



**CONSULTATION ON A PROPOSED APPEAL MECHANISM  
AGAINST ACQUITTALS BY THE COURT OF FIRST INSTANCE  
CONSTITUTED BY A PANEL OF THREE JUDGES  
ON CASES CONCERNING NATIONAL SECURITY**

**THE SUBMISSION OF THE LAW SOCIETY**

1. The Law Society received a consultation paper from the Department of Justice (“DOJ”) on a proposal to amend the Criminal Procedure Ordinance (Cap.221) (“CPO”), to introduce a mechanism for appeal against acquittal by the Court of First Instance (“CFI”) constituted by a Panel of three Judges (“the Panel”) for cases concerning offences endangering National Security (“NS Cases”). This submission sets out our preliminary responses thereto.
2. Under the Proposal by the DOJ, an appeal mechanism is being put forward for acquittals by the Panel in the CFI on NS Cases. The Panel is constituted under Article 46 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“NSL”) for criminal proceedings in the CFI, when the Secretary for Justice (“SJ”) issues a certificate directing that the case shall be tried without a jury.
3. It is said that while the Prosecution generally has a right to appeal against acquittals by way of case stated in Magistrates Courts and District Court, no similar right of appeal (by way of case stated) is afforded to the Prosecution in the CFI. Absent this right, there is no lawful mechanism for the Prosecution to seek to correct an erroneous verdict of acquittal by the Panel for NS Cases, where relevant. It is suggested that the need for this right to appeal has become apparent, as a matter of public interest.

4. The appeal mechanism is proposed to be modelled on the existing provisions in the District Court Ordinance (Cap 336) and Magistrates Ordinance (Cap 227). At the time of this submission, the amendment bill on the above proposal is not made available.
5. Upon the above understanding,
  - (a) we have no objection in principle that a mechanism for appeal by way of case stated be introduced for NS Cases tried by the Panel in the CFI. The policy objective on the above seems to us is logical and reasonable. Public interest requires that an erroneous verdict be corrected and there should be a proper mechanism in place for the said purpose;
  - (b) we anticipate that the provisions under the amendment to the CPO would be similar to the relevant provisions in the District Court Ordinance and the Magistrates Ordinance. We take note that the corresponding appeal mechanisms in the District Court and the Magistrates Courts have been in operation for a long period of time. Appeals by way of case stated in lower courts should not be novel to the legal profession, law enforcement agencies or the general public.
6. We have not been provided with analysis on constitutional or human rights implications, if any, arising from the Proposal. The Consultation Paper from the DOJ is silent. We reserve our comments in this regard, pending elaboration by the DOJ.
7. As for the procedures proposed for the appeal mechanism, subject to a review of the amendment bill when issued, we have the following comments.
8. Under the Proposal by the DOJ, the appeal from the Panel will be initiated by the SJ making an application in writing to the Panel to state a case. The application has to be made *within 14 clear days* after the reasons for a verdict have been recorded or after the order of acquittal has been made (whichever is later), or within such further period as the CA may allow (§ 22, Consultation Paper). Our

members' experience tends to show that, for appeals by way of case stated in lower courts, a period of time longer than 14 days is usually required. To save time and resources, we would have no objection if the DOJ is to put down a slightly longer period of time (of 21 days) for the above applications.

9. By way of a passing remark, the DOJ may wish to also consider putting in consequential amendments to the District Court Ordinance and, if relevant, the Magistrates Ordinance, in order that the application periods for appeal by way of case stated in the CFI, District Court and also the Magistrates Court would all be the same.
10. The DOJ suggests that for the proposed appeal mechanism, the Court of Appeal ("CA") is to be given powers to extend the period for making the application to state a case, to issue a warrant of arrest, to detain or admit a respondent to bail (§26, ditto). References are made to section 83Y of CPO. Section 83Y sets out those powers of the CA which are exercisable by a single judge. The powers include *the power to grant leave to appeal*. For this Proposal, we do not believe that leave is required and therefore there should be no need to include this power in the amendment bill.
11. As for the other procedures under the Proposal, we reserve our comments, and shall await the gazetting of the amendment bill.

**The Law Society of Hong Kong**  
**9 May 2023**