

Applications for review

Under section 31 of the Labour Tribunal Ordinance (“LTO”), Cap. 25, Laws of Hong Kong, a presiding officer may, of his own motion within 14 days¹ from the date of an award or order made by him, or on the application of a party within 7 days¹, review the award or order, and on such review may re-open and re-hear the claim wholly or in part and may call or hear fresh evidence and may confirm, vary or reverse his previous award or order.

If any party is dissatisfied with an award or order, he may make an application for review by submitting Form 13. This Form can be obtained from the registry of the Labour Tribunal² or downloaded from the Judiciary’s website at <http://www.judiciary.hk>. An application for review must be filed within 7 days¹ from the date of the award. A prescribed fee of \$45 is payable upon filing of the application.

Pursuant to section 31(4) of the LTO, the presiding officer may order the applicant to give security for payment of any award or order if the presiding officer considers it just and expedient to do so. The presiding officer may order the applicant to pay security if the application for review is devoid of merit or is made to delay the process, or if the assets that may be available to satisfy an award or order may be disposed of to the prejudice of any party.

Applicants should note that if an order for payment of security is made, failure to comply with such order may result in the dismissal of the application for review without further hearing if the presiding officer had expressly ordered he would do so on non-compliance of the security order (see section 31(4E) LTO).

Procedure on review

The review hearing is heard before the trial presiding officer and it is for the presiding officer to decide on the appropriate procedure to be adopted for the review hearing.

In general, the applicant will be asked to explain the grounds of review. If the applicant intends to submit new evidence for the presiding officer to consider, the new evidence should be submitted well before the hearing and a copy is to be served on the other party.

The opposing party will be given a chance to reply to the applicant’s application.

Applicants are reminded that a review hearing is not a chance to re-litigate the case.

¹ The computation of time is stipulated by section 71 of Cap.1 Interpretation and General Clauses Ordinance, Laws of Hong Kong.

² The registry of the Labour Tribunal is located at G/F., 36 Gascoigne Road, Kowloon.

Applications for leave to appeal

The right to appeal against an award or order of the Labour Tribunal is not as of right. Parties wishing to appeal must first seek leave from the Court of First Instance to appeal against such award or order. It is only when leave to appeal is granted will the appeal be heard.

Under section 32 of the LTO, if a party is dissatisfied with an award, order or determination by the Labour Tribunal on the grounds that the award, order or determination is –

- (a) erroneous in point of law; or
- (b) outside the jurisdiction of the tribunal,

such party may, within 7 days¹ after the date on which the award, order or determination was served on him, or within such extended time as may be allowed by the Registrar of the High Court on good cause, apply to the Court of First Instance for leave to appeal and the Court of First Instance may grant such leave.

A refusal by the Court of First Instance to grant leave to appeal is final (see section 32(3) LTO).

A party applying for leave to appeal must set out the grounds of appeal and the reasons in support of such grounds in Form 14 – “Application for Leave to Appeal on Point of Law”. This Form can be obtained from the registry of the Labour Tribunal, the Clerk of Court’s Office of the High Court³ or downloaded from the Judiciary’s website at <http://www.judiciary.hk>. The appellant may be represented by lawyers in the application⁴.

An application for leave to appeal has to be lodged with the Registrar of the High Court and should be filed at the Clerk of Court’s Office of the High Court. A prescribed fee of \$45 is payable upon filing of the application. After an application for leave to appeal is filed, the Registrar of the High Court will fix a date for hearing. Only the appellant is required to attend the hearing for leave to appeal, which will be heard by a High Court judge. The presiding officer will submit written reasons for decision to the High Court before the hearing for leave to appeal. The Labour Tribunal will provide a copy to the appellant at no cost.

If leave to appeal is granted, the Labour Tribunal will provide the respondent with a copy of the written reasons for decision free of charge. After the appellant has paid a fee of \$1,045 to file the Notice of Originating Motion, the appellant should proceed to list the hearing of the appeal. Both the appellant and the respondent will be required to attend the hearing and make their submissions. Both parties may be represented by lawyers⁵.

On appeal, the Court of First Instance may –

- (a) allow the appeal;
- (b) dismiss the appeal; or
- (c) remit the matter to the tribunal with such directions as it thinks fit, which may include a direction to the tribunal for a new hearing.

³ The Clerk of Court’s Office of the High Court is located at G/F., High Court Building, 38 Queensway, Hong Kong.

^{4&5} Except where leave has been granted by the High Court, a body corporate such as a limited company must be legally represented in an appeal.

But may not –

- (a) reverse or vary any determination made by the tribunal on questions of fact; or
- (b) receive further evidence.

If the parties are dissatisfied with a decision of the Court of First Instance, an application for leave to appeal to the Court of Appeal may be made within 7 days¹ of the decision. If the Court of Appeal considers a question of law of general public importance is involved, leave may be granted (see section 35A LTO).

Grounds of appeal

Appellants should set out their grounds of appeal in full and provide sufficient particulars to enable the appellate judge to understand the basis of appeal.

To succeed in an appeal on a point of law, an appellant must establish the presiding officer has wrongly applied a principle of law; misunderstood a statute; reached a decision that no reasonable tribunal could have reached; or come to a conclusion that was perverse since there was no evidence whatsoever to support it⁶.

Usually, an appeal on facts is not permitted. However, if a finding of fact or inference from the facts is perverse or irrational, or where there is no evidence to support it, or where the decision is made by reference to irrelevant factors or without regard to relevant factors, this may amount to an error of law⁷ and such an appeal on facts may be allowed.

A claim is “outside the jurisdiction of the tribunal” if it is a claim that falls outside those types of cases as listed in the Schedule of the LTO and/or if the claim is brought outside the applicable limitation period as set out in the Limitation Ordinance (Cap. 347). Hence if an appellant believes the claim was one that should not have been decided by the Labour Tribunal (for example, it is not an employment dispute) then the appellant may lodge an appeal on the ground the claim is “outside the jurisdiction of the tribunal”.

Does an application for review or leave to appeal operate as a stay of execution?

No. An application for review or leave to appeal shall not operate as a stay of execution of an award or order (see section 37 LTO). This means that even if a party is reviewing or appealing against an award or order, he still has to pay the judgment sum according to the award or order unless the Labour Tribunal, the Court of First Instance or Court of Appeal orders otherwise.

⁶ See *Watling v William Bird & Son (Contractors) Ltd* (1976) 11 I.T.R.70.

⁷ See *Scott Williams v Cathay Pacific Airways Limited* (unreported), HCLA 24/2009, 10 November 2010 at para 38 and *Guido Ferrando v Hua Dao Shipping* (unreported) HCLA 44/2007, 31 October 2008 at paras.18-21.

Differences between a review and an appeal

The following table illustrates the differences between a review and an appeal.

Review	Appeal
<ul style="list-style-type: none">• The forum is the Labour Tribunal.• The review will normally be heard by the same presiding officer who presided over the trial.• No legal representation is permitted.• Costs are generally lower.• Fresh evidence may be received.• Not bound by the tribunal's previous finding of facts.	<ul style="list-style-type: none">• The forum is the Court of First Instance of the High Court.• The appeal will be heard by a Judge of the Court of First Instance.• Parties may engage lawyers to conduct the appeal.• Legal costs can be substantial.• No fresh evidence may be received on appeal.• No power to reverse or vary the tribunal's finding of facts.

Legal advice should be sought

As the legal costs involved in an appeal may be substantial, it is advisable to seek independent legal advice before lodging an appeal.

If the intended appellant does not have the financial means to engage private legal representation, there are various sources of free legal advice offered to the general public. Parties should make their own effort to seek and obtain such legal advice.

The Free Legal Advice Scheme under the Duty Lawyer Service provides free legal advice to the public. However, the Scheme will not offer representation to the parties. Appointments must be made in person at any Public Enquiry Service Centres of the Home Affairs Department. For details concerning the Free Legal Advice Scheme, please call the Duty Lawyer Service at 2526 5969 or visit its website at <http://www.dutylawyer.org.hk>. Enquiries may also be made by calling the Central Telephone Enquiry Centre of the Home Affairs Department at 2835 2500 (<http://www.had.gov.hk>).

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