

## 如何申請司法覆核

### How to apply for judicial review

- This leaflet is designed to provide you with a brief outline of the procedure for making applications for judicial review. It does not cover the substantive law on judicial review. You should seek legal advice if you require assistance on the substantive law.
- Applications for judicial review must be made in accordance with Order 53 Rules of the High Court and Practice Direction SL3. You should read them for full details of the procedure and practice.
- The Civil Justice Reform has come into effect on 2<sup>nd</sup> April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 “Civil Justice Reform: Transitional Arrangements” of this series.
- This publication is for general reference only and should not be treated as a complete or authoritative statement of law or court practice. Whilst every effort has been made to ensure that the information provided in this leaflet is accurate, it does not constitute legal or other professional advice. The Judiciary cannot be held responsible for the content of this publication.
- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

- In principle, applicants applying for judicial review may act in person. However, this area of the law, together with the drafting and preparation of the necessary documents can be highly technical. An applicant should carefully consider the advisability of instructing a solicitor either at your own expense or through legal aid.

## **How to apply for judicial review**

### **Introduction**

#### 1. Application for judicial review

Application for judicial review includes an application for a review of the lawfulness of an enactment, or of a decision, action or failure to act in relation to the exercise of a public function.

#### 2. Timing

2.1 Judicial review proceedings must be brought promptly and in any case within 3 months of the date when grounds for the application first arose.

2.2 The Court can extend the time limit but will only exercise this power where it is satisfied there are very good reasons for doing so. If an extension of time is sought, the grounds in support of that application must be set out in the application for leave to apply for judicial review and verified by affidavit/ affirmation.

#### 3. Leave to apply for judicial review

Application for judicial review is by way of a two-stage procedure. The first step is to obtain from the court, permission (which is often referred to as "leave") to bring an application for judicial review. If the court refuses to grant leave, no application for judicial review can be brought.

#### 4. Relief

It is important to state clearly the relief that you seek by way of judicial review. The relief sought may include one or more of the following:

(a) *Mandamus*

This is an order compelling the respondent to perform an act specified in the order

of the court, which is in the nature of a public duty or obligation. The act or obligation has to be specified in the application.

*(b) Certiorari*

This is an order to quash or set aside a decision already made by the respondent.

*(c) Prohibition*

This is an order to prevent the respondent from acting or continuing to act in excess of his power or to act against the rules of natural justice.

*(d) Declaration*

This is an order declaring the legal rights and duties of the parties.

*(e) Injunction*

This is an order restraining unlawful acts or interference with the rights of the applicant.

*(f) Damages*

Damages may be claimed as additional relief to other remedies. But you cannot commence judicial review proceedings for seeking these remedies alone.

*(g) Interim relief*

The court may make interim orders before the application for judicial review is decided. However, interim relief will not be granted before leave to apply for judicial review is granted.

## **Application for leave**

### **5. Notice of Application for Leave (Form 86)**

5.1 To obtain leave, you must file with the High Court Registry a Notice of Application for Leave (Form 86). A filing fee<sup>1</sup> is payable.

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<sup>1</sup> Currently, the filing fee is HK\$1,045. This is subject to adjustment from time to time. You can find out the current fee from the High Court Fees Rules.

5.2 You must include in the notice:

- (a) your name, description and an address for service;
- (b) the name, description and address of the respondent;
- (c) the date and a description of the decision or act of the respondent that you seek to challenge;
- (d) the relief you seek, including any interim relief;
- (e) the name and address of all interested parties (if any) known to you;
- (f) the grounds on which your application is based; and
- (g) if there is delay in seeking judicial review, the reasons for the delay.

5.3 A copy of Form 86 together with the accompanying Notes for Guidance is at Appendix 1.

6. Supporting affidavit / affirmation

You also have to file with the High Court Registry an affidavit/ affirmation verifying the facts you rely upon in support of your leave application. You should exhibit in the affidavit/ affirmation the documents that are relevant to your application. If the documents are more than 10 pages, you should prepare a list showing the pages that are relevant or relied on by you.

7. Filing

The original copy of the Form 86 and the supporting affidavit/ affirmation will be kept by the court. You should therefore make sufficient copies for your own reference and for service on other parties.

8. Determination

8.1 Application for leave is made ex parte. It is determined by a judge of the Court of First Instance of the High Court on consideration of the papers filed.

There will be no oral hearing unless a hearing is requested in the notice of application or if the judge directs otherwise.

8.2 On consideration of the papers, the judge may either grant leave to apply for judicial review or may refuse leave. The judge may also direct the named respondent to attend court and to make representations on the leave application if he considers that it is not possible to decide the leave application on paper or without also hearing the respondent.

8.3 No matter what order the judge makes on your leave application, it will be communicated to you or your solicitors, if you are legally represented.

9. Challenging the grant or refusal of leave

If leave is refused, you may appeal against the refusal to the Court of Appeal of the High Court within 14 days after the order of refusal is made. If leave is granted on your application, the respondent may apply to the judge to set aside the leave.

10. Service of the order granting leave to apply for judicial review

If the court grants leave to apply for judicial review, you should within 14 days after the order granting leave, serve a copy of the order and any directions made by the court on the respondent and such interested parties as may be directed by the court.

**Application for judicial review**

11. Originating summons (Form 86A)

11.1 When leave to apply for judicial review is granted, you should proceed to make your application for judicial review by filing with the High Court Registry an Originating Summons (Form 86A). The Originating Summons must be filed within 14 days after leave is given. A filing fee<sup>2</sup> is payable.

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<sup>2</sup> Currently, the filing fee is HK\$1,045. This is subject to adjustment from time to time. You can find out the current fee from the High Court Fees Rules.

11.2 A copy of Form 86A is in Appendix 2.

12. Service of the originating summons and other court documents

12.1 The Originating Summons must be served on the respondent and all interested parties, namely, parties directly affected by the application for judicial review. The Originating Summons should be served together with the notice of application for leave (Form 86) and the affidavit/ affirmation in support of the application for leave.

12.2 Service must be effected promptly. There should be at least 10 days between the date of service and the date of the hearing of the application for judicial review.

12.3 The person who effects service must make an affidavit/ affirmation setting out the names of all parties that have been served with the Originating Summons, and also the date(s), place(s) and manner of such service. If there is any person who ought to be served, but has not been served, this fact together with the reason(s) for not effecting service should be stated in the affidavit/ affirmation of service. The affidavit/ affirmation of service must be filed within 7 days of effecting the service.

13. Affidavit / affirmation

13.1 The respondent may file affidavit/ affirmation in reply to the application for judicial review. The respondent's affidavit/ affirmation should be filed within 56 days from being served with the Originating Summons, unless the court has directed otherwise.

13.2 As an applicant, if you wish to rely on further affidavit/ affirmation, you must seek permission from the court at the hearing of the application for judicial review. However, you must give prior notice to every other party of your intention to do so.

## **The hearing of judicial review**

### 14. Date of hearing

The court will either fix a date for hearing the application for judicial review or notify the parties to go before the listing officer to fix a date for the hearing. A notice of hearing, setting out the date, time and place for the hearing, will be issued by the court and sent to the parties.

### 15. Mode of hearing

The hearing of the application for judicial review is conducted in open court. Generally, the judge will determine the application on the basis of the affidavit/ affirmation evidence and there will not be any cross-examination of witnesses. In rare cases where there is a conflict of the relevant evidence, the court may direct for cross-examination of witnesses.

### 16. Hearing bundles and skeleton arguments

16.1 The applicant should prepare a hearing bundle for use at the hearing. The bundle should be lodged with the Court and served on the other parties at least 7 clear working days before the hearing, unless the judge has directed otherwise. You should read Practice Direction SL3, para. 18 to 20 on the form and content of the hearing bundle.

16.2 An applicant and any interested party who wishes to make submissions in support of a judicial review application should lodge with the Court and serve on the other parties a skeleton submission 7 clear days before the hearing.

16.3 A respondent and any interested party who wishes to make submissions in opposition to a judicial review application should lodge with the Court and serve on the other parties a skeleton submission 3 clear days before the hearing.



16.4 You should read Practice Direction SL3, para. 21 and 22 on the content of a skeleton submission.

17. Judgment

At the conclusion of the hearing, the judge may deliver his judgment or he may reserve his judgment and hand it down on a date to be notified to the parties.

18. Appeal

Appeal against the grant or refusal of judicial review must be brought in the Court of Appeal within 28 days from the date the judgment was made.

19. Costs

The Court has a discretion on what order to make on the costs of the judicial review proceedings. Normally, the losing party will be ordered to pay the costs of the other parties.

### Summary of the steps in commencing judicial review proceedings

(i)	Complete the Form 86
(ii)	Prepare the supporting affidavit/ affirmation and have it sworn/ affirmed at the Oaths and Declarations Office on LG1 Floor of the High Court.  Note: You should not file the application form without a supporting affidavit/ affirmation.
(iii)	Pay the filing fee at the Accounts Office on LG2 Floor of the High Court.
(iv)	Get a case serial number at the High Court Registry on LG1 Floor of the High Court.
(v)	Go for documentation at the Clerk of Court's Office at Room G32 on Ground Floor of the High Court.
(vi)	Return to the High Court Registry on LG1 Floor of the High Court to file the application form (after xeroxing a copy for your own use).

**Form 86 and Notes for Guidance**

**No. 86**

**Notice of application for leave to apply for judicial review  
(O. 53 r. 3(2))**

HCAL No. .... /20 .....

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE**  
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST  
NO. \_\_\_\_\_ OF 20 \_\_\_\_

Applicant

**Notice of Application for leave to  
Apply for Judicial Review (O.53 r.3(2))**

This form must be read together with Notes for Guidance obtainable from the Registry.

To the Registrar, High Court, Hong Kong.

Name, address and description of applicant	
Name, address and description of proposed respondent	
Judgment, order, decision or other proceeding in respect of which relief is sought	
Relief Sought	
Name and address of all interested parties, (if any) known to the applicant	
Name and address of applicant's solicitors, or, if no solicitors acting, the address for service of the applicant	
Signed	Dated

*Grounds on which relief is sought*  
(If there has been any delay, include reasons here).

Note : – Grounds must be supported by an affidavit which verifies the facts relied on.

## NOTES FOR GUIDANCE

These notes, issued at the direction of the Registrar, High Court, are not intended to be exhaustive but merely to offer an outline of the procedure to be followed. Applicants and their legal advisers should consult Order 53 of Rules of the High Court made under section 54 of the High Court Ordinance, Cap. 4.

### A1. Legal Aid

The Court itself cannot grant legal aid for judicial review. Applications should be made to Legal Aid Department.

In principle, judicial review can be applied for by applicants acting in person. However, this area of the law, together with the drafting of the necessary documents is highly technical. Citizens should carefully consider the advisability of instructing a solicitor, either at their own expense or through legal aid.

### A2. Time

All applications for judicial review must begin with application for leave to apply for judicial review.

An application for leave for judicial review must be made as soon as possible after the date of the judgment, order, decision or other proceeding in respect of which relief is sought, but in any event within 3 months from the date of such judgment etc.

The court can extend the time limit but will only exercise this power where it is satisfied there are very good reasons for doing so: Order 53 rule 4(1). If an extension of time is sought the grounds in support of that application must be filed and verified by affidavit.

### A3. Fees

A fee of \$1,045\* is payable on an application for leave to apply for judicial review. Payments should be made by cash to the Accounts Office of the High Court, LG2 Floor, High Court Building.

\*This is subject to adjustment from time to time. Applicants should find out the current fee from the High Court Fees Rules under section 54 of the High Court Ordinance, Cap. 4.

A4. Form of Application

Applications for leave to apply for judicial review must be made in Form 86 (as laid down in Rules of the High Court) and must be supported by an affidavit verifying the facts relied on: Order 53 rule 3(2). The original copy will be kept by the court and an applicant has to provide sufficient copies for himself/herself and for service on other parties after leave was granted.

A5. Leave to Apply for Judicial Review

All applications for leave must be made ex parte. The judge may determine the application with or without an oral hearing, unless an oral hearing is requested in the notice of application. Whichever way the judge decides the application for leave, the result will be communicated to the applicant, or, if represented, to his/her solicitor.

Where an application for leave is refused by a judge or is granted on terms, the applicant may appeal against the judge's order to the Court of Appeal of the High Court within 14 days after such order: Order 53 rule 3(4).

A6. Applying for Judicial Review

When leave has been granted to make an application for judicial review, the application shall be made by Originating Summons (Form 86A) to a High Court Judge. An Originating Summons must be prepared and taken to the Clerk of Court's Office where a date for hearing will be allocated. A filing fee\* of \$1,045 is payable. This must be done within 14 days after the grant of leave. The Originating Summons must then be served on all persons directly affected by the application for judicial review. Unless the court granting leave has otherwise

directed, there must be at least 10 days between the service of the Originating Summons and the day named for hearing: Order 53 rule 5(4).

An affidavit giving the names and addresses of, and the places and dates of service on all persons who have been served with the Originating Summons must be filed with the court, and must be before the court on the date of the hearing of the Originating Summons: Order 53 rule 5(6).

\*This is subject to adjustment from time to time. Applicants should find out the current fee from the High Court Fees Rules under section 54 of the High Court Ordinance, Cap. 4.

A7. Hearing of Originating Summons

Application for judicial review will be heard by a single judge sitting in open court unless the court otherwise directs: Order 53 rule 5(1) and (2).

A8. Costs

It is a general rule that the party who loses is ordered to pay the costs of the other side.

Special rules apply to applicants with legal aid. Applicants should consult the Legal Aid Ordinance, Cap.91 for details.

A9. Appeals

An appeal from an order of a judge granting or refusing an application for judicial review lies to the Court of Appeal: Order 53 rule 13. The notice of appeal must be served, within 28 days from the date the judgment was made, on all parties to the judicial review who are directly affected by the appeal.

If in doubt about any procedural matters, applicants or their advisers should direct their enquiries to the High Court Registry LG1 Floor, High Court Building.

**Form 86A**

**No. 86A**

**Originating Summons -- judicial review  
(O. 53 r. 5)**

HCAL No. .... /20 .....

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST  
NO. \_\_\_\_\_ OF 20 \_\_\_\_**

Between *A.B.* Applicant

and

*C.D.* Respondent

Pursuant to the leave granted by the Honourable \_\_\_\_\_ on \_\_\_\_\_, let all parties concerned appear before the Honourable \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_\_\_ o'clock, on the hearing of an application by *A.B.* for an order that (or for the following relief, namely):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TAKE NOTICE that an order will also be sought that the costs of and incidental to this application be paid by \_\_\_\_\_.

THE GROUNDS FOR THE APPLICATION are those set out in Form No. 86 used on the application for leave to apply for such order (or the grounds for the application, for which leave had been granted, are as follows :

\_\_\_\_\_  
\_\_\_\_\_ )

FURTHER TAKE NOTICE that on the hearing of this application, the applicant will use the following affidavit(s) and the exhibits therein referred to :

\_\_\_\_\_  
\_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Solicitor for the applicant  
(or where the applicant acts  
in person, name of the applicant)

This summons was taken out by \_\_\_\_\_, solicitor for the applicant  
whose address is at \_\_\_\_\_

(or where the plaintiff acts in person:

This summons was taken out by the applicant whose address for service is at \_\_\_\_\_)

To : \_\_\_\_\_

(Name and address of the respondent or the solicitor for the respondent, and if applicable, name and address of the interested party or other party as directed by the court).

Judiciary  
March 2009