

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 80 – JUDICIARY Subhead 000 Operational expenses

Members are invited to recommend to Finance Committee the creation of the following permanent posts in the Lands Tribunal of the Judiciary with immediate effect –

1 Judge of the District Court
(JSPS 13) (\$148,700 - \$157,600)

1 Member, Lands Tribunal
(JSPS 12) (\$127,900 - \$135,800)

PROBLEM

The Lands Tribunal (the Tribunal) of the Judiciary needs additional judicial manpower to help cope with the increase in workload arising from the rising number of compulsory sale applications filed with the Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) (the Ordinance).

PROPOSAL

2. The Judiciary Administrator (JA) as the Controlling Officer for the Judiciary, on the instruction of the Chief Justice and with the support of the Secretary for Development, proposes to create one post of Judge of the District Court and one post of Member, Lands Tribunal in the Tribunal to handle the increased caseload.

/JUSTIFICATION

JUSTIFICATION

3. The Tribunal, which commenced operation in October 1974 following the enactment of the Lands Tribunal Ordinance (Cap. 17), is a specialised court that deals with specified categories of cases relating to land matters. The Tribunal has jurisdiction to hear and adjudicate the following main categories of cases -

- (a) possession cases under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), or under the common law;
- (b) building management cases;
- (c) appeals concerning government rates and rents;
- (d) compensation cases; and
- (e) compulsory sale cases.

4. The Tribunal is headed by a President who is also a Judge of the Court of First Instance of the High Court¹. It comprises two Presiding Officers who are Judges of the District Court, and one Member who is at present a land valuation surveyor². In the exercise of the jurisdiction of the Tribunal, the Presiding Officers have jurisdiction to determine any claims and any proceedings under the Lands Tribunal Ordinance. They handle principally all applications for possession arising from the Landlord and Tenant (Consolidation) Ordinance, building management cases and other related legal matters, and hear all interlocutory and chambers applications. The Member specialises in tenancy cases, appeal cases against the government rates and rents, and appeal cases against the assessment of prevailing market value of a property under the Housing Ordinance (Cap. 283). For compensation and compulsory sale cases, they are usually heard by a Presiding Officer together with the Member. If the issues in such cases involve only valuation of properties without any dispute in point of law, the Member may hear such cases alone.

5. The Ordinance, enacted in 1998, came into operation in June 1999. Under section 3(1) of the Ordinance, a person who owns not less than 90% of the undivided shares in a lot may apply to the Tribunal for an order for the sale of all the undivided shares in the whole lot for the purpose of the redevelopment of the lot.

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¹ As the President of the Lands Tribunal is generally sitting as a judge of the Court of the First Instance, he does not handle Lands Tribunal cases on a daily basis. However, where necessary, he may hear Lands Tribunal cases either alone or together with the Member.

² Under the Lands Tribunal Ordinance, a wide range of professionals are eligible to be appointed as Member. The position is usually held by a surveyor.

To speed up the pace of urban renewal for tackling the problems arising from urban decay, to improve the living conditions of the residents in dilapidated buildings and to release the potential of precious land resources to meet the changing economic needs of Hong Kong, the Government gazetted in January 2010 the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice (the Notice) which specifies that applications for compulsory sale of the following three classes of lot be subject to a lower application threshold of not less than 80% of the undivided shares of a lot –

- (a) a lot with units each of which accounts for more than 10% of the undivided shares in the lot;
- (b) a lot with all buildings aged 50 years or above; and
- (c) a lot with all industrial buildings aged 30 years or above not located within an industrial zone.

The Notice came into effect on 1 April 2010 after scrutiny by the Legislative Council (LegCo).

Increasing workload in the Lands Tribunal

Encl. 1

6. While the number of other types of cases handled by the Tribunal has remained stable in the past three years as shown at Enclosure 1, there has been a substantial increase in the number of compulsory sale applications filed with the Tribunal since the Notice came into effect on 1 April 2010. Between April 2010 and April 2012, a total of 105 applications for compulsory sale had been received by the Tribunal, compared to 65 applications prior to the Notice, i.e. between June 1999 and March 2010. In other words, the caseload has increased from an average of one every two months to a monthly average of 4.2. A breakdown of the number of compulsory sale applications made and heard between January 2009 and April 2012 is as set out below –

Year	Number of Applications under the 90% Threshold		Number of Applications under the 80% Threshold		Total Number of Applications	
	Filed	Heard	Filed	Heard	Filed	Heard
2009	8	5	-	-	8	5
2010	17	6	4	0	21	6
2011	24	7	22	2	46 (2)	9
2012 (Jan –April)	9	3	30	0	39 (2)	3

Note: The figure in brackets shows the number of connected cases of applications by the tenants affected by compulsory sale for determining tenant compensation under the Ordinance.

/Furthermore

Furthermore, the increase in caseload has been on an upward trend. For the first four months of 2012, 39 compulsory sale applications and two connected cases were filed. Although compulsory sale applications and connected cases, in absolute number, do not account for a large portion of the total number of cases submitted to the Tribunal in the past three years, the trend of increase is obvious and we see a need to enhance the judicial capacity of the Tribunal so that the compulsory sale cases can be heard within a reasonable waiting time without affecting the hearing timetable of the other types of cases also heard by the Tribunal.

7. Compulsory sale applications and connected cases have a significant impact on court time at the Tribunal. For proceedings under the Ordinance, a call-over hearing for directions would as far as practicable be held by the Listing Presiding Officer³ (or in his absence, the other Presiding Officer) of the Tribunal within 30 working days after receipt of an application for setting down for trial. At the call-over hearing, the Presiding Officer would ascertain whether all the outstanding matters have been complied with by the parties and, if the case is ready for trial, he would direct whether the trial should be heard by one of the two Presiding Officers together with the Member or by the Member alone.

8. Compared with other types of cases such as possession cases, more judicial resources are required in the handling of compulsory sale cases. The work will include, inter alia, preparations for the hearing, the hearing for call-over (for identifying the issues between the parties and giving directions to the parties for preparing the case for trial, such as ordering the filing and serving of expert reports, witness statements and relevant documents, as well as fixing the case for trial and exploration of mediation), interlocutory applications (for considering issues such as application for substituted service or dispensation of service, appointment of a person to represent the estate of a deceased respondent, and extension of time to file and serve relevant documents, etc.), actual trials and judgment writing.

9. As the Tribunal, under the Ordinance, has to be satisfied that redevelopment is justified and has to determine, among other things, the existing use value and the reserve price for the lot in question, the applicant has to produce various expert reports such as building conditions survey report, building structure report and valuation report to prove his case. If the respondent disputes with these issues, he will also call his own experts and produce their reports to challenge the applicant's case. As these reports are usually voluminous, the Tribunal needs to spend considerable time to go through them. Even in the case where the respondent does not challenge the applicant's case, the Tribunal is still required to go through

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³ The Presiding Officer in the Lands Tribunal in charge of the listing.

the applicant's reports to see whether the statutory requirements are satisfied and to fix the reserve price. Written judgment is normally required in such cases so as to give the parties detailed reasons for the decision and how the existing use value and the reserve price are assessed. Such cases also require a Presiding Officer and the Member to work together to make the determination. Thus, it is considerably more time-consuming for the Tribunal to prepare, hear and determine such cases. Moreover, since usually a Presiding Officer and the Member have to be engaged at the same time in compulsory sale cases, there would, as a result, be only one other Presiding Officer left to deal with all the other types of cases at the Tribunal when a compulsory sale case is being heard. The rise in compulsory sale caseload has inevitably created additional strain on the manpower resources of the Tribunal.

10. The following are the numbers of compulsory sale cases fixed before a Presiding Officer and/or the Member since 2009 –

Year	Cases fixed for Trial	Cases fixed before	
		Presiding Officer and Member	Member alone
2009	7	5	2
2010	8	5	3
2011	21	17	4

11. More importantly, as compulsory sale cases (like all the other compensation cases heard in the Tribunal) almost invariably involve disputes on valuation, the Member will be required to spend considerable time with the Presiding Officer in the writing of the judgment in such cases. As such, this further aggravates the staffing constraint as there is currently only one Member on the Lands Tribunal establishment who has to handle all the compulsory sale cases.

Need for additional judicial posts in the Lands Tribunal

12. There has been no creation of permanent judicial posts for the Tribunal since 1994. To alleviate the manpower shortage situation, as a provisional arrangement, a Temporary Member has been appointed to sit at the Tribunal since September 2011. Furthermore, one additional Deputy District Judge has been temporarily deployed from the District Court to hear Tribunal cases since October 2011. Upon their appointment, the situation has stabilised and the pressure on the waiting time for other types of cases has eased off. However, this temporary arrangement is at the expense of the other services of the Judiciary and thus cannot continue on a long-term basis. Creation of permanent judicial posts is the only viable solution to the existing manpower shortage problem.

13. As at 30 April 2012, there were still 55 compulsory sale cases pending the fixing for trial and it is envisaged that the rising trend of compulsory sale applications will continue as our building stock continues to age with more old buildings reaching the end of their design life. It is therefore the considered view of the JA that the temporary deployments should be regularised with new permanent positions created to handle the increase in workload at the Tribunal.

14. We propose that one Judge of the District Court post, designated as Presiding Officer, Lands Tribunal and one Member, Lands Tribunal post, designated as Member, Lands Tribunal, be created. To make the most effective use of judicial resources and to ensure continued flexibility when scheduling future Tribunal hearings, the JA has advised that the two directorate judicial posts to be created should not be dedicated to the hearing of compulsory sale applications only. Notwithstanding this, it is envisaged that the two proposed posts will provide the much needed help in facilitating timely hearing and conclusion of compulsory sale cases.

Encls. 2 & 3 15. The job descriptions of the two judicial posts are at Enclosures 2 and 3.

ADDITIONAL NON-DIRECTORATE POSTS

Encls. 4 & 5 16. A total of four non-directorate posts, i.e. two teams of supporting staff each consisting of one Judicial Clerk and one Assistant Clerical Officer, will be created in accordance with the established mechanism to provide the necessary support to the proposed Judge of the District Court and Member, Lands Tribunal. The proposed organisation charts of the Tribunal are at Enclosures 4 and 5.

ALTERNATIVES CONSIDERED

17. The JA has critically examined whether the existing temporary redeployment mentioned in paragraph 12 above could sustain the service of the Tribunal on a long-term basis but has advised in the negative and considered that the proposed creation of two permanent judicial posts is the only viable solution to the existing problem.

18. Apart from temporary redeployment, mediation, the adoption of which has been widely encouraged, has also been considered as an alternative to bringing compulsory sale cases before the Tribunal for trial. The Practice Direction (LTPD : CS No. 1/2011) issued by the President of the Lands Tribunal, detailing the arrangements regarding the application of mediation to all compulsory sale cases, came into effect on 15 February 2011. Pursuant to that Practice Direction,

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the Tribunal will take into account any unreasonable failure of a party to engage in mediation when considering whether to grant a compulsory sale order and when exercising its discretion on the award of costs. Between 15 February 2011 and 30 April 2012, the Tribunal had heard 12 compulsory sale applications. Six of them had attempted mediation but only one was partially successful⁴. Given that the Practice Direction has only been in force for one year, it is considered premature to rely on mediation as an alternative to the proposed creation of the additional judicial and supporting posts.

FINANCIAL IMPLICATIONS

19. The proposed creation of two permanent judicial posts will bring about an additional notional annual salary cost at mid-point of \$3,420,000 as follows –

	Notional annual salary cost at mid-point \$	No. of posts
Judge of the District Court (JSPS 13)	1,837,800	1
Member, Lands Tribunal (JSPS 12)	1,582,200	1
Total	<u>3,420,000</u>	<u>2</u>

The additional full annual average staff cost, including salaries and staff on-costs, is \$5,247,000.

20. The additional notional annual salary cost at mid-point for the four non-directorate posts is \$1,022,520 and the full annual average staff cost, including salaries and staff on-cost, is \$1,455,000.

21. We have included sufficient provision in the 2012-13 Estimates to meet the cost of the proposal and will reflect the resources required in the Estimates of subsequent years.

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⁴ In that case, one out of six respondents had attempted mediation and eventually reached agreement with the applicant.

PUBLIC CONSULTATION

22. We consulted the LegCo Panel on Development on this proposal at its meeting on 17 April 2012, which some Members of the LegCo Panel on Administration of Justice and Legal Services and other Panels also attended. Members generally supported the proposed creation of the two judicial posts. The additional information required from the Judiciary on the average time required to complete the various necessary procedures before the trial of compulsory sale cases and the trials themselves as well as the expected improvement with the proposed creation of the two judicial posts is at Enclosure 6.

Encl. 6

ESTABLISHMENT CHANGES

23. The establishment changes in the Judiciary for the last two years are as follows –

Establishment (Note)	Number of posts			
	Existing (as at 1 May 2012)	As at 1 April 2012	As at 1 April 2011	As at 1 April 2010
A	185 ^{*^}	185 [*]	185 [*]	185 [*]
B	168 [#]	166 [#]	158 [#]	157 [#]
C	1 324	1 298	1 291	1 301
Total	1 677	1 649	1 634	1 643

Note:

A – ranks in the directorate pay scale or equivalent

B – non-directorate ranks, the maximum pay point of which is above MPS Point 33 or equivalent

C – non-directorate ranks, the maximum pay point of which is at or below MPS Point 33 or equivalent

* including 179 Judges and Judicial Officer (JJO) posts

^ as at 1 May 2012, there were 41 unfilled directorate JJO posts and the judicial functions of 31 such posts were performed by Deputy JJOs appointed from outside the Judiciary. Recruitment exercises to fill the JJO vacancies are on-going.

including 11 Special Magistrate posts

ADVICE OF THE STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE

24. The Standing Committee on Judicial Salaries and Conditions of Service has advised that the grading proposed for the posts is appropriate.

Development Bureau
Judiciary Administration
May 2012

Enclosure 1 to EC(2012-13)7

Caseload in the Lands Tribunal

Case Type	2009	2010	2011
Possession cases	4 347	4 592	4 457
Building management cases	394	340	407
Appeal cases	274	335	239
Compensation cases	17	12	15
Compulsory sale cases	8	21	46 (2)
Miscellaneous proceedings	6	10	4
Total	5 046	5 310	5 168 (2)

Note: The figure in brackets shows the number of connected cases of applications by the tenants affected by compulsory sale for determining tenant compensation under the Ordinance.

**Proposed Job Description
Presiding Officer, Lands Tribunal**

Rank : Judge of the District Court (JSPS 13)

Responsible to : Chief District Judge (JSPS 15)

Main Duties and Responsibilities –

To hear and determine matters within the jurisdiction of the Lands Tribunal under the Lands Tribunal Ordinance (Cap. 17).

**Proposed Job Description
Member, Lands Tribunal**

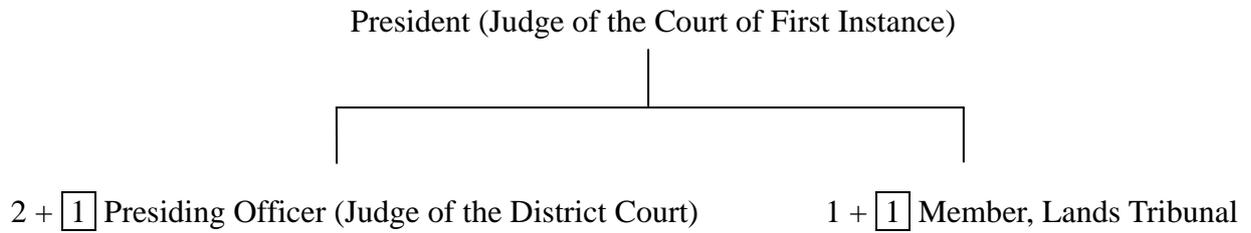
Rank : Member, Lands Tribunal (JSPS 12)

Responsible to : Chief District Judge (JSPS 15)

Main Duties and Responsibilities –

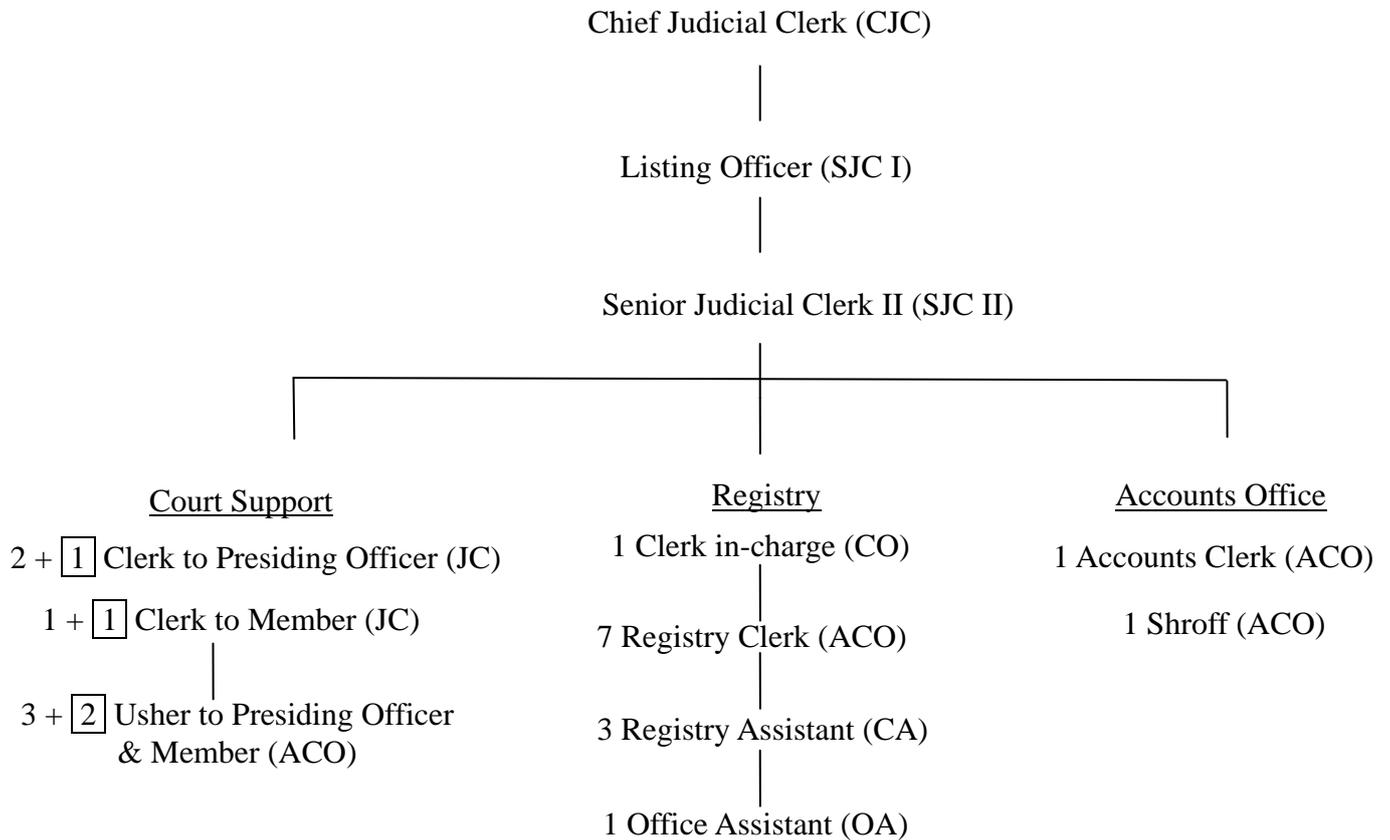
1. To hear and determine matters within the jurisdiction of the Lands Tribunal under the Lands Tribunal Ordinance (Cap. 17), other than points of law, which are usually determined by the Presiding Officer.
2. To prepare a reasoned judgment if sitting alone or assist in the preparation of a reasoned judgment if sitting with the President and/or the Presiding Officer.

**Proposed Organisation Chart of Lands Tribunal
– Judges and Judicial Officers**



Proposed new posts

**Proposed Organisation Chart of Lands Tribunal
– Supporting Staff**



Legend

- CJC Chief Judicial Clerk
- SJC Senior Judicial Clerk
- JC Judicial Clerk
- CO Clerical Officer
- ACO Assistant Clerical Officer
- OA Office Assistant
- Proposed new posts

**Proposed Creation of Judicial Posts in the Lands Tribunal
Supplementary Information on Compulsory Sale Cases**

Purpose

This note seeks to provide additional information as requested by the Legislative Council Panel on Development at its meeting held on 17 April 2012. The supplementary information covers the various stages of the procedures for processing compulsory sale applications, and the time required for these different stages.

Procedures for Processing Compulsory Sale Applications

2. Normally, when parties are involved in compulsory sale applications, they have to go through the following key stages.

Stage I: From filing to setting down for trial

3. An applicant seeking an order for compulsory sale under section 3(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) must file with the Registrar of the Lands Tribunal a notice of application (in accordance with Form 32). The applicant must then:

- (a) cause a copy of the notice of application to be served on each minority owner of the land in question not later than seven days after it is filed;
- (b) register the notice of application with the Land Registry as required under the Land Registration Ordinance (Cap. 128) not later than seven days after it is filed; and
- (c) cause a copy of the notice as specified in Part 2 of Schedule 1 to Cap. 545 in Chinese and English languages to be affixed at the land in question and also published in a Chinese language newspaper and an English language newspaper not later than seven days after filing of the notice of application.

4. In addition, the applicant must file with the Registrar of the Tribunal an affidavit of service (as referred to in paragraph 3(a) above), an affidavit of the registration (as referred to in paragraph 3(b) above), an affidavit of affixture and an affidavit of the publication (as referred to in paragraph 3(c) above) within three days after such actions are effected.

5. The respondent, if he/she wishes to oppose the application, must file with the Registrar of the Tribunal a notice of opposition (in accordance with Form 33) and serve a copy of it on the applicant within 21 days of the service of the notice of application on him. Upon the expiry of the 21-day period, the applicant can then proceed to file an application for setting down (in accordance with Form 31).

6. Following the filing of an application for setting down, a call-over hearing for directions would as far as practicable be held by the Listing Presiding Officer (or in his absence, the other Presiding Officer) of the Lands Tribunal within 30 working days after receipt of the said application. At the call-over hearing, the Presiding Officer would identify outstanding issues between the parties and give directions to the parties for preparing the case for trial, such as ordering the filing and serving of expert reports, witness statements and relevant documents, as well as fixing the case for trial and exploration of mediation. Before and during this period, there could also be interlocutory hearings for considering issues such as applications for substituted service or dispensation of service, appointment of a person to represent the estate of a deceased respondent as well as extension of time to file and/or serve relevant documents.

7. The length of Stage I would vary from case to case depending on factors like complexity of the case, the state of preparedness of parties concerned in preparing the expert reports and the time taken for considering mediation. The lead-time from filing of application to setting down for trial can be long particularly if more interlocutory hearings are required or the parties are unrepresented. Nevertheless, the parties can proceed to setting down generally after one or two call-over/interlocutory hearings.

8. For the compulsory sale applications filed in 2011, the average time taken from filing of application to setting down for trial, including interlocutory and call-over hearings, is 163 days. This was largely the time required by the parties for preparing the cases for trial.

Stage II: From setting down to trial

9. For civil cases including the compulsory sale cases, the period from the date of setting down to the date of trial, i.e. from the date the case is ready for trial to the date of trial, is regarded as the waiting time for the purpose of assessing the administrative efficiency in the processing of cases, or, in other words, the adequacy, or otherwise, of judicial and other supporting resources so deployed. This relates to the period where the control rests with the Judiciary itself and not with the parties, unlike the preparatory work under Stage I, the responsibility for which lies primarily with the parties themselves.

10. Insofar as the compulsory sale cases in the Lands Tribunal are concerned, the average waiting time from the date of setting down to the date of trial had been reduced upon the appointment of a Temporary Member, Lands Tribunal and the temporary deployment of an additional Deputy District Judge from the District Court to the Lands Tribunal in September and October 2011 respectively. It was reduced by **16%** from 49 days (January to August 2011) to 41 days (September to December 2011). The waiting time was further reduced to 28 days for the first four months of 2012, i.e. a decrease of **43%** when compared with that of January to August 2011.

Stage III : Trial

11. In 2011, it took about one to six days to hear a compulsory sale case. The judicial resources involved would be doubled if the case was heard by a Presiding Officer and the Member.

Other Observations

12. It should be noted that the temporary addition of judicial manpower mentioned in paragraph 10 above has not only improved the average waiting time for compulsory sale cases, but has also eased off the pressure on the other types of cases. Before the injection of the temporary judicial resources concerned, when a compulsory sale case was being heard, there would usually be one Presiding Officer left to deal with all the other types of cases at the Lands Tribunal. The hearing timetable of the other types of cases was hence affected. Upon the appointment of the Temporary Member and the Deputy District Judge, the situation has improved.

13. As the redeployment arrangements could not be continued on a permanent basis, it is therefore considered necessary to regularise them with the proposed creation of the new permanent posts.
