



Judicial Review

If you wish to challenge the lawfulness of a decision, action, or failure to act by a public body, such as a government department, then you should seek legal advice on whether you can start legal proceedings in court by Judicial Review (“JR”). If the Court makes a finding of unlawfulness then it can set aside the decision and send the matter back to the decision-maker for reconsideration.

Before you apply to the Court, you should seek legal advice on matters including but not limited to those below.

Grounds of Reviews

JR is not an appeal. The Court does not re-assess the merits of the decision. It mainly reviews the legality, rationality and procedural propriety of the decision. The most common grounds for JR are:

- breach of 'natural justice' which includes the failure to comply with procedural rules;
- irrationality of the decision;
- an error of law (e.g. a decision-maker acted in excess of its authority or a finding of fact was unsupported by evidence); and/or
- failure to take into account relevant material before making the decision.

Time Limit

Under the relevant Rules of the High Court, applications for JR must be made within three months from the date when the ground(s) to apply first arose but you should not wait until the end of the three-month period before you apply.

Stage 1 - Permission to apply for JR and Standing to Sue

An application for JR is a two-stage process. You must first obtain leave (i.e. permission) from the Court to proceed with the JR. It will not be granted unless the Applicant has sufficient interest in the matter, i.e. you must have the “standing to sue”.

The Court will review the application (usually without a hearing) and will either grant or refuse leave to proceed with the JR. The Court will decide whether you have a “reasonably arguable case which enjoys a realistic prospect of success”. If the Court refuses to grant leave, no application for judicial review can be brought unless you successfully appeal that decision to the Court of Appeal.

Stage 2 - Application for Judicial Review

If leave is granted by the Court to proceed with the JR, the Applicant initiates a substantive application by serving the prescribed form of originating process on the Respondent and lodging a copy with the Registrar. The Respondent may then file affidavit evidence to oppose the application. Unlike civil proceedings, there is no automatic disclosure of evidence or cross examination of witnesses.

There will usually be a hearing for the substantive application.

The procedures are technical and you should seek appropriate legal advice.

*The information contained in this leaflet is for reference only.
It should not be regarded as legal advice for any individual cases. If you have any queries, please consult a solicitor.*

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Judicial Review

Judicial Review – Court orders

If the application is successful the Court can:

- order the Respondent to perform a public duty or obligation
- prevent the Respondent from exceeding his jurisdiction or acting contrary to the rules of natural justice
- quash or set aside the Respondent's decision and send the matter back to the decision-maker for reconsideration
- grant an injunction against the Respondent to stop the acts from being committed
- give a declaratory judgment on the rights and entitlements of the parties
- order damages, restitution, or recovery of a sum (as additional relief, and you cannot bring JR proceedings to claim damages, restitution, or recovery of a sum as your sole remedy) and
- grant interim relief, if relevant

Costs

The Court will decide which party will pay the legal costs of the JR - usually the losing party pays the winning party's costs. The losing party will also have to pay its own legal costs, if legally represented.

Further Assistance

This pamphlet only provides a brief overview of judicial review and does not cover the substantive law. You may seek assistance from:

- (a) **Solicitors' Directory** at www.hklawsoc.org.hk or www.ChooseHKLawyer.com : Select a solicitor who will provide up to 45 minutes of free legal advice.
- (b) **Resource Centre for Unrepresented Litigants**
Web-site: <http://rcul.judiciary.hk>
Contact number: 2825 0586
- (c) **Legal Aid Department**
Web-site: <http://www.lad.gov.hk/index.html>
Contact number: 2537 7677

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