

**立法會**  
**Legislative Council**

LC Paper No. LS48/14-15

**Paper for the House Committee Meeting  
on 13 March 2015**

**Legal Service Division Report on  
Proposed Resolution under section 9 of  
the Criminal Procedure Ordinance (Cap. 221)**

The Chief Secretary for Administration has given notice to move a motion at the Council meeting of 18 March 2015 to seek the Legislative Council's approval of the Criminal Appeal (Amendment) Rules 2015 (the Amendment Rules) made by the Criminal Procedure Rules Committee (the Rules Committee) under section 9 of the Criminal Procedure Ordinance (Cap. 221) on 13 February 2015.

2. Under rule 39 of the Criminal Appeal Rules (Cap. 221A), an appellant may, at any time before the hearing thereof, abandon his appeal by giving notice of abandonment thereof to the Registrar in Form VII specified in the Schedule to Cap. 221A, and upon such notice being received by the Registrar the appeal shall be deemed to have been dismissed by the Court of Appeal.

3. The Amendment Rules seek to amend the notice of abandonment in Form VII by adding a note to indicate, for information purposes, the effect in law of an abandonment as follows: -

- (a) once an appeal is abandoned and deemed to have been dismissed by virtue of rule 39 of Cap. 221A, the Court of Appeal has no inherent jurisdiction to permit an appeal to be reopened unless the abandonment is treated as a nullity, or the matter is referred to it by the Chief Executive under section 83P<sup>1</sup> of Cap. 221; and

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<sup>1</sup> Section 83P(1) of Cap. 221 provides that where a person has been convicted on indictment or been tried on indictment and found not guilty by reason of insanity, or been found by a jury to be under disability, the Chief Executive may, if he thinks fit, at any time either—

- (a) refer the whole case to the Court of Appeal and the case shall then be treated for all purposes as an appeal to the Court of Appeal by that person; or
- (b) if he desires the assistance of the Court of Appeal on any point arising in the case, refer that point to the Court of Appeal for its opinion thereon, and the Court of Appeal shall consider that point so referred and furnish the Chief Executive with its opinion thereon accordingly.

- (b) the Court of Appeal will treat the abandonment as a nullity only in exceptional circumstances where the Court is satisfied that the abandonment is not the result of a deliberate and informed decision<sup>2</sup>.

4. The Amendment Rules also propose certain textual amendments to the notice of abandonment in Form VII.

5. According to paragraph 3 of the LegCo Brief (File Ref: CSO/ADM/CR 2/3221/11) issued by the Administration Wing, Chief Secretary for Administration's Office and the Judiciary Administration on 25 February 2015, the Amendment Rules are made with a view to reducing the number of unmeritorious applications to revive appeals by applicants who have filed a notice of abandonment.

6. The Amendment Rules, if approved by the Legislative Council, would come into operation on the day it is published in the Gazette.

7. According to paragraph 7 of the LegCo Brief, the Judiciary has consulted the Rules Committee, the Hong Kong Bar Association, the Law Society of Hong Kong and the Hong Kong Law Costs Draftsmen Association. They are content with the proposed legislative amendments. In response to our enquiry on the rationale and the process for consulting the Rules Committee which makes the Amendment Rules itself, the Judiciary Administration has explained that when a legislative proposal is received, the Judiciary Administration will facilitate by seeking the views of the Rules Committee as to whether the proposal should be pursued. If so, the Judiciary Administration will seek inputs and comments from the relevant stakeholders such as the Law Society and the Bar Association. The Judiciary Administration will collate the views received and put the specific proposed legislative amendments to the Rules Committee for its consideration. Upon the agreement of the Rules Committee, members of the Rules Committee will formally make the legislative amendments.

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<sup>2</sup> The information proposed in the note reflects the Court of Appeal's decision in *HKSAR v Lai Siu Cheung* [2005] 1 HKLRD 1. The Court held that the right of appeal was conferred by statute and once an appeal was abandoned and thus dismissed, the Court of Appeal had no inherent jurisdiction to permit an appeal to be reopened unless the abandonment was treated as a nullity or the matter was referred to the Chief Executive under section 83P of Cap. 221. It further held that the kernel of the "nullity test" was that the court must be satisfied that the abandonment was not the result of a deliberate and informed decision, i.e. that the applicant's mind did not go with the act of the abandonment.

8. As advised by the Clerk to the Panel on Administration of Justice and Legal Services (the Panel), at the meeting of the Panel on 26 January 2015, members noted the Judiciary Administration's information paper entitled "Proposed Legislative Amendments relating to the Notice of Abandonment in the Schedule to the Criminal Appeal Rules (Cap. 221 sub. leg. A)" and did not raise any queries.

9. No difficulties relating to the legal and drafting aspects of the Amendment Rules have been identified.

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