

CJRS 9/2008

**Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform**

**Proposed Amendments to the
Lands Tribunal Rules (Cap. 17A)**

Purpose

This paper introduces the amendments proposed by the Steering Committee on Civil Justice Reform (“the Steering Committee”) to the Lands Tribunal Rules (“LTR”) (Cap. 17A) for the extension of certain recommendations in the Final Report of the Civil Justice Reform (“CJR”) to the Lands Tribunal (“LT”).

Background

2. Currently, pursuant to section 10(1)¹ of the Lands Tribunal Ordinance (Cap. 17) (“LTO”), the LT has a general power to adopt the practice and procedure of the Court of First Instance (“CFI”) in the exercise of its civil jurisdiction in respect of the matters listed under that section. Following a separate review of the procedures of the LT in 2005, the Judiciary proposed that section 10(1) be amended to make it clear that the LT has a general power to adopt all practice and procedure of the CFI as it thinks fit (and not restricted to the matters currently listed in section 10).

¹

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 in respect of the following matters -
- (a) the attendance, examination and payment of witnesses;
 - (b) the hearing of any matter with the assistance of an assessor or assessors;
 - (c) the consolidation or hearing of any matters;
 - (d) the punishment of persons guilty of contempt;
 - (e) the ordering of inspection of any premises or place;
 - (f) the entering and viewing of any premises or place;
 - (g) the enforcement of decisions, judgments and orders;
 - (h) the making of orders as to interim payments;
 - (i) the making of orders in default of any action by a party,
- 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.

3. In December 2005, the Chief Justice decided that the legislative amendment exercise for the implementation of CJR should apply to the District Court (“DC”) and the LT where appropriate, and expanded the terms of reference of the Steering Committee to oversee the application of the recommendations in the Final Report to the DC and LT.

Present Position

4. With the enactment of the Civil Justice (Miscellaneous Amendments) Ordinance 2008, the following amendments, among others, have been made to the LTO, to -

- (a) Make it clear that the LT has the same jurisdiction, powers and duties of the CFI in respect of its practice and procedure (cf. amendments to section 10 of LTO);
- (b) Introduce a leave requirement for interlocutory and final appeals from the LT to the Court of Appeal (“CA”), so that it can be ascertained that the appeal involves a question of law. Leave would only be granted where (i) the appeal has a reasonable prospect of success or (ii) there is some other reason in the interests of justice why the appeal should be heard (cf. new section 11AA of the LTO); and
- (c) Specify that the Registrar or a Master of the High Court, or the registrar or a deputy registrar or assistant registrar of the LT may tax the costs ordered to be taxed by the LT (cf. new section 12(6) of the LTO).

Proposed Amendments to the LTR

5. Pursuant to the new section 10(1) of the LTO, the LT has a general power to adopt the practice and procedure of the CFI in the exercise of its civil jurisdiction. With such flexibility therefore to adopt the practice and procedure of the CFI, any changes under CJR can likewise be utilized as the LT thinks fit. Following this amendment, amendments are proposed to the LTR to make it clear that the case-management powers of the LT under the existing rule 14(2) are in addition to and do not derogate from any power of the LT conferred by any enactment or rule of law.

6. With the introduction of a leave requirement for appeals from the LT to the CA under the new section 11AA of the LTO, amendments are proposed to the LTR to prescribe the procedures for (i) an appeal against a judgment, order or decision of the registrar of the LT or of a deputy registrar or assistant registrar of the LT; and (ii) an application for leave to appeal against a judgment, order or decision of the LT, and for any subsequent appeal to the CA.

7. Opportunity is also taken in this exercise to replace the references to “Registrar” with “registrar” in the relevant provisions in the LTR for consistency with the term “registrar” in the LTO.

Draft Lands Tribunal (Amendment) Rules 2008 (“Draft LTR”)

8. The following Annexes are attached –

(a) **Annex A** – the latest Draft LTR; and

Annex A

(b) **Annex B** – the marked-up version of the provisions affected by the latest Draft LTR (N.B. The 50 provisions in which references to “Registrar” are replaced with “registrar” are not shown in the marked-up version).

Annex B

Public Consultation

9. As in the case of the latest Draft RHC, most of the proposed amendments to the LTR were contained in the Steering Committee’s two consultation papers, namely, (i) the “*Consultation Paper on Proposed Legislative Amendments for the Implementation of the CJR*” issued in April 2006 for a 3-month consultation, and (ii) the “*Revised Proposals for Amendments to Subsidiary Legislation under the CJR*” issued in October 2007 for 1-month consultation. As regards the proposed amendments in the latest Draft LTR relating to the procedures for appeals and application for leave to appeal, they are largely modeled on the relevant provisions in the latest Draft RDC.

Judiciary Administration
March 2008

LANDS TRIBUNAL (AMENDMENT) RULES 2008

(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 the day appointed for the commencement of the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008)

2. Listing for hearing

Rule 14 of the Lands Tribunal Rules (Cap. 17 sub. leg. A) is amended by adding –

"(3) Subrule (2) is in addition to and does not derogate from any power of the Tribunal conferred by any enactment or rule of law."

3. Rules added

The following are added –

"30A. Appeals from registrar to presiding officer

(1) An appeal to a presiding officer from a judgment, order or decision of the registrar may be made, irrespective of whether the judgment, order or decision was given or made on the basis of written submissions only or after hearing.

(2) The appeal must be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice in the form specified by the Tribunal, requiring the party on whom the notice is served to attend before the presiding officer on a day specified in the notice or on such other day as may be directed.

(3) Unless the Tribunal otherwise orders, the notice –

(a) must be filed with the registrar within 14 days after the judgment, order or decision appealed against was given or made; and

(b) must be served within 5 days after filing.

(4) An appeal to which this rule applies must not be heard sooner than 2 clear days after the service under subrule (3)(b).

(5) Except so far as the Tribunal may otherwise direct, an appeal under this rule does not operate as a stay of the proceedings in which the appeal is brought.

(6) No further evidence (other than evidence as to matters which have occurred after the date on which the judgment, order or decision was given or made) may be received on the hearing of an appeal under this rule except on special grounds.

(7) In subrule (1), "registrar" () includes a deputy registrar or assistant registrar of the Tribunal.

30B. Application for leave to appeal

- (1) An application for leave to appeal against a judgment, order or decision of the Tribunal must be made to the Tribunal first before the application may be made to the Court of Appeal.
- (2) The application to the Tribunal must be made within -
 - (a) in the case of an appeal against a judgment, order or decision other than an interlocutory judgment, order or decision, 28 days from the date of the judgment, order or decision;
 - (b) in the case of an appeal against an interlocutory judgment, order or decision, 14 days from the date of the interlocutory judgment, order or decision.
- (3) So far as is practicable, the application must be made to the member or members of the Tribunal against whose judgment, order or decision leave to appeal is sought.
- (4) Where the Tribunal refuses the application, a further application for leave to appeal may be made to the Court of Appeal within 14 days from the date of refusal.
- (5) An application under this rule must be made inter partes if the proceedings to which the judgment, order or decision relates are inter partes.

30C. Service of notice of appeal

- (1) Subject to subrule (2), where leave to appeal is granted by the Tribunal or the Court of Appeal, Order 60A of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the appeal.
- (2) Notwithstanding Order 60A, rule 3 of the Rules of the High Court (Cap. 4 sub. leg. A), a notice of appeal within the meaning of that Order must be served on –
 - (a) the Tribunal; and
 - (b) all other parties to the proceedings before the Tribunal,within 7 days from the date on which leave to appeal is granted.

30D. Extension of time for appeal or application for leave to appeal

The Tribunal or the Court of Appeal may, at any time, and notwithstanding that the time for an appeal or an application for leave to appeal may have already expired, extend the time for the appeal or for applying for leave to appeal.

30E. Non-interlocutory judgments and orders

- (1) For the purposes of rule 30B(2), the following judgments and orders are not interlocutory –
 - (a) a judgment or order determining in a summary way the substantive rights of a party to an action;
 - (b) an order made under section 12(3) of the Ordinance disallowing, or requiring a legal representative to meet, the whole or any part of any wasted costs;

- (c) an order prohibiting a debtor from leaving Hong Kong;
 - (d) an order for the imprisonment of a judgment debtor; and
 - (e) an order of committal for contempt of court.
- (2) Without affecting the generality of subrule (1)(a), the following are judgments and orders determining in a summary way the substantive rights of a party –
- (a) an order striking out –
 - (i) an application or other proceedings;
 - (ii) a notice of application or a notice of opposition; or
 - (iii) any part of the application, proceedings or notice;
 - (b) a judgment or order determining any question of law or construction of any document without a full trial of the action;
 - (c) a judgment or order dismissing any cause or matter upon determination of a question of law or construction of any document without a full trial of the action;
 - (d) a judgment or order on any preliminary issue;
 - (e) an order dismissing or striking out an application or other proceedings for want of prosecution;
 - (f) a judgment obtained pursuant to an "unless" order;
 - (g) an order refusing to set aside a judgment in default;
 - (h) an order refusing to allow –
 - (i) an amendment of a notice of application;
 - (ii) a notice of opposition to introduce a new claim or defence; or
 - (iii) any other new issue; and
 - (i) a judgment or order on admissions of fact or of part of a case.
- (3) A direction as to whether a judgment or order is one that is referred to in subrule (1)(a) may be sought from the member or members of the Tribunal who made or will make the judgment or order.
- (4) A reference to an order specified in subrule (1)(b), (c), (d) and (e) includes an order refusing, varying or discharging the order."

4. "Registrar" substituted by "registrar"

The following provisions are amended, in the English text, by repealing "Registrar" wherever it appears and substituting "registrar" –

- (a) rule 4;
- (b) rule 5;
- (c) rule 6;
- (d) rule 7A;
- (e) rule 10;
- (f) rule 13;
- (g) rule 14;
- (h) rule 15;
- (i) rule 16;
- (j) rule 20;
- (k) rule 22;
- (l) rule 24;

- (m) rule 34;
- (n) rule 35;
- (o) rule 36;
- (p) rule 38;
- (q) rule 39;
- (r) rule 40;
- (s) rule 41;
- (t) rule 44;
- (u) rule 45;
- (v) rule 46;
- (w) rule 47;
- (x) rule 48;
- (y) rule 49;
- (z) rule 50;
- (za) rule 51;
- (zb) rule 53;
- (zc) rule 54;
- (zd) rule 56;
- (ze) rule 57;
- (zf) rule 58;
- (zg) rule 59;
- (zh) rule 60;
- (zi) rule 61;
- (zj) rule 62;
- (zk) rule 63;
- (zl) rule 65;
- (zm) rule 66;
- (zn) rule 68;
- (zo) rule 69;
- (zp) rule 72;
- (zq) rule 73;
- (zr) rule 74;
- (zs) rule 75;
- (zt) rule 77;
- (zu) rule 78;
- (zv) rule 78H;
- (zw) rule 78I;
- (zx) rule 78J.

Chief Justice

Explanatory Note

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

- (a) make it clear that the powers of the Lands Tribunal under rule 14(2) of the Principal Rules are in addition to and do not derogate from any power of the Lands Tribunal conferred by any enactment or rule of law;
 - (b) prescribe the procedure for an appeal against a judgment, order or decision of the Registrar of the Lands Tribunal or of a deputy registrar or assistant registrar of the Lands Tribunal;
 - (c) prescribe the procedure for an application for leave to appeal against a judgment, order or decision of the Tribunal, and for any subsequent appeal to the Court of Appeal; and
 - (d) replace the references to "Registrar" with "registrar".
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LANDS TRIBUNAL (AMENDMENT) RULES 2008

LANDS TRIBUNAL RULES (Cap. 17A)

Remarks**14. Listing for hearing**

- (1) In relation to an application (other than an application for an order for possession of any premises)— (L.N. 281 of 2006)
- (a) where a notice of opposition has been filed, or the time limited for filing has elapsed and no notice of opposition has been filed, any party to the application, on giving notice to all other parties, may apply to the Registrar in accordance with Form 31 to list the application for hearing;
 - (b) at the expiration of not less than 3 days after the receipt of the application to list for hearing, the Registrar shall, subject to any order of the Tribunal, list the application for hearing and shall 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;
 - (c) the Registrar may refer any application to list for hearing to the Tribunal, which may make such order as it thinks fit; and
 - (d) any party may, at any time before the application has been listed for hearing, make representations to the Registrar with regard to the listing. (L.N. 281 of 2006)
- (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. (L.N. 281 of 2006)
- (2) Where any party has failed, in the opinion of the Tribunal, to pursue any proceedings with due diligence, or has failed to comply with any rule or a requisition under rule 13 the Tribunal may, after giving the parties an opportunity to be heard, order that the proceedings be heard by the Tribunal or give such other direction as it may think fit for the purpose of expediting or disposing of the proceedings.
(Enacted 1994)

(3) Subrule (2) is in addition to and does not derogate from any power of the Tribunal conferred by any enactment or rule of law.

Rule 2

30. Clerical mistakes and slips

Clerical mistakes in decisions or determinations, and errors arising therein from any accidental slip or omission may at any time be corrected by the Tribunal.

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(3) Unless the Tribunal otherwise orders, the notice –
(a) must be filed with the registrar within 14 days after the judgment, order or decision appealed against was given or made; and
(b) must be served within 5 days after filing.

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Rule 3

(1) For the purposes of rule 30B(2), the following judgments and orders are not interlocutory –

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- (h) an order refusing to allow –
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(3) A direction as to whether a judgment or order is one that is referred to in subrule (1)(a) may be sought from the member or members of the Tribunal who made or will make the judgment or order.

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