

For discussion on
17 April 2012

Legislative Council Panel on Development

Proposed Creation of Judicial Posts in the Lands Tribunal of the Judiciary

PURPOSE

This paper seeks Members' support for the proposed creation of the following judicial posts in the Lands Tribunal of the Judiciary to help cope with the increase in workload arising from the rising number of compulsory sale applications filed with the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) ("the Ordinance") -

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

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

BACKGROUND

2. The Lands Tribunal ("the Tribunal") is established under the Lands Tribunal Ordinance (Cap. 17). It is a specialised court that deals with specified categories of cases relating to land. 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.

3. 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 Lands 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. Except for the temporary employment/deployment explained in paragraph 12 below, there has been no creation of permanent judicial posts for the Lands Tribunal since 1994.

4. 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 Lands 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. 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.

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 Cap. 17, a wide range of professionals are eligible to be appointed as Member. The position is usually held by a surveyor.

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

5. In response to LegCo’s concerns expressed during the scrutiny of the Notice in 2010 over the need for enhanced support to minority owners affected by compulsory sale, the Development Bureau has launched two pilot schemes since January 2011 to provide support to minority owners affected by compulsory sale or voluntary acquisition prior to compulsory sale, namely, the “Pilot Mediation Scheme” and the “Pilot Scheme on Outreach Support Service for Elderly Owners”. Details on the latest situation of compulsory sale and the progress with the two pilot schemes are at **Annex A**.

A

JUSTIFICATIONS FOR THE CREATION OF TWO JUDICIAL POSTS IN THE LANDS TRIBUNAL

6. While the number of the other types of cases handled by the Lands Tribunal has remained stable in the past three years as **Annex B** shows, there has been a substantial increase in the number of compulsory sale applications filed with the Lands Tribunal since the Notice came into effect on 1 April 2010. Between April 2010 and February 2012, a total of 88 applications for compulsory sale had been received by the Lands 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 3.8. A breakdown of the number of compulsory sale applications made and heard between January 2009 and February 2012 is as set out below –

B

| 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 – Feb) | 8 | 2 | 14 | - | 22 (2) | 2 |

Note: The figure in brackets shows the number of separate but connected cases for determining tenant compensation.

Furthermore, the increase in caseload witnessed seems to be in an upward trend. For the first two months of 2012, there were already 22 compulsory sale applications and two connected cases 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 Lands Tribunal in the past three years, the trend of increase is obvious and we see a need to enhance the judicial capacity of the Lands 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 Lands Tribunal.

7. The reasons why compulsory sale applications and connected cases have a significant impact on court time at the Lands Tribunal are explained here: 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

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

produce their reports to challenge the applicant’s case. As these reports are usually voluminous, it does require the Tribunal 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 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 Lands 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 Lands 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 Lands 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.

12. To alleviate the situation, as a provisional arrangement, a Temporary Member has been appointed to sit at the Lands Tribunal since September 2011. Furthermore, one additional Deputy District Judge has been temporarily deployed from the District Court to hear Lands Tribunal

cases since October 2011. Upon their appointment, the situation has stabilised and the pressure on the waiting time for the 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 be made permanent.

13. As at 29 February 2012, there were still 47 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 Judiciary Administrator that the temporary deployments should be regularised with new permanent positions created to handle the increase in workload at the Lands Tribunal.

14. We propose that one Judge of the District Court and one Member, Lands Tribunal, be created. These judicial positions will be supported by two teams of staff (each consisting of one Judicial Clerk and one Assistant Clerical Officer). To make the most effective use of judicial resources and to ensure continued flexibility when scheduling future Lands Tribunal hearings, the Judiciary Administrator has advised that the two 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 judicial posts will provide the much needed help in facilitating timely hearing and conclusion of compulsory sale cases.

C & D
E

15. The job descriptions of the two judicial posts are at **Annexes C and D**. An organisation chart showing the proposed new posts at the Lands Tribunal is at **Annex E**.

ALTERNATIVE CONSIDERED

16. The Judiciary Administrator has critically examined whether the existing temporary redeployment mentioned in paragraphs 12 and 13 could continue on a permanent basis and has advised in the negative.

17. Mediation, the adoption of which has been widely encouraged, has also been considered as an alternative to bringing compulsory sale cases before the Lands 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, the Lands 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 29 February 2012, the Lands Tribunal had heard 11 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

18. The proposed creation of one Judge of the District Court will require an additional notional annual salary at mid-point of \$1,837,800. The additional full annual average staff cost, including salary and staff on-cost, for the post is \$2,874,516. The proposed creation of one Member of the Lands Tribunal will require an additional notional annual salary at mid-point of \$1,582,200. The additional full annual average staff cost, including salary and staff on-cost, for the post is \$2,372,940. The notional annual salary at mid-point and the full annual average staff cost, including salaries and on-costs, for the creation of the two judicial posts are \$3,420,000 and \$5,247,456 respectively.

ADVICE SOUGHT

19. Members are invited to consider the creation of the proposed posts in the Lands Tribunal of the Judiciary. Subject to Members' support, we will seek the recommendation of the Establishment Subcommittee in early June 2012 and approval from the Finance Committee afterwards.

Development Bureau
Judiciary Administration
April 2012

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

**Progress with Applications under
the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)
and the Two Pilot Schemes to Support Minority Owners**

Background

The Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) (“the Ordinance”), which came into operation in 1999, facilitates persons who own a specified majority of the undivided shares in a lot in making applications to the Lands Tribunal for an order for the sale of all the undivided shares in the lot for the purposes of redevelopment. The Lands Tribunal will make such an order if specified criteria are met, namely, that the redevelopment is considered justified due to the age or state of repair of the existing building on the lot and that the majority owner has taken reasonable steps to acquire all the undivided shares in the lot. The percentage specified in the Ordinance is a percentage not less than 90%. The statutory compulsory sale for redevelopment mechanism is conducive to the policy objective of urban renewal, helping to improve the built environment of Hong Kong and to improve the living environment of residents in dilapidated buildings. The redevelopment of old building stock is also an important source of new housing land supply.

2. In January 2010, with a view to enhancing the pace of urban renewal to address the changing economic needs of Hong Kong and to complement the work of the Urban Renewal Authority (“the URA”), the Government gazetted the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice (“the Notice”) to lower the compulsory sale threshold from 90% to 80% for three classes of lot, namely, Class (i): a lot with units each of which accounts for more than 10% of the undivided shares in the lot; Class (ii): a lot with all buildings aged 50 years or above; and Class (iii): a lot that is not located within an industrial zone and with all the buildings on the lot being industrial buildings aged 30 years or above. The Notice came into effect on 1 April 2010.

Present Position of Compulsory Sale Applications to the Lands Tribunal

3. Since the Ordinance came into operation in 1999 and up till 29 February 2012, the Lands Tribunal received a total of 153 applications for compulsory sale, of which 37 applications (24%) had been granted

compulsory sale orders, one application (1%) was dismissed, 62 applications (40%) were withdrawn by applicants or adjourned for various reasons and 53 applications (35%) were under processing.

4. Since the Notice took effect on 1 April 2010 and up till 29 February 2012, the Lands Tribunal received a total of 88 applications (or 58% of all compulsory sale applications received since the Ordinance came into operation), of which compulsory sale orders in respect of 10 cases had been granted. Among these 88 applications, 40 involve classes of lots specified in the Notice to which the 80% application threshold applies. Of the 40 applications, one is an application for a Class (i) lot as described in paragraph 2 above, 18 are Class (ii) lots, 20 are lots that fall under both Classes (i) and (ii) and one is a Class (iii) lot.

Progress of the Two Pilot Schemes to Support Minority Owners

Pilot Mediation Scheme

5. On 27 January 2011, the Development Bureau commissioned the Joint Mediation Helpline Office Limited (“JMHO”) to launch the “Pilot Mediation Scheme” for a 12-month period. The scheme aims to facilitate the parties involved in or contemplating compulsory sale applications under the Ordinance in undertaking mediation on a voluntary basis. All mediators listed under the scheme are qualified mediators who have undergone training on the Ordinance and charge mediator fee at a flat rate of \$3,000 per hour. The scheme provides free mediation venue support to the participating owners. Financial assistance is also available to eligible elderly owners aged 60 years or above for the payment of their share of the mediator fees up to 15 hours.

6. Over the 12-month period since its launch in January 2011, the “Pilot Mediation Scheme” handled 79 enquiries and received 31 requests for mediation. Among the 31 cases, mediation was successfully conducted in two and the parties involved had entered into settlement agreement (application for compulsory sale has been made to the Lands Tribunal in respect of one of these two cases). The parties involved in another 15 cases had approached JMHO for an introduction to the scheme, and had subsequently resolved their differences themselves. In five other cases, one of the parties refused to participate in mediation. In another case, the parties could not reach settlement agreement after mediation. The remaining eight cases were under processing.

7. So far, the pilot mediation scheme has been operating smoothly. Given the relatively short time over which mediation has been adopted as an alternative mechanism to settle disputes in compulsory sale cases, we have decided to extend the scheme for another year to January 2013, and have commissioned JMHOL to continue to operate the scheme.

Pilot Scheme on Outreach Support Service for Elderly Owners

8. Also in January 2011, we commissioned the Senior Citizen Home Safety Association (“SCHSA”) to launch the “Pilot Scheme on Outreach Support Service for Elderly Owners” (“the Outreach Scheme”) for a 12-month period. The Outreach Scheme, targeting elderly owners living in old buildings who are affected by compulsory sale, aims to provide the elderly owners with information and other support services in relation to compulsory sale. The scheme social workers will proactively reach out to the elderly owners to explain to them the general practice of property acquisition before compulsory sale and the process of compulsory sale. They will follow up on those cases where the elderly owners need further assistance. The scheme social workers will also check for the owners, free-of-charge, whether their properties are situated on lots to which the 90% or 80% compulsory sale threshold applies and will refer them to professionals, such as surveyors, for paid service according to their wish.

9. Over the 12-month period since its launch in January 2011, the Outreach Scheme handled 61 cases of requests for assistance from elderly owners. The scheme social workers paid 475 home visits to elderly owners, 263 building visits (where the social workers outreached to the old buildings to distribute information leaflets door-to-door to elderly owners) and conducted 45 public talks on the Ordinance at elderly centres in various districts.

10. Feedback from the elderly owners is generally positive as the outreach service has helped them understand more of their rights and entitlements in compulsory sale. Given the positive feedback and the volume of requests for assistance from elderly owners, we have decided to expand the current service from one outreach service team to two, namely, one for the Hong Kong Island Cluster and one for the Kowloon and the New Territories Cluster, in 2012-13. We awarded a 12-month service contract for the Kowloon and the New Territories Cluster to SCHSA on 16 March 2012. We are conducting a tendering exercise for the Hong Kong Island Cluster.

Public Education and Publicity

11. To further step up public education and publicity, the Development Bureau invited the Hong Kong Housing Society (HKHS) to provide free information service on compulsory sale to the public at their 10 Property Management Advisory Centres across the territory. We also launched a public education video on compulsory sale in January 2011 in addition to the distribution of information leaflets by the HKHS, JMHOL and SCHSA. We have since jointly organised with the Hong Kong Institute of Surveyors, JMHOL, SCHSA and the URA ^{Note} three public talks in 2011-12 to introduce to the public the Ordinance and the two pilot schemes. The Hong Kong Police Force also attended the third public talk held in March 2012 to brief participants on crime prevention in buildings affected by acquisition under compulsory sale. A total of over 420 property owners or interested members of the public participated in the three public talks. We are planning to organise the next regular public talk in the summer.

^{Note} Under the new Urban Renewal Strategy promulgated in February 2011, the URA may adopt more diverse forms of redevelopment with the URA as “implementer” or “facilitator”. Under the URA’s new “Facilitation Scheme” introduced in July 2011, the URA may provide assistance to owners of private buildings as consultant to help them assemble titles for joint sale to developers to redevelop their lots.

Caseload in the Lands Tribunal

| Case Type | 2009 | 2010 | 2011 |
|---------------------------|--------------|--------------|-----------------|
| Possession cases | 4 347 | 4 592 | 4457 |
| 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 |
| <i>Total</i> | <i>5 046</i> | <i>5 310</i> | <i>5168 (2)</i> |

Note: The figure in brackets is the number of separate but connected cases for determining tenant compensation.

**Job Description of
Judge of the District Court**

Post Title : Presiding Officer, Lands Tribunal

Rank : Judge of the District Court (JSPS 13)

Responsible to : Chief District Judge (JSPS 15)

Main Duties and Responsibilities –

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

**Job Description of
Member of the Lands Tribunal**

Post Title : Member, Lands Tribunal

Rank : Member, Lands Tribunal (JSPS 12)

Responsible to : Chief District Judge (JSPS 15)

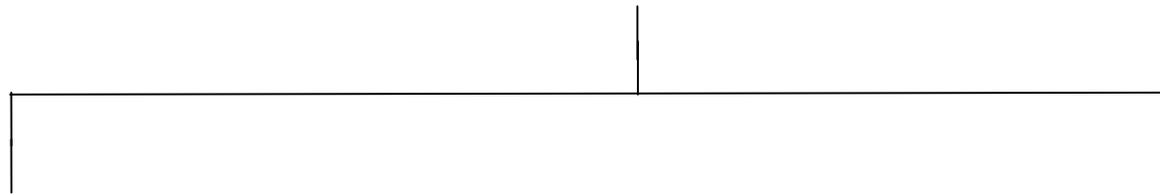
Main Duties and Responsibilities –

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.

Organisation Chart of Lands Tribunal – Judges and Judicial Officers

(as at 29.2.2012)

President [Judge of the Court of First Instance]



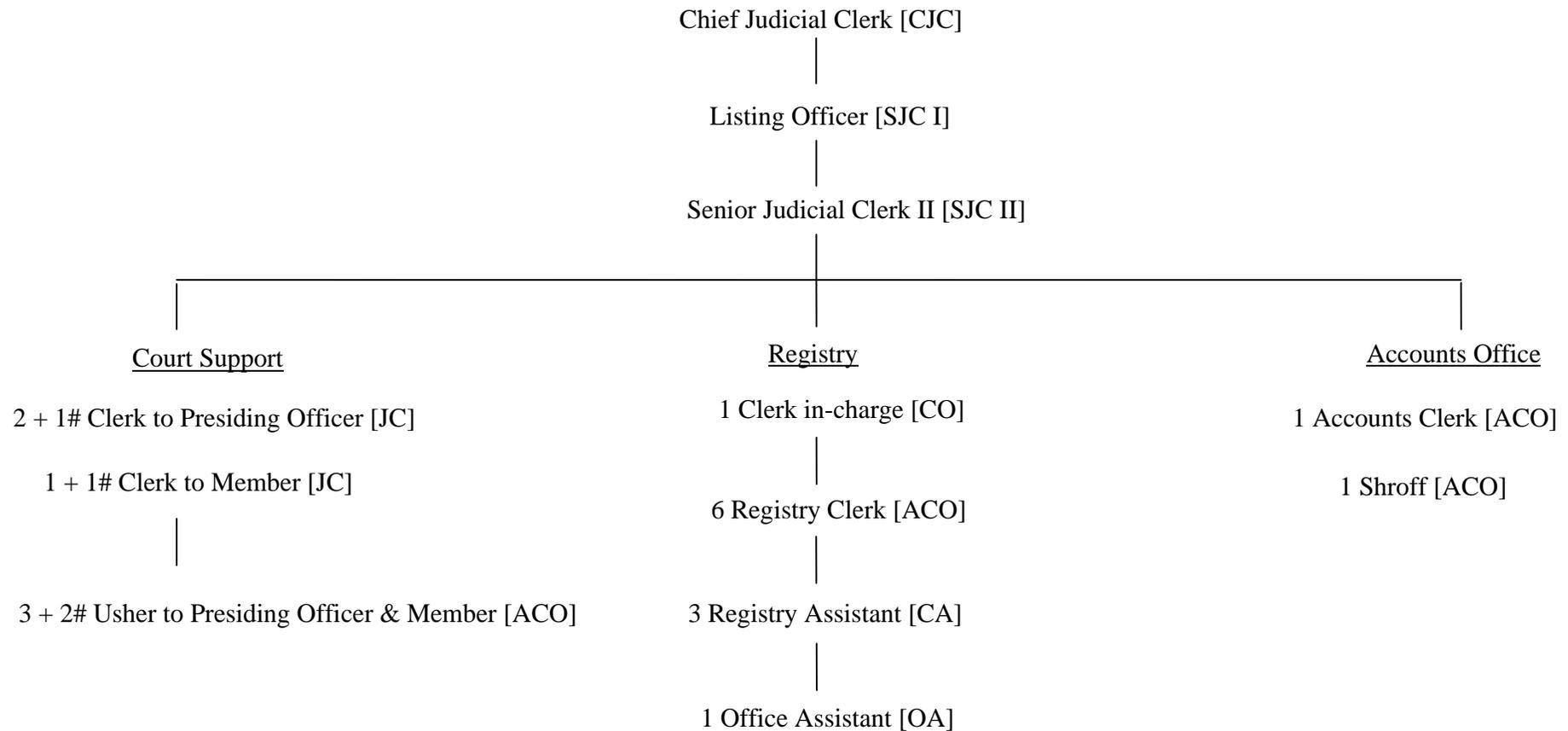
2 + 1# Presiding Officer [Judge of the District Court]

1 + 1# Member, Lands Tribunal

Proposed New Posts

Organisation Chart of Lands Tribunal – Support Staff

(as at 29.2.2012)



Proposed New Posts

CJC: Chief Judicial Clerk

SJC: Senior Judicial Clerk

JC: Judicial Clerk

CO: Clerical Officer

ACO: Assistant Clerical Officer

CA: Clerical Assistant