

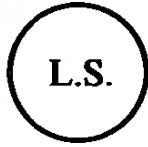
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HONG KONG

ORDINANCE NO. 79 OF 1995



I assent.

Mrs. Anson CHAN,
Acting Governor.
3 August 1995

An Ordinance to establish a Court of Final Appeal for Hong Kong, and for matters incidental thereto and connected therewith.

[1 July 1997]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I

GENERAL

1. Short title and commencement

(1) This Ordinance may be cited as the Hong Kong Court of Final Appeal Ordinance.

(2) This Ordinance shall not come into operation on or before 30 June 1997 and the following day shall be the day for the coming into operation of the Ordinance, which shall be amended as necessary to ensure that it is in full conformity with the Basic Law.

2. Interpretation

In this Ordinance, unless the context otherwise requires—

“Appeal Committee” (上訴委員會) means the Appeal Committee established under section 18;

“barrister” (大律師) has the same meaning as in the Legal Practitioners Ordinance (Cap. 159);

“Chief Justice” (首席大法官) means the Chief Justice of the Court;

“civil cause or matter” (民事訟案或事項) means a cause or matter other than a criminal cause or matter;

“Court” (終審法院、終審法院審判庭) means the Hong Kong Court of Final Appeal;

“High Court” (高等法院) means the High Court of Justice;

- “judge” (大法官) means a judge of the Court, including the Chief Justice, a permanent judge and a non-permanent judge;
- “judge from another common law jurisdiction” (其他普通法適用地區大法官) means a judge appointed as a judge from another common law jurisdiction under section 9;
- “legal officer in the Attorney General’s Chambers” (律政署的律政人員) means a person holding one of the offices in the Attorney General’s Chambers mentioned in the Schedule to the Legal Officers Ordinance (Cap. 87);
- “non-permanent Hong Kong judge” (非常任香港大法官) means a judge appointed as a non-permanent Hong Kong judge under section 8;
- “non-permanent judge” (非常任大法官) means a non-permanent Hong Kong judge or a judge appointed as a judge from another common law jurisdiction;
- “permanent judge” (常任大法官) means a judge appointed as a permanent judge under section 7;
- “Registrar” (司法常務官) means the Registrar of the Court appointed under section 42;
- “solicitor” (律師) has the same meaning as in the Legal Practitioners Ordinance (Cap. 159).

3. Establishment of the Court

There shall be a Hong Kong Court of Final Appeal which shall be a superior court of record.

4. Jurisdiction of the Court

(1) The Court shall have the jurisdiction conferred on it under this Ordinance and by any other law.

(2) The Court shall have no jurisdiction over acts of state such as defence and foreign affairs.

(3) The Court shall obtain a certificate from the Governor on questions of fact concerning acts of state whenever such questions arise in the adjudication of cases, and that certificate shall be binding on the Court.

(4) Before issuing such a certificate the Governor shall obtain a certifying document from the Government of the United Kingdom of Great Britain and Northern Ireland.

5. Constitution of the Court

- (1) The following shall be the judges of the Court—
- (a) the Chief Justice; and
 - (b) the permanent judges.

(2) The Court may as required invite non-permanent Hong Kong judges to sit on the Court.

(3) The Court may as required invite judges from other common law jurisdictions to sit on the Court.

(4) When sitting as a member of the Court pursuant to subsection (2) or (3) a judge shall be deemed to be a member of the Court.

(5) Subject to section 7(2) there shall be not less than 3 permanent judges.

(6) Where the Chief Justice is ill or absent for any cause, the Governor shall appoint the next most senior permanent judge who is eligible to be appointed as the Chief Justice, to act as Chief Justice, with all the powers and functions of the Chief Justice, that seniority being determined in accordance with the order of precedence prescribed in section 11 with the judge having the highest precedence being regarded as the most senior.

6. Chief Justice

(1) The Chief Justice shall be appointed by the Governor acting in accordance with the recommendation of the Judicial Officers Recommendation Commission.

(2) The Chief Justice shall be the head of the Judiciary and shall be charged with the administration of the Judiciary and such other functions as may from time to time be lawfully conferred on him.

(3) A Justice of Appeal or a judge of the High Court appointed as Chief Justice shall cease to be a Justice of Appeal or a judge of the High Court.

7. Appointment of permanent judges

(1) The permanent judges of the Court shall be appointed by the Governor acting in accordance with the recommendation of the Judicial Officers Recommendation Commission.

(2) If the office of any permanent judge becomes vacant, by death or otherwise and the number of permanent judges is thereby reduced to less than 3, the Governor acting in accordance with the recommendation of the Judicial Officers Recommendation Commission shall as soon as reasonably possible after the office becomes vacant appoint another permanent judge to fill the vacancy.

(3) A Justice of Appeal or a judge of the High Court appointed as a permanent judge shall cease to be a Justice of Appeal or a judge of the High Court.

8. List of non-permanent Hong Kong judges

(1) There shall be a list to be known as the list of non-permanent Hong Kong judges.

(2) The list shall consist of judges appointed by the Governor acting in accordance with the recommendation of the Judicial Officers Recommendation Commission, as non-permanent Hong Kong judges.

9. List of judges from other common law jurisdictions

(1) There shall be a list to be known as the list of judges from other common law jurisdictions.

(2) The list shall consist of judges appointed by the Governor acting in accordance with the recommendation of the Judicial Officers Recommendation Commission, as judges from other common law jurisdictions.

10. Limit on number of non-permanent judges

The total number of persons holding office as non-permanent judges shall not at any one time exceed 30.

11. Precedence of judges

The judges of the Court, the non-permanent Hong Kong judges and the judges from other common law jurisdictions shall take precedence in the following order—

- (a) the Chief Justice;
- (b) the permanent judges who amongst themselves shall rank according to the priority of their respective appointments;
- (c) the non-permanent Hong Kong judges who amongst themselves shall rank according to the priority of their respective appointments to the list of non-permanent Hong Kong judges; and
- (d) the judges from other common law jurisdictions who amongst themselves shall rank according to the priority of their respective appointments to the list of judges from other common law jurisdictions.

12. Qualifications of judges

(1) A person shall be eligible to be appointed as the Chief Justice or as a permanent judge if he is—

- (a) the Chief Justice of the Supreme Court, a Justice of Appeal or a judge of the High Court; or
- (b) a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years.

(2) Notwithstanding subsection (1) a person shall also be eligible to be appointed as the first Chief Justice to be appointed or as a permanent judge to be appointed prior to the hearing of the first appeal by the Court if he is—

- (a) a retired Chief Justice of the Supreme Court;
- (b) a retired Justice of Appeal; or
- (c) a retired judge of the High Court.

(3) A person shall be eligible to be appointed as a non-permanent Hong Kong judge if he is—

- (a) a retired Chief Justice of the Supreme Court;
- (b) a retired Chief Justice of the Court;
- (c) a retired permanent judge of the Court;
- (d) a Justice or retired Justice of Appeal; or
- (e) a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years,

whether or not he is ordinarily resident in Hong Kong.

(4) A person shall be eligible to be appointed as a judge from another common law jurisdiction if he is—

- (a) a judge or retired judge of a court of unlimited jurisdiction in either civil or criminal matters in another common law jurisdiction;
- (b) a person who is ordinarily resident outside Hong Kong; and
- (c) a person who has never been a judge of the Supreme Court, a District Judge or a permanent magistrate, in Hong Kong.

13. Prohibition on practice as barrister or solicitor

A person who has been appointed as the Chief Justice, a permanent judge or a non-permanent judge shall not be entitled to practise as a barrister or solicitor in Hong Kong either while he holds office as such a judge or at any time after he ceases for any reason to hold office as such a judge and shall be deemed upon and by virtue of such appointment to be not qualified to practise as a barrister or solicitor.

14. Tenure of office

(1) The Chief Justice and permanent judges shall vacate their offices when they attain the retiring age.

(2) Notwithstanding subsection (1)—

- (a) subject to paragraphs (b) and (c) the terms of office of the Chief Justice and of permanent judges may be extended for not more than 2 periods of 3 years by the Governor acting, in the case of the Chief Justice, in accordance with the recommendation of the

Judicial Officers Recommendation Commission and, in the case of permanent judges, in accordance with the recommendation of the Chief Justice and in any such case the Chief Justice or permanent judge, as the case may be, shall accordingly be regarded as having attained the retiring age at the expiration of that extended period;

(b) subject to paragraph (c) a person who has attained the age of 65 years may be appointed to be the Chief Justice or to be a permanent judge for a term of 3 years and that term may be extended for one period of 3 years by the Governor acting, in the case of the Chief Justice, in accordance with the recommendation of the Judicial Officers Recommendation Commission and, in the case of a permanent judge, in accordance with the recommendation of the Chief Justice;

(c) a person may be appointed pursuant to section 12(2) to be the Chief Justice or to be a permanent judge for a term of 3 years.

(3) There shall be no retiring age for a non-permanent judge.

(4) A non-permanent judge shall hold office for a term of 3 years but that term may be extended for one or more periods of 3 years by the Governor acting in accordance with the recommendation of the Chief Justice.

(5) A judge may at any time resign his office by notice in writing addressed to the Governor.

(6) A judge may be removed from office only for inability to discharge his duties (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (7), (8) or (9).

(7) The Chief Justice may be removed only by the Governor, on the recommendation of a tribunal of judges appointed by the Governor and consisting of not fewer than 5 members each one of whom is either a permanent judge or a non-permanent Hong Kong judge.

(8) A permanent or non-permanent judge may be removed only by the Governor, on the recommendation of a tribunal of judges appointed by the Chief Justice and consisting of not fewer than 3 members each one of whom is either a permanent judge or a non-permanent Hong Kong judge.

(9) If the question of removing a judge from office is being investigated by a tribunal the Governor may suspend the judge from performing the functions of his office.

(10) Any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect if the tribunal recommends that the judge ought not to be removed from office.

(11) In this section and section 15 "retiring age" (退休年齡) means the age of 65 years.

15. Continuing powers of judges

Notwithstanding the fact that he has attained the retiring age or that his term of office has for any reason expired, a judge may continue to sit as and perform all the functions of a member of the Court for as long as may be necessary to enable the Court to deliver judgment or do any other thing in relation to proceedings that were commenced, before he attained that age or before his term of office expired, in the Court of which he was then sitting as a member.

16. Hearing of appeals

(1) Subject to subsection (4), an appeal shall be heard and determined by the Court constituted as follows—

- (a) the Chief Justice or a permanent judge designated to sit in his place under subsection (2);
- (b) 3 permanent judges nominated by the Chief Justice; and
- (c) 1 non-permanent Hong Kong judge or 1 judge from another common law jurisdiction selected by the Chief Justice and invited by the Court.

(2) The Chief Justice shall be President of the Court, and where he is not available for any cause to hear an appeal he shall designate a permanent judge to sit in his place and be President.

(3) Where pursuant to subsection (2) a judge is sitting in place of the Chief Justice the Court must still consist of 5 judges.

(4) Where a sufficient number of permanent judges are not available for any cause to hear an appeal, the Chief Justice shall nominate a non-permanent Hong Kong judge to sit in place of a permanent judge.

(5) The judgment or order which is that of the majority of the judges sitting shall be deemed to be the judgment or order of the Court.

(6) If there is no judgment or order which is that of the majority of the judges sitting, a rehearing shall be ordered.

(7) If a judge is absent for any cause after the hearing of the appeal has commenced but before the determination of the appeal, the appeal may with the consent of all the parties be continued with the remaining judges being not less than 4.

(8) No judge shall sit as a member of the Court on the hearing of, or on the determination of any application in proceedings incidental or preliminary to—

- (a) an appeal from a judgment or order made by him or by a court in which he was sitting as a member;
- (b) an appeal against a conviction before him or a sentence passed by him.

17. Powers of the Court

(1) The Court may confirm, reverse or vary the decision of the court from which the appeal lies or may remit the matter with its opinion thereon to that court, or may make such other order in the matter, including any order as to costs, as it thinks fit.

(2) For the purpose of disposing of an appeal, the Court may exercise any powers of the court from which the appeal lies (including the power to order a retrial), or may remit the case to that court.

(3) Where the Court restores a conviction, it may make—

(a) any order for the restitution of property which the court of trial could have made; and

(b) any compensation order which the court of trial could have made under section 73 of the Criminal Procedure Ordinance (Cap. 221).

(4) The Court may from time to time adjourn the hearing of any appeal.

(5) Any provision in this or any other Ordinance which authorizes or requires the taking of any steps for the execution or enforcement of a judgment or order of the Court of Appeal or the High Court applies in relation to a judgment or order of the Court as it applies in relation to a judgment or order of the Court of Appeal or the High Court.

18. Appeal Committee

(1) There shall be an Appeal Committee consisting of—

(a) the Chief Justice and 2 permanent judges nominated by the Chief Justice; or

(b) 3 permanent judges nominated by the Chief Justice.

(2) The power of the Court to hear and determine any application for leave to appeal shall be exercised by the Appeal Committee.

(3) The decision of the Appeal Committee shall be final and not itself subject to appeal.

PART II

CIVIL

19. Interpretation

In this Part, unless the context otherwise requires—

“appeal” (上訴) means appeal to the Court in any civil cause or matter;

“Court of Appeal” (上訴法院) includes a single judge of the Court of Appeal, where the matter in question is one which properly appertains to a single judge of the Court of Appeal;

“judgment” (判決) includes decree, order or decision;

“record” (紀錄) means the aggregate of papers relating to an appeal (including the pleadings, evidence and judgments) proper to be laid before the Court on the hearing of the appeal.

20. Application

This Part applies to appeals in any civil cause or matter.

21. Civil jurisdiction

The civil jurisdiction of the Court shall consist of appeals under this Part and under any other law.

22. Civil appeals

(1) An appeal shall lie to the Court in any civil cause or matter—

(a) as of right, from any final judgment of the Court of Appeal, where the matter in dispute on the appeal amounts to or is of the value of \$1,000,000 or more, or where the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of \$1,000,000 or more; and

(b) at the discretion of the Court of Appeal or the Court, from any other judgment of the Court of Appeal, whether final or interlocutory, if, in the opinion of the Court of Appeal or the Court, as the case may be, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the Court for decision.

(2) The Governor in Council may by order published in the Gazette amend subsection (1) to vary the amounts specified.

23. Leave to appeal

(1) No appeal shall be admitted unless either—

(a) leave to appeal has been granted by the Court of Appeal; or

(b) in the absence of such leave, leave has been granted by the Court.

(2) Where an appeal lies of right, leave to appeal shall not be refused but shall, in the first instance, be granted as conditional leave in accordance with section 25.

24. Applications for leave to appeal

(1) Applications to the Court of Appeal or the Court for leave to appeal shall be made by motion.

(2) Notice of a motion for the purpose of subsection (1) shall be filed within 28 days from the date of the judgment to be appealed from, and the applicant shall give the opposite party 7 days notice of his intended application and such notice may be given at any time during the period of 28 days.

(3) If an application for leave is refused by the Court of Appeal, an application may be made to the Court for leave and such application shall be made by motion.

(4) Notice of a motion for the purpose of subsection (3) shall be filed within 28 days from the date on which the application for leave is refused by the Court of Appeal, and the applicant shall give the opposite party 7 days notice of his intended application and that notice may be given at any time during the period of 28 days.

(5) The Court of Appeal or the Court, as the case may be, may, on such terms as it considers appropriate, by order extend the period within which the applicant is required or authorized by subsection (2) or (4) to do any act.

(6) The Court of Appeal or the Court, as the case may be, may extend any such period as is referred to in subsection (5) even though the application for extension is not made until after the expiration of that period.

25. Grant of leave to appeal

(1) Where the Court of Appeal or the Court decides or is required to grant leave to appeal pursuant to an application made under section 24 it may grant leave subject to such conditions as it considers necessary.

(2) Without restricting the generality of subsection (1) leave granted under subsection (1) may be granted—

(a) upon a condition that the appellant shall enter into good and sufficient security, for the due prosecution of the appeal, and the payment of all such costs as may become payable to the respondent in the event of the appeal being dismissed for non-prosecution, or of the Court ordering the appellant to pay the respondent's costs of the appeal; and

(b) upon such other conditions (if any) as to the time or times within which the appellant shall procure the preparation of the record as the Court of Appeal or the Court considers appropriate.

(3) The security required under subsection (2)(a) shall—

(a) be entered into within a period to be fixed by the Court of Appeal or the Court, but not exceeding 3 months from the date on which the application for leave to appeal is granted; and

(b) be to the satisfaction of the Court of Appeal or the Court in a sum not exceeding \$400,000 in respect of each respondent.

(4) The Court of Appeal or the Court, as the case may be, may vary any conditions it has imposed under this section in such manner as it considers fit.

(5) The Governor in Council may by order published in the Gazette amend subsection (3)(b) to vary the amount specified.

(6) Without prejudice to subsection (2) the Court of Appeal or the Court, as the case may be, may when granting leave under subsection (1) impose a timetable on any party for the prosecution of the appeal and may either on the application of a party or of its own motion vary that timetable.

26. Stay of execution

(1) Where a judgment appealed from requires the appellant to pay money or perform a duty, the Court of Appeal or the Court, as the case may be, shall have power, when granting leave to appeal or subsequently, either to direct that the judgment shall be carried into execution or that the execution shall be suspended pending the appeal.

(2) Where the Court of Appeal or the Court directs the judgment appealed from to be carried into execution, the person in whose favour it was given shall, before the execution, enter into good and sufficient security, to the satisfaction of the Court of Appeal or the Court, as the case may be, for the due performance of such order as the Court shall make in respect of the appeal.

(3) Where the Court of Appeal or the Court directs that the execution of the judgment appealed from shall be suspended pending the appeal, the appellant shall enter into good and sufficient security, to the satisfaction of the Court of Appeal or the Court, as the case may be, for the due performance of such order as the Court shall make in respect of the appeal.

27. Notice of application

(1) On an application for final leave to appeal, the Court of Appeal or the Court, as the case may be, may inquire whether notice or sufficient notice of the application has been given by the appellant to all parties concerned.

(2) If the Court of Appeal or the Court, as the case may be, is not satisfied that notice or sufficient notice of an application for final leave to appeal has been given, it may defer the granting of the final leave to appeal or may give such other directions in the matter as it thinks fit.

PART III**CRIMINAL****28. Interpretation**

In this Part, unless the context otherwise requires—
“appeal” (上訴) means appeal to the Court under this Part, and “appellant” (上訴人) has a corresponding meaning, and includes a person who has given notice of application for leave to appeal;
“court of trial” (原審法庭), in relation to an appeal, means the court from which the appeal lies to the Court of Appeal or the High Court;
“defendant” (被告人) means, in relation to an appeal, the defendant before the court of trial, and references to the prosecutor shall be construed accordingly.

29. Application

This Part applies to appeals in any criminal cause or matter.

30. Criminal jurisdiction

The criminal jurisdiction of the Court shall consist of appeals under this Part.

31. Criminal appeals

An appeal shall, at the discretion of the Court, lie to the Court in any criminal cause or matter, at the instance of any party to the proceedings, from—

- (a) any final decision of the Court of Appeal;
- (b) any final decision of the High Court (not being a verdict or finding of a jury) from which no appeal lies to the Court of Appeal.

32. Leave to appeal

(1) No appeal shall be admitted unless leave to appeal has been granted by the Court.

(2) Leave to appeal shall not be granted unless it is certified by the Court of Appeal or the High Court, as the case may be, that a point of law of great and general importance is involved in the decision or it is shown that substantial and grave injustice has been done.

(3) Where the Court of Appeal or the High Court declines to certify as mentioned in subsection (2), the Court may so certify and grant leave to appeal.

(4) The Court may when granting leave under subsection (1) impose a timetable on any party for the prosecution of the appeal and may either on the application of a party or of its own motion vary that timetable.

33. Application for leave to appeal

(1) An application to the Court for leave to appeal shall be made within 28 days from the date of the decision of the Court of Appeal or the High Court, as the case may be.

(2) The Court may, upon application made at any time by any party to the appeal, extend the time within which an application may be made to the Court under subsection (1).

(3) An appeal to the Court shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of.

34. Bail

(1) The Court, the Court of Appeal or the High Court, as the case may be, may on the application of a person appealing or applying for leave to appeal or on the application of a person in custody pending the determination of the appeal, grant the person in custody bail pending the determination of the appeal.

(2) A grant of bail under subsection (1) may be made subject to such conditions as the Court, the Court of Appeal or the High Court, as the case may be, considers necessary.

(3) If a person is refused bail on an application made under subsection (1), he shall not thereafter be entitled to make a fresh application for bail—

(a) before the commencement of the hearing of the appeal, except to the Court, the Court of Appeal or the High Court and only if he satisfies the Court, the Court of Appeal or the High Court that since the refusal, there has been a material change in relevant circumstances; or

(b) during the hearing of the appeal, except to the Court.

35. Detention on appeal by prosecutor

(1) The following provisions apply where, immediately after a decision of the Court of Appeal or the High Court, as the case may be, from which an appeal lies to the Court, the prosecutor is granted or gives notice that he intends to apply for, leave to appeal.

(2) If, but for the decision of the Court of Appeal or the High Court, as the case may be, the defendant would be liable to be detained, the Court of Appeal or the High Court, as the case may be, may, on the application of the prosecutor made within 7 days of that decision, make an order providing for his detention, or directing that he shall not be released except on bail (which may be granted as under section 34), as long as an appeal to the Court is pending.

(3) An order under this section shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would have been liable to be detained but for the decision of the Court of Appeal or the High Court, as the case may be.

(4) Where an order is made under this section in the case of a defendant who, but for the decision of the Court of Appeal or the High Court, as the case may be, would be liable to be detained in pursuance of—

(a) an order under Part IV of the Mental Health Ordinance (Cap. 136); or

(b) an order under section 76(1) of the Criminal Procedure Ordinance (Cap. 221),

the order under this section shall be one authorizing his continued detention in pursuance of the order referred to in paragraph (a) or (b); and the provisions of the Mental Health Ordinance (Cap. 136) with respect to persons liable to be detained as mentioned in this subsection shall apply accordingly.

36. Presence of defendant

The defendant shall be entitled to be present at the hearing of an application for leave to appeal and an appeal unless the Court, where it considers it necessary in the interests of justice or public order or security to do so, orders otherwise.

37. Effect of appeal on sentence

(1) Where a person subject to a sentence is granted bail under section 34 or 35, the time during which he is released on bail shall be disregarded in computing the term of his sentence unless the Court, the Court of Appeal or the High Court, as the case may be, otherwise directs.

(2) Subject to subsection (1), any sentence passed on an appeal to the Court in substitution for another sentence shall, unless the Court, the Court of Appeal or the High Court, as the case may be, otherwise directs, begin to run from the time when the other sentence should have begun to run.

(3) In this section “sentence” (判刑) includes any order made by a court when dealing with an offender (including a hospital order under Part IV of the Mental Health Ordinance (Cap. 136)).

PART IV

MISCELLANEOUS

38. Withdrawal

(1) An appellant may at any time with leave of the Court withdraw his appeal.

(2) Where an appeal has been withdrawn under subsection (1) the respondent shall, subject to any agreement between himself and the appellant to the contrary, be entitled to apply to the Court for his costs of and incidental to the appeal.

39. Rules

The Court of Final Appeal Rules Committee constituted under section 40 may make rules of court regulating and prescribing the procedure and the practice to be followed in the Court in all causes and matters in or with respect to which the Court has jurisdiction and any matters incidental to or relating to that procedure or practice, and it may make rules of court providing generally for the better carrying out of the provisions of this Ordinance.

40. Rules Committee

(1) There shall be a Court of Final Appeal Rules Committee which shall consist of—

- (a) the Chief Justice;
- (b) 2 permanent judges;
- (c) the Registrar;
- (d) 2 barristers nominated by the Hong Kong Bar Association;
- (e) 2 solicitors nominated by The Law Society of Hong Kong;
- (f) the Attorney General or a legal officer in the Attorney General's Chambers appointed by him.

(2) The Registrar shall be the secretary of the Court of Final Appeal Rules Committee.

(3) A quorum for a meeting of members of the Court of Final Appeal Rules Committee shall be constituted by a barrister, a solicitor, the Attorney General or a legal officer in the Attorney General's Chambers appointed by him and not less than 2 other members.

41. Registry

There shall be a Registry of the Court, which shall be in the charge of the Registrar.

42. The Registrar

(1) There shall be attached to the Court a Registrar.

(2) The Registrar shall be appointed by the Governor and shall possess the same qualifications as are required for appointment as the Registrar of the Supreme Court.

(3) The Registrar shall have and may exercise and perform such jurisdiction, powers and duties as may be conferred or imposed on him by or under rules of court or any other law.

(4) The Chief Justice may appoint such other officers of the Court as may be required for the conduct of business of the Court who may exercise and perform such jurisdiction, powers and duties as may be conferred or imposed on them by or under rules of court or any other law.

(5) The Chief Justice shall, in the absence of the Registrar for any cause, appoint a person to act in his place.

43. Costs

Costs, including costs in the courts below or before a magistrate, shall be paid by such party or person as the Court shall order, and such costs shall be taxed by the Registrar, or some other officer of the Court to whom the Registrar may delegate this function.

44. Non-prosecution of appeal

(1) Where an appellant, who has obtained final leave to appeal under Part II or leave to appeal under Part III, fails to prosecute his appeal with due diligence, the Court may dismiss the appeal for non-prosecution, or give such other directions as it thinks fit.

(2) An appellant whose appeal has been dismissed for non-prosecution may apply to the Court for an order that his appeal be restored.

(3) Where an appeal has been dismissed under this section a respondent may apply to the Court for an order for costs.

45. Appeal from decision on taxation

(1) Any party aggrieved by a decision on a taxation of costs may appeal to the Court in accordance with rules of court.

(2) A permanent judge may exercise all the powers of the Court to hear and determine an appeal under this section.

46. Powers of single permanent judge

- (1) A single permanent judge may exercise the powers of the Court—
- (a) to extend the time for making an application for leave to appeal; and
 - (b) to make an order for or in relation to bail under Part III,

but where the judge refuses an application to exercise any of these powers, the applicant shall be entitled to have the application determined by the Appeal Committee which for the purposes of this section may exercise all the powers of the Court.

(2) In an application for leave to appeal or an appeal, any incidental order or direction, not involving the decision of the application or appeal, any interim order necessary to prevent prejudice to the parties and any order for security for costs or for the dismissal of an application or appeal for default in furnishing security so ordered, may be made or given at any time by a single permanent judge.

(3) Any order made under subsection (2) may be discharged or varied by the Appeal Committee.

(4) The powers exercisable by a single permanent judge under this section may, subject to rules of court, be exercised in chambers.

47. Sittings and business

(1) The Court shall sit at such times and at such places as the Chief Justice shall appoint.

(2) All proceedings before the Court or the Appeal Committee shall be held in open court to which the public shall have access.

(3) The Court or the Appeal Committee may, if it considers it necessary in the interests of justice or public order or security, direct that, save as provided in subsection (4), no person, other than a person nominated by the Court or the Committee, shall be in court or in the building in which the Court or the Committee sits.

(4) Subsection (3) shall not apply to a person who is required to be in the Court or building by virtue of his office or profession or an order of a court or who is otherwise required for the purposes of any proceedings to be in the Court or building or to any one person representing a newspaper or news agency.

(5) Any person who contravenes a direction under subsection (3) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 6 months and may be forcibly removed by any police officer from the Court or building.

(6) The distribution of business of the Court shall be made in accordance with directions given by the Chief Justice.

48. Seal

(1) The Court shall use such seal as the Chief Justice may direct.

(2) All judgments, orders, documents and exemplifications or copies thereof, shall be sealed with the seal referred to in subsection (1).

(3) Any judgment, order, document and any exemplification or copy thereof, shall, when purporting to be sealed under subsection (2), be admitted in evidence in any criminal or civil proceedings before any court on its production without further proof.

49. Transitional

Any appeal in respect of which the Judicial Committee of the Privy Council or the Court of Appeal has granted conditional, final or special leave to appeal to that Committee and the appeal has not been finally disposed of on or before 30 June 1997 shall proceed in the Court, and the Court may give such directions as to the continuation of the prosecution of the appeal as it thinks fit and shall have full power to determine by whom and the extent to which costs in relation thereto are to be paid.

50. Schedule of amendments

The enactments specified in the Schedule are amended to the extent and in the manner specified in that Schedule in relation to each such enactment.

SCHEDULE

[s. 50]

Item	Enactment	Amendment
1.	Interpretation and General Clauses Ordinance (Cap. 1)	<p>In section 3—</p> <p>(a) in the definition of “Chief Justice”, by repealing “Hong Kong” and substituting “the Court of Final Appeal”;</p> <p>(b) in the definition of “judge”, by repealing “the Chief Justice” and substituting— “the Chief Justice, a judge of the Hong Kong Court of Final Appeal, the Chief Justice of the Supreme Court”;</p> <p>(c) by adding— ““Court of Final Appeal” (終審法院) means the Hong Kong Court of Final Appeal established by section 3 of the Hong Kong Court of Final Appeal Ordinance (79 of 1995); “judge of the Court of Final Appeal” (終審法院大法官) means the Chief Justice, a permanent judge and a non-permanent judge of the Court of Final Appeal.”.</p>
2.	Jury Ordinance (Cap. 3)	<p>In section 5(o), by adding— “(ia) a judge of the Court of Final Appeal;”.</p>

Item	Enactment	Amendment
3.	Supreme Court Ordinance (Cap. 4)	<p>(a) In section 4(1)(a), by adding “of the Supreme Court” after “Justice”.</p> <p>(b) In section 5(1)(a), (1A) and (3), by adding “of the Supreme Court” after “Justice”.</p> <p>(c) In section 7(1)(a), by adding “of the Supreme Court” after “Justice”.</p> <p>(d) In section 8(1) and (2), by adding “of the Supreme Court” after “Chief Justice”.</p> <p>(e) In section 34B(5), by repealing “Privy Council” and substituting “Court of Final Appeal”.</p> <p>(f) In section 36—</p> <p>(i) by adding “or by the Chief Justice of the Supreme Court” after “Justice”;</p> <p>(ii) by adding “other than an act in the performance of or relating to the performance of a function under the Hong Kong Court of Final Appeal Ordinance (79 of 1995)” after “such act”.</p>
4.	Bankruptcy Ordinance (Cap. 6)	In paragraph 11(3)(b) of Schedule 1, by repealing “Privy Council” and substituting “Court of Final Appeal”.
5.	Evidence Ordinance (Cap. 8)	By repealing section 59(4)(c) and substituting— “(c) proceedings before the Court of Final Appeal.”.
6.	Oaths and Declarations Ordinance (Cap. 11)	In the Third Schedule, in Part I, by adding— “Chief Justice Permanent judge of the Court of Final Appeal Non-permanent Hong Kong judge of the Court of Final Appeal Judge of the Court of Final Appeal from another common law jurisdiction”.
7.	Co-operative Societies Ordinance (Cap. 33)	In section 50(2), by adding “of the Supreme Court” after “Justice”.
8.	Pensions Ordinance (Cap. 89)	In sections 2 and 14, by repealing “Judicial Service” wherever it appears and substituting “Judicial Officers Recommendation”.
9.	Legal Aid Ordinance (Cap. 91)	<p>(a) In section 2(1)—</p> <p>(i) in the definition of “counsel”, by repealing everything after “from practice” where it first appears and substituting a semicolon;</p> <p>(ii) in the definition of “court”, by repealing “Privy Council” and substituting “Court of Final Appeal”;</p> <p>(iii) in the definition of “order for costs”, by repealing “Privy Council” and substituting “Court of Final Appeal”;</p> <p>(iv) by repealing the definition of “Privy Council”;</p> <p>(v) in the definition of “Registrar”, by repealing “Privy Council, includes the Registrar of the Privy Council” and substituting “Court of Final Appeal, includes the Registrar of the Court of Final Appeal”;</p> <p>(vi) in the definition of “solicitor”, by repealing everything after “is not suspended from practice” where it first appears and substituting a semicolon.</p>

Item	Enactment	Amendment
		(b) In section 2(2), by repealing "Privy Council" and substituting "Court of Final Appeal".
		(c) In section 3(3), by adding "or the Court of Final Appeal" after "court".
		(d) In section 8(4), by adding "or the Court of Final Appeal" after "court".
		(e) In section 9(d), by repealing "if the application does not relate to an appeal to, or an application for leave to appeal to, the Privy Council,".
		(f) By repealing section 9(da).
		(g) In section 12(1), in proviso (a), by repealing "Privy Council" and substituting "Court of Final Appeal".
		(h) In section 13(1), by repealing everything from "in Hong Kong" up to and including "(b) in other proceedings," and substituting "and".
		(i) In section 14, by adding— " (5) In this section, "court" (法院) includes the Court of Final Appeal."
		(j) By repealing section 15(1).
		(k) By repealing section 16(1).
		(l) In section 16A, by repealing "Privy Council" and substituting "Court of Final Appeal".
		(m) In section 16B(c) and (d), by repealing "except in Privy Council proceedings,".
		(n) In section 16C(1)(b), by repealing "Privy Council" wherever it appears and substituting "Court of Final Appeal".
		(o) In section 16C(1)(c), by repealing "Privy Council" and substituting "Court of Final Appeal".
		(p) By repealing section 16C(4).
		(q) In section 17, by adding— " (6) In this section, "court" (法院) includes the Court of Final Appeal."
		(r) In section 18A(3B), by adding "or the Court of Final Appeal" after "court".
		(s) In section 18A(4), by adding "or the Court of Final Appeal" after "court".
		(t) In section 19(1), by adding "or the Court of Final Appeal" after "A court".
		(u) In section 19(1A)(a), by repealing "Privy Council" and substituting "Court of Final Appeal".
		(v) By repealing section 19(3).
		(w) In section 19A(1)(a), (c) and (d), by repealing "Privy Council" and substituting "Court of Final Appeal".
		(x) In section 19A(2), by adding "or the Court of Final Appeal" after "court" wherever it appears.
		(y) In section 19B(1)(b), by adding "or the Registrar of the Court of Final Appeal" after "Supreme Court".
		(z) In section 19B, by adding— " (3) In this section, "court" (法院) includes the Court of Final Appeal."
		(aa) In section 20A(2), by adding "the Hong Kong Court of Final Appeal Ordinance (79 of 1995)," after "made under".
		(ab) In section 24, by adding—

Item	Enactment	Amendment
		<p>“(4) In this section, “court” (法院) includes the Court of Final Appeal.”</p> <p>(ac) In section 26(1A), by repealing “Privy Council” and substituting “Court of Final Appeal”.</p> <p>(ad) In section 26A(1), by repealing “Privy Council” and substituting “Court of Final Appeal”.</p> <p>(ae) In Part I of Schedule 2—</p> <p>(i) by repealing paragraph 1(a), (b) and (c) and substituting—</p> <p>“(a) Court of Final Appeal;</p> <p>(b) Court of Appeal;</p> <p>(c) High Court;</p> <p>(d) District Court.”;</p> <p>(ii) by repealing paragraph 3.</p>
10.	Judicial Service Commission Ordinance (Cap. 92)	<p>(a) In the long title, sections 1, 2 and 3 and the Second Schedule by repealing “Judicial Service” wherever it appears and substituting “Judicial Officers Recommendation”.</p> <p>(b) In section 3, by adding—</p> <p>“(5B) Where the Commission is exercising its functions under section 6(a) of this Ordinance in relation to the filling of vacancies under sections 7 and 8 of the Hong Kong Court of Final Appeal Ordinance (79 of 1995) or to the extension of the term of office of the Chief Justice under section 14 of that Ordinance, a member who is or may reasonably be regarded as a candidate for selection to fill any such vacancy or whose term of office is being considered for extension shall disclose whether or not, if he were to be selected or if the extension of his term of office were to be recommended as the case may be, he is willing to accept appointment or the extension and that disclosure shall be recorded in the minutes of the Commission.</p> <p>(5C) A member who, under subsection (5B), discloses a willingness to accept an appointment or extension—</p> <p>(a) shall not take part in any deliberation of the Commission with respect to that appointment or extension as the case may be and shall not vote on any question concerning the same; and</p> <p>(b) shall, for the purposes of subsection (6), with respect to any deliberation of the Commission concerning that appointment or extension as the case may be and any question concerning the same, be treated as being unable to act.</p> <p>(5D) For the purposes of any meeting of the Commission, if the Chief Justice is unable to act as Chairman, those members present at that meeting may by resolution appoint any of their number to act in his place and in so acting to exercise and perform all the functions of the Chairman at that meeting.”.</p> <p>(c) In section 6, by adding “or make recommendations to” after “advise”.</p> <p>(d) In the First Schedule, by adding—</p> <p>“Chief Justice Judge of the Court of Final Appeal”.</p>

Item	Enactment	Amendment
11.	Public Service Commission Ordinance (Cap. 93)	In section 2, by repealing "Judicial Service" and substituting "Judicial Officers Recommendation".
12.	Inland Revenue Ordinance (Cap. 112)	In section 69(7), by repealing "Privy Council" and substituting "Court of Final Appeal".
13.	Criminal Procedure Ordinance (Cap. 221)	<p>(a) In section 83P, by adding— " (3) For the avoidance of doubt, it is hereby declared that this section also applies in a case where an appeal has been heard and determined by the Court of Final Appeal."</p> <p>(b) By repealing section 83R(2).</p> <p>(c) By repealing section 83U(1) and (2) and substituting— " (1) A defendant shall be entitled to be present at the hearing of an application for leave to appeal and an appeal unless the Court of Appeal, where it considers it necessary in the interests of justice or public order or security to do so, orders otherwise."</p> <p>(d) By repealing section 83ZA.</p> <p>(e) In section 84B(4)(b), by repealing "special leave to appeal to the Privy Council" and substituting "leave to appeal to the Court of Final Appeal".</p> <p>(f) In section 84B(4)(c), by repealing "Privy Council" and substituting "Court of Final Appeal".</p> <p>(g) In section 84B(5)— (i) by repealing "Privy Council" and substituting "Court of Final Appeal"; (ii) by repealing "special leave" wherever it appears and substituting "leave".</p>
14.	Magistrates Ordinance (Cap. 227)	<p>(a) In section 113A, by adding— " (4) For the avoidance of doubt, it is hereby declared that this section also applies in a case where an appeal has been heard and determined by the Court of Final Appeal."</p> <p>(b) In section 118(1)(e), by adding "of the Supreme Court" after "Justice" where it twice appears.</p>
15.	Compulsory Service Ordinance (Cap. 246)	In section 5(b), by repealing "the Puisne Judges" and substituting "judges of the Court of Final Appeal and the Supreme Court".
16.	Control of Obscene and Indecent Articles Ordinance (Cap. 390)	In section 31(b), by adding "of the Supreme Court" after "Justice" where it twice appears.
17.	Pension Benefits (Judicial Officers) Ordinance (Cap. 401)	<p>(a) In section 6— (i) in subsection (1)— (A) by renumbering the existing paragraph (a) as paragraph (aa); (B) by adding, before paragraph (aa)— " (a) the Chief Justice or a permanent judge of the Court of Final Appeal is when he attains the age of 65 years unless he is appointed under section 14(2)(b) or (c) of the Hong Kong Court of Final Appeal Ordinance (79 of 1995) in which case his age at the expiration of his term of 3 years shall be regarded as the normal retirement age;"</p>

Item	Enactment	Amendment
		<ul style="list-style-type: none"> (ii) in subsections (2) and (3), by adding “or (aa)” after “subsection (1)(a)”; (iii) in subsection (4), by adding “or before the expiration of any extension granted under section 14(1)(a) or (b) of the Hong Kong Court of Final Appeal Ordinance (79 of 1995)” at the end; (iv) in subsection (5), by adding “or under section 14(2)(a) or (b) of the Hong Kong Court of Final Appeal Ordinance (79 of 1995)” after “Letters Patent”.
		<ul style="list-style-type: none"> (b) In section 7— <ul style="list-style-type: none"> (i) in subsection (1), by adding— <ul style="list-style-type: none"> “(da) in the case of the Chief Justice or a permanent judge of the Court of Final Appeal, on retirement after removal from office under section 14 of the Hong Kong Court of Final Appeal Ordinance (79 of 1995), whether or not he has completed qualifying service of not less than the relevant period as specified in paragraph (a);”; (ii) in subsection (2), by repealing “(1)(e)” and substituting “(1)(da), (e)”. (c) In section 8(1)(a), by repealing “7(1)(e)” and substituting “7(1)(da), (e)”. (d) In section 21(5)(a), by repealing “7(1)(e)” and substituting “7(1)(da), (e)”. (e) In section 29, by repealing “Judicial Service” wherever it appears and substituting “Judicial Officers Recommendation”.
18.	Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)	<ul style="list-style-type: none"> (a) By repealing section 2(13)(a). (b) In section 2(13)(b), by repealing “in any other case,”.
19.	Judicial Officers (Tenure of Office) Ordinance (Cap. 433)	<ul style="list-style-type: none"> (a) In section 2, by adding “judge of the Court of Final Appeal,” after “include a”. (b) In sections 2, 5, 7, 8 and 11, by repealing “Judicial Service” wherever it appears and substituting “Judicial Officers Recommendation”.
20.	Organized and Serious Crimes Ordinance (82 of 1994)	<ul style="list-style-type: none"> (a) By repealing section 2(17)(a). (b) In section 2(17)(b), by repealing “in any other case,”.
21.	The Rules of the Supreme Court (Cap. 4 sub. leg.)	In Order 32, rule 10, by repealing “Privy Council” and substituting “Court of Final Appeal”.
22.	Legal Aid Regulations (Cap. 91 sub. leg.)	<ul style="list-style-type: none"> (a) In regulation 9(7), by repealing “Except in proceedings in relation to an appeal to, or an application for leave to appeal to, the Privy Council, where” and substituting “Where”. (b) In regulation 10(1), by repealing “Privy Council” and substituting “Court of Final Appeal”. (c) In regulation 18(1), by adding “the Hong Kong Court of Final Appeal Rules (L.N. of 1995) and” before “Order 62”. (d) In regulation 18(2), by adding “the Hong Kong Court of Final Appeal Rules (L.N. of 1995) and” before “the Rules”.
23.	Legal Aid (Scale of Fees) Regulations (Cap. 91 sub. leg.)	<ul style="list-style-type: none"> In regulation 2— <ul style="list-style-type: none"> (a) in the definition of “rules of court”, by adding “the Hong Kong Court of Final Appeal Ordinance (79 of 1995),” after “made under”;

Item	Enactment	Amendment
		(b) in the definition of "taxing master", by adding "the officer acting under section 43 of the Hong Kong Court of Final Appeal Ordinance (79 of 1995) or" after "means".
24.	Matrimonial Causes Rules (Cap. 179 sub. leg.)	In rule 2(2), in the definition of "judge", in paragraph (b), by adding "of the Supreme Court" after "Justice".
25.	Domestic Violence Rules (Cap. 189 sub. leg.)	In rule 2, in the definition of "judge", in paragraph (a), by adding "of the Supreme Court" after "Chief Justice".
26.	Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg.)	<p>(a) In rule 2(1)—</p> <p>(i) in the definition of "counsel", by repealing everything after "from practice" where it first appears and substituting a semicolon;</p> <p>(ii) by repealing the definition of "Privy Council";</p> <p>(iii) in the definition of "Registrar", by repealing "Privy Council, includes the Registrar of the Privy Council" and substituting— "Court of Final Appeal, includes the Registrar of the Court of Final Appeal";</p> <p>(iv) in the definition of "solicitor", by repealing everything after "is not suspended from practice" where it first appears and substituting a full stop.</p> <p>(b) In rule 2(2)(c), by repealing "Privy Council" and substituting "Court of Final Appeal".</p> <p>(c) In rule 4(1)(h), by repealing "Privy Council" and substituting "Court of Final Appeal".</p> <p>(d) In rule 8(3), by repealing "Privy Council" where it twice appears and substituting "Court of Final Appeal".</p> <p>(e) In rule 12(1A), by repealing "Privy Council" and substituting "Court of Final Appeal".</p> <p>(f) In rule 13(1)(c), by repealing "Privy Council" and substituting "Court of Final Appeal".</p> <p>(g) In rule 14A(2), by repealing "Privy Council" and substituting "Court of Final Appeal".</p> <p>(h) In rule 14B(1) and (2), by repealing "Privy Council" and substituting "Court of Final Appeal".</p>