

CJRB 11/2007

**Bills Committee on
Civil Justice (Miscellaneous Amendments) Bill 2007**

**Proposed Introduction of a Leave Requirement for
Appeals from the Lands Tribunal to the Court of Appeal**

Purpose

This paper sets out the Steering Committee on Civil Justice Reform (“the Steering Committee”)’s proposal to introduce a leave requirement for appeals from the Lands Tribunal to the Court of Appeal.

Background

2. Section 11(2) of the Lands Tribunal Ordinance (“LTO”) (Cap. 17) stipulates that any party may appeal against a determination or order of the Lands Tribunal to the Court of Appeal on the ground that such determination or order is erroneous in point of law.

3. In the “*Consultation Paper on Proposed Legislative Amendments for the Implementation of the CJR*” (“the Consultation Paper”) published in April 2006, the Steering Committee proposed that the recommendations on the requirement for leave to appeal in the Final Report on CJR should be made equally applicable to the Lands Tribunal¹, and that accordingly, section 11 of LTO should be amended along similar lines as the proposed amendments to the High Court Ordinance (“HCO”) (Cap. 4) in relation to leave to appeal².

4. In the Bar Association’s submission dated 19.7.2006, this proposal was opposed. It was stated, “... *The Bar is against introducing a leave requirement in addition to the existing provision, which already confines the scope of appeals. Where an appeal not seeking in substance to argue a point of law is filed, the respondent (which is usually the Government or the public authority) can be relied on to act diligently to seek the striking out of the notice of appeal.*”³

¹ Para. 2.2(7) of the Consultation Paper.

² Pages C6-7 of Annex C in Consultation Paper.

³ Para. 135 of the Bar’s submission.

5. In view of the Bar's position, the proposed amendments to section 11 of the LTO were therefore not included in the Civil Justice (Miscellaneous Amendments) Bill 2007.

Present Position

6. In *德喜大廈業主立案法團與黎明光* CACV 171/2006 (date of decision 30 July 2007), the Court of Appeal commented that many of the appeals from the Lands Tribunal, particularly those where the appellants were unrepresented, had not been made in accordance with the statutory ground, i.e. that the Lands Tribunal's determination or order was erroneous in point of law. Often, it was only at the hearing of the appeal proper when it was discovered that no points of law were involved, by which time the other side had already incurred costs and the court itself had allotted time over an appeal that ought never have been brought in the first place. It was noted by way of contrast that appeals from the Labour Tribunal and the Small Claims Tribunal concerning points of law required leave. The Court of Appeal commented that there was a need to consider amending the LTO to introduce a leave requirement for appeals from the Lands Tribunal, so that only appeals involving questions of law would be dealt with at the substantive hearing.

7. The Steering Committee has therefore reconsidered the matter in the light of the Court of Appeal's comments in CACV 171/2006. The relevant considerations are -

- (a) Whilst there are Lands Tribunal appeals in which the Government is the respondent (mostly compensation cases), experience has shown that there are a very substantial number of appeals in which the respondent is not the Government (particularly in building management and possession cases). These are likely to be cases in which the appellants are unrepresented litigants. There are also applications for stay of execution pending appeals (mostly possession cases);
- (b) For unmeritorious appeals not involving points of law, legal costs incurred by the respondents are very often disproportionate to the subject matter of the appeal, and in possession cases, such legal costs are probably unrecoverable due to the insolvency of the appellant; and

- (c) Unless there is a leave requirement, the objective of section 11(2) of the LTO to limit the scope of appeals to those determinations or orders which are erroneous in point of law is often defeated and such appeals become costly for the respondent.

Proposed Leave Requirement for Lands Tribunal Appeals

8. In view of the above, the Steering Committee now proposes that Committee Stage Amendments (“CSAs”) should be introduced to the Civil Justice (Miscellaneous Amendments) Bill 2007 to amend section 11 of LTO to introduce a leave requirement for interlocutory and final appeals from the Lands Tribunal to the Court of Appeal. Leave would only be granted where there is a reasonable prospect of success or some other compelling reason exists for an appeal. Refusal of leave by the Court of Appeal is final.

Consultation

9. The two legal professions have been consulted on the proposed leave requirement for Lands Tribunal appeals to the Court of Appeal.

10. The Bar Association has now indicated agreement to the Steering Committee’s proposal. The Bar believes that the number of disputes submitted to the Lands Tribunal in which ordinarily the Government is not a party outnumbers the matters in which the Government is a party. In view of this and the Court of Appeal’s concern expressed in CACV 171/2006, and since the mischief which the proposed amendments aim to deal with is a real one, the Bar Association has therefore reconsidered its earlier position.

11. The Law Society has suggested that the proposed leave requirement for Lands Tribunal appeals could follow the proposed amendments to HCO in section 14AA in respect of interlocutory appeals; and in respect of appeal against a final order/determination, leave may be granted on the ground that the order/determination is erroneous on a point of law.

Proposed Way Forward

12. Having considered the views of the two legal professional bodies, the Steering Committee proposes to amend section 11 of LTO as suggested in paragraph 8 above. The proposed leave requirement is of course intended to ensure that appeals from the Lands Tribunal to the Court of Appeal are made in accordance with the statutory ground, i.e. the determination or order is erroneous in point of law. As this ground is already provided for in the existing section 11(2) of the LTO, the Steering Committee sees no need to separately provide this as a ground for granting leave in respect of appeals against a final order/determination of the Lands Tribunal as suggested by the Law Society.

13. Subject to Members' views, the Administration will introduce CSAs to the Bill to implement the Steering Committee's proposal.

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