

For information

Legislative Council
Panel on Administration of Justice and Legal Services
Proposed Legislative Amendments
relating to the Procedures of Civil Appeals to the Court of Appeal

PURPOSE

This paper briefs Members on the Judiciary's proposed legislative amendments to improve the court practice and procedures for civil appeals.

BACKGROUND

2. Order 59 of the Rules of the High Court (Cap. 4A) governs the practice and procedures for civil appeals to the Court of Appeal ("CA").
3. In the light of operational experience and the Judges' observations in a number of CA's judgments, the Judiciary has reviewed the practice and procedures for civil appeals to the CA. The Judiciary considers that there is room to enhance the procedures.
4. At this stage, the Judiciary would like to propose changes to Cap. 4A to provide for the following :
 - (a) enhancing the court's case management powers over the parties' amendments to the appeal-related documents; and
 - (b) empowering also the Court of First Instance ("CFI") to consider applications for time extension relating to appeals/applications to the CA.

Details are set out in the ensuing paragraphs. Some other legislative changes may also be put forward at a later stage.

AMENDMENTS TO APPEAL-RELATED DOCUMENTS

5. Broadly speaking, under the existing Order 59 as supplemented by the relevant Practice Directions, after any necessary leave from the court has been sought (including any leave for out-of-time appeals), an appellant has to/must serve a notice of appeal on any parties to the proceedings in the court below who are directly affected by the appeal. The appellant will then have to lodge the necessary documents pertinent to the appeal with the Registrar of the High Court (“the Registrar”).

6. After ensuring that the appeal documents are in order, the Registrar will cause the appeal to be set down. The appellant must then give notice of such setting down to all the parties on whom the notice of appeal was served. The respondent who, having been served with a notice of appeal, desires to contend on the appeal that the decision of the court below should be varied or should be affirmed on other grounds or to contend by way of cross-appeal that the decision of the court below was wrong must give a respondent’s notice to specify his ground(s) of contention.

7. An application may then be made to the CA to fix a date for the hearing of the appeal. Alternatively, a Judge may order to fix a date for the hearing¹.

8. Order 59, rule 7 of the Rules of the High Court (Cap. 4A) governs the amendments of the notice of appeal and the respondent’s notice. A party may amend the notice of appeal or respondent’s notice with leave of the CA at any time: rule 7(1)(a); or without such leave, by serving a supplementary notice on all the parties concerned not less than 3 weeks before the hearing date of the appeal: rule 7(1)(b).

9. In other words, even a wholesale amendment of the original notice of appeal can be made without any control by the court if it is made earlier than 3 weeks before the hearing of the appeal. The same is true for amending a respondent's notice. The Judiciary considers that this is unsatisfactory and could result in abuses.

¹ The court will direct to fix the hearing date under certain circumstances, e.g. urgent appeals.

Proposed Legislative Amendments

10. To strike a better balance between the need for flexibility and proper case management, the Judiciary proposes to tighten up rule 7(1)(b) by advancing the cut-off date of serving a supplementary notice to amend a notice of appeal or respondent's notice without the leave of the CA to the date when a hearing date of the appeal is fixed. Any subsequent amendments to the notice of appeal/respondent's notice will be subject to the approval of the CA because such amendments may affect the length of the appeal hearing and the preparation time needed for the hearing before the CA.

11. The opportunity is also taken to refine rule 5 to provide for a clearer framework for the fixing of the dates of hearing of civil appeals after the setting down of such appeals.

TIME EXTENSION APPLICATIONS

12. Order 59, rule 2B governs the application for leave to appeal against interlocutory and other judgments or orders of the CFI requiring leave. It provides that an application for leave to appeal may only be made to the CFI in the first instance within 14 days from the date of the judgment or order. However, it does not provide for any power for the CFI to extend the 14-day time limit². It only provides that where the CFI refuses the application for leave to appeal, a further application may be made to the CA within 14 days from the date of the refusal. In short, only the CA, but not the CFI, is currently empowered under Cap. 4A³ to allow time extension for such leave applications.

13. This is more restrictive than the arrangements for the Competition Tribunal and the District Court whereby the latter may allow time extension for such leave applications⁴.

² Please see *Wynn Resorts (Macau) SA v Mong Henry* [2009] 5 HKC 515 at paragraphs 10-15 *per* Chu J (as she then was); *Menno Leendert Vos v Global Fair Industrial Ltd* (unrep, HCA 4200/1995, 23 April 2010) at paragraphs 5-8 *per* To J.

³ See Order 3, rule 5, Order 59, rules 2A(1)(b) and 15.

⁴ Rule 50 of the Competition Tribunal Rules (Cap. 619D) and Order 58, rule 2(10) of the Rules of the District Court (Cap. 336H) refer.

Proposed Legislative Amendments

14. The Judiciary suggests aligning the arrangements for the CFI, Competition Tribunal and District Court by amending Order 59, rules 2B and 15 to confer on the CFI the power to extend the time for civil appeals/applications or for applications for leave to appeal to the CA even though the time limit for the related appeals/applications may have expired.

15. The CA should neither be burdened with applications for leave to appeal which, but for the late making of the applications, should have been dealt with by the CFI at first instance, nor with other applications for an extension of time which should as a matter of principle be first dealt with by the CFI at first instance. Also, the CA should not be deprived of the views of the CFI Judge in the first-tier application.

OVERALL PROPOSED LEGISLATIVE AMENDMENTS

16. A marked-up version showing all the above proposed amendments to Order 59 is at the Annex.

CONSULTATION

17. We have consulted various stakeholders, including the Bar Association and the Law Society, on the proposed legislative amendments. They are supportive of the proposed amendments.

WAY FORWARD

18. Members are invited to note the content of this paper. We aim at tabling the proposed amendments at the Legislative Council for negative vetting within 2017, together with some other proposed miscellaneous amendments to Cap. 4A submitted to the Panel in February 2017.

Judiciary Administration
May 2017

**Proposed Amendments to
the Rules of the High Court (Cap. 4 sub. leg. A)
in Marked-up Mode**

Order 59 Appeals to the Court of Appeal

1. Application of Order to appeals (O. 59, r. 1)

- (1) This Order applies, subject to the provisions of these rules with respect to particular appeals, to every appeal to the Court of Appeal (including so far as it is applicable thereto, any appeal to that Court from a master or other officer of the High Court or from any tribunal from which an appeal lies to that Court under or by virtue of any enactment) not being an appeal for which other provision is made by these rules and references to "the court below" apply to any Court, tribunal or person from which such appeal lies.
- (2) For the avoidance of doubt and without prejudice to the generality of paragraph (1), this Order, unless the context otherwise requires, applies in relation to an appeal to the Court of Appeal from the District Court or the Competition Tribunal.

2. Application of Order to applications for new trial (O. 59, r. 2)

This Order (except so much of rule 3(1) as provides that an appeal shall be by way of rehearing and except rule 11 (1)) applies to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that Court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

GENERAL PROVISIONS AS TO APPEALS

2A. Application to Court of Appeal for leave to appeal (O. 59, r. 2A)

- (1) An application to the Court of Appeal for leave to appeal must be made by a summons supported by a statement setting out—
 - (a) the reasons why leave should be granted; and
 - (b) if the time for appealing has expired, the reasons why the application was not made within that time.
- (2) An application under paragraph (1) must be made inter partes if the proceedings in the court below are inter partes.
- (3) An application under paragraph (1) must include, where necessary, an application to extend the time for appealing.

- (4) A party who intends to resist an application under paragraph (1) made inter partes shall, within 14 days after the application is served on him, file in the Court of Appeal and serve on the applicant a statement as to why the application should not be granted.
- (5) The Court of Appeal may—
 - (a) determine the application without a hearing on the basis of written submissions only; or
 - (b) direct that the application be heard at an oral hearing, and in both cases, the Court of Appeal may give such directions as it thinks fit in relation to the application.
- (6) Where the Court of Appeal grants the application, it may impose such terms as it thinks fit.
- (7) Subject to paragraph (8), if the application is determined on the basis of written submissions only, a party aggrieved by the determination may, within 7 days after he has been given notice of the determination, request the Court of Appeal to reconsider the determination at an oral hearing inter partes.
- (8) Where the Court of Appeal determines the application on the basis of written submissions only, it may, if it considers that the application is totally without merit, make an order that no party may under paragraph (7) request the determination to be reconsidered at an oral hearing inter partes.
- (9) An oral hearing held pursuant to a request under paragraph (7) may be before the Court of Appeal consisting of—
 - (a) the Justice of Appeal; or
 - (b) one or more of the Justices of Appeal, who have determined the application on the basis of written submissions only.

2B. Application for leave to appeal against interlocutory and other judgments or orders of Court (O. 59, r. 2B)

- (1) Subject to paragraph (4) and any other enactment, an application for leave to appeal against—
 - (a) an interlocutory judgment or order of the Court;
 - (b) a judgment or order of the Court specified in section 14(3)(e) or (f) of the Ordinance; or
 - (c) any other judgment or order of the Court against which an appeal may be made with leave of the Court or the Court of Appeal, may only be made to the Court in the first instance within 14 days from the date of the judgment or order.
- (2) So far as is practicable, the application must be made to the judge or master against whose judgment or order leave to appeal is sought.

- (3) Where the Court refuses the application, a further application for leave to appeal may be made to the Court of Appeal within 14 days from the date of the refusal.
- (4) If the Court of Appeal allows, the application may be made direct to the Court of Appeal within 14 days from the date of the judgment or order.
- (5) An application under this rule must be made inter partes if the proceedings to which the judgment or order relates are inter partes.
- (6) The Court or the Court of Appeal may extend the period for making an application for leave to appeal before or after the expiration of the period.

2BA. Application for leave to appeal against interlocutory orders, etc. of Competition Tribunal (O. 59, r. 2BA)

- (1) If the Competition Tribunal refuses an application for leave to appeal against an interlocutory decision, determination or order of the member or members of the Tribunal under rule 45 of the Competition Tribunal Rules, another application for leave to appeal may be made to the Court of Appeal within 14 days from the date of the refusal.
- (2) If the Court of Appeal allows, the application for leave mentioned in paragraph (1) may be made direct to the Court of Appeal within 14 days from the date of the interlocutory decision, determination or order.
- (3) An application under this rule must be made inter partes if the proceedings to which the interlocutory decision, determination or order relates are inter partes.

2C. Refusal by single judge of application for leave to appeal (O. 59, r. 2C)

- (1) Notwithstanding rule 2A(8), where an application for leave to appeal made under rule 2A(1), 2B(3) or 2BA(1) is determined (with or without a hearing) by a single Justice of Appeal, a party aggrieved by the determination may, within 7 days from the date of the refusal, make a fresh application to the Court of Appeal.
- (2) The party is entitled to have the fresh application determined by the Court of Appeal consisting of 2 Justices of Appeal.
- (3) The Justice of Appeal who has previously determined the application may sit in the Court of Appeal determining the fresh application.

3. Notice of appeal (O. 59, r. 3)

- (1) An appeal to the Court of Appeal shall be by way of rehearing and must be brought by motion, and the notice of the motion is referred to in this Order as "notice of appeal".

- (2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below; and every such notice must specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court of Appeal to make.
- (3) Except with the leave of the Court of Appeal or a single judge, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal, or to apply for any relief, not specified in the notice of appeal.
- (5) A notice of appeal must be served on all parties to the proceedings in the court below who are directly affected by the appeal; and, subject to rule 8, it shall not be necessary to serve the notice on parties not so affected.
- (6) No notice of appeal shall be given by a respondent in a case to which rule 6(1) relates.

4. Time for appealing (O. 59, r. 4)

- (1) Except as otherwise provided by these rules, a notice of appeal must be served under rule 3(5) within—
 - (a) in the case where leave to appeal to the Court of Appeal is required under section 14AA (not being a case to which sub-paragraph (b) applies) or section 14(3)(e) or (f) of the Ordinance, 7 days after the date on which leave to appeal is granted;
 - (b) in the case of an appeal from a judgment, order or decision given or made in the matter of the winding up of a company, or in the matter of any bankruptcy, 28 days from the date of the judgment, order or decision; and
 - (c) in any other case, 28 days from the date of the judgment, order or decision concerned.
- (2) In the case where an appeal may lie from a judgment of the Court of First Instance under Division 3 of Part II of the Hong Kong Court of Final Appeal Ordinance (Cap 484), the following period of time shall be disregarded in determining the period referred to in paragraph (1)—
 - (a) where an application has been made under section 27C of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined; or
 - (b) where an application has been made under section 27D of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined.
- (3) (Repealed L.N. 152 of 2008)
- (4) In relation to an appeal from the District Court, a notice of appeal must be served under rule 3(5) within—

- (a) in the case where leave to appeal to the Court of Appeal is required under section 63(1) or (1B) of the District Court Ordinance (Cap 336), 7 days after the date on which leave to appeal is granted; and
 - (b) in the case of an appeal from an order specified in section 63(3) of the District Court Ordinance (Cap 336) or an order for imprisonment given or made under Order 49B of the Rules of the District Court (Cap 336 sub. leg. H), 28 days after the date on which the order is made.
- (5) In relation to an appeal from the Competition Tribunal or the Registrar of the Tribunal under the Competition Ordinance (Cap 619), a notice of appeal must be served under rule 3(5) within—
- (a) if leave to appeal to the Court of Appeal is required under sections 154(2)(c) and 155(1) of that Ordinance, 7 days after the date on which leave to appeal is granted; and
 - (b) if an appeal lies as of right against—
 - (i) any decision, determination or order of the Tribunal under section 154(1) of that Ordinance;
 - (ii) any interlocutory decision, determination or order of the Tribunal under section 155(2) of that Ordinance; or
 - (iii) any decision, determination or order of the Registrar of the Tribunal under rule 43 of the Competition Tribunal Rules, 28 days after the date on which the decision, determination or order is made.

5. Setting down appeal (O. 59, r. 5)

- (1) Within 7 days after the date on which service of the notice of appeal was effected, the appellant must lodge with the Registrar—
 - (a) a copy of the sealed judgment or order and a copy of the reasoned decision (if any); and
 - (b) two copies of the notice of appeal, one of which shall be indorsed with the amount of the fee paid, and the other indorsed with a certificate of the date of service of the notice.
- (2) Upon the said documents being left, the Registrar shall file one copy of the notice of appeal and cause the appeal to be set down in the list of appeals; ~~and the appeal shall come on to be heard according to its order in that list unless the Court of Appeal or a judge of that Court otherwise orders.~~
- (3) Within 4 days after an appeal has been set down, the appellant must give notice to that effect to all parties on whom the notice of appeal was served.

6. Respondent's notice (O. 59, r. 6)

- (1) A respondent who, having been served with a notice of appeal, desires—
- (a) to contend on the appeal that the decision of the court below should be varied, either in any event or in the event of the appeal being allowed in whole or in part, or
 - (b) to contend that the decision of the court below should be affirmed on grounds other than those relied upon by that court, or
 - (c) to contend by way of cross-appeal that the decision of the court below was wrong in whole or in part,
- must give notice to that effect, specifying the grounds of his contention and, in a case to which sub-paragraph (a) or (c) relates, the precise form of the order which he proposes to ask the Court to make.
- (2) Except with the leave of the Court of Appeal or a single judge, a respondent shall not be entitled on the hearing of the appeal to apply for any relief not specified in a notice under paragraph (1) or to rely, in support of any contention, upon any ground which has not been specified in such a notice or relied upon by the court below.
- (HK)(3) Any notice given by a respondent under this rule (in this Order referred to as a "respondent's notice") must be served on the appellant, and on all parties to the proceedings in the court below who are directly affected by the contentions of the respondent, and must be served—
- (a) where the notice of appeal related to an interlocutory order, within 14 days, and
 - (b) in any other case, within 21 days,
- after the service of the notice of appeal on the respondent.
- (4) A party by whom a respondent's notice is given must, within 2 days after service of the notice, furnish 2 copies of the notice to the Registrar.

6A. Fixing of date for hearing appeal (O. 59, r. 6A)

- (1) The Registrar may, at any time after an appeal has been set down under rule 5, direct that a date be fixed for hearing the appeal.
- (2) The Registrar may give the direction—
 - (a) either on the Registrar's own motion or on the application of a party; and
 - (b) only if the Registrar is satisfied that the matter is ready for determination.
- (3) Despite paragraphs (1) and (2), the Court of Appeal or a single judge may at any time give a direction as to the date for hearing the appeal (including a direction to fix a date for the hearing).

7. Amendment of notice of appeal and respondent's notice (O. 59, r. 7)

- (1) A notice of appeal or respondent's notice may be amended—
- (a) by or with the leave of the Court of Appeal or a single judge at any time;
 - (b) without such leave, by supplementary notice served—
 - (i) on each of the parties on whom the notice of appeal or respondent's notice was served; and
 - (ii) before the date on which a hearing date of the appeal is fixed in accordance with a direction referred to in rule 6A. ~~not less than three weeks before the date fixed for the hearing of the appeal.~~
- (2) A party by whom a supplementary notice is served under this rule must, within 2 days after service of the notice, furnish two copies of the notice to the Registrar.

8. Directions of the Court as to service (O. 59, r. 8)

- (1) The Court of Appeal or a single judge may in any case direct that a notice of appeal or respondent's notice be served on any party to the proceedings in the court below on whom it has not been served, or on any person not party to those proceedings.
- (2) Where a direction is given under paragraph (1) the hearing of the appeal may be postponed or adjourned for such period and on such terms as may be just and such judgment may be given and such order made on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

9. Documents to be lodged by appellant (O. 59, r. 9)

- (1) Not less than 14 days before the date on which the appeal is listed for hearing the appellant must cause to be lodged with the Registrar the number of copies for which paragraph (2) provides of each of the following documents, namely—
- (a) the notice of appeal;
 - (b) the respondent's notice;
 - (c) any supplementary notice served under rule 7;
 - (d) the judgment or order of the court below;
 - (e) the originating process by which the proceedings in the court below were begun, any interlocutory or other related process which is the subject of the appeal, the pleadings (including particulars), if any, and, in the case of an appeal in an Admiralty cause or matter, the preliminary acts, if any;
 - (f) the transcript of the official shorthand note, if any, of the judgment or order of the court below or, in the absence of such a note, the

- judge's note of his reasons for giving the judgment or making the order;
- (g) such parts of the transcript of the official shorthand note, if any, of the evidence given in the court below as are relevant to any question at issue on the appeal or, in the absence of such a note, such parts of the judge's note of the evidence as are relevant to any such question;
 - (h) any list of exhibits made under Order 35, rule 11, or the schedule of evidence, as the case may be;
- (HK)(i) such documents, affidavits, exhibits, or parts of exhibits, as were in evidence in the court below and as are relevant to any question at issue on the appeal.
- (2) Unless otherwise directed the number of copies to be lodged in accordance with paragraph (1) is three copies except—
- (a) where the appeal is to be heard by two judges in which case it is two copies; or
 - (b) in the case of an appeal in an Admiralty cause or matter, in which case it is four copies or, if the Court of Appeal is to hear the appeal with assessors, six copies.
- (2A) When the transcripts, if any, referred to in items (f) and (g) of paragraph (1) have been bespoken by the appellant and paid for, the number of such transcripts required in accordance with paragraph (2) shall be sent by the appellant direct to the Registrar.
- (3) At any time after an appeal has been set down in accordance with rule 5 the Registrar may give such directions in relation to the documents to be produced at the appeal, and the manner in which they are to be presented, and as to other matters incidental to the conduct of the appeal, as appear best adapted to secure the just, expeditious and economical disposal of the appeal.
- (4) The directions referred to in paragraph (3) may be given without a hearing provided always that the Registrar may at any time issue a summons requiring the parties to an appeal to attend before him and any party to an appeal may apply at any time for an appointment before the Registrar.

10. General powers of the Court (O. 59, r. 10)

- (1) In relation to an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance.
- (2) The Court of Appeal shall have power to receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner, but no such further evidence

(other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.

- (3) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.
- (4) The powers of the Court of Appeal under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.
- (5) The Court of Appeal may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.
- (6) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.
- (7) Documents impounded by order of the Court of Appeal shall not be delivered out of the custody of that Court except in compliance with an order of that Court:
 Provided that where a Law Officer or the Director of Public Prosecutions makes a written request in that behalf, documents so impounded shall be delivered into his custody.
- (8) Documents impounded by order of the Court of Appeal, while in the custody of that Court, shall not be inspected except by a person authorized to do so by an order of that Court.
- (9) In any proceedings incidental to any cause or matter pending before the Court of Appeal, the powers conferred by this rule on the Court may be exercised by a single judge:
 Provided that the said powers of the Court of Appeal shall be exercisable only by that Court or a single judge in relation to—
 - (a) the grant, variation, discharge or enforcement of an injunction, or an undertaking given in lieu of an injunction; and
 - (b) the grant or lifting of a stay of execution or proceedings.

11. Powers of the Court as to new trials (O. 59, r. 11)

- (1) On the hearing of any appeal the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.

- (2) The Court of Appeal shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.
- (3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (2) affects part only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.
- (4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court may, in lieu of ordering a new trial—
 - (a) with the consent of all parties concerned, substitute for the sum awarded by the jury such sum as appears to the Court to be proper;
 - (b) with the consent of the party entitled to receive or liable to pay the damages, as the case may be, reduce or increase the sum awarded by the jury by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded;but except as aforesaid the Court of Appeal shall not have power to reduce or increase the damages awarded by a jury.
- (5) A new trial shall not be ordered by reason of the ruling of any judge that a document is sufficiently stamped or does not require to be stamped.

12. Evidence on appeal (O. 59, r. 12)

Where any question of fact is involved in an appeal, the evidence taken in the court below bearing on the question shall, subject to any direction of the Court of Appeal or a single judge, be brought before that Court as follows—

- (a) in the case of evidence taken by affidavit, by the production of a true copy of such affidavit;
- (b) in the case of evidence given orally, by a copy of so much of the transcript of the official shorthand note as is relevant or by a copy of the judge's note, where he has intimated that in the event of an appeal his note will be sufficient, or by such other means as the Court of Appeal or a single judge, may direct.

12A. Non-disclosure of payment into court (O. 59, r. 12A)

- (1) Where—
 - (a) any question on an appeal in an action for a debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof, and
 - (b) money was paid into court under Order 22, in the proceedings in the court below before judgment,
 neither the fact of the payment nor the amount thereof nor the terms of any relevant offer made in accordance with Order 22 shall be stated in the notice of appeal or the respondent's notice or in any supplementary notice or be communicated to the Court of Appeal until all such questions have been decided. This rule shall not apply in the case of an appeal as to costs only or an appeal in an action to which a defence of tender before action was pleaded.
- (2) For the purpose of complying with this rule the appellant must cause to be omitted from the copies of the documents lodged by him under rule 9(d) and (f) every part thereof which states that money was paid into court in the proceedings in that court before judgment.

13. Stay of execution, etc. (O. 59, r. 13)

- (1) Except so far as the court below or the Court of Appeal or a single judge may otherwise direct-
 - (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;
 - (b) no intermediate act or proceeding shall be invalidated by an appeal.
- (2) On an appeal from the court below, interest for such time as execution has been delayed by the appeal shall be allowed unless the court below otherwise orders.

14. Applications to the Court of Appeal (O. 59, r. 14)

- (1) Unless otherwise directed, every application to the Court of Appeal or a single judge which is not made ex parte must be made by summons and such summons must be served on the party or parties affected at least 2 clear days before the day on which it is heard or, in the case of an application which is made after the expiration of the time for appealing, at least 7 days before the day on which the summons is heard.
- (1A) In support of any application (whether made ex parte or inter partes) the applicant shall lodge with the Registrar such documents as the Court of Appeal or a single judge may direct, and rule 9(3) and (4) shall apply, with any necessary modifications, to applications as they apply to appeals.

- (2) (Repealed L.N. 152 of 2008)
- (2A)-(2B) (Repealed L.N. 152 of 2008)
- (3) Where an ex parte application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal ex parte within 7 days after the date of the refusal.
- (3A) Where an application made to the Court of Appeal ex parte under paragraph (3) is granted, notice of the order granting the application must be served on the party or parties affected.
- (3B) A party on whom a notice has been served is entitled, within 7 days after service of the notice, to apply to the Court of Appeal to have the order granting the application reconsidered inter partes in open court.
- (4) Wherever under these rules an application may be made either to the court below or to the Court of Appeal, it shall not be made in the first instance to the Court of Appeal, except where there are special circumstances which make it impossible or impracticable to apply to the court below.
- (5)-(6) (Repealed 17 of 2010 s. 112)
- (6A) (Repealed 17 of 2010 s. 112)
- (7) An application which may be heard by a single judge, shall, unless otherwise directed, be heard in chambers.
- (8)-(9) (Repealed L.N. 404 of 1991)
- (10) A single judge may refer to the Court of Appeal any matter which he thinks should properly be decided by that Court, and, following such reference, that Court may either dispose of the matter or refer it back to a single judge or the Registrar, with such directions as that Court thinks fit.
- (11) (Repealed L.N. 404 of 1991)
- (12) An appeal shall lie to the Court of Appeal from any determination by a single judge and shall be brought by way of fresh application made within 10 days of the determination appealed against.
- (13) This rule does not apply in relation to an application for leave to appeal.

14A. Determination of interlocutory application (O. 59, r. 14A)

- (1) The Court of Appeal (including a single judge thereof) may, in relation to a cause or matter pending before the Court of Appeal, determine an interlocutory application without a hearing on the basis of written submissions only.
- (2) Where it considers it necessary or expedient, the Court of Appeal (including a single judge thereof) may direct that the interlocutory application shall be heard before the Court of Appeal consisting of 2 or 3 Justices of Appeal.

- (3) For the avoidance of doubt, nothing in this rule precludes a judge of the Court of First Instance from sitting as an additional judge of the Court of Appeal in accordance with section 5(2) of the Ordinance.

15. Extension of time (O. 59, r. 15)

Without prejudice to the power of the Court of Appeal or a single judge under Order 3, rule 5, to extend or abridge the time prescribed by any provision of this Order, the period for serving notice of appeal under rule 4 or making application *ex parte* under rule 14(3) may be extended or abridged by the court below on application made before or after the expiration of that period.

SPECIAL PROVISIONS AS TO PARTICULAR APPEALS

16. Appeal against decree nisi (O. 59, r. 16)

- (1) The following provisions of this rule shall apply to any appeal to the Court of Appeal in a matrimonial cause against a decree nisi of divorce or nullity of marriage.
- (1A) An appeal lies as of right to the Court of Appeal from a decree nisi granted by the Court.
- (2) The period of 28 days specified in rule 4 shall be calculated from the date on which the decree was pronounced and rule 15 shall not apply in relation to that period.
- (3) The appellant must, within the period mentioned in paragraph (2) produce to the Registrar a sealed copy of the decree appealed against and leave with him a copy of that decree and two copies of the notice of appeal (one of which shall be indorsed with the amount of the fee paid and the other indorsed with a certificate of the date of service of the notice); and the appeal shall not be competent unless this paragraph has been complied with.
- (4) For the purposes of rule 5 the leaving of the said copies shall be sufficient for the setting down of the appeal and rule 5(1) shall not apply.
- (5) A party who intends to apply *ex parte* to the Court of Appeal to extend the period referred to in paragraphs (2) and (3) must give notice of his intention to the appropriate Registrar before the application is made; and where any order is made by the Court of Appeal extending the said period, it shall be the duty of the Registrar forthwith to give notice of the making of the order and of the terms thereof to the appropriate Registrar.
- (6) In this rule "the appropriate Registrar" (適當的司法常務官) means—

(a) in relation to a cause pending in a district court, the registrar of that court.

19. Appeal from District Court (O. 59, r. 19)

- (1) The following provisions of this rule shall apply to any appeal to the Court of Appeal from a District Court other than an appeal against a decree nisi of divorce or nullity of marriage.
- (2) The notice of appeal must be served on the registrar of the District Court as well as on the party or parties required to be served under rule 3.
- (3) (Repealed L.N. 152 of 2008)
- (4) Except where the Court of Appeal or a single judge otherwise directs, an affidavit or note by a person present in the District Court shall not be used in evidence before the Court of Appeal unless it was previously submitted to the judge for his comments.
- (4A) Rule 12A shall apply in any case where money was paid into court by the defendant before judgment in district court proceedings in satisfaction of the plaintiff's cause of action or of one or more causes joined in one action or on account of a sum admitted by the defendant to be due to the plaintiff.
- (4B) Rule 12A(1) applies as if a reference to Order 22 were a reference to Order 22 of the Rules of the District Court (Cap 336 sub. leg. H).
- (5) Rule 13(1)(a) shall apply subject to the provisions of section 66 of the District Court Ordinance (Cap 336).

20. Appeals in cases of contempt of court (O. 59, r. 20)

- (1) In the case of an appeal to the Court of Appeal against an order of committal or other punishment for contempt of Court made by a judge of the Court of First Instance, the notice of appeal must be served on the Registrar as well as on the party or parties required to be served under rule 3. (See App. A, Form 99)
This paragraph shall not apply in relation to an appeal to which rule 19 applies.
- (2) Where, in the case of such an appeal as is mentioned in paragraph (1), the appellant is in custody, the Court of Appeal may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as that Court may fix) for his appearance within 10 days after the judgment of the Court of Appeal on the appeal shall have been given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.
- (3) An application for the release of a person under paragraph (2) pending an appeal to the Court of Appeal must be made by motion, and the

notice of the motion must, at least 24 hours before the day named therein for the hearing, be served on the Registrar and on all parties to the proceedings who are directly affected by the appeal.

CASES WHERE LEAVE TO APPEAL IS NOT REQUIRED FOR INTERLOCUTORY APPEALS

21. Judgments and orders to which section 14AA(1) of the Ordinance not apply (O. 59, r. 21)

- (1) Judgments and orders to which section 14AA(1) of the Ordinance (leave to appeal required for interlocutory appeals) does not apply and accordingly an appeal lies as of right from them are the following—
- (a) a judgment or order determining in a summary way the substantive rights of a party to an action;
 - (b) an order made under section 52A(4) of the Ordinance;
 - (c) an order prohibiting a debtor from leaving Hong Kong under Order 44A, rule 3(1);
 - (d) an order for the imprisonment of a judgment debtor under Order 49B;
 - (e) an order of committal for contempt of court under Order 52, rule 1;
 - (f) an order granting any relief made at the hearing of an application for judicial review;
 - (g) an order under Order 53, rule 3 refusing to grant leave to apply for judicial review;
 - (h) an order granting an application for a writ of habeas corpus ad subjiciendum;
 - (i) an order under Order 73 (other than an order against which leave to appeal is required under the Arbitration Ordinance (Cap 609));
 - (j) a judgment given inter partes under Order 83A, rule 4, or Order 84A, rule 3 or in a mortgage action within the meaning of Order 88, rule 1;
 - (k) an order under Order 121; and
 - (l) a decree nisi of divorce or nullity of marriage.
- (2) Without affecting the generality of paragraph (1)(a), the following are judgments and orders determining in a summary way the substantive rights of a party—
- (a) a summary judgment under Order 14 or Order 86;
 - (b) an order striking out an action or other proceedings or a pleading or any part of a pleading under Order 18, rule 19 or under the inherent jurisdiction of the Court;

- (c) a judgment or order determining any question of law or the construction of any document under Order 14A, rule 1(1);
 - (d) a judgment or order made under Order 14A, rule 1(2) dismissing any cause or matter upon determination of a question of law or construction of any document;
 - (e) a judgment on any question or issue tried pursuant to an order under Order 33, rule 3;
 - (f) an order dismissing or striking out an action or other proceedings for want of prosecution;
 - (g) a judgment obtained pursuant to an "unless" order;
 - (h) an order refusing to set aside a judgment in default;
 - (i) an order refusing to allow an amendment of a pleading to introduce a new claim or defence or any other new issue; and
 - (j) a judgment or order on admissions under Order 27, rule 3.
- (3) A direction as to whether a judgment or order is one that is referred to in paragraph (1)(a) may be sought from the judge who made or will make the judgment or order.
- (4) A reference to an order specified in paragraph (1)(b), (c), (d), (e), (f), (h), (i), (k) and (l) includes an order refusing, varying or discharging the order.