

## Appeals from the Cayman Islands to the Judicial Committee of the Privy Council: a Summary of the Rules

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**The Judicial Committee of the Privy Council ('the JCPC') is the final and highest Court of Appeal for the Cayman Islands, eleven other British Overseas Territories, three Crown Dependencies and nine commonwealth countries (e.g. Jamaica, Antigua & Barbuda and the Bahamas). An overview of the benefits of the JCPC as the Cayman Islands' final appellate Court can be found [here](#).**

Each jurisdiction or country has its own laws, within its constitutional framework or by Act of Parliament or statutory instrument, that provide for a right of appeal to the JCPC.

Appeals from the Cayman Islands to the JCPC are governed by the *Cayman Islands (Appeals to Privy Council) Order 1984* ('CI Appeal Order').

There are three types of appeals: (1) an appeal as of right; (2) an appeal with leave of the Cayman Islands Court of Appeal ('the Court of Appeal'); and (3) an appeal by special leave of the JCPC. An intended appellant should first consider the kind of appeal it intends to pursue and second, the procedural requirements to obtain leave to appeal and then to prosecute the appeal.

### Substantive requirements for leave to appeal

#### *Appeals as of right*

Section 3(1) of the CI Appeal Order states that an appeal as of right exists in three circumstances:

- there is a final decision in civil proceedings where the dispute is £300 or more, or a claim or question regarding property or a right valued £300 or more;
- final decisions for dissolution or nullity of marriage; and
- in any other case prescribed by the laws of the Cayman Islands.

The JCPC decision of *Jacpot Ltd v Gambling Regulatory Authority* [2018] UKPC 16 provides guidance on the interpretation of the statutory rules governing appeals as of right. The salient points from *Jacpot* are as follows:

- There are three requirements for an appeal as of right which must be strictly construed and satisfied, that is, (a) there must be civil proceedings (no criminal element); (b) there must be a 'final decision'<sup>1</sup>; and (c) the dispute or matter must reach the statutory value.
- The value threshold applies to any (1) matter in dispute; (2) claim to, or question respecting, property; or (3) a right.
- A money claim is not required to satisfy the value threshold but it is essential to value the matter or right that is the subject of the appeal. If the value of the right or matter exceeds the value threshold then there is an appeal as of right.
- In an appeal as of right, an application for leave to appeal must nevertheless be made to the local Court. The local Court is to verify that an appeal lies as of right and deal with the procedural matters (such as the conditions upon which leave is granted). If the

<sup>1</sup> There is sometimes scope for argument as to whether a relevant decision is properly characterized as 'final' or 'interlocutory'.

application for leave as of right is wrongly refused by the local Court in civil cases, then the JCPC will grant special leave unless the substantive appeal is abusive or bound to fail.

*Jacpot* was applied in the Cayman Islands Court of Appeal decision of *Essar Global Fund Limited v Arcelormittal USA LLC*, CICA (Civil) Appeal 15 of 2019, dated 6 May 2021, which illustrates the need to value the 'right' at stake on appeal. In *Essar*, the Court refused leave as of right in relation to a *Norwich Pharmacal* Order ('NPO'). It held that an applicant for an NPO has a right to have its application determined fairly but has no proprietary right to the documents or information requested.

### *Appeals with leave of the Court*

For an appeal with leave of the Court of Appeal, section 3(2) of the CI Appeal Order permits a litigant to seek leave to appeal a decision in any civil proceedings, which, in the opinion of the Court, concerns such a question of great general or public importance that it should be submitted to the JCPC.

Section 22 of the CI Appeal Order provides that the JCPC may grant special leave to any person aggrieved by any judgment of the Court. Special leave appeals are discretionary, conditional and usually granted in criminal cases (where the local Court of Appeal cannot grant leave), but can also be granted in civil cases where the local Court of Appeal refused leave to appeal. The test applied by the JCPC in civil cases is whether the appeal raises an arguable point of law of general public importance which ought to be considered by the JCPC.<sup>2</sup>

### **Procedural requirements**

The applicant must first apply for leave to appeal by filing a motion or petition with the Court of Appeal within 21 days of the date of the decision being appealed. In *Shanda Games Limited v Maso Capital Investments Limited*, 2020 (2) CILR 1, the Court of Appeal confirmed that the 21 day period begins to run on the date that the Court of Appeal's order is sealed and filed, not on the date that the Court of Appeal's judgment is handed down.

All relevant parties must be given notice and the motion or petition must set out the relief being sought.

Once an application for leave to appeal is filed with the Court of Appeal, a single Judge may determine it. However, the full court (three Judges) may vary, discharge or reverse the Order of that Judge.<sup>3</sup> The Court, for convenience, may consolidate applications for leave to appeal and it may, upon granting leave to appeal, stay the execution of a decision that requires the appellant to pay money or do a particular thing.

Once leave to appeal is granted, the Court will set conditions for the intended appellant to: (1) provide security not exceeding £500<sup>4</sup> and (2) prepare the record of appeal.<sup>5</sup> The record of appeal should only contain documents that are relevant to the appeal, however, excluded documents should be enumerated on a list that accompanies the record.<sup>6</sup> The record must include the decision or Order (along with the reasons) that is being appealed. Any objections to the inclusion of a document in the record should be noted in the index of the record.

Provided that the conditions for leave are satisfied, the intended appellant must apply to the Court of Appeal for a Final Order for leave to appeal. Upon the grant of that order, the appellant must prosecute the appeal by filing the notice of appeal and all other necessary documents to bring the appeal to a hearing before the JCPC.

Once the appeal is before the JCPC, the matter becomes subject to the JCPC's own procedural rules, in the form of the Judicial Committee (Appellate Jurisdiction) Rules 2009, the JCPC's Practice Directions and the JCPC's Electronic Bundle Guidelines.

### **Conclusion**

In conclusion, any person aggrieved by a decision of the Court of Appeal may seek to appeal to the JCPC. The applicant, however, must first obtain leave to appeal and then file the appeal documents, to have the matter heard by the JCPC. The appellant must also seek to ensure that it complies with all relevant procedural rules and Practice Directions.

<sup>2</sup> Practice Direction 3 to the Judicial Committee (Appellate Jurisdiction) Rules 2009, paragraph 3.3.3(a).

<sup>3</sup> Section 6 of the CI Appeals Order.

<sup>4</sup> Section 5(1) of the CI Appeals Order.

<sup>5</sup> Section 5(2) of the CI Appeals Order.

<sup>6</sup> Section 9 of the CI Appeals Order.

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