

**Legislative Council 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

This paper informs Members of –

- (a) the outcome of the Judiciary Administration’s consultation with the two legal professional bodies on the review of the Lands Tribunal Ordinance (“LTO”) (Cap. 17) and the Lands Tribunal Rules (“LTR”) (Cap. 17A), hereafter referred to as “the Review”; and
- (b) the way forward for the legislative amendment exercise to implement the recommendations arising from the Review.

Background

2. At the AJLS Panel meeting on 25 April 2005, Members discussed the Judiciary Administration’s paper on the Review (LC Paper No. CB(2)1320/04-05(02)). Members noted that the Judiciary Administration would consult the two legal professional bodies on the Review, and requested us to report to the Panel on the outcome of the consultation.

Present Position

3. The Judiciary has consulted the two legal professional bodies on the Review, and the draft Amendment Rules to implement those recommendations requiring amendments to the LTR.

Comments from the Law Society

4. The Law Society has indicated that it endorsed the proposals in the Review to streamline the repossession of premises; and had no comments on the draft Amendment Rules.

Comments from the Bar Association

5. The Bar Association has commented on certain recommendations in the Review, and the Judiciary has responded to these comments. The relevant correspondence has been copied to the AJLS Panel. The issues raised by the Bar and the Judiciary's responses to them are summarized below.

Notice of Opposition (LTR Rule 69)

6. The Bar has questioned the reason for the proposed reduction of the period for filing and service of the notice of opposition from 14 days to 7 days in non-payment of rent claims, and was concerned that this might compromise fairness in such cases.

7. The Judiciary has responded as follows -

- (a) The limited applicability of the 7-day period for filing of opposition under the rule 69(2) to certain tenancies only, but not to non-payment of rent cases, might cause confusion to respondents;
- (b) As most non-payment of rent cases are simple and straightforward, the period for filing of opposition should be aligned with that for all other possession claims under Rule 69(2) to avoid confusion;
- (c) The period for filing of opposition is always subject to the overriding power of the Lands Tribunal to grant extension of time to do justice between the parties; and
- (d) A Notice of Opposition filed out of time may be accepted, provided that no default judgment has been entered.

8. We have agreed to the Bar's suggestion for future monitoring. In the first year after the commencement of the Amendment Rules, the Lands Tribunal will keep statistics on (i) the number of applications made by the respondents for extension of time for filing of notice of opposition; (ii) the number of such applications granted; (iii) the number of extensions granted on the Tribunal's own volition; and (iv) the number of applications dismissed. We will send the relevant statistics to the AJLS Panel for information in due course.

Interlocutory Procedure (LTR Rule 4)

9. The Bar is concerned about the proposed deletion of Rules 4(3)–(5), as these rules provide for certain rights and obligations for the parties in Lands Tribunal proceedings. In particular, the Bar is of the view that Rule 4(5) confers a right on a non-party to be heard on an interlocutory application. It is concerned that the deletion of these rules would mean that parties have to find out their rights and obligations from another set of Rules, namely the Rules of the High Court ("RHC") (Cap. 4A), and this might pose problems to litigants in person.

10. The Judiciary has responded as follows -

- (a) Rule 4(3) only imposes a requirement of a certificate of service pursuant to Rule 6, which provides parties with the right to be served with documents, including those for interlocutory applications. Having regard to the practical experience in the Lands Tribunal, it is considered unnecessary to retain rule 4(3) to ensure compliance with the service requirement in Rule 6;
- (b) As regards the proposed deletion of Rule 4(4), reference has been made to the practice in the Court of First instance ("CFI") and the District Court ("DC"), where interlocutory applications can be disposed of 2 clear days after the service of the summons. Following the deletion of Rule 4(4), Rule 4 would be amended to import the practice in Order 32 rule 3(1)¹ of the RHC to provide that, save for summons for

¹ **3. Services of summons** (O. 32, r. 3)

A summons asking only for the extension or abridgement of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these rules otherwise provides, a summons must be served on every other party not less than 2 clear days before the day so specified.

abridgement of time, an interlocutory application should be served on the parties 2 clear days before the date of hearing of the application.

- (c) The proposed deletion of Rule 4(5) does not mean that the Lands Tribunal will not afford an 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. Whilst Rule 4(5) affords “*any party*” to an application to be heard, a *non-party* who wishes to intervene would have to apply to become a party under Order 15, Rule 6 of the RHC in any event. That said, having considered the Bar’s comments, the Judiciary has decided to retain Rule 4(5) in the LTR.

Types of Possession Claims (LTO section 8)

11. The Bar has questioned whether the proposed amendment to section 8 of the LTO is recommended to give the Lands Tribunal exclusive jurisdiction over all types of possession claims regardless of their basis.

12. The Judiciary has clarified that the proposed amendments to section 8 seek to give the Lands Tribunal a comprehensive non-exclusive jurisdiction over all types of possession cases. This is in addition to its existing jurisdiction, dealing with, among other things, common law claims of termination by notice to quit, forfeiture by breach of tenancy (including non-payment of rent) cases, and cases of termination by transition notice of termination.

Award of Damages (LTO Section 8)

13. The Bar has questioned the need to amend section 8 of the LTO to give the Lands Tribunal the jurisdiction to award damages solely as well as in addition to rent and mesne profits, as it considers that the existing section 8(9) already empowers the Lands Tribunal to award damages.

14. The Judiciary has pointed out that section 8(9) of the LTO is not broad enough to encompass the making of an order for possession on acceptance of repudiation of tenancy agreement and consequential award

of damages. This ground of possession is becoming more and more common as an alternative to claims for forfeiture. The inclusion of this ground requires the additional power for the Lands Tribunal to award damages as a consequential order. Therefore, the Judiciary proposes to amend section 8(8) to expressly empower the Lands Tribunal to deal with this additional ground of possession and to make the consequential order. The proposed amendment does not seek to empower the Lands Tribunal to award damages that may go beyond its jurisdictional limit on the types of cases it can entertain.

Jurisdiction of the Tribunal (LTO Section 10)

15. The review recommends that section 10 of the LTO should be amended to make it clear that the Lands Tribunal should generally have the same power and jurisdiction as that of the CFI on matters of practice and procedures. The Bar (i) has asked whether the proposed amendment would empower the Lands Tribunal to grant injunctions, bearing in mind that the District Court in its jurisdiction did not generally have the power to do so; and (ii) is concerned that the proposed deletion of the specific matters under section 10(1) might pose difficulty to litigants in person in understanding the procedural law of the Lands Tribunal.

16. The Judiciary has clarified that -

- (a) The Lands Tribunal currently has the power to grant injunctions. This power is often exercised in obstruction of common area cases in the building management context.
- (b) It is not recommended that the whole of section 10(1) be deleted, but only paragraphs (a) to (i) thereunder, which may appear to restrict the Lands Tribunal's powers to adopt the High Court's practice and procedure to these specific matters only. The proposed deletion would make it clear that the Lands Tribunal has the flexibility to adopt the High Court practice and procedures generally.

17. Having noted the Judiciary's position and clarifications on the above issues, the Bar Association has indicated either agreement to the proposed amendments or no further comments.

Way Forward

18. Subject to any further views Members may have, we will proceed to introduce the necessary Amendment Rules into the Legislative Council for negative vetting.

19. As for the proposed amendments to the LTO, we are liaising with the Administration, with a view to introducing the necessary amendments in due course.

Judiciary Administration
November 2006