

# GUIDE TO CIVIL APPEALS IN THE CAYMAN ISLANDS

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## PREFACE

The information contained in this Guide is for informational purposes only and should not be treated as constituting legal advice. Readers are encouraged to consult their professional advisers before making decisions or taking actions on the numerous and complex issues involved in appeals in the Cayman Islands.

If any such questions arise in relation to the contents, they should be addressed Appleby using the [contact information](#) provided at the end of this Guide.

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## 1. INTRODUCTION

Appeals in the Cayman Islands run from the Grand Court to the Court of Appeal and from the Court of Appeal to the Privy Council.

An appeal may be based on a point of law or, to a more limited extent, a question of fact or a wrongful exercise of discretion. The Court of Appeal will rarely interfere with a decision based on the Grand Court's evaluation of oral evidence, but will be more likely to interfere with an inference drawn from the primary facts. The Court of Appeal will only interfere with the exercise of the Grand Court's discretion unless it is satisfied that the Grand Court's decision is clearly wrong.

## 2. APPEALS FROM THE GRAND COURT TO THE COURT OF APPEAL

### 2.1 Can You Appeal, and is Leave to Appeal Required?

The Court of Appeal Law (2011 Revision) (the **Law**) provides that no appeal shall lie in certain circumstances, including from an order allowing an extension of time for appealing from a judgment and an order giving unconditional leave to defend an action (i.e. an unsuccessful plaintiff's summary judgment application).

The Law also provides that no appeal shall lie in certain other circumstances without the leave of the Court or the Grand Court. This includes from an order made with consent of the parties, or from an order as to costs only where costs are by law left to the discretion of the Grand Court, or from an interlocutory judgment. There are certain exceptions where there is an appeal as of right from an interlocutory judgment, which include:

- where an injunction or the appointment of a receiver is granted or refused;
- in the case of an order made in any arbitration proceedings; or
- in the case of a decision determining the claim of any creditor, the liability of any contributory or the liability of any director or other officer of any company, under any law for the time being in force relating to companies, in respect of misfeasance or otherwise. Note that this leads to the somewhat unexpected result that, in liquidation proceedings, a creditor who disagrees with the liquidator's adjudication on his proof of debt has two appeals as of right, one to the Grand Court and one to the Court of Appeal.

Except in the exceptional circumstances outlined above, leave to appeal is required from an interlocutory decision. Therefore, the question whether a decision is final or interlocutory is of importance.

### 2.2 Interlocutory or Final Decision

The question whether a judgment or order should be treated as final or interlocutory is determined by Rule 12 of the Court of Appeal Rules (2009 Revision) (the **Rules**).

The Rules provide that a judgment or order shall be treated as final if the entire cause or matter would (subject only to any possible appeal) have been finally determined whichever way the court below had decided the issues before it. The key point to note is that it is the nature of the application that determines whether the judgment or order is final or interlocutory, not the nature or judgment or order itself. However, how final the judgment or order may be, if it resulted from an application that could in principle have been resolved in a way that did not finally determine the entire cause or matter, it is an interlocutory judgment or order. This test is known as the "application test".

The Rules also list certain orders which are to be treated as final and interlocutory.

### 2.3 Time for Appeal Where Leave is Not Required

Where leave is not required, the Law provides that an appeal shall be brought by the appellant, within fourteen days after the date of the judgment (which is fourteen days after the date the judgment or order is filed), lodging and serving a written notice of appeal.

The Law also provides that the appellant should deposit C\$50 as security with the Grand Court, together with "such further sum for security for costs of the appeal as a Judge of the Grand Court may direct".

Once the Court has the notice and security as outlined above, the Law states that the Court will draw up a statement of reasons for the judgment appealed against and then the appellant shall, within 21 days of receiving the statement, file and serve a memorandum of the grounds of appeal. However, in normal practice (given that most judgments are comprehensive in providing reasons for the Court's decision), once the notice and security have been provided to the Court, the Registrar of the Court of Appeal will write to the parties and provide them with a proposed timetable for the memorandum of grounds of appeal, the service of any respondent's notice (which should be provided within fourteen days of the memorandum of grounds of appeal) and the exchange of skeleton arguments.

### 2.4 Time for Application for Leave to Appeal

An application for leave shall be made to the court below (i.e. the Grand Court) at the time the judgment or order is pronounced, or by summons or motion issued within fourteen days from the date on which the judgment or order is filed.

Once the summons or motion is issued, the Grand Court will set a date for the hearing and the parties will agree (or, failing agreement, will ask the Court to order) a timetable for exchange of skeleton arguments. The intended appellant's skeleton argument will make clear the grounds on which he is seeking leave to appeal.

If leave is granted then, a notice of appeal will have to be lodged within 14 days of the date the order giving leave is made. The requirement to lodge security as mentioned above will also apply at this stage and the Registrar of the Court of Appeal will usually contact the parties with a proposed timetable for the appeal at this stage.

If the Grand Court refuses leave, the intended appellant may apply to the Court of Appeal for leave on an ex parte basis within seven days of the date of that refusal. The application should include a draft notice and grounds, the order, a skeleton argument and the Judge's ruling. The application shall be determined by a single Judge of the Court of Appeal on the papers and if it is refused intended appellant may renew the application at the next available sitting of the Court of Appeal.

If permission is granted by the Court of Appeal, the notice of appeal shall be served and filed within fourteen days of the date on which the order granting leave is made. The requirement to lodge security as mentioned above will also apply at this stage.

The general test for whether leave to appeal will be granted is whether the appeal has a real (i.e. realistic, not fanciful) prospect of success.

### 2.5 Effect of Appeal

Appellants should note that except so far as the Grand Court or the Court of Appeal otherwise direct, an appeal shall not operate as a stay of execution but an application for a stay of execution may be made to a single Judge.

## 2.6 Specialittings of the Court of Appeal

The Court of Appeal has three scheduled sittings (each usually for a duration of three weeks) per year.

An appellant may apply for a “special sitting” of the Court of Appeal (in cases where leave is required for an appeal, then leave needs to be applied for prior or at the same time as an application for a special sitting). This requires satisfying the President of the Court of Appeal that (a) a special sitting is necessary in the interests of justice; and (b) having regard to the availability of Judges to hear the appeal or proposed appeal, it is practicable to convene a special sitting of the Court before the date by which the appeal needs to be determined.

A fee of CI\$25,000 (CI\$5,000 payable for the application and the remainder payable upon a direction that a special sitting is convened), will also need to be paid by the applicant who seeks the special sitting.

## 3. APPEALS FROM THE COURT OF APPEAL TO THE PRIVY COUNCIL

### 3.1 Introduction

The procedure for seeking leave to appeal from the Court of Appeal to the Privy Council is governed by the Cayman Islands (Appeals to Privy Council) Order 1984. The Judicial Committee Rules (Appellate Jurisdiction) Order 2009 covers the powers of and procedures before the Privy Council itself.

Appeals to the Privy Council can be brought:

- as of right (but subject to the Court of Appeal confirming the existence of an appeal as of right and ordering that the appellant lodge security or imposing other conditions as are permitted by law);
- with leave of the Court of Appeal; or
- with special leave of the Privy Council.

### 3.2 Appeals as of Right

There is an appeal as of right in the case of final decisions in any civil proceedings, where the matter in dispute is of the value of £300 or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of £300 or upwards.

An appeal as of right has to be brought within 56 days of the decision of the Court of Appeal and has to be served on the other party before it is filed.

Once served upon the respondent to an appeal, the respondent must acknowledge service within 21 days. Other procedural steps will then be carried out prior to the hearing of the appeal, such as the preparation of the record and a statement of facts and issues, the filing of case and preparing copies of authorities.

A final decision for the purposes of bringing an appeal as of right means a decision that is not interlocutory. As with the test for appeals to the Court of Appeal (see above), whether the decision is final or interlocutory is determined using the application test. See *Strathmore Group v Fraser* [1992] 2 AC 172 at 180F, *Haron Bin Mohd Zaid v Central Securities* [1983] 1 AC 16 and *Tampion v Anderson* [1973] 48 ALJR 48. Thus the test for finality for the purposes of the appeal as of right to the Privy Council is the test used in the Court of Appeal. At the Court of Appeal level there is a list in the Court of Appeal rules of matters that are final and interlocutory, to which reference can be made when appealing to the Court of Appeal. Although that list does not in terms apply to appeals to the Privy Council, it is likely to be persuasive as the Privy Council ruled in *Zaid* (above) that the test for finality to be applied is the local test used in the jurisdiction from which the appeal is brought, not a freestanding test.

### 3.3 Appeals with Leave of the Court of Appeal

An appeal shall lie with the leave of the Court of Appeal where in the opinion of the Court the question involved in the appeal is one that, by reason of its great general or public importance, ought to be submitted to the Privy Council.

Applications to the Court of Appeal for leave are to be made by motion or petition within 21 days of the decision appealed from and a single Judge of the Court of Appeal shall have power to hear an application for leave to appeal.

The Court of Appeal, when granting leave, may give directions as to whether execution is to be stayed pending the appeal and leave shall be granted upon conditions as to the provision of security by the appellant, and the delivery of the record to England.

Once the notice of appeal is served upon the respondent to an appeal, the respondent must acknowledge service within 21 days. As with appeals as of right, other procedural steps will then be carried out prior to the hearing of the appeal, such as the preparation of the record and a statement of facts and issues, the filing of case and preparing copies of authorities.

### 3.4 Appeals with Special Leave of the Privy Council

If a party wishes to appeal a decision of the Court of Appeal, or has been refused leave to appeal by the Court of Appeal, an application to the Privy Council for special leave to appeal must be made within 56 days of the date of the order or decision of the Court of Appeal or the date of the Court of Appeal refusing leave to appeal (whichever is later). Before the application is filed, it is to be served on the respondent.

If, having received the application, a respondent wishes to object to it, it must do so within 28 days and serve the notice of objection upon the appellant and any other respondent before it is filed.

It is the appellant's responsibility to file the requisite number of copies of the application together with supporting documents within 21 days of the application being filed.

The Judicial Committee of the Privy Council will determine the application for leave to appeal on the papers or at an oral hearing. If leave is granted, the appellant must file a notice of intention to proceed within fourteen days and, assuming the appellant wishes to proceed, the application for permission to appeal stands as the notice of appeal and must be served on the respondent.

The respondent must acknowledge service of a notice of appeal within 21 days. Other procedural steps will then be carried out prior to the hearing of the appeal, such as the preparation of the record and a statement of facts and issues, the filing of case and preparing copies of authorities.

For more specific advice on appeals in the Cayman Islands, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).