



Court of Final Appeal (“CFA”) Right of Appeal

Judiciary’s Consultation Paper

The Law Society notes the retention of the “as of right” precedent was based on the historical origin of the system of appeals to the Privy Council where appeals lay as of right involving disputes of HK\$500,000 or more.

It is difficult to justify why a proposed appeal meeting a monetary value of \$1,000,000 should lie as of right and why other appeals should not. There is no reason why a litigant should be given a third bite of the cherry “as of right” having gone through the Court of First Instance and the Court of Appeal. It is important to have finality.

We agree the CFA’s limited resources should be used to adjudicate genuine and meritorious appeals.

In practice, the CFA has narrowly interpreted the “as of right” provision so removing it makes sense.

Repeal of Section 22(1)(a) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484)

In principle we support the repeal of Section 22(1)(a) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) subject to clarification of:

- **Meritorious Appeals**

The comments in paragraph 22 of the Consultation paper indicate leave to appeal for *meritorious* appeals will be refused unless a question of “great general or public importance or otherwise” is also involved. Paragraph 22 (c) states:

The Judiciary proposal will:

- (c) *“allow better use of judicial resources as the CFA can focus on hearing meritorious appeals involving questions of great general or public importance or otherwise, irrespective of the monetary value involved”*

Some concerns have been expressed this proposal may result in erosion of the substantive rights of appellants, unless it is shown the appeal is meritorious and is equated to it being a matter of “great general of public importance or otherwise” such that leave will be granted.

As drafted, the proposal outlined in paragraph 22(c) seems to suggest that a meritorious appeal is not enough; there must also be a question of great general or public importance involved.

The proposal should be clarified. If an appeal is meritorious then leave should be granted even if it does not involve a question of “great general or public importance”. Further, leave ought to be granted where a matter of great general or public importance is involved, without any assessment of the merits.

- **Administering leave applications**

One other issue is unclear in the Consultation Paper and that is “To whom will leave applications be addressed?”

Will there be an increase in the work of the CFA in dealing with leave applications and therefore will the reform be counter-productive? Instead of hearing substantive appeals, will the Court of Appeal and the CFA be tied up in dealing with leave applications?

This may create greater cost and delay, unless the substantive application is consolidated with the leave application but then what is the point of requiring leave if the substantive application is heard together with the substantive hearing?

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