

Rules of the District Court (Amendment) Rules 2008

The Rules of the District Court (Cap. 336H)

Order 58 – APPEALS

Remarks

1. Appeals from master to judge in chambers (O. 58, r. 1)

(1) Except as provided by rule 2 and Order 32 rule 17, an appeal shall lie to a judge in chambers from any judgment, order or ~~determination of a master~~ **decision of a master, irrespective of whether the judgment, order or decision was given or made on the basis of written submissions only or after hearing.**

Rule 121
Rec 109

(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or ~~determination-~~ **decision** was given or made a notice to attend before the judge on a day specified in the notice or as on such other day as may be directed.

(3) Unless the Court otherwise orders, the notice must be issued within 14 days after the judgment, order or ~~determination~~ **decision** appealed against was given or made and must be served within 5 days after issue and an appeal to which this rule applies shall not be heard sooner than 2 clear days after such service.

(4) No further evidence (other than evidence as to matters which have occurred after the date on which the judgment, order or decision was given or made) may be received on the hearing of an appeal under this rule except on special grounds.

2. Appeals to Court of Appeal (O. 58, r. 2)

(1) Subject to the provisions of this rule, an appeal shall lie to the Court of Appeal from any judgment, order or ~~determination~~ **decision** of a judge.

Rule 122
Consequential
amendment

~~(2) Subject to the provisions of this rule, an appeal shall lie to the Court of Appeal from any judgment, order or determination of a master on the hearing or determination of any cause, matter, question or issue tried or assessed before him under Order 14, rule 6(2), Order 36, rule 1, Order 37, Order 49B or Order 84A, rule 3.~~

(2) Subject to the provisions of this rule, an appeal lies to the Court of Appeal from –

Rule 122
Alignment with RHC

(a) a judgment, order or decision of a master on any cause,

matter, question or issue tried or assessed before him under Order 14, rule 6(2), Order 36, rule 1, Order 37 or Order 84A, rule 3; and

(b) a judgment, order or decision (other than an interlocutory judgment, order or decision) of a master given or made under Order 49B.

(2A) Notwithstanding paragraph (2)(b), an appeal lies to the Court of Appeal as of right from an order for imprisonment given or made by a master under Order 49B;

~~(3) Subject to the provisions of the Ordinance, an appeal under this rule shall lie only with the leave of the Court or the Court of Appeal.~~

~~(4) An application for leave must be made to the judge, or to the master in the case of an appeal under paragraph (2), not later than the expiration of the following period beginning on the date immediately following the date on which the judgment or order of the Court was sealed or otherwise perfected, that is to say—~~

~~(a) in the case of an appeal from any judgment, order or determination of a master under paragraph (2), 14 days;~~

~~(b) in the case of an appeal from any interlocutory order, or any judgment or order given or made under Order 14 or Order 86 by a judge, 14 days;~~

~~(c) in any other case, 28 days;~~

~~or if leave is refused, within a further 14 days from the date of such refusal to the Court of Appeal.~~

(4) An application for leave to appeal must be made to a judge, or to a master in the case of an appeal under paragraph (2), within –

(a) in the case of an appeal from a judgment, order or decision of a master under paragraph (2), 28 days from the date of the judgment, order or decision;

(b) in the case of an appeal from a judgment, order or decision (other than an interlocutory judgment, order or decision) of a judge, 28 days from the date of the judgment, order or decision;

(c) in the case of an appeal from an interlocutory judgment, order or decision of a judge, 14 days from the date of the interlocutory judgment, order or decision.

(4A) If the judge or master (as the case may be) refuses an application for leave made under paragraph (4), a further application for leave may be made to the Court of Appeal within 14 days from the date of refusal.

(4B) An application under paragraph (4) or (4A) must be made inter partes if the proceedings to which the judgment, order or decision relates are inter partes.

(5) So far as is practicable, every application for leave to appeal made to a

Remarks

judge or a master shall be made to the judge or the master against whose judgment, order or ~~determination~~ decision the appeal is sought.

(6) In any case in which the Court of Appeal may so allow, any such application may be made direct to the Court of Appeal.

~~(7) On any such application, the Court or the Court of Appeal, as the case may be, may in its discretion grant leave to appeal on such terms as to costs, payment of money into court, giving security for the prosecution of the appeal or otherwise as it may think fit.~~

(8) Where leave to appeal is granted under paragraph (4) or (4A), the notice of appeal must be served under Order 59, rule 3(5) of the Rules of the High Court (Cap. 4 sub. leg. A), not later than 7 days after the date when leave is granted.

(9) In the case of an appeal from an order specified in section 63(3) of the Ordinance or an order for imprisonment given or made under Order 49B, the notice of appeal must be served under Order 59, rule 3(5) of the Rules of the High Court (Cap. 4 sub. leg. A), not later than ~~14 days from the date on which the order of the Court was sealed or otherwise perfected~~ 28 days from the date of the order of the Court.

Rule 122
Consequential
amendment

Rule 122
Alignment with RHC

(10) The Court or the Court of Appeal may, at any time, and notwithstanding that the time for an appeal or an application for leave to appeal may have already expired, extend the time for the appeal or for applying for leave to appeal.

3. Appeal not to operate as stay of proceedings (O. 58, r. 3)

Except so far as the Court may otherwise direct, an appeal under this Order shall not operate as a stay of the proceedings in which the appeal is brought.

4. Non-interlocutory judgments and orders (O. 58, r. 4)

Rule 123
Alignment with RHC

(1) For the purposes of rule 2(4)(b) and (c), the following judgments and orders are not interlocutory –

- (a) a judgment or order determining in a summary way the substantive rights of a party to an action;**
- (b) an order made under section 53(3) of the Ordinance;**
- (c) an order prohibiting a debtor from leaving Hong Kong under Order 44A, rule 3(1);**
- (d) an order for the imprisonment of a judgment debtor under Order 49B;**
- (e) an order of committal for contempt of court under Order 52, rule 1; and**
- (f) a judgment given inter partes under Order 83A, rule 4, or**

Order 84A, rule 3 or in a mortgage action within the meaning of Order 88, rule 1.

(2) Without affecting the generality of paragraph (1)(a), the following are judgments and orders determining in a summary way the substantive rights of a party –

- (a) a summary judgment under Order 14 or Order 86;
- (b) an order striking out an action or other proceedings or a pleading or any part of a pleading under Order 18, rule 19 or under the inherent jurisdiction of the Court;
- (c) a judgment or order determining any question of law or the construction of any document under Order 14A, rule 1(1);
- (d) a judgment or order made under Order 14A, rule 1(2) dismissing any cause or matter upon determination of a question of law or construction of any document;
- (e) a judgment on any question or issue tried pursuant to an order under Order 33, rule 3;
- (f) an order dismissing or striking out an action or other proceedings for want of prosecution;
- (g) a judgment obtained pursuant to an “unless” order;
- (h) an order refusing to set aside a judgment in default;
- (i) an order refusing to allow an amendment of a pleading to introduce a new claim or defence or any other new issue; and
- (j) a judgment or order on admissions under Order 27, rule 3.

(3) A direction as to whether a judgment or order is one that is referred to in paragraph (1)(a) may be sought from the judge who made or will make the judgment or order.

(4) A reference to an order specified in paragraph (1)(b), (c), (d) and (e) includes an order refusing, varying or discharging the order.