立法會
Legislative Council

LC Paper No. CB(2)430/06-07(01)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

Background brief for the meeting on 27 November 2006

Court procedure for repossession of premises - Review of Lands Tribunal Ordinance and Lands Tribunal Rules

Purpose

This paper summarizes the discussions of the Panel on Administration of Justice and Legal Services (AJLS Panel) on measures to streamline the court procedure for repossession of premises, and the review of the Lands Tribunal Ordinance and the Lands Tribunal Rules.

Background

2. The long lead time for repossession of premises has all along been a cause of concern among Members. The process of repossession of premises for non-payment of rent where a notice of opposition had been filed took a total of 103 days (i.e. an application stage of 35 days, a relief stage of 28 days, a processing stage of 10 days, and an execution stage of 20 days). The purpose of the relief period was to allow the tenant a final opportunity to settle the rent in arrears before a writ of possession could be executed.

3. To minimize the abuse of the relief period by habitually defaulting tenants, the Landlord and Tenant (Consolidation) (Amendment) Bill 2001 (the 2001 Bill) sought to, among other things, shorten the relief period from 28 to seven days. Such relief only covers cases where the ground for an order of possession is non-payment of rent. Other grounds to claim possession include unlawful subletting, immoral or illegal use of the premises by the tenant, or repossession for the landlord's own use. The 2001 Bill was passed on 18 December 2002.

4. While agreeing that the shortening of the relief period was a step forward in the right direction, the Bills Committee on the 2001 Bill held the view that a fast-track procedure for repossession of premises by aggrieved landlords, especially in cases of repeated defaults in payment of rent by tenants should be introduced to protect the interests of the landlords. As the review of court procedure was outside the scope of

the 2001 Bill, the Bills Committee agreed to request the AJLS Panel to follow up the relevant issues.

5. The Landlord and Tenant (Consolidation) (Amendment) Bill 2003 (the 2003 Bill) sought to, inter alia, remove the security of tenure provisions for domestic tenancies under Part IV of the Ordinance. Members of the Bills Committee on the 2003 Bill had examined whether there was room for further streamlining of the repossession process following the proposed removal of security of tenure. The Administration agreed that unlike in forfeiture cases, a tenant should have no reason not to move out upon completion of a tenancy when the security of tenure regime no longer existed. The Administration subsequently moved an amendment to the 2003 Bill to the effect that the "opposition period" for a tenant to file an opposition to the landlord's application be shortened from 14 days to seven days. The 2003 Bill was passed on 30 June 2004.

6. The relevant issues were discussed by the AJLS Panel at its meetings on 29 January 2004, 24 May 2004 and 25 April 2005.

Repossession procedure

7. The repossession procedure can be divided broadly into three stages -

(a) Application stage - after a landlord files an application for repossession, the tenant could file a notice of opposition within the statutory time limit. If an opposition is filed by the tenant, the application will be listed for a court hearing. If no opposition is filed by the tenant, the landlord can apply for a default judgment by the court.

(b) Processing stage - after the court hearing and an order for possession has been made, the landlord will have to post up the notice of the court order to the tenant. If the tenant fails to move out within the period specified in the notice of the court order, the landlord will apply to the court for leave to issue a writ of possession and will then dispatch the writ to the Bailiff's Office for execution.

(c) Execution stage - the landlord will make an appointment with the Bailiff's Office for execution of the writ of possession.

Measures to streamline procedure for repossession of premises

8. The Panel made a number of suggestions to streamline the court procedure for repossession of premises. These suggestions and the response of the Judiciary Administration are summarized below.

Improvement measures

Time for processing applications for default judgment

9. The Panel suggested that the Lands Tribunal should grant a default order for repossession right away if the tenant had not filed a notice of opposition within the statutory time limit.

10. The Judiciary Administration advised in May 2004 that the number of repossession cases disposed of by way of default judgment was about eight times those dealt with by hearing. The time for processing such applications was about 10 days on average. The Judiciary Administration was seeking to shorten the time for processing applications for default judgment to seven days, through further procedure reviews and staffing re-deployment within the Lands Tribunal, if the case load remained steady.

Disposal of straightforward repossession cases by way of callover hearings

11. The Judiciary Administration informed the Panel that the Lands Tribunal had set aside one day every week since 5 January 2004 for a court to deal exclusively with repossession cases in the form of callover hearings. The callover arrangement enabled simple and non-contested cases (about 80% of the total cases) to be disposed of expeditiously. For the more complicated cases, the new practice had shortened the waiting time from the date of application for repossession to the date of first hearing (a reduction of 45 days in 2003 to 40 days in the first quarter of 2004) in spite of an increased workload.

12. The Panel suggested that the Lands Tribunal should assign a specific time slot on a daily basis for callover hearings. The Judiciary Administration advised that such concept was indeed being practiced to some extent as repossession cases were listed for callover hearings on those days whenever there were vacant slots in a court's diary.

Execution of writs of possession

13. The Judiciary Administration informed the Panel on a number of occasions of the time taken for execution of writs of possession by the Bailiffs -

(a) at the time when the 2001 Bill was examined, only about 14% of the writs of possession could be executed by the Bailiffs within 30 days;

(b) in 2003, 92% of the writs of possession were executed within 30 days, the average being 25 days. The situation was sustained in the first quarter of 2004, in spite of a slight increase in the number of writs issued; and

(c) the Panel was advised in April 2005 that updated information showed that successful execution of writs of possession took about 19 to 23 days. Continuous efforts would be made to minimize the period subject to the workload situation.

Suggestions not to be pursued

14. The Judiciary Administration advised that the following suggestions made by the Panel would not be pursued -

(a) the Lands Tribunal should grant a default order for repossession right away if the defendant had not filed a notice of opposition within the statutory time limit; and

(b) the Lands Tribunal should consider allowing landlords applying for repossession to elect to have their cases dealt with by way of a callover hearing or a formal hearing.

For details of the response of the Judiciary Administration, members are invited to refer to paragraphs 33 - 36 of the paper in **Appendix I** (paragraph 17 below refers).

Lands Tribunal review

15. The Judiciary Administration advised the Panel at its meeting on 24 May 2004 that the Chief Justice had directed that the Lands Tribunal Rules as a whole should be reviewed, and the Panel would be consulted when the review was completed.

16. The Judiciary Administration reverted to the Panel at its meeting on 25 April 2005 after completing the review of both the Lands Tribunal Ordinance and the Lands Tribunal Rules. Of the 14 recommendations made (**Annex A** of **Appendix I** refers), most of the recommendations were related primarily to the subject of application for possession of premises with a view to streamlining the procedures. Recommendations were also made in respect of the jurisdiction and other practice and procedure of the Lands Tribunal, with a view to making the processing of claims in the Tribunal more efficient and expeditious.

17. Other than the revised administrative procedures which had already been put into practice as from 21 February 2005, other improvement measures would require legislative amendments for implementation. The Judiciary Administration advised that subject to the Panel's view and the outcome of the consultation with the legal professional bodies, the Judiciary would -

(a) implement the recommendations requiring legislative amendments to the Lands Tribunal Rules by introducing amendment rules for negative vetting in due course; and

(b) liaise with the Administration on the implementation of recommendations requiring legislative amendments to the Lands Tribunal Ordinance and the District Court Ordinance.

A copy of the paper on "Review of the Lands Tribunal Ordinance (Cap. 17) and the Lands Tribunal Rules (Cap. 17A)" provided for the Panel meeting on 25 April 2005 (LC Paper No. CB(2)1320/04-05(02)) is in **Appendix I**.

18. The Judiciary Administration advised the Panel that the proposed recommendations to streamline the procedure for possession of premises would result in a maximum reduction of 18 days from the statutory limits of the various steps in applying for possession. As illustrated in paragraph 20 and Annex B of **Appendix I**, for a straightforward case other than a non-payment of rent case, the period from application for possession to application for writ of possession would be reduced from 47 days to 29 days. The period for non-payment of rent cases was 36 days.

19. At the meeting on 25 April 2005, the Hong Kong Bar Association gave preliminary comments on a number of the recommendations. Its subsequent revised written submission and correspondence with the Judiciary Administration were circulated to the Panel for information. As the Bar remains of the view that it cannot support the proposed deletion of Rule 4(5) of the Lands Tribunal Rules on interlocutory procedure for all types of cases, the Judiciary Administration has agreed to retain the Rule.

Latest development

20. The Judiciary Administration has completed its consultation with the legal professional bodies on the review of the Lands Tribunal Ordinance and the Lands Tribunal Rules, and will brief the AJLS Panel on the outcome at its meeting on 27 November 2006.

Relevant papers

21. A list of the relevant papers available on the LegCo website is in **Appendix II.**

Council Business Division 2
Legislative Council Secretariat
22 November 2006

For information

Paper for the Panel on Administration of Justice and Legal Services ("AJLS")

Review of the Lands Tribunal Ordinance (Cap. 17) and the Lands Tribunal Rules (Cap. 17A)

Purpose

The Judiciary has completed the review of the Lands Tribunal Ordinance ("LTO") (Cap. 17) and the Lands Tribunal Rules ("LTR") (Cap. 17A). This paper sets out the recommendations of the review and the proposed way forward.

Background

2. At the AJLS Panel meeting on 29 January 2004, Members noted the Judiciary's review of the impact of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002 on the Lands Tribunal, and the measures introduced by the Judiciary to streamline the court procedure for repossession of premises, including assigning at least one day in a week to deal exclusively with repossession cases in the form of callover hearings. At the meeting, the Panel suggested, inter-alia, that -

(a) the Lands Tribunal should grant a default order for repossession right away if the defendant had not filed a notice of opposition within the statutory time limit; and

(b) the Lands Tribunal should consider allowing landlords applying for repossession to elect to have their cases dealt with by way of a callover hearing or a formal hearing.

3. At the LegCo AJLS Panel on 24 May 2004, the Judiciary briefed the Panel on the progress of the improvement measures to streamline the court procedure for repossession of premises. The Judiciary also informed the Panel that the Chief Justice had directed that the LTR as a whole should be reviewed, and Members would be

consulted when the review was completed, and amendments to the LTR were proposed.

Present Position

4. The Judiciary has now completed the review of both the LTO and the LTR, and a total of 14 recommendations are made. Most of the recommendations are related primarily to application for possession of premises, with a view to streamlining the procedures. Recommendations are also made in respect of the jurisdiction and other practice and procedure of the Tribunal, with a view to making the processing of claims in the Tribunal more efficient and expeditious. A summary of the recommendations is at **Annex A**. They are classified into four broad categories, viz. - **Annex A**

(a) Revised administrative procedures;
(b) Amendments to LTR;
(c) Amendments to primary legislation; and
(d) Suggestions not to be pursued.

The considerations and details of the recommendations are set out in the ensuing paragraphs.

I. Revised Administrative Procedures

5. Practice Direction ("PD") 16.4 on Execution to Enforce Judgment for Possession of Immovable Property provides that, where a party seeks leave under Order 45 rule 3 of the Rules of the High Court ("RHC")[1] (Cap. 4A), it must be shown by affidavit that -

(a) notice of the proceedings in both English and Chinese addressed to all persons in actual possession has been posted on 3 successive days upon the main door or entrance to the premises; and that

(b) a minimum of 4 clear days has elapsed from the last of the said 3 days to the date upon which such leave is sought.

---

[1] Order 45, r. 3 of the RHC sets out the procedures for enforcement of judgment for possession of land.

6. The posting of notice requirement under PD16.4 is intended to satisfy the requirement of Order 45 rule 3 of the RHC, which provides, inter-alia, that the Court shall not grant leave for the issue of a writ of possession unless it is shown that every person in actual possession of the premises has received such notice of the proceedings as appears to the Court sufficient to enable such person to apply to the Court for any relief to which he may be entitled.

7. In the past, following the terms of the specimen notice in PD16.4, applicants would post a notice of judgment at the suit premises to satisfy the requirement. In other words, application for leave to issue a writ of possession can only be filed 7 days ***after*** judgment has been given.

8. Given the short processing time of applications for possession in the Lands Tribunal (usually within 6 months) which would produce a smaller risk of change of occupancy in the course of an application, and bearing in mind that it is in the interest of all concerned to bring proceedings of possession to the notice of the occupants as soon as possible, the Judiciary believes that the objective of Order 45 Rule 3 and PD 16.4 could be better served by giving notice of proceedings to all occupants before judgment. Accordingly, the Judiciary **recommends** that applicants should be permitted to post the notice of proceedings at an early stage ***before*** judgment is given. This would shorten the process for recovering of possession.

9. This recommendation has been implemented. As from 21 February 2005, the Tribunal has introduced a new practice, permitting applicants to post the notice of proceedings either before or after judgment has been given. New specimen bilingual notices (which can be used as an alternative to those annexed to PD16.4) are provided. The new practice and specimen notices are promulgated by a set of administrative guidelines obtainable at the Lands Tribunal Registry and accessible at the Judiciary's website.

II. Amendments to LTR

<u>Method of Service for All Types of Cases</u>

10. Currently, under Rule 7, service of document required to be served on any person may be effected -

> "(a) if the person is acting by a solicitor, by delivering it to or leaving it for the solicitor or sending it by ordinary post addressed to the solicitor, at the address for service or at his place of business;
>
> (b) if the person is not acting by a solicitor, by delivering it to him personally or by leaving it for him or sending it by ordinary post addressed to him at the address for service, or, if none is given, at his last known or usual place of abode or business in Hong Kong;
>
> (c) in such other manner as the Tribunal may direct."

11. The Judiciary **recommends** that Rule 7 be amended to provide a statutory recognition of service of documents in applications before the Tribunal to be effected by insertion into letterboxes of the premises of the parties. This will be convenient for the parties, as most of them are landlords and tenants of known premises or neighbours of a housing estate. This is similar to O. 10 r. 1(2) of the RHC and O. 10 r.1(2) of the Rules of the District Court ("RDC") (Cap. 336H) providing a similar mode of service.

Service of Writ for Repossession of Premises

12. At present, the requirement for the posting of the notice of application for repossession in the LTR is different from that in the RHCand the RDC. In the latter two instances, for ordinary claim for possession, O.10 r. 4(2) of the RHC and O. 10 r. 4(2) of the RDC prescribe that the writ must be posted in a conspicuous place on or at the entrance to the premises by way of additional requirement as to service, viz. -

> "**Service of writ in certain actions for possession of premises or land (O. 10, r. 4**)
>
> (HK)(2) Where a writ is indorsed with a claim for the recovery, or delivery of possession, of premises or land, in addition to, and not in substitution for any other mode of service, a copy of the writ shall be posted in a conspicuous place on or at the entrance to the premises or land recovery or possession of which is claimed."

However, there is no such requirement in respect of proceedings in the Lands Tribunal.

13. Having reviewed the above requirements, it is considered that there should be uniform procedures in the three levels of court. Moreover, it is in the interest of all concerned that the application should be posted at the suit premises at an early stage so that third parties in occupation may take whatever action they deem necessary.

14. Accordingly, the Judiciary **recommends** that the relevant requirement in Rule 7 of the LTR should be amended to include an express requirement to post the notice of application for repossession at the suit premises as and when the application is issued, as is currently required under Order 10, Rule 4(2) of the RHC and the RDC.

Notice of Opposition in Application for Possession of Premises

15. Rule 69(1) provides that the respondent to an application for possession of premises shall file and serve a notice of opposition within 14 days of the service of the notice of application upon him. The Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (No. 16 of 2004) introduced a Rule 69(2), which provides that the period should be reduced to 7 days if the tenancy has been terminated by notice of termination, notice to quit, surrender, effluxion of time or a transitional termination notice under Ordinance No. 16.

16. However, the shortened opposition period does not apply to, inter alia, forfeiture for non-payment of rent cases. There may be cases where the applicant will rely on more than one ground for possession and one of the grounds will be forfeiture for non-payment of rent. In such cases, it will be confusing for the respondent to consider when to file and serve the notice of opposition. In fact, non-payment of rent cases, which constitute the overwhelming majority of possession cases, are mostly quite simple and straightforward. The Judiciary sees no reason why the shortened opposition period of 7 days should not be extended to all other possession cases.

17. The Judiciary therefore **recommends** that the period for filing and service of the notice of opposition in all possession claims in the Tribunal should be reduced to 7 days. This can produce a saving of 7 days, and avoid confusion particularly for those who are not legally represented. Should there be any need for a longer period for the preparation of the notice of opposition, the Tribunal can allow an extension of time.

Listing for Hearing for Possession Cases

18. Under Rule 14, if the respondent has filed and served the notice of opposition to an application lodged in the Tribunal or if no such notice is filed within the prescribed time, any party can file a Form 31 to ask for the case to be listed for hearing. Upon receipt of the Form 31, the Registrar shall wait for at least 3 days before listing the application for hearing and to give the parties notice of the hearing date on the fourth day at the earliest. The date when the parties are given notice of hearing shall be at least 14 clear days before the hearing date as fixed. The procedures under Rule 14 have lengthened the processing time of applications for possession.

19. The Judiciary **recommends** that the Rule 14 be amended to the effect that, once a notice of opposition has been filed in a possession case, the Registrar should fix a date for the hearing of the case automatically, without the need of either party to file a Form 31. This can produce a saving of at least 4 days as well as one visit by the applicant to the Tribunal to submit Form 31.

20. The above recommendations together would result in a maximum reduction of 18 days in the statutory time limits of the various steps in an application for repossession of premises without compromising fairness, viz. –

(a) 7 days resulting from the posting of notice before judgment to satisfy PD16.4 for cases based on grounds other than non-payment of rent;

(b) 7 days resulting from the reduction of the opposition period under Rule 69; and

(c) 4 days resulting from the removal of the Form 31 requirement under Rule 14.

For a straight-forward case (other than a non-payment of rent case), the time for the application stage (from application for possession to application for writ of possession) will be reduced from 47 days to 29 days as illustrated at **Annex B**.

Annex B

Interlocutory Procedure for All Types of Cases

21. Rule 4 sets out the procedure for interlocutory applications before the Tribunal, viz. -

> "**4 Interlocutory procedure**
> (1) An interlocutory application unless the Tribunal otherwise permits shall be made in writing by filing with the Registrar an application substantially in accordance with Form 1.
> (2) If an interlocutory application is made with the consent of all parties then evidence of every such consent shall be endorsed on or filed with the application.
> (3) Except where subrule (2) applies, an interlocutory application shall be accompanied by a certificate that the other parties have been served pursuant to rule 6.
> (4) Any party who objects to the application shall within 7 days after service on him file and serve on the other parties a statement of the grounds of his objection or notice that he wishes to be heard.
> (5) The Tribunal shall afford any party who gives notice that he wishes to be heard an opportunity to appear and be heard on the application."

Rule 4(3), (4) and (5) appear to be redundant and unnecessary. The 7 days provided for in Rule 4(4) could delay the disposal of interlocutory applications. Rule 4(3) and (5) are unnecessary, as the High Court practice can be followed, without any express rules for these matters. These rules do not advance the objective of disposal of business in the Lands Tribunal expeditiously.

22. The Judiciary **recommends** the deletion of Rules 4(3), (4) and (5). By reason of Section 10(1)[2] of the LTO, the Tribunal can follow the practice in the Court of First Instance without those sub-rules.

Schedule – Forms

23. Currently, there are three forms prescribed for use in building management applications under the Building Management Ordinance (Cap. 344). They are Forms 27, 28 and 29. Form 28, Notice of Application to Dissolve Management Committee and Appoint an

---

[2] **Section 10 – Practice and procedure of Tribunal**
(1) The Tribunal shall have the powers which are vested in the Court of First Instance in the exercise of its civil jurisdiction … … and, so far as it thinks fit, may follow the practice and procedure of the Court of First Instance in the exercise of its civil jurisdiction.

Administrator or Notice of Application to Remove and Replace an Administrator under the Building Management Ordinance, does not appear to be appropriate for the purpose it was designed. The Judiciary **recommends** that Form 28 be deleted. Any application in relation to matters for which Form 28 was designed can be made in Form 29.

III. Amendments to Primary Legislation

Jurisdiction

Types of Possession Claims

24. The Lands Tribunal is a specialised tribunal for adjudicating disputes relating to land or interest in land. At present, applications by landlords for possession of premises constitute nearly half of the workload of the Tribunal. Section 8 of the LTO sets out the jurisdiction of the Tribunal. The following categories of tenancies are outside the jurisdiction of the Tribunal -

(a) Tenancies within the scope of the Landlord and Tenant (Consolidation) Ordinance ("LTCO") (Cap. 7) terminated on grounds **other than** (i) by forfeiture, (ii) by surrender, (iii) by notice of termination, (iv) by notice to quit given by the landlord to the tenant or the tenant to the landlord or (v) by effluxion of time-since 9 July 2004 (see section 8(7) and Ordinance No. 16 of 2004); and

(b) Certain tenancies like tenancies for agricultural lands, some domestic tenancies for fixed terms of 5 years or more, and some non-domestic tenancies for fixed terms of 3 years or more (see sections 116 and 121 of the LTCO).

25. If these tenancies were entered into on or after 9 July 2004 and are terminated by effluxion of time, the Tribunal can assume jurisdiction for possession claims pursuant to their termination. This is the result of the enlargement of jurisdiction by Ordinance No. 16 of 2004. However, if these tenancies were entered into before 9 July 2004, or even if they were entered into on or after that date but are terminated otherwise than by effluxion of time, applications for possession pursuant to their termination are outside the jurisdiction of the Tribunal. These applications have to be lodged with the Court of First Instance or the District Court.

26. Members of the public who are not legally represented may not appreciate the Tribunal's lack of jurisdiction for some possession claims. Some applicants may have to be turned away by the Tribunal for lack of jurisdiction or the Tribunal may have to transfer such claims to the Court of First Instance or the District Court. Inconvenience would thus be caused to these applicants.

27. The Judiciary **recommends** that the Lands Tribunal, being a specialised tribunal, should have comprehensive jurisdiction to adjudicate all types of possession claims regardless of the basis of such claims. It can generally dispose of possession claims efficiently. This recommendation will provide applicants of all types of claims with an option to have their claims dealt with in the Tribunal.

Award of Damages

28. Pursuant to section 8(8), the Tribunal at present can only order the tenants to pay rent and mesne profits up to the day of removal. It has no jurisdiction to order either party, who has committed a breach of the tenancy, to pay damages to indemnify the loss of the other party. In the event that either party to an application should also claim damages for breach of tenancy, or where a landlord may wish to claim damages in terms of loss of rental for the remaining term when there is a fall in the market rent of the property, the application would have to be transferred to the Court of First Instance or the District Court.

29. The Judiciary **recommends** that the Tribunal be given the jurisdiction to award damages whether or not rent and mesne profits are also claimed.

<u>Practice and Procedure of the Tribunal</u>

30. The types of cases dealt with in the Tribunal may vary from simple possession cases to highly complicated compensation claims. In order to afford the Tribunal the flexibility to adopt suitable practice and procedure to deal with each case depending on its circumstances, the Judiciary **recommends** that Section 10 be amended in a manner to make it clear that the Tribunal should generally have the same power and jurisdiction as that of the Court of First Instance on matters of practice

and procedure, and the references to specific matters in the original version could be deleted.

Costs

31. There have been conflicting judicial decisions on whether the Registrar of the District Court has the power to tax the Tribunal's orders of costs. Since the Registrar of the District Court also serves as the Registrar of the Lands Tribunal and the Presiding Officers of the Tribunal are Judges of the District Court, the Judiciary takes the view that it is desirable to clarify that the Registrar of the District Court and the Masters in the District Court have the power to tax bills relating to proceedings in the Lands Tribunal. Accordingly, the Judiciary **recommends** an amendment to section 12 of the LTO to spell out clearly that the Registrar of the District Court has the power to tax the Tribunal's orders of costs. Moreover, the Presiding Officers and Members of the Tribunal should be given the express power to carry out summary assessment of the amount of costs payable under the Tribunal's orders of costs.

Transfer of Proceedings from the District Court to Lands Tribunal

32. Under section 8A of the LTO, the Lands Tribunal can transfer its proceedings to the Court of First Instance or the District Court. From time to time, the District Court may receive applications for proceedings, which should be commenced in the Tribunal but are wrongly instituted in the District Court. The Judiciary **recommends** the addition of a power to the District Court to transfer any proceeding to the Tribunal as the District Court may deem appropriate, so that such wrongly instituted proceedings can be transferred to the Tribunal rather than being dismissed. This recommendation can be implemented by amending section 42 of the District Court Ordinance ("DCO") (Cap. 336) to include the Tribunal as a venue for transfer.

IV. Suggestions Not to be Pursued

Application for Default Judgment at the Time of Application

33. We have considered the Panel's suggestion in paragraph 2(a) above that an applicant should be given an option to submit an application for default judgment at the time when he submits the

originating application for possession. If such an option should be allowed, the applicant would not have to wait until after the expiry of the time for the filing of a notice of opposition by the respondent before applying for default judgment. With such an application and an affidavit of service as currently required under LTR 10, should the respondent fail to file the notice of opposition in time, the application for default judgment could be processed automatically without the need of a further attendance by the applicant. This can save the applicant's trouble of one visit to the Tribunal for submitting the application for default judgment under LTR 15, but it would not produce any saving in time.

34. However, it should be noted that there is a significant number of cases which will not proceed beyond the filing and possibly service of an originating application for possession by the applicant. These cases will become dormant. In 2003, 947 out of 4,000 (23.67%) applications under Part IV and 424 out of 1,616 (26.23%) applications under Part V of the LTCO were unresolved. The overwhelming majority of these unresolved cases were dormant and did not proceed beyond the filing and possibly service of the originating applications. These cases must presumably have been resolved by settlement or by surrender. The processing of applications for default judgment for such dormant cases will result in substantial manpower wastage. The Judiciary therefore considers that the idea should not be pursued.

Fixing a Call-over Hearing Date upon Filing of Application

35. We have also considered the Panel's suggestion in paragraph 2(b) above as to whether it is possible to fix a call-over date upon the filing of an application for order of possession. If the respondent should fail to file a notice of opposition within time, the call-over date could then be cancelled and the application would automatically be passed for processing of default judgment. The trouble with this procedure is that when there is no notice of opposition filed in time, there will be the need for the staff of the Tribunal to notify the parties about the cancellation of the call-over hearing. There may be many enquiries by applicants and respondents on whether a notice of opposition has been filed in time, and whether the call-over hearing has been cancelled. All these will cause confusion and unwarranted administrative difficulties. The extra work involved will outweigh any advantage to be gained. The Judiciary considers that the suggestion should not be pursued.

36. Although the suggestions in paragraphs 33-35 are not pursued, the Judiciary believes that with the implementation of the recommendations referred to above, the processing time for repossession cases will be significantly reduced.

Proposed Way Forward

37. The Judiciary has informed the Housing, Planning and Lands Bureau ("HPLB") and the Home Affairs Bureau ("HAB") on the recommendations concerning their respective purviews, and will proceed to consult the two legal professional bodies on the recommendations requiring legislative amendments.

38. Subject to Members' views, and the outcome of the consultation with the legal professional bodies, the Judiciary will –

(a) implement the recommendations requiring legislative amendments to the LTR by introducing amendment rules for LegCo's negative vetting in due course; and

(b) liaise with the Administration on the implementation of recommendations requiring legislative amendments to the LTO and the DCO.

Judiciary Administration
April 2005

Review of the Lands Tribunal Ordinance ("LTO") (Cap. 17) and the Lands Tribunal Rules ("LTR") (Cap. 17A)

Summary of Recommendations

I. Revised Administrative Procedures

1. Applicants for repossession of premises should be permitted to post the bilingual notices of proceedings either before or after judgment is given. The Lands Tribunal to provide new specimen forms for posting before judgment.

II. Amendments to LTR

Method of Service for All Types of Cases

2. Rule 7 should be amended to provide a statutory recognition of service of documents in applications before the Tribunal to be effected by insertion into letterboxes of the premises of the parties.

Service of Writ for Repossession of Premises

3. Rule 7 should be amended to include an express requirement to post the notice of application for repossession at the suit premises as and when the application is issued, as is currently required under Order 10, Rule 4(2) of the Rules of the High Court and the Rules of the District Court.

Notice of Opposition in an Application for Possession of Premises

4. Rule 69(1) should be amended to reduce the period for filing and service of the notice of opposition in all possession claims from 14 days to 7 days. Should there be any need for a longer period for the preparation of the notice of opposition, the Tribunal can allow an extension of time.

Listing for Hearing for Possession Cases

5. Rule 14 should be amended to the effect that, once a notice of opposition has been filed in a possession case, the Registrar should

fix a date for the hearing of the case automatically, without the need of either party to file a Form 31.

Interlocutory Procedure for All Types of Cases

6. Rules 4(3), (4) and (5) should be deleted.

Schedule - Forms

7. Form 28 should be deleted. Any application in relation to matters for which Form 28 was designed can be made in Form 29.

III. Amendments to Primary Legislation

Jurisdiction

Types of Possession Claims

8. Section 8 of the LTO should be amended to confer comprehensive jurisdiction on the Lands Tribunal to adjudicate all types of possession claims regardless of the basis of such claims.

Award of Damages

9. Section 8 of the LTO should be amended to give the Tribunal the jurisdiction to award damages solely as well as in addition to rent and mesne profits.

Practice and Procedure of the Tribunal

10. Section 10 of the LTO should be amended in a manner to make it clear that the Tribunal should generally have the same power and jurisdiction as that of the Court of First Instance on matters of practice and procedures, and the references to specific matters in the original version could be deleted.

Costs

11. Section 12 of the LTO should be amended to spell out clearly that the Registrar of the District Court has the power to tax the Tribunal's orders of costs. Moreover, the Presiding Officers and Members of the Tribunal should be given the express power to

carry out summary assessment of the amount of costs payable under the Tribunal's orders of costs.

Transfer of Proceedings from the District Court to Lands Tribunal

12. Section 42 of the District Court Ordinance ("DCO") (Cap. 336) should be amended to include the Lands Tribunal as a venue for transfer.

IV. Suggestions Not to be Pursued

13. The suggestion to allow application for default judgment at the time of application for possession should not be pursued.

14. The suggestion to fix a call-over date upon the filing of an application for order of possession should not be pursued.

———————

Application Procedures for Repossession of Premises
(from Application for Possession to Application for Writ of Possession)

Existing Procedures

Day 1	Filing of application & affidavit of service
Day 3	Service of application effected – PD19.2
Day 4-17	Opposition period - 14 days under Rule 69(1)
Day 18	Filing of application to list for hearing (Rule 14)
Day 19-21	3 days as required under Rule 14(1)(b)
Day 22	Listing officer to fix date and send out notice
Day 23-39	2 days for service to be effected – PD19.2 14 days as required under Rule 14(1)(b) 1 day hearing by Tribunal and grant of repossession order
Day 40-46	3 days posting up of order at suit premises and 4 clear days grace period (PD 16.4) Concurrent running of 7-day relief period for non-payment of rent cases under s 21F of High Court Ordinance
Day 47	Filing of Application for Writ of Possession

Total: 47 days

Reformed Procedures

Day 1	Filing of application & affidavit of service
Day 3	Service of application effected – PD19.2 Posting of Notice (3 + 4 days under PD16.4)
Day 4-10	Opposition period (7 days under revised Rule 69(1))
Day 11	Listing officer to fix date and send out notice
Day 12-28	2 days for service to be effected – PD19.2 14 days as required under Rule 14(1)(b) 1 day hearing by Tribunal and grant of repossession order
Day 29	Filing of Application for Writ of Possession (other than non-payment of rent cases)
Day 29-35	7-day relief period for non-payment of rent cases under s 21F of High Court Ordinance
Day 36	Filing of Application for Writ of Possession for non-payment of rent cases

Total: 29 days (Other than non-payment of rent cases)
36 days for non-payment of rent cases

Note: The chart illustrates a straightforward case. The same process can, however, take longer time depending on the circumstances of the case.

Appendix II

Court procedure for repossession of premises – Review of Lands Tribunal Ordinance and Lands Tribunal Rules

Relevant papers

Meeting	**Meeting Date**	**Papers/Motion Passed**
Panel on Administration of Justice and Legal Services	29 January 2004	Paper provided by the Judiciary Administration on "Court Procedure for Repossession of Premises" [LC Paper No. CB(2)1100/03-04(03)] Relevant extract from the report of the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001 [LC Paper No. CB(2)1100/03-04(04)] Letter dated 10 January 2004 from Secretary for Housing, Planning and Lands [LC Paper No. CB(2)1100/03-04(05)] *(English version only)* Minutes of meeting [LC Paper No. CB(2)1741/03-04]
	24 May 2004	Paper provided by the Judiciary Administration on "Court Procedure for Repossession of Premises" [LC Paper No. CB(2)2427/03-04(03)] Letter dated 4 May 2004 from Secretary for Housing, Planning and Lands [LC Paper No. CB(2)2345/03-04(01)] *(English version only)* A referral from the Complaints Division of the Legislative Council Secretariat [LC Paper No. CB(2)2457/03-04(01)] *(Chinese version only)* Letter dated 21 May 2004 from the Law Society of Hong Kong [LC Paper No. CB(2)2490/03-04(01)] *(English version only)*

Meeting	**Meeting Date**	**Papers/Motion Passed**
		Minutes of meeting [LC Paper No. CB(2)3044/03-04]
Panel on Administration of Justice and Legal Services	25 April 2005	Background brief prepared by the LegCo Secretariat on "Court procedure for repossession of premises" [LC Paper No. CB(2)1320/04-05(01)] Paper provided by the Judiciary Administration on "Review of the Lands Tribunal Ordinance (Cap. 17) and the Lands Tribunal Rules (Cap. 17A) [LC Paper No. CB(2)1320/04-05(02)] Submission from the Hong Kong Bar Association on "Review of the Lands Tribunal Ordinance (Cap. 17) and the Lands Tribunal Rules (Cap. 17A) [LC Paper No. CB(2)1360/04-05(01)] *(English version only)* Minutes of meeting [LC Paper No. CB(2)2057/04-05]
		Hong Kong Bar Association's revised comments on the recommendations of the Judiciary's review of the Lands Tribunal Ordinance (Cap. 17) and the Land Tribunal Rules (Cap. 17A) [LC Paper No. CB(2)1466/04-05(01)] *(English version only)*
		Correspondence between the Hong Kong Bar Association and the Judiciary Administration on "Court procedure for repossession of premises" [LC Paper Nos. CB(2)1757/05-06(01)-(02)] [LC Paper Nos. CB(2)3023/05-06(01)-(02)] *(English version only)*