73 allows the High Court's appellate jurisdiction to be limited "with such exceptions and subject to such regulations as the Parliament prescribes".

3. There is no automatic right to have an appeal heard by the High Court, and an appeal shall not be brought from a judgment, whether final or interlocutory, unless the High Court gives special leave to appeal.¹ Parties need to persuade the court that there are special reasons. In considering whether to grant special leave to appeal, the High Court may have regard to any matters it considers relevant but must have regard to:

"(a) whether the proceedings in which the judgment to which the application relates was pronounced involve a question of law:

(i) that is of public importance, whether because of its general application or otherwise; or

(ii) in respect of which a decision of the High Court, as the final appellate court, is required to resolve differences of opinion between different courts, or within the one court, as to the state of the law; and

(b) whether the interests of the administration of justice, either generally or in the particular case, require

¹ Section 35AA, Judiciary Act 1903.

*consideration by the High Court of the judgment to which the application relates."*²

Canada

4. The Supreme Court of Canada is the highest court in Canada. Its jurisdiction embraces both the civil law of the province of Quebec and the common law of the other nine provinces and the territories. In most cases, appeals are heard by the court only if leave to appeal is given. Such leave is given when a case involves a question which the Supreme Court is of the opinion that:

*"by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it."*³

England and Wales

5. The Supreme Court of the United Kingdom is the final appellate court in almost all cases in England and Wales. The Supreme Court came into being on 1 October 2009 by virtue of Part III of the Constitutional Reform Act 2005. The Supreme Court has replaced the House of Lords in its judicial capacity,⁴ and assumed the jurisdiction of the House of Lords. Apart from appeals from England and Wales, the Supreme Court also deals with appeals from Scotland's Court of Session etc.

6. Section 40(2) of the Constitutional Reform Act 2005 stipulates that an appeal lies to the Court from any order or judgment of the Court of Appeal in England and Wales in civil proceedings. However, an "appeal under subsection (2) lies only with the permission of the Court of Appeal or the Supreme Court",⁵ subject to any other enactment restricting such an

² Section 35A, Judiciary Act 1903.

³ Section 40, Supreme Court Act 1985 (Canada).

⁴ See Constitutional Reform Act 2005. Before the Act, the House of Lords was the highest court of appeal. (See section 37).

⁵ Section 40(6).

appeal.⁶ An application for permission to appeal must be made first to the Court of Appeal. If that Court refuses permission, an application may be made to the Supreme Court.⁷

Ireland

7. The Supreme Court is the court of final appeal in all constitutional and civil matters in Ireland.⁸ The High Court is a court of first instance with full original jurisdiction in all civil and criminal matters.

8. There is no equivalent intermediate court of appeal for civil matters between the High Court and the Supreme Court. Instead, the Supreme Court is the court of final appeal and hears civil appeals from decisions of the High Court. As such, there is generally an automatic right of appeal to the Supreme Court from the decisions of the High Court for civil matters. There are however a limited number of exceptions to this right of appeal where a certificate is required from the trial judge certifying that the appeal involves a point of law of public importance.⁹

Singapore

9. The Supreme Court of Singapore is made up of the Court of Appeal and the High Court. The High Court is a court of first instance with full original jurisdiction in all civil and criminal matters. The Court of Appeal hears appeals against the decisions of the High Court in both civil and criminal matters. The Court of Appeal is also the final court of appeal in Singapore. There is no intermediate court of appeal between the High Court and the Court of Appeal.

⁶ For civil appeals, relevant statutes are:

- the Administration of Justice (Appeals) Act 1934;
- the Administration of Justice Act 1960;
- the Administration of Justice Act 1969;
- the Judicature (Northern Ireland) Act 1978;
- the Court of Session Act 1988; and
- the Access to Justice Act 1999.

⁷ www.supremecourt.gov.uk ("A guide to bringing a case to the Supreme Court").

⁸ Article 34 of the Constitution.

⁹ Website of the Supreme Court of Ireland.

10. There is in general an automatic right of appeal from the High Court to the Court of Appeal for civil matters for claims above a monetary threshold (S\$250,000). This is set out in section 34(2)(a) of the Supreme Court of Judicature Act (Cap. 322) which reads:

"(2) Except with the leave of a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:

(a) where the amount in dispute, or the value of the subject-matter, at the hearing before the High Court (excluding interest and costs) does not exceed \$250,000 or such other amount as may be specified by an order made under subsection (3);

...".

11. As stated by the Court of Appeal in one of its decisions, as the monetary threshold of S\$250,000 was the upper limit of the District Court's jurisdiction, the objective of section 34(2)(a) was to ensure that where appeals from the decision of the District Court had been heard and disposed of by the High Court, there should be no further appeals therefrom to the Court of Appeal unless (on sufficient grounds shown) leave of either the High Court or the Court of Appeal was obtained. What was contemplated by the legislature was that there should be only two tiers of hearing – the first instance hearing and an appeal. A further appeal to the Court of Appeal, Singapore's final court of appeal, is only possible with leave.

12. The Court of Appeal in another decision explained that, as a general rule, it was intended that there should only be one tier of appeal as a matter of right.¹⁰

New Zealand

13. The Supreme Court of New Zealand is the highest court and the court of last resort in New Zealand.

14. There is no automatic right of appeal to the Supreme Court.¹¹ All would-be appellants are first required to apply to the court for leave to

¹⁰ *IW v IX* [2006] 1 SLR 135 at [22].

¹¹ Section 12, Supreme Court Act 2003 (New Zealand).

appeal, which will be granted only if it is necessary in the interests of justice.¹²

15. A number of factors for determining whether an appeal is “necessary in the interests of justice” are listed in section 13 of the Supreme Court Act 2003. An appeal is necessary in the interests of justice if:

- it involves a matter of general or public importance
- a substantial miscarriage of justice may have occurred, or may occur if the appeal is not heard
- it involves a matter of general commercial significance
- it involves a significant issue relating to the Treaty of Waitangi

16. It has been pointed out that a question of general or public importance may arise even though there is only a very small amount at stake in financial terms. In *Jeffries v Attorney General*,¹³ the Supreme Court granted leave to appeal on the question whether the Court of Appeal’s order requiring the appellant to pay costs of NZ\$750 was properly made. In granting leave, the Supreme Court was satisfied that the case raised a point of general importance despite the very small amount at stake in financial terms. The Court however urged the parties to reflect on whether the matter in issue is capable of resolution without the cost of a full hearing.

¹² Section 13, Supreme Court Act 2003, cited above.

¹³ [2009] NZSC 6. Date of judgment : 4 Feb 2009.

Legislative Amendments relating to Operation of the Labour Tribunal

Present Position

The Labour Tribunal (the Tribunal) seeks to provide a quick, simple, cheap and informal forum for resolving disputes between employers and employees.

2. The Judiciary has reviewed the operation of the Tribunal, and considers that there is room to improve its operation in a few areas, including clarifying its jurisdiction, enhancing its case management powers and aligning the time limit for enforcing its awards or orders with other civil claims.

Proposed Legislative Amendments

Clarifying the Jurisdiction

3. According to section 7 of the Labour Tribunal Ordinance (the LTO) (Cap. 25), the Tribunal has jurisdiction to inquire into, hear and determine the claims specified in the Schedule. Paragraph 1 of that Schedule refers to a claim for a sum of money which arises from certain breaches or non-compliance under a few employment-related Ordinances¹.

4. There are different interpretations in case law as to the meaning of the term “a sum of money”. Some legal precedents interpret it to be confined to liquidated damages (i.e. damages for which the amount has been contractually agreed between the parties or fixed by a statute). Others construe it as extending to also cover unliquidated damages (i.e. damages that are at large and fall to be assessed by the court under the general principles of law). In practice, the latter line of case law is usually followed in the Tribunal.

5. In practice, it is exceptional to have terms in employment contracts fixing the amount to be paid by way of damages in the event of breach. Most employment claims will therefore be unliquidated damages. As the Tribunal is intended to be a simple and informal forum for resolving

¹ These Ordinances include the Minimum Wage Ordinance (Cap. 608), the Employment Ordinance (Cap. 57) and the Apprenticeship Ordinance (Cap. 47).

employment-related disputes, the objectives of the Tribunal will be better served if it has clear power to deal with all types of monetary claims relating to employment claims, including unliquidated damages. The Judiciary proposes to clarify this respect in the legislation.

Enhancing Case Management Powers

6. Case management is an integral part of the adjudication process. While the Tribunal is already equipped with certain case management powers to curtail some unnecessary excesses in the adjudication process, there are still instances where parties attempt to abuse the adjudication process as a delaying tactic. For example, parties deliberately fail to comply with the directions of presiding officers and tribunal officers, cause adjournment of hearings unnecessarily, and make groundless applications for review of a Tribunal's award. All of these conducts are oppressive to other litigating parties.

7. The Judiciary sees the need to enhance the Tribunal's case management powers to minimise undue delays or abuses of the adjudication process. This would in turn help ensure that claims are dealt with in an expeditious and just manner.

8. For instance, section 29A of the LTO currently empowers the Tribunal to impose any conditions on a party as it thinks fit on adjournment of a hearing. Section 30 of the LTO however restricts the power of the Tribunal to order security upon such adjournment only to cases where the adjournment may result in prejudice to a party because of a disposal or loss of control of assets by the defendant. This is sometimes difficult to establish. Further, a claimant's hardship caused by delays in having the sum adjudicated could not be relieved.

9. Similarly, pursuant to section 31 of the LTO, the Tribunal may review an award or order made and re-open the case within 14 days after the granting of an award or order. Under section 31(4) of the LTO, on a party's application for review, the Tribunal may order the party to make payment into the Tribunal or give security having regard to the possibility of disposal of the assets available for satisfying an award to the prejudice of other party. This is comparatively restrictive. By contrast, on a party's application to restore a claim or set aside an award or order made in the absence of another party, sections 20A and 21A of the LTO confer on the Tribunal a general power to impose terms as it thinks just.

10. To better guard against the risk of undue delays or abuses of adjudication processes, the Judiciary proposes to enhance the case management powers of the Tribunal. Specifically, the Judiciary proposes to confer a general power on the Tribunal so that it can order a party to give security for the payment of any award or order, at any time during a proceeding, or after a party has applied for a review of an award or order, so long as the Tribunal considers it just and expedient to do so.

11. Possible circumstances for the Tribunal to order security from a party may include (a) there is a real risk of dissipating that party's asset to prejudice the satisfaction of an award or order; (b) that party is delaying the adjudication process; (c) that party fails to comply with the Tribunal's directions, etc without reasonable excuse; and/or (d) that party makes an application for review which is devoid of merits. If the party fails to give security upon such order, the Tribunal may dismiss his claim/application for review, stay the proceedings or enter judgment on the claim against him as appropriate.

Aligning the Time Limit for Enforcing Awards

12. According to section 38 of the LTO and rule 12(1) of the Labour Tribunal (General) Rules (Cap. 25A) (the Rules), in order to enforce an award or order of the Tribunal, a person has to obtain a certificate of award or order from the Tribunal and then have it registered in the District Court. Upon registration, the award or order becomes a judgment of the District Court and may be enforced like any District Court judgment.

13. Under Rule 12(2) of the Rules, registration of the award or order must be made within 12 months after the making of the award or order. Those not so registered may only be enforced by way of a separate claim commenced in the Small Claims Tribunal, the District Court or the Court of First Instance, depending on the amount of the award or order in question.

14. The time limit of 12 months for registration of the award or order does not exist for other civil judgments/orders. In the High Court and the District Court, a judgment/order for the payment of money may be enforced by a writ of execution within six years, after which leave of the court will have to be obtained for the issue of such a writ². The Judiciary does not see any reason for treating the awards or orders of the Tribunal differently.

² Order 46, rule 2(1) of the Rules of the High Court (Cap. 4A) and that of the Rules of the District Court (Cap. 336H) respectively refers.

15. This is particularly so because the judgment creditor in a Tribunal's award or order may have given indulgence to the judgment debtor by allowing the latter to pay by instalments, and inadvertently allow the 12 months to elapse. To require the judgment creditor to commence a new action for enforcement of the award or order will not be reasonable and will cause him inconvenience. The Judiciary therefore proposes to repeal the 12-month time limit, thereby aligning the enforcement period of the Tribunal awards or orders with that for the other civil claims (namely, six years from the date of the awards or orders in general).
