

Resolution of the Legislative Council

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## **Criminal Procedure Ordinance**

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### **Resolution**

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(Under section 9 of the Criminal Procedure Ordinance (Cap. 221))

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**Resolved** that the Criminal Procedure (Appeal against Ruling of No Case to Answer) Rules, made by the Criminal Procedure Rules Committee on 14 November 2024, be approved.

## Criminal Procedure (Appeal against Ruling of No Case to Answer) Rules

(Made by the Criminal Procedure Rules Committee under section 9 of the Criminal Procedure Ordinance (Cap. 221) subject to the approval of the Legislative Council)

### 1. Commencement

These Rules come into operation on the day on which sections 4, 7 and 9 of, and Part 2 of the Schedule to, the Criminal Procedure (Amendment) Ordinance 2023 (21 of 2023) come into operation.

### 2. Interpretation

(1) In these Rules—

*appeal* (上訴) means an appeal made by the Secretary under section 81AAC of the Ordinance;

*respondent* (答辯人), in relation to an appeal against a specified ruling in relation to a subject offence, means the defendant charged with the subject offence.

(2) The words and expressions used in these Rules and defined in Division 3 of Part IV of the Ordinance have the same meaning as in that Division.

(3) Without limiting subrule (2), section 81AA(2) of the Ordinance applies in these Rules for the purposes of the definition of *respondent* in subrule (1).

### 3. Use of language in appeal

(1) The Court of Appeal may use either or both of the official languages in an appeal or a part of an appeal before it as it considers appropriate for the just and expeditious disposal of the appeal.

- (2) The decision of the Court of Appeal under subrule (1) is final.
- (3) A party to or a witness in an appeal or a part of an appeal before the Court of Appeal—
  - (a) may use either or both of the official languages; and
  - (b) may address the Court of Appeal or testify in any language.
- (4) A legal representative in an appeal or a part of an appeal before the Court of Appeal may use either or both of the official languages.
- (5) Documents filed in an appeal or served on a party to an appeal may be in either official language.
- (6) If a party (other than the Secretary) is served with a document relating to an appeal in an official language with which the party is not familiar, the party may, within 3 days of being served, request in writing the Secretary to provide a translation of the document into the other official language.
- (7) If a request is made under subrule (6)—
  - (a) the Secretary must provide the translation as soon as practicable; and
  - (b) the time for compliance with any rule or order requiring the taking of the next step in an appeal within a particular period starts to run only after—
    - (i) the time of receipt of the translation; or
    - (ii) another time as specified by the Court of Appeal.
- (8) The official record of an appeal must be kept in either or both of the official languages as the Court of Appeal directs.
- (9) The transcript of proceedings for appeal purposes must be prepared in the official language that the Court of Appeal directs.

**4. Notice of appeal**

- (1) For the purpose of making an appeal against a specified ruling, the Secretary must, within 21 days of the making of the specified ruling, serve a notice of appeal on—
  - (a) the respondent of the appeal; and
  - (b) the Registrar.
- (2) The requirement under subrule (1)(a) is taken to be complied with if—
  - (a) the respondent—
    - (i) cannot be found; or
    - (ii) is outside Hong Kong; and
  - (b) the Secretary has taken all reasonable steps to serve the notice of appeal on the respondent.
- (3) The notice of appeal must state—
  - (a) the specified ruling and any other ruling against which the Secretary intends to appeal;
  - (b) whether leave to appeal has been granted by the court;
  - (c) the ground of the appeal;
  - (d) the error of law or principle allegedly made by the court;
  - (e) the facts of the case as are necessary for the consideration of the ground and the error;
  - (f) the summary of arguments intended to be presented to the Court of Appeal;
  - (g) the authorities intended to be cited;
  - (h) that an acquittal guarantee has been given by the Secretary under section 81AAC(4)(c) of the Ordinance; and

- (i) whether the court decides to expedite the appeal and whether any action is taken by the court under section 81AAF(2) or (3) of the Ordinance.
- (4) The notice of appeal must be in the specified form.
- (5) If leave to appeal against the specified ruling has not been granted by the court, the notice of appeal also serves as an application to the Court of Appeal for leave to appeal.

**5. Respondent to be given opportunity to appear**

- (1) Unless rule 4(2) applies, a notice of appeal must invite the respondent to inform the Registrar within the period specified in the notice (*specified period*)—
  - (a) whether the respondent intends to present any argument to the Court of Appeal; and
  - (b) if the respondent so intends, whether the respondent also intends to—
    - (i) present the argument by counsel on the respondent's behalf; or
    - (ii) appear in person.
- (2) The specified period must not be less than 28 days from the date of service of the notice of appeal.
- (3) The Court of Appeal must not hear any argument by or on behalf of the Secretary before the specified period expires unless the respondent agrees or has indicated that the respondent does not intend to present any argument to the Court of Appeal.

**6. Withdrawal or amendment of notice of appeal**

- (1) The Secretary may withdraw or amend a notice of appeal—
  - (a) at any time before the Court of Appeal begins the hearing of the appeal; or

- (b) with the leave of the Court of Appeal, at any time after the Court of Appeal begins the hearing of the appeal and before the Court of Appeal makes a determination on the appeal.
- (2) A notice to withdraw or amend the notice of appeal must, if the Court of Appeal or Registrar so directs, be served on—
  - (a) the respondent; and
  - (b) an amicus curiae appointed by the Court of Appeal (if any).
- (3) To avoid doubt, if the Secretary withdraws a notice of appeal, the Secretary is taken as abandoning the appeal to which the notice relates for the purposes of sections 81AAD(2)(b) and 81AAE(2) of the Ordinance and section 9AA(b) of the Costs in Criminal Cases Ordinance (Cap. 492).

#### 7. **Methods of service**

For the purposes of rules 4(1) and 6(2), service of a document on a respondent may be effected—

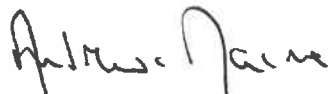
- (a) if the respondent is a body corporate, by—
  - (i) delivering the document to the secretary of the respondent at the respondent's registered or principal office;
  - (ii) sending the document by registered post addressed to the secretary of the respondent at that office; or
  - (iii) delivering the document to the solicitor of the respondent; or
- (b) otherwise, by—
  - (i) delivering the document to the respondent;

- (ii) leaving the document for the respondent with a person at the respondent's last known or usual place of residence or business;
- (iii) sending the document by registered post addressed to the respondent at the respondent's last known or usual place of residence or business; or
- (iv) delivering the document to the solicitor of the respondent.

Made this 14th day of November 2024.



The Hon. Mr. Justice POON  
Chief Judge of the High Court



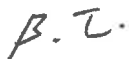
The Hon. Mr. Justice MACRAE, V.P.



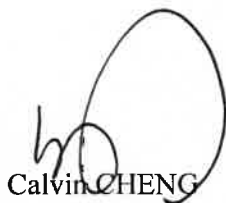
The Hon. Mr. Justice LEE



HUI Ka-ho  
Senior Deputy Registrar, High Court



Benson TSOI, S.C.



Calvin CHENG



Derek LAU



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**Explanatory Note**

The Criminal Procedure (Amendment) Ordinance 2023 (21 of 2023) introduces a mechanism for the Secretary for Justice (*Secretary*) to appeal against rulings that a defendant has no case to answer made by the Court of First Instance in criminal trials with a jury.

2. These Rules provide for certain procedural matters in relation to such an appeal.
3. Rule 1 provides for the commencement of these Rules.
4. Rule 2 provides for the definitions of *appeal* and *respondent* and provides that the words and expressions used in these Rules and defined in Division 3 of Part IV of the Criminal Procedure Ordinance (Cap. 221) have the same meaning as in that Division.
5. Rule 3 provides for the use of language in the appeal.
6. Rule 4 requires the Secretary to serve a notice of appeal in the specified form on the respondent of the appeal and the Registrar of the High Court (*Registrar*) and provides for the content of the notice.
7. Rule 5 provides that—
  - (a) a notice of appeal must invite the respondent to inform the Registrar, within the period specified in the notice (*specified period*), whether the respondent intends to present any argument to the Court of Appeal; and
  - (b) the Court of Appeal must not hear any argument by or on behalf of the Secretary before the specified period expires unless the respondent agrees or has indicated that the respondent does not intend to present any argument to the Court of Appeal.
8. Rule 6 provides for the withdrawal or amendment of the notice of appeal.

9. Rule 7 provides for the methods to serve a document on a respondent.