

Chapter:	484	HONG KONG COURT OF FINAL APPEAL ORDINANCE	Gazette Number	Version Date
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		Long title	79 of 1995	01/07/1997
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An Ordinance to establish a Court of Final Appeal for Hong Kong, and for matters incidental thereto and connected therewith.

[1 July 1997]

(Originally 79 of 1995)

Part:	I	GENERAL	79 of 1995	01/07/1997
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Section:	1	Short title and commencement	79 of 1995	01/07/1997
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(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.

Section:	2	Interpretation	L.N. 87 of 2003	28/03/2003
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(1) In this Ordinance, unless the context otherwise requires- (Amended 120 of 1997 s. 2)

"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" (首席法官) means the Chief Justice of the Court; (Amended 120 of 1997 s. 4)

"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 which consists of the Court of First Instance and the Court of Appeal; (Amended 120 of 1997 s. 2)

"judge" (法官) means a judge of the Court, including the Chief Justice, a permanent judge and a non-permanent judge; (Amended 120 of 1997 s. 4)

"judge from another common law jurisdiction" (其他普通法適用地區法官) means a judge appointed as a judge from another common law jurisdiction under section 9; (Amended 120 of 1997 s. 4)

"Justice of Appeal" (上訴法庭法官) means a Justice of Appeal of the Court of Appeal; (Added 120 of 1997 s. 2)

"legal officer in the Department of Justice" (律政司的律政人員) means a person holding one of the offices in the Department of Justice mentioned in Schedule 1 to the Legal Officers Ordinance (Cap 87); (Amended 120 of 1997 s. 2; 42 of 2000 s. 31)

"non-permanent Hong Kong judge" (非常任香港法官) means a judge appointed as a non-permanent Hong Kong judge under section 8; (Amended 120 of 1997 s. 4)

"non-permanent judge" (非常任法官) means a non-permanent Hong Kong judge or a judge appointed as a judge from another common law jurisdiction; (Amended 120 of 1997 s. 4)

"permanent judge" (常任法官) means a judge appointed as a permanent judge under section 7; (Amended 120 of 1997 s. 4)

"Region" (香港特區) means the Hong Kong Special Administrative Region of the People's Republic of China; (Added 120 of 1997 s. 2)

"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).

(2) In this Ordinance, a reference to the Court of First Instance includes the High Court which was in operation before 1 July 1997. (Added 120 of 1997 s. 2)

Section:	3	Establishment of the Court	79 of 1995	01/07/1997
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There shall be a Hong Kong Court of Final Appeal which shall be a superior court of record.

Section:	4	Jurisdiction of the Court	79 of 1995; 120 of 1997 s. 3	01/07/1997
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(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 Chief Executive 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. (Amended 120 of 1997 s. 3)

(4) Before issuing such a certificate the Chief Executive shall obtain a certifying document from the Central People's Government. (Amended 120 of 1997 s. 3)

Section:	5	Constitution of the Court	132 of 1997 s. 2	05/09/1997
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(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) Subject to subsection (7), where the Chief Justice is ill or absent for any cause, the Chief Executive 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. (Amended 120 of 1997 s. 4; 132 of 1997 s. 2)

(7) If there is no permanent judge who is eligible to be appointed as the Chief Justice, the Chief Executive shall, where the Chief Justice is ill or absent for any cause, appoint the next most senior permanent judge, even though he is not so eligible, to act as Chief Justice, with all the powers and functions of the Chief Justice, that seniority being determined in the manner specified in subsection (6). (Added 132 of 1997 s. 2)

Section:	6	Chief Justice	10 of 2005	08/07/2005
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(1) The Chief Justice shall be appointed by the Chief Executive acting in accordance with the recommendation of the Judicial Officers Recommendation Commission. (Amended 120 of 1997 s. 4)

(1A) The Chief Justice shall be a Chinese citizen who is a permanent resident of the Region with no right of abode in any foreign country. (Added 120 of 1997 s. 5)

(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 permanent judge, a Justice of Appeal or a judge of the Court of First Instance appointed as Chief Justice shall cease to be a permanent judge, a Justice of Appeal or a judge of the Court of First Instance. (Amended 120 of 1997 s. 5; 10 of 2005 s. 154)

Section:	7	Appointment of permanent judges	79 of 1995; 120 of 1997 ss. 4 & 6	01/07/1997
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(1) The permanent judges of the Court shall be appointed by the Chief Executive 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 Chief Executive 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 Court of First Instance appointed as a permanent judge shall cease to be a Justice of Appeal or a judge of the Court of First Instance. (Amended 120 of 1997 s. 6)

(Amended 120 of 1997 s. 4)

Section:	7A	Endorsement of Appointment or Removal of Judges of the Court	120 of 1997	01/07/1997
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(1) The Chief Executive shall-

* (a) obtain the endorsement of the Legislative Council for the appointment or removal of judges of the Court, the non-permanent judges and judges from other common law jurisdictions appointed pursuant to sections 6, 7, 8 and 9; and

(b) report the appointment or removal to the Standing Committee of the National People's Congress of the People's Republic of China in accordance with Article 90 of the Basic Law of the Region for the record.

(2) For the purpose of this section, "Legislative Council" (立法會) means the Legislative Council but during the existence of the Provisional Legislative Council means the Provisional Legislative Council.

(Added 120 of 1997 s. 7)

Note:

* For endorsement of the Legislative Council, please see-

(a) section 4 and Schedule 2 of the Hong Kong Reunification Ordinance; and

(b) L.N. 397 of 1997; L.N. 2 of 1998 (as rectified by L.N. 117 of 1998); L.N. 216 of 2000; L.N. 171 of 2003; L.N. 96 of 2006; L.N. 8 of 2009; L.N. 78 of 2010; L.N. 79 of 2010; L.N. 102 of 2011; L.N. 111 of 2012 and L.N. 116 of 2013.

Section:	8	List of non-permanent Hong Kong judges	79 of 1995; 120 of 1997 s. 4	01/07/1997
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(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 Chief Executive acting in accordance with the recommendation of the Judicial Officers Recommendation Commission, as non-permanent Hong Kong judges.

(Amended 120 of 1997 s. 4)

Section:	9	List of judges from other common law jurisdictions	79 of 1995; 120 of 1997 s. 4	01/07/1997
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(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 Chief Executive acting in accordance with the recommendation of the Judicial Officers Recommendation Commission, as judges from other common law jurisdictions. (Amended 120 of 1997 s. 4)

Section:	10	Limit on number of non-permanent judges	79 of 1995	01/07/1997
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The total number of persons holding office as non-permanent judges shall not at any one time exceed 30.

Section:	11	Precedence of judges	79 of 1995	01/07/1997
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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.

Section:	12	Professional qualifications of judges	10 of 2005	08/07/2005
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- (1) A person shall be eligible to be appointed as the Chief Justice if he is- (Amended 10 of 2005 s. 155)
 - (aa) a permanent judge; (Added 10 of 2005 s. 155)
 - (a) the Chief Judge of the High Court, a Justice of Appeal or a judge of the Court of First Instance; or (Amended 120 of 1997 s. 8)
 - (b) a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years.
 - (1A) A person shall be eligible to be appointed as a permanent judge if he is-
 - (a) the Chief Judge of the High Court, a Justice of Appeal or a judge of the Court of First Instance; or
 - (b) a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years. (Added 10 of 2005 s. 155)
 - (2) (Repealed 10 of 2005 s. 155)
 - (3) A person shall be eligible to be appointed as a non-permanent Hong Kong judge if he is-
 - (a) a retired Chief Judge of the High Court; (Amended 120 of 1997 s. 8)
 - (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 High Court, a District Judge or a permanent magistrate, in Hong Kong.
 - (5) In subsection (3), a reference to a retired Chief Judge of the High Court, Justice of Appeal or judge of the Court of First Instance includes a reference to a retired Chief Justice, Justice of Appeal or judge of the Supreme Court before 1 July 1997. (Added 120 of 1997 s. 8. Amended 10 of 2005 s. 155)
 - (6) In subsection (4), a reference to a person never being a judge of the High Court, a District Judge or a permanent magistrate in Hong Kong includes a reference to a person never being a judge of the Supreme Court, the District Court or a permanent magistrate before 1 July 1997. (Added 120 of 1997 s. 8)
- (Amended 120 of 1997 s. 8)

Section:	13	Prohibition on practice as barrister or solicitor	79 of 1995	01/07/1997
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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.

Section:	14	Tenure of office	10 of 2005	08/07/2005
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- (1) The Chief Justice and permanent judges shall vacate their offices when they attain the retiring age.
- (2) Notwithstanding subsection (1)-
 - (a) subject to paragraph (b) 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 Chief Executive 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; (Amended 10 of 2005 s. 156)

- (b) 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 Chief Executive 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. (Amended 10 of 2005 s. 156)

(c) (Repealed 10 of 2005 s. 156)

(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 Chief Executive 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 Chief Executive.

(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 Chief Executive, on the recommendation of a tribunal of judges appointed by the Chief Executive 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 Chief Executive, 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 Chief Executive may suspend the judge from performing the functions of his office.

(10) Any such suspension may at any time be revoked by the Chief Executive 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.

(Amended 120 of 1997 s. 4)

Section:	15	Continuing powers of judges	79 of 1995	01/07/1997
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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.

Section:	16	Hearing of appeals	79 of 1995	01/07/1997
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(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.

Section:	17	Powers of the Court	79 of 1995; 120 of 1997	01/07/1997
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(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 Court of First Instance 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 Court of First Instance. (Amended 120 of 1997 s. 9)

Section:	18	Appeal Committee	133 of 1997 s. 2	03/10/1997
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(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, including the power of the Court to certify under section 32(3), shall be exercised by the Appeal Committee. (Amended 133 of 1997 s. 2)

(2A) No judge shall sit as a member of the Appeal Committee on the hearing and 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; or
- (c) any appeal in respect of which an application for leave to appeal or an application for a certificate under section 32(2) has been refused or declined by him or by a court in which he was sitting as a member. (Added 133 of 1997 s. 2)

(2B) Where a sufficient number of permanent judges is not available for any cause to sit on the Appeal Committee to hear and determine any application the Chief Justice shall nominate a non-permanent Hong Kong judge to sit in place of a permanent judge. (Added 133 of 1997 s. 2)

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

Part:	II	CIVIL	79 of 1995; 120 of 1997 s. 4	01/07/1997
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Part:	II	Preliminary*	L.N. 102 of 2002	02/12/2002
Division:	1			

Note:

* (Added 11 of 2002 s. 2)

Section:	19	Interpretation	L.N. 102 of 2002	02/12/2002
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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" (上訴法庭) 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; (Amended 120 of 1997 s. 4)

"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.

Section:	20	Application	79 of 1995	01/07/1997
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This Part applies to appeals in any civil cause or matter.

Section:	21	Civil jurisdiction	79 of 1995	01/07/1997
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The civil jurisdiction of the Court shall consist of appeals under this Part and under any other law.

Part:	II	Appeal from Court of Appeal to Court; Appeal relating to Election*	18 of 2011	15/07/2011
Division:	2			

Note:

* (Added 11 of 2002 s. 3. Amended 18 of 2011 s. 31)

Section:	22	Civil appeals	5 of 2014	04/04/2014
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Remarks:

According to section 1 of the Rural Representative Election Legislation (Amendment) Ordinance 2014 (5 of 2014) ("the Amendment Ordinance"), the commencement provisions of the Amendment Ordinance are as follows-

- (a) for all purposes relating to the elections of Resident Representatives, Indigenous Inhabitant Representatives and Kaifong Representatives in 2015—the Amendment Ordinance comes into operation on 4 April 2014; and
 - (b) in so far as it has not come into operation under paragraph (a)—the Amendment Ordinance comes into operation on 1 April 2015.
- (1) An appeal shall lie to the Court— (Amended 21 of 2001 s. 52)
- (a) as of right, from any final judgment of the Court of Appeal in any civil cause or matter, where the matter in dispute on the appeal amounts to or is of the value of \$1000000 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 \$1000000 or more; (Amended 21 of 2001 s. 52)
 - (b) at the discretion of the Court of Appeal or the Court, from any other judgment of the Court of Appeal in any civil cause or matter, 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; and (Amended 21 of 2001 s. 52)
 - (c) at the discretion of the Court, from—
 - (i) a determination of the Court of First Instance under section 37(1) of the Chief Executive Election Ordinance (Cap 569); (Amended 18 of 2011 s. 32)
 - (ii) a judgment or order of the Court of First Instance in—
 - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap 4); or
 - (B) any other proceedings under that Ordinance, which put in issue whether the candidate is duly determined to be not returned at an election under section 26A(4) of the Chief Executive Election Ordinance (Cap 569) or whether the candidate declared

under section 28 of that Ordinance as elected at an election can lawfully assume the office of the Chief Executive; (Added 21 of 2001 s. 52. Amended 10 of 2006 s. 19; 18 of 2011 s. 32)

- (iii) a determination of the Court of First Instance under section 67 of the Legislative Council Ordinance (Cap 542); (Added 18 of 2011 s. 32)
 - (iv) a judgment or order of the Court of First Instance in—
 - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap 4); or
 - (B) any other proceedings under that Ordinance, which put in issue whether a candidate declared under section 58 of the Legislative Council Ordinance (Cap 542) as duly elected at an election can lawfully assume the office of a Member of the Legislative Council; (Added 18 of 2011 s. 32)
 - (v) a determination of the Court of First Instance under section 55 of the District Councils Ordinance (Cap 547); (Added 18 of 2011 s. 32)
 - (vi) a judgment or order of the Court of First Instance in—
 - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap 4); or
 - (B) any other proceedings under that Ordinance, which put in issue whether a candidate declared under section 46 of the District Councils Ordinance (Cap 547) as duly elected at an election can lawfully assume the office of the elected member of the District Council constituency concerned; (Added 18 of 2011 s. 32)
 - (vii) a determination of the Court of First Instance under section 45 of the Rural Representative Election Ordinance (Cap 576); or (Added 18 of 2011 s. 32. Amended 5 of 2014 s. 2)
 - (viii) a judgment or order of the Court of First Instance in—
 - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap 4); or
 - (B) any other proceedings under that Ordinance, which put in issue whether a candidate declared under section 36 of the Rural Representative Election Ordinance (Cap 576) as duly elected at an election can lawfully assume the office of the Rural Representative for the Rural Area concerned. (Added 18 of 2011 s. 32. Amended 5 of 2014 s. 2)
- (2) The Chief Executive in Council may by order published in the Gazette amend subsection (1) to vary the amounts specified. (Amended 120 of 1997 s. 4)

Section:	23	Leave to appeal	79 of 1995	01/07/1997
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- (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.

Section:	24	Applications for leave to appeal	L.N. 187 of 2001	21/09/2001
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- (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 or in the case of an appeal from a determination, judgment or order of the Court of First Instance referred to in section 22(1)(c), an application may be made to the Court for leave and such application shall be made by motion. (Amended 21 of 2001 s. 53)
- (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.

Section:	25	Grant of leave to appeal	79 of 1995; 120 of 1997 s. 4	01/07/1997
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(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 \$400000 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 Chief Executive in Council may by order published in the Gazette amend subsection (3)(b) to vary the amount specified. (Amended 120 of 1997 s. 4)

(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.

Section:	26	Stay of execution	79 of 1995	01/07/1997
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(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.

Section:	27	Notice of application	79 of 1995	01/07/1997
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(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:	II	Appeal from Court of First Instance to Court*#	L.N. 102 of 2002	02/12/2002
Division:	3			

Note:

* For the transitional provision relating to the amendments made by the Hong Kong Court of Final Appeal (Amendment) Ordinance 2002 (11 of 2002), see section 5 of that Ordinance.

(Added 11 of 2002 s. 4)

Section:	27A	Definitions	L.N. 102 of 2002	02/12/2002
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In this Division-

"Court of First Instance" (原訟法庭) means the Court of First Instance of the High Court;

"judge" (法官) means a judge of the Court of First Instance, a recorder of the Court of First Instance or a deputy judge of the Court of First Instance.

(Added 11 of 2002 s. 4)

Note:

* **For the transitional provision relating to the amendments made by the Hong Kong Court of Final Appeal (Amendment) Ordinance 2002 (11 of 2002), see section 5 of that Ordinance.**

Section:	27B	Civil appeals	L.N. 102 of 2002	02/12/2002
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(1) Notwithstanding section 22, an appeal may lie to the Court at the discretion of the Court of First Instance and the Court, from any judgment of the Court of First Instance in any civil cause or matter if the criteria set out in section 27C(1)(a), (b) and (c) are satisfied.

(2) No appeal shall be admitted unless-

- (a) a certificate has been issued by a judge under section 27C; and
- (b) leave to appeal has been granted by the Court under section 27D.

(Added 11 of 2002 s. 4)

Section:	27C	Grant of certificate	L.N. 102 of 2002	02/12/2002
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(1) Where on the application of any of the parties to any proceedings in respect of which an appeal may lie under this Division the judge hearing the application for a certificate is satisfied-

- (a) that the relevant conditions are fulfilled in relation to a decision of the judge in those proceedings; and
- (b) that a sufficient case for an appeal to the Court has been made out to justify an application for leave to bring such an appeal; and
- (c) that all the parties to the proceedings consent to the grant of a certificate under this section,

the judge, subject to the provisions of this Division, may grant a certificate to that effect.

(2) For the purposes of subsection (1)(a), the relevant conditions are fulfilled in relation to a decision of the judge in any proceedings if a point of law of great general or public importance is involved in that decision and-

- (a) where that point of law does not relate wholly or mainly to the construction of the Basic Law, it must-
 - (i) relate wholly or mainly to the construction of an Ordinance or subsidiary legislation, and has been fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings; or
 - (ii) be one in respect of which the judge is bound by a decision of the Court of Appeal or the Court in previous proceedings, and was fully considered in the judgments given by the Court of Appeal or the Court (as the case may be) in those previous proceedings; and
- (b) where that point of law relates wholly or mainly to the construction of the Basic Law, it must be one in respect of which the judge is bound by a decision of the Court of Appeal or the Court in previous proceedings, and was fully considered in the judgments given by the Court of Appeal or the Court (as the case may be) in those previous proceedings.

(3) An application for a certificate under this section shall be made to a judge within-

- (a) 14 days from the date on which the judgment is given; or
- (b) such other longer period as may be prescribed by rules of court.

(4) The judge before whom an application for a certificate under this section is made shall, as far as is practicable and convenient, be the trial judge in the proceedings to which the application relates.

(5) No appeal shall lie against the grant or refusal of a certificate under this section.

(Added 11 of 2002 s. 4)

Section:	27D	Leave to appeal	L.N. 102 of 2002	02/12/2002
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(1) Where in any proceedings a judge grants a certificate under section 27C, any of the parties to the proceedings may make an application to the Court for leave to appeal by way of a notice of motion at any time within-

- (a) 28 days from the date on which that certificate is granted; or
- (b) such extended time as in any particular case the Court may allow.

(2) Subject to subsection (4), if on an application made under this section it appears to the Court to be expedient to do so, the Court may grant leave for an appeal to be brought directly to the Court; and where leave is granted under this section-

- (a) no appeal from the decision of the judge to which the certificate relates shall lie to the Court of Appeal, but
- (b) an appeal shall lie from that decision to the Court.

(3) Applications under this section shall be determined by the Appeal Committee, with or without a hearing.

(4) Without prejudice to subsection (2), no appeal shall lie to the Court of Appeal from a decision of the judge in respect of which a certificate is granted under section 27C until-

- (a) the time within which an application can be made under this section has expired; and
- (b) where such an application is made, that application has been determined.

(Added 11 of 2002 s. 4)

Section:	27E	Leave to appeal subject to conditions	L.N. 102 of 2002	02/12/2002
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(1) Leave to appeal granted under section 27D(2) may be granted subject to such conditions as the Court considers necessary.

(2) Section 25(2), (3), (4) and (6), with the necessary modifications, shall apply in relation to the grant of leave under this section as it applies to the grant of leave under that section.

(3) Section 26 shall apply in relation to a judgment appealed from and grant of leave to appeal under this Division as it applies in relation to a judgment appealed from and grant of leave to appeal under Division 2.

(4) Section 27 shall apply in relation to an application for final leave to appeal to the Court under this Division as it applies in relation to an application for final leave to appeal to the Court of Appeal or to the Court under Division 2.

(Added 11 of 2002 s. 4)

Section:	27F	Cases excluded from section 27B(1)	L.N. 102 of 2002	02/12/2002
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(1) No appeal shall lie under section 27B(1) in respect of a decision of the judge in any proceedings where by virtue of any enactment, apart from the provisions of this Division, no appeal would lie from that decision to the Court of Appeal, with or without the leave of a judge or of the Court of Appeal.

(2) No appeal shall lie under section 27B(1) in respect of a decision of the judge where by virtue of any enactment, apart from the provisions of this Division, no appeal would (with or without the leave of the Court of Appeal or of the Court) lie from any decision of the Court of Appeal on an appeal from the decision of the judge.

(3) Where by virtue of any enactment, apart from the provisions of this Division, no appeal would lie to the Court of Appeal from the decision of the judge except with the leave of a judge or of the Court of Appeal, no appeal shall lie under section 27B(1) in respect of that decision unless it appears to the judge that apart from the provisions of this Division it would be a proper case for granting such leave.

(4) No appeal shall lie under section 27B(1) where the decision of the judge, or any order made by him in pursuance of that decision, is made in the exercise of jurisdiction to punish for contempt of court.

(Added 11 of 2002 s. 4)

Part:	III	CRIMINAL	79 of 1995; 120 of 1997	01/07/1997
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Section:	28	Interpretation	79 of 1995; 120 of 1997	01/07/1997
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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 Court of First Instance; (Amended 120 of 1997 s. 10)
"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.

Section:	29	Application	79 of 1995	01/07/1997
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This Part applies to appeals in any criminal cause or matter.

Section:	30	Criminal jurisdiction	79 of 1995	01/07/1997
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The criminal jurisdiction of the Court shall consist of appeals under this Part.

Section:	31	Criminal Appeals	79 of 1995; 120 of 1997	01/07/1997
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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 Court of First Instance (not being a verdict or finding of a jury) from which no appeal lies to the Court of Appeal. (Amended 120 of 1997 s. 11)

Section:	32	Leave to appeal	79 of 1995; 120 of 1997	01/07/1997
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- (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 Court of First Instance, 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. (Amended 120 of 1997 s. 12)
- (3) Where the Court of Appeal or the Court of First Instance declines to certify as mentioned in subsection (2), the Court may so certify and grant leave to appeal. (Amended 120 of 1997 s. 12)
- (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.

Section:	33	Application for leave to appeal	79 of 1995; 120 of 1997	01/07/1997
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- (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 Court of First Instance, as the case may be. (Amended 120 of 1997 s. 13)
- (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.

Section:	34	Bail	79 of 1995; 120 of 1997	01/07/1997
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(1) The Court, the Court of Appeal or the Court of First Instance, 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 Court of First Instance, 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 Court of First Instance and only if he satisfies the Court, the Court of Appeal or the Court of First Instance 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.

(Amended 120 of 1997 s. 14)

Section:	35	Detention on appeal by prosecutor	79 of 1995; 120 of 1997	01/07/1997
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(1) The following provisions apply where, immediately after a decision of the Court of Appeal or the Court of First Instance, 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 Court of First Instance, as the case may be, the defendant would be liable to be detained, the Court of Appeal or the Court of First Instance, 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 Court of First Instance, 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 Court of First Instance, 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.

(Amended 120 of 1997 s. 15)

Section:	36	Presence of defendant	79 of 1995	01/07/1997
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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.

Section:	37	Effect of appeal on sentence	79 of 1995; 120 of 1997	01/07/1997
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(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 Court of First Instance, 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 Court of First Instance, 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)).

(Amended 120 of 1997 s. 16)

Part:	IV	MISCELLANEOUS	79 of 1995	01/07/1997
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Section:	38	Withdrawal	79 of 1995	01/07/1997
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(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.

Section:	39	Rules	79 of 1995	01/07/1997
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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.

Section:	40	Rules Committee	79 of 1995; 120 of 1997	01/07/1997
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(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 Secretary for Justice or a legal officer in the Department of Justice appointed by him. (Amended 120 of 1997 s. 17)

(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 Secretary for Justice or a legal officer in the Department of Justice appointed by him and not less than 2 other members. (Amended 120 of 1997 s. 17)

Section:	41	Registry	79 of 1995	01/07/1997
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There shall be a Registry of the Court, which shall be in the charge of the Registrar.

Section:	42	The Registrar	10 of 2005	08/07/2005
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(1) There shall be attached to the Court a Registrar.

(2) The Registrar shall be appointed by the Chief Executive and shall possess the same qualifications as are required under section 37AA(1) of the High Court Ordinance (Cap 4) for appointment as the Registrar of the High Court. (Amended 120 of 1997 ss. 4 & 18; 10 of 2005 s. 157)

(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 who possesses the same qualifications as are required under section 37AA(1) of the High Court Ordinance (Cap 4) for appointment as

the Registrar of the High Court to act in the place of the Registrar. (Amended 10 of 2005 s. 157)

Section:	43	Costs	23 of 2002	19/07/2002
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(1) 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. (Amended 23 of 2002 s. 8)

(2) Where the Appeal Committee refuses an application for leave to appeal, the costs of and occasioned by the application shall be paid by such party or person as the Appeal Committee 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. (Added 23 of 2002 s. 8)

Section:	44	Non-prosecution of appeal	79 of 1995	01/07/1997
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(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.

Section:	45	Appeal from decision on taxation	79 of 1995	01/07/1997
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(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.

Section:	46	Powers of single permanent judge	79 of 1995	01/07/1997
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(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.

Section:	47	Sittings and business	79 of 1995	01/07/1997
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(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 \$5000 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.

Section:	48	Seal	79 of 1995	01/07/1997
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(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.

Section:	49	Transitional	79 of 1995; 120 of 1997	01/07/1997
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(1) 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. (Amended 120 of 1997 s. 19)

(2) A reference to a final or interlocutory judgment of the Court of Appeal under section 22(1), and to a final decision of the Court of Appeal or the Court of First Instance under section 31, includes a reference to similar judgments and decisions of the Court of Appeal and the High Court made before 1 July 1997. (Added 120 of 1997 s. 19)

(3) A reference in sections 23, 28, 32(2), 33(1) and 35 to the Court of Appeal or the Court of First Instance includes a reference to the Court of Appeal and to the High Court as they existed before 1 July 1997 for appeals that arise out of the extension made in subsection (2). (Added 120 of 1997 s. 19)

Section:	50	(Omitted as spent)	79 of 1995	01/07/1997
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(Omitted as spent)

Schedule:		SCHEDULE (Omitted as spent)	79 of 1995	01/07/1997
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(Omitted as spent)