



HONG KONG BAR ASSOCIATION

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By Hand

Your Ref: SC/101/19/6

31st October 2005

Judiciary Administrator
 Judiciary Administration
 Judiciary
 Room 256, LG2 High Court
 38 Queensway, Hong Kong

Attn: Miss Vega Wong
for Judiciary Administrator

Dear Sirs,

Re: Lands Tribunal Review

I refer to your letter dated 1st September 2005.

The matters raised in your letter were discussed by the Bar Council at its meeting held recently. The Bar Council has the following comments:

Notice of Opposition in Application for Possession of Premises

The Judiciary's response is reassuring. However, having a right of having 14 days to file a notice of opposition is quite different from their being given an indulgence from the Tribunal, which may or may not be granted.

香港大律師公會
 香港金鐘道三十八號高等法院低層二樓

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In case we may be having undue worry, and since it is the Judiciary which has the responsibility of the day-to-day operation of the Lands Tribunal, the Bar Council is willing to give this proposal the benefit of the doubt. However, the Bar Council would recommend to the Legislative Council that the Judiciary should make a report to the Legislative Council in a year's time after the amendment has come into effect, as to the number of non-payment of rent cases in which the Lands Tribunal has indeed granted an extension and the number of cases in which the Lands Tribunal has refused to do so.

Interlocutory Procedure for All Types of Cases*Rules 4(3) and 4(4)*

Having noted the clarifications in relation to rules 4(3) and 4(4) as set out in your letter, the Bar Council now agrees to these proposed amendments.

Rule 4(5)

In your letter you said that Rule 4(5) is proposed for deletion because it is considered redundant, and that the Lands Tribunal can deal with intervention by third parties and it is doubtful whether any third party when intervening has referred to this rule. As we said in April 2005, whilst Rule 4(5) confers a general right on a non-party to be heard on an interlocutory application, enabling provisions in the CFI confer such right in limited types of interlocutory application. The Bar Council would, therefore, like to know more about the frequencies of such intervention by third parties before it decides whether it feels comfortable enough to support the proposed deletion of rule 4(5).

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Proposed amendments to the Lands Tribunal Ordinance

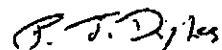
Section 8(8)

Having noted the clarifications in relation to section 8(9) as set out in your letter, the Bar Council now agrees to the proposed amendment in relation to section 8(8).

Section 10(1)

Having noted the clarifications in relation to section 10(1) as set out in your letter, the Bar Council now agrees to this proposed amendment.

Yours sincerely,



Philip Dykes SC
Chairman

cc: Mrs. Percy Ma
(Clerk to Panel, Legislative Council)(fax 2509-9055)



香港司法機構
司法機構政務處



LC Paper No. CB(2)1757/05-06(02)
JUDICIARY ADMINISTRATION
JUDICIARY
HONG KONG

本函檔號 OUR REF: SC/101/19/6

來函檔號 YOUR REF:

電 話 TEL: 2825 4244

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11 April 2006

Mr Philip Dykes, SC
Chairman
Hong Kong Bar Association
LG2, High Court
38 Queensway
Hong Kong

Dear Chairman,

Lands Tribunal Review

Thank you for your letter of 31 October 2005.

2. Having considered the Bar Association's further comments on the above Review, the Judiciary's response is set out below.

Rule 69 - Notice of Opposition in Application for Possession of Premises

3. Pursuant to a direction from the President of the Lands Tribunal in June 2005, the current practice in the Lands Tribunal is that there is no need for a respondent to get an extension of time before the Notice of Opposition could be filed out of time provided default judgment has not yet been entered.

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4. In view of the Bar's comments, the Lands Tribunal will, upon the commencement of the Amendment Rules reducing the opposition period from 14 to 7 days, keep statistics on (i) the number of applications made by the respondents for extension of time to file defence outside the 7 days period; (ii) the number of extensions granted as a result of such applications; (iii) the number of extensions granted out of the Tribunal's own volition; and (iv) the number of applications for extension of time that are dismissed.

5. As suggested by the Bar, the Judiciary would report the above to the Legislative Council Panel on the Administration of Justice and Legal Services ("AJLS") after one year of the operation of the Amendment Rules.

Rule 4(5) - Interlocutory Procedure for All Types of Cases

6. The Lands Tribunal does not keep statistics on the frequencies of "intervention by third parties" made under Rule 4(5) as such. According to records available, of the total caseload of 6,669 and 6,268 in 2004 and 2005 respectively, there were only 35 and 33 cases involving some applications made by the third parties, representing just about 0.5% of the total caseload. Among these, about 80% were tenancy cases and the third parties were sub-tenants who wished to join as respondents.

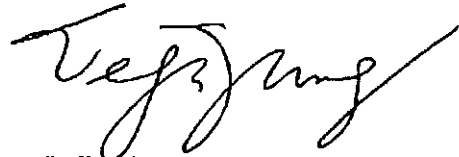
7. In view of the small number of cases involving third party intervention in the Lands Tribunal, the Judiciary maintains its proposal to delete Rule 4(5). The deletion of Rule 4(5) does not mean that the Lands Tribunal will not afford opportunity to be heard to any party. That is indeed a fundamental precept of natural justice and the right to be heard is guaranteed under the Basic Law and the Hong Kong Bill of Rights. The Tribunal can resort to the relevant Rules of the High Court to deal with third party intervention. And one of the objectives of our present exercise is to synchronize our rules with those in the District Court and the High Court.

Lands Tribunal (Amendment) Rules 2006

8. On the basis of our recommendations in the Lands Tribunal Review, the attached Draft Lands Tribunal (Amendment) Rules 2006 have been prepared. We would be grateful for the Bar Association's comments by 11 May 2006. We will revise the draft Rules as appropriate in the light of comments received and report back to the LegCo AJLS Panel in June 2006.

With best regards,

Yours sincerely,



(Miss Vega Wong)
for Judiciary Administrator

c.c. Clerk of the AJLS Panel - w/o Encl.