

## LEGISLATIVE COUNCIL BRIEF

### Lands Tribunal Ordinance (Chapter 17)

#### LANDS TRIBUNAL (AMENDMENT) RULES 2006

#### INTRODUCTION

On 22 December 2006, the Chief Justice made the Lands Tribunal (Amendment) Rules 2006 (“the Amendment Rules”) at **Annex** under section 10(3) of the Lands Tribunal Ordinance (“LTO”) (Cap. 17).

**Annex**

#### JUSTIFICATIONS

2. In December 2004, the Judiciary completed a review of the Lands Tribunal Rules (“LTR”) (Cap.17A) and recommended certain amendments, with a view to streamlining the application procedures for the repossession of premises and expediting the processing of claims in the Lands Tribunal (“the Tribunal”). The Amendment Rules at **Annex** are made to implement the recommendations arising from the review as set out in paragraphs 3 – 15 below.

#### Interlocutory Procedure

3. Rule 4 of the LTR 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.”

Rules 4(3) and (4) are considered to be redundant and unnecessary. The 7 days provided for in Rule 4(4) could delay the disposal of interlocutory applications. Rule 4(3) is 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 Tribunal expeditiously.

4. The Judiciary recommends the deletion of Rules 4(3) and (4). Amendments should be made to align the practice in the Tribunal with that in the Court of First Instance, by requiring an interlocutory application to be served on the parties to the application 2 clear days before the date of hearing, and removing the mandatory requirement on the opposing party to serve a statement of the grounds of objection.

#### Method of Service

5. Currently, under Rule 7 of LTR, 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.”

6. 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 Rules of High Court (“RHC”) (Cap. 4A) and O. 10 r.1(2) of the Rules of the District Court (“RDC”) (Cap. 336H) providing a similar mode of service.

7. At present, the requirement for the posting of the notice of application for repossession in the LTR is different from that in the RHC and 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 Tribunal.

8. 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.

9. 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.

### Listing for Hearing

10. 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.

11. The Judiciary recommends that the Rule 14 of LTR 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.

### Notice of Opposition

12. 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 of 2004.

13. 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.

14. 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.

#### Schedule – Forms

15. 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 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.

#### **THE AMENDMENT RULES**

16. The Amendment Rules at **Annex** amend the LTR to –
- (a) align with the practice in the Court of First Instance by requiring an interlocutory application to be served on the parties to the application 2 days before the date of hearing of the application, and remove the mandatory requirement on the opposing party to serve a statement of the grounds of objection (rule 2);
  - (b) provide that service of documents on a person acting in person may be effected by inserting the relevant document through the letter box for the address for service (rule 3);
  - (c) require an applicant for an order for possession of any premises to post a copy of the notice of application for recovery of possession in a conspicuous place on the premises (rule 4);
  - (d) provide that the Registrar shall list an application for an order for possession of any premises for hearing when a notice of opposition in relation to the application has been filed (rule 5);

- (e) require a respondent to an application for recovery of possession to file and serve a notice of opposition within 7 days of service of the notice of application on him (rule 10); and
- (f) provide that proceedings under section 31 of the Building Management Ordinance (Cap. 344) shall be commenced by the filing of a notice substantially in accordance with Form 29 in the Schedule to the Rules (rules 11 and 12).

## **LEGISLATIVE TIMETABLE**

17. The Amendment Rules will be gazetted on 29 December 2006 and tabled at the Legislative Council on 10 January 2007 for negative vetting. Subject to the Legislative Council's approval of the Amendment Rules by negative vetting, the Judiciary aims to bring the Amendment Rules into operation in April 2007. The commencement date of the Amendment Rules will be appointed by the Chief Justice by notice published in the Gazette.

## **PUBLIC CONSULTATION**

18. The Judiciary has consulted the two legal professional bodies on the recommendations arising from the review and the draft Amendment Rules. The Law Society has endorsed the proposals to streamline the repossession of premises and had no comments on the draft Amendment Rules. The Bar Association's comments have been taken into account and reflected in the Amendment Rules. The Legislative Council Panel on Administration of Justice and Legal Services was consulted on 25 April 2005 and 27 November 2006. The Panel indicated general support for the recommendations and requested the early introduction of the Amendment Rules.

## **PUBLICITY**

19. Publicity materials on repossession procedure in the Tribunal would be updated to promulgate the changes in due course.

## **ENQUIRY**

20. Any enquiry on this brief can be addressed to Miss Vega Wong, Assistant Judiciary Administrator (Development), at 2825 4244.

Judiciary Administration  
December 2006

## **LANDS TRIBUNAL (AMENDMENT) RULES 2006**

(Made by the Chief Justice under section 10(3) of the  
Lands Tribunal Ordinance (Cap. 17) after  
consultation with the President of the  
Lands Tribunal)

### **1. Commencement**

These Rules shall come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

### **2. Interlocutory procedure**

(1) Rule 4 of the Lands Tribunal Rules (Cap. 17 sub. leg. A) is amended by adding –

“(2A) An interlocutory application (other than an application for an abridgement of any period of time) shall be served on the other parties not less than 2 clear days before the day specified in the application for the hearing of the application.”.

(2) Rule 4(3) and (4) is repealed.

### **3. Method of service**

(1) Rule 7(1)(b) is repealed and the following substituted –

“(b) if the person is not acting by a solicitor –

(i) by delivering the document to him personally;

(ii) by leaving the document for him at the address for service or, if no address for service is given, at his last known or usual place of abode or business in Hong Kong;

(iii) by sending the document by ordinary post addressed to him at the address for service or, if no address for service is given, at his last known or usual place of abode or business in Hong Kong;

- (iv) if there is a letter box for the address for service, by inserting through the letter box the document that is enclosed in a sealed envelope addressed to him; or
- (v) if no address for service is given and if there is a letter box for his last known or usual place of abode or business in Hong Kong, by inserting through the letter box the document that is enclosed in a sealed envelope addressed to him;”.

(2) Rule 7(3) is amended by repealing “subrules (1)(a) and (b) and (2)” and substituting “this rule,”.

#### **4. Rule added**

The following is added –

**“7A. Additional requirement for service of notice of application for order for possession**

An applicant for an order for possession of any premises shall, as soon as practicable after filing a notice of application for recovery of possession with the Registrar, post a copy of the notice in a conspicuous place on or at the entrance to the premises.”.

#### **5. Listing for hearing**

(1) Rule 14(1) is amended by repealing “(1)” and substituting –

“(1) In relation to an application (other than an application for an order for possession of any premises) –”.

(2) Rule 14(1)(a) is amended, in the English text, by repealing “Where” and substituting “where”.

(3) Rule 14(1)(a) is amended by repealing “hearing.” and substituting “hearing;”.

(4) Rule 14(1)(b) is amended, in the English text, by repealing “At” and substituting “at”.

(5) Rule 14(1)(b) is amended by repealing “parties.” and substituting “parties;”.

(6) Rule 14(1)(c) is amended, in the English text, by repealing “The” and substituting “the”.

(7) Rule 14(1)(c) is amended by repealing “fit.” and substituting “fit; and”.

(8) Rule 14(1)(d) is amended by repealing “Any party to an application” and substituting “any party”.

(9) Rule 14 is amended by adding –

“(1A) In relation to an application for an order for possession of any premises –

(a) where a notice of opposition has been filed, the Registrar shall as soon as practicable list the application for hearing and give notice to all parties, which shall be not less than 14 clear days, or such other period as may be agreed by the parties; and

(b) any party to the application may, at any time before the application has been listed for hearing, make representations to the Registrar with regard to the listing.”.

## **6. Expert evidence**

(1) Rule 20(1) is amended by adding “or (1A)” after “rule 14(1)”.

(2) Rule 20(3) is amended by adding “or (1A)” after “rule 14(1)”.

**7. Enlargement or abridgement of time**

- (1) Rule 32(1)(c) is amended by repealing the comma and substituting “; or”.
- (2) Rule 32(1) is amended by adding –  
“(d) serving any document,”.

**8. Service of notice of listing for hearing**

- (1) Rule 63 is amended, in the heading, by repealing “**listing for**”.
- (2) Rule 63 is amended by repealing “listing of application has been given by the Registrar under rule 14” and substituting “hearing has been given by the Registrar under rule 14(1)”.

**9. Application for hearing appeal**

Rule 66(2) is amended by repealing “rule 14” and substituting “rule 14(1)”.

**10. Notice of opposition**

- (1) Rule 69(1) is repealed and the following substituted –
  - “(1) The respondent who wishes to oppose the application shall, within 7 days of service of the notice of application upon him –
    - (a) file with the Registrar a notice of opposition substantially in accordance with Form 7 stating the grounds of opposition and that he wishes to be heard; and
    - (b) serve a copy of the notice of opposition on the applicant.”.
- (2) Rule 69(2) is repealed.

**11. Commencement of proceedings**

Rule 77(b) is amended by repealing “Form 28” and substituting “Form 29”.

## 12. Forms

- (1) The Schedule is amended, in Form 16, by repealing “19” where it twice appears.
- (2) The Schedule is amended, in Form 16, by adding at the end –  
“\* Delete whichever does not apply.”.
- (3) The Schedule is amended, in Form 22, in the Note, by repealing “14” and substituting “7”.
- (4) The Schedule is amended by repealing Form 28.
- (5) The Schedule is amended, in Form 29, by repealing “[r. 77(c)]” and substituting “[r. 77(b) & (c)]”.
- (6) The Schedule is amended, in Form 29, by repealing “Pursuant to Tenth Schedule, paragraph .....” and substituting “Pursuant to .....”.
- (7) The Schedule is amended, in Form 29, in item 1, by repealing “appropriate paragraph of the Tenth Schedule pursuant to which application” and substituting “provision pursuant to which application is”.
- (8) The Schedule is amended, in Form 29, by repealing “19”.
- (9) The Schedule is amended, in Form 31, by repealing “[r. 14]” and substituting “[r. 14(1)]”.
- (10) The Schedule is amended, in Form 31, by repealing “rule 14” and substituting “rule 14(1)”.
- (11) The Schedule is amended, in Form 31, by repealing “19” wherever it appears.

Chief Justice

22nd December 2006

### **Explanatory Note**

These Rules amend the Lands Tribunal Rules (Cap. 17 sub. leg. A) (“Rules”) to –

- (a) align with the practice in the Court of First Instance by requiring an interlocutory application to be served on the parties to the application 2 days before the date of hearing of the application and remove the mandatory requirement on the opposing party to serve a statement of the grounds of objection (rule 2);
- (b) provide that service of documents on a person acting in person may be effected by inserting the relevant document through the letter box for the address for service (rule 3);
- (c) require an applicant for an order for possession of any premises to post a copy of the notice of application for recovery of possession in a conspicuous place on the premises (rule 4);
- (d) provide that the Registrar shall list an application for an order for possession of any premises for hearing when a notice of opposition in relation to the application has been filed (rule 5);
- (e) require a respondent to an application for recovery of possession to file and serve a notice of opposition within 7 days of service of the notice of application on him (rule 10); and
- (f) provide that proceedings under section 31 of the Building Management Ordinance (Cap. 344) shall be commenced by the filing of a notice substantially in accordance with Form 29 in the Schedule to the Rules (rules 11 and 12).