For information

**Paper for the 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

The Judiciary has completed the review of the Lands Tribunal Ordinance ("LTO") (Cap. 17) and the Lands Tribunal Rules ("LTR") (Cap. 17A). This paper sets out the recommendations of the review and the proposed way forward.

Background

2. At the AJLS Panel meeting on 29 January 2004, Members noted the Judiciary's review of the impact of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002 on the Lands Tribunal, and the measures introduced by the Judiciary to streamline the court procedure for repossession of premises, including assigning at least one day in a week to deal exclusively with repossession cases in the form of callover hearings. At the meeting, the Panel suggested, inter-alia, that -

(a) the Lands Tribunal should grant a default order for repossession right away if the defendant had not filed a notice of opposition within the statutory time limit; and

(b) the Lands Tribunal should consider allowing landlords applying for repossession to elect to have their cases dealt with by way of a callover hearing or a formal hearing.

3. At the LegCo AJLS Panel on 24 May 2004, the Judiciary briefed the Panel on the progress of the improvement measures to streamline the court procedure for repossession of premises. The Judiciary also informed the Panel that the Chief Justice had directed that the LTR as a whole should be reviewed, and Members would be

consulted when the review was completed, and amendments to the LTR were proposed.

Present Position

4. The Judiciary has now completed the review of both the LTO and the LTR, and a total of 14 recommendations are made. Most of the recommendations are related primarily to application for possession of premises, with a view to streamlining the procedures. Recommendations are also made in respect of the jurisdiction and other practice and procedure of the Tribunal, with a view to making the processing of claims in the Tribunal more efficient and expeditious. A summary of the recommendations is at **Annex A**. They are classified into four broad categories, viz. - **Annex A**

(a) Revised administrative procedures;
(b) Amendments to LTR;
(c) Amendments to primary legislation; and
(d) Suggestions not to be pursued.

The considerations and details of the recommendations are set out in the ensuing paragraphs.

I. Revised Administrative Procedures

5. Practice Direction ("PD") 16.4 on Execution to Enforce Judgment for Possession of Immovable Property provides that, where a party seeks leave under Order 45 rule 3 of the Rules of the High Court ("RHC")[1] (Cap. 4A), it must be shown by affidavit that -

(a) notice of the proceedings in both English and Chinese addressed to all persons in actual possession has been posted on 3 successive days upon the main door or entrance to the premises; and that

(b) a minimum of 4 clear days has elapsed from the last of the said 3 days to the date upon which such leave is sought.

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[1] Order 45, r. 3 of the RHC sets out the procedures for enforcement of judgment for possession of land.

6. The posting of notice requirement under PD16.4 is intended to satisfy the requirement of Order 45 rule 3 of the RHC, which provides, inter-alia, that the Court shall not grant leave for the issue of a writ of possession unless it is shown that every person in actual possession of the premises has received such notice of the proceedings as appears to the Court sufficient to enable such person to apply to the Court for any relief to which he may be entitled.

7. In the past, following the terms of the specimen notice in PD16.4, applicants would post a notice of judgment at the suit premises to satisfy the requirement. In other words, application for leave to issue a writ of possession can only be filed 7 days ***after*** judgment has been given.

8. Given the short processing time of applications for possession in the Lands Tribunal (usually within 6 months) which would produce a smaller risk of change of occupancy in the course of an application, and bearing in mind that it is in the interest of all concerned to bring proceedings of possession to the notice of the occupants as soon as possible, the Judiciary believes that the objective of Order 45 Rule 3 and PD 16.4 could be better served by giving notice of proceedings to all occupants before judgment. Accordingly, the Judiciary **recommends** that applicants should be permitted to post the notice of proceedings at an early stage ***before*** judgment is given. This would shorten the process for recovering of possession.

9. This recommendation has been implemented. As from 21 February 2005, the Tribunal has introduced a new practice, permitting applicants to post the notice of proceedings either before or after judgment has been given. New specimen bilingual notices (which can be used as an alternative to those annexed to PD16.4) are provided. The new practice and specimen notices are promulgated by a set of administrative guidelines obtainable at the Lands Tribunal Registry and accessible at the Judiciary's website.

II. Amendments to LTR

<u>Method of Service for All Types of Cases</u>

10. Currently, under Rule 7, 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;
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> (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;
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> (c) in such other manner as the Tribunal may direct."

11. 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 RHC and O. 10 r.1(2) of the Rules of the District Court ("RDC") (Cap. 336H) providing a similar mode of service.

Service of Writ for Repossession of Premises

12. At present, the requirement for the posting of the notice of application for repossession in the LTR is different from that in the RHCand 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**)
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> (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 Lands Tribunal.

13. 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.

14. 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.

Notice of Opposition in Application for Possession of Premises

15. 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.

16. 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.

17. 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.

Listing for Hearing for Possession Cases

18. 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.

19. The Judiciary **recommends** that the Rule 14 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.

20. The above recommendations together would result in a maximum reduction of 18 days in the statutory time limits of the various steps in an application for repossession of premises without compromising fairness, viz. –

(a) 7 days resulting from the posting of notice before judgment to satisfy PD16.4 for cases based on grounds other than non-payment of rent;

(b) 7 days resulting from the reduction of the opposition period under Rule 69; and

(c) 4 days resulting from the removal of the Form 31 requirement under Rule 14.

For a straight-forward case (other than a non-payment of rent case), the time for the application stage (from application for possession to application for writ of possession) will be reduced from 47 days to 29 days as illustrated at **Annex B**.

Annex B

Interlocutory Procedure for All Types of Cases

21. Rule 4 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."

Rule 4(3), (4) and (5) appear to be redundant and unnecessary. The 7 days provided for in Rule 4(4) could delay the disposal of interlocutory applications. Rule 4(3) and (5) are 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 Lands Tribunal expeditiously.

22. The Judiciary **recommends** the deletion of Rules 4(3), (4) and (5). By reason of Section 10(1)[2] of the LTO, the Tribunal can follow the practice in the Court of First Instance without those sub-rules.

Schedule – Forms

23. 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

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[2] **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 … … 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.

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.

III. Amendments to Primary Legislation

Jurisdiction

Types of Possession Claims

24. The Lands Tribunal is a specialised tribunal for adjudicating disputes relating to land or interest in land. At present, applications by landlords for possession of premises constitute nearly half of the workload of the Tribunal. Section 8 of the LTO sets out the jurisdiction of the Tribunal. The following categories of tenancies are outside the jurisdiction of the Tribunal -

(a) Tenancies within the scope of the Landlord and Tenant (Consolidation) Ordinance ("LTCO") (Cap. 7) terminated on grounds **other than** (i) by forfeiture, (ii) by surrender, (iii) by notice of termination, (iv) by notice to quit given by the landlord to the tenant or the tenant to the landlord or (v) by effluxion of time-since 9 July 2004 (see section 8(7) and Ordinance No. 16 of 2004); and

(b) Certain tenancies like tenancies for agricultural lands, some domestic tenancies for fixed terms of 5 years or more, and some non-domestic tenancies for fixed terms of 3 years or more (see sections 116 and 121 of the LTCO).

25. If these tenancies were entered into on or after 9 July 2004 and are terminated by effluxion of time, the Tribunal can assume jurisdiction for possession claims pursuant to their termination. This is the result of the enlargement of jurisdiction by Ordinance No. 16 of 2004. However, if these tenancies were entered into before 9 July 2004, or even if they were entered into on or after that date but are terminated otherwise than by effluxion of time, applications for possession pursuant to their termination are outside the jurisdiction of the Tribunal. These applications have to be lodged with the Court of First Instance or the District Court.

26. Members of the public who are not legally represented may not appreciate the Tribunal's lack of jurisdiction for some possession claims. Some applicants may have to be turned away by the Tribunal for lack of jurisdiction or the Tribunal may have to transfer such claims to the Court of First Instance or the District Court. Inconvenience would thus be caused to these applicants.

27. The Judiciary **recommends** that the Lands Tribunal, being a specialised tribunal, should have comprehensive jurisdiction to adjudicate all types of possession claims regardless of the basis of such claims. It can generally dispose of possession claims efficiently. This recommendation will provide applicants of all types of claims with an option to have their claims dealt with in the Tribunal.

Award of Damages

28. Pursuant to section 8(8), the Tribunal at present can only order the tenants to pay rent and mesne profits up to the day of removal. It has no jurisdiction to order either party, who has committed a breach of the tenancy, to pay damages to indemnify the loss of the other party. In the event that either party to an application should also claim damages for breach of tenancy, or where a landlord may wish to claim damages in terms of loss of rental for the remaining term when there is a fall in the market rent of the property, the application would have to be transferred to the Court of First Instance or the District Court.

29. The Judiciary **recommends** that the Tribunal be given the jurisdiction to award damages whether or not rent and mesne profits are also claimed.

<u>Practice and Procedure of the Tribunal</u>

30. The types of cases dealt with in the Tribunal may vary from simple possession cases to highly complicated compensation claims. In order to afford the Tribunal the flexibility to adopt suitable practice and procedure to deal with each case depending on its circumstances, the Judiciary **recommends** that Section 10 be amended in a manner to make it clear that the Tribunal should generally have the same power and jurisdiction as that of the Court of First Instance on matters of practice

and procedure, and the references to specific matters in the original version could be deleted.

Costs

31. There have been conflicting judicial decisions on whether the Registrar of the District Court has the power to tax the Tribunal's orders of costs. Since the Registrar of the District Court also serves as the Registrar of the Lands Tribunal and the Presiding Officers of the Tribunal are Judges of the District Court, the Judiciary takes the view that it is desirable to clarify that the Registrar of the District Court and the Masters in the District Court have the power to tax bills relating to proceedings in the Lands Tribunal. Accordingly, the Judiciary **recommends** an amendment to section 12 of the LTO to spell out clearly that the Registrar of the District Court has the power to tax the Tribunal's orders of costs. Moreover, the Presiding Officers and Members of the Tribunal should be given the express power to carry out summary assessment of the amount of costs payable under the Tribunal's orders of costs.

Transfer of Proceedings from the District Court to Lands Tribunal

32. Under section 8A of the LTO, the Lands Tribunal can transfer its proceedings to the Court of First Instance or the District Court. From time to time, the District Court may receive applications for proceedings, which should be commenced in the Tribunal but are wrongly instituted in the District Court. The Judiciary **recommends** the addition of a power to the District Court to transfer any proceeding to the Tribunal as the District Court may deem appropriate, so that such wrongly instituted proceedings can be transferred to the Tribunal rather than being dismissed. This recommendation can be implemented by amending section 42 of the District Court Ordinance ("DCO") (Cap. 336) to include the Tribunal as a venue for transfer.

IV. Suggestions Not to be Pursued

Application for Default Judgment at the Time of Application

33. We have considered the Panel's suggestion in paragraph 2(a) above that an applicant should be given an option to submit an application for default judgment at the time when he submits the

originating application for possession. If such an option should be allowed, the applicant would not have to wait until after the expiry of the time for the filing of a notice of opposition by the respondent before applying for default judgment. With such an application and an affidavit of service as currently required under LTR 10, should the respondent fail to file the notice of opposition in time, the application for default judgment could be processed automatically without the need of a further attendance by the applicant. This can save the applicant's trouble of one visit to the Tribunal for submitting the application for default judgment under LTR 15, but it would not produce any saving in time.

34. However, it should be noted that there is a significant number of cases which will not proceed beyond the filing and possibly service of an originating application for possession by the applicant. These cases will become dormant. In 2003, 947 out of 4,000 (23.67%) applications under Part IV and 424 out of 1,616 (26.23%) applications under Part V of the LTCO were unresolved. The overwhelming majority of these unresolved cases were dormant and did not proceed beyond the filing and possibly service of the originating applications. These cases must presumably have been resolved by settlement or by surrender. The processing of applications for default judgment for such dormant cases will result in substantial manpower wastage. The Judiciary therefore considers that the idea should not be pursued.

Fixing a Call-over Hearing Date upon Filing of Application

35. We have also considered the Panel's suggestion in paragraph 2(b) above as to whether it is possible to fix a call-over date upon the filing of an application for order of possession. If the respondent should fail to file a notice of opposition within time, the call-over date could then be cancelled and the application would automatically be passed for processing of default judgment. The trouble with this procedure is that when there is no notice of opposition filed in time, there will be the need for the staff of the Tribunal to notify the parties about the cancellation of the call-over hearing. There may be many enquiries by applicants and respondents on whether a notice of opposition has been filed in time, and whether the call-over hearing has been cancelled. All these will cause confusion and unwarranted administrative difficulties. The extra work involved will outweigh any advantage to be gained. The Judiciary considers that the suggestion should not be pursued.

36. Although the suggestions in paragraphs 33-35 are not pursued, the Judiciary believes that with the implementation of the recommendations referred to above, the processing time for repossession cases will be significantly reduced.

Proposed Way Forward

37. The Judiciary has informed the Housing, Planning and Lands Bureau ("HPLB") and the Home Affairs Bureau ("HAB") on the recommendations concerning their respective purviews, and will proceed to consult the two legal professional bodies on the recommendations requiring legislative amendments.

38. Subject to Members' views, and the outcome of the consultation with the legal professional bodies, the Judiciary will –

(a) implement the recommendations requiring legislative amendments to the LTR by introducing amendment rules for LegCo's negative vetting in due course; and

(b) liaise with the Administration on the implementation of recommendations requiring legislative amendments to the LTO and the DCO.

Judiciary Administration
April 2005

Review of the Lands Tribunal Ordinance ("LTO") (Cap. 17) and the Lands Tribunal Rules ("LTR") (Cap. 17A)

Summary of Recommendations

I. Revised Administrative Procedures

1. Applicants for repossession of premises should be permitted to post the bilingual notices of proceedings either before or after judgment is given. The Lands Tribunal to provide new specimen forms for posting before judgment.

II. Amendments to LTR

Method of Service for All Types of Cases

2. Rule 7 should 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.

Service of Writ for Repossession of Premises

3. Rule 7 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 Rules of the High Court and the Rules of the District Court.

Notice of Opposition in an Application for Possession of Premises

4. Rule 69(1) should be amended to reduce the period for filing and service of the notice of opposition in all possession claims from 14 days to 7 days. 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.

Listing for Hearing for Possession Cases

5. Rule 14 should 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.

Interlocutory Procedure for All Types of Cases

6. Rules 4(3), (4) and (5) should be deleted.

Schedule - Forms

7. Form 28 should be deleted. Any application in relation to matters for which Form 28 was designed can be made in Form 29.

III. Amendments to Primary Legislation

Jurisdiction

Types of Possession Claims

8. Section 8 of the LTO should be amended to confer comprehensive jurisdiction on the Lands Tribunal to adjudicate all types of possession claims regardless of the basis of such claims.

Award of Damages

9. Section 8 of the LTO should be amended to give the Tribunal the jurisdiction to award damages solely as well as in addition to rent and mesne profits.

Practice and Procedure of the Tribunal

10. Section 10 of the LTO should be amended in a manner to make it clear that the Tribunal should generally have the same power and jurisdiction as that of the Court of First Instance on matters of practice and procedures, and the references to specific matters in the original version could be deleted.

Costs

11. Section 12 of the LTO should be amended to spell out clearly that the Registrar of the District Court has the power to tax the Tribunal's orders of costs. Moreover, the Presiding Officers and Members of the Tribunal should be given the express power to

carry out summary assessment of the amount of costs payable under the Tribunal's orders of costs.

Transfer of Proceedings from the District Court to Lands Tribunal

12. Section 42 of the District Court Ordinance ("DCO") (Cap. 336) should be amended to include the Lands Tribunal as a venue for transfer.

IV. Suggestions Not to be Pursued

13. The suggestion to allow application for default judgment at the time of application for possession should not be pursued.

14. The suggestion to fix a call-over date upon the filing of an application for order of possession should not be pursued.

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Application Procedures for Repossession of Premises
(from Application for Possession to Application for Writ of Possession)

Existing Procedures

Day 1	Filing of application & affidavit of service
Day 3	Service of application effected – PD19.2
Day 4-17	Opposition period - 14 days under Rule 69(1)
Day 18	Filing of application to list for hearing (Rule 14)
Day 19-21	3 days as required under Rule 14(1)(b)
Day 22	Listing officer to fix date and send out notice
Day 23-39	2 days for service to be effected – PD19.2 14 days as required under Rule 14(1)(b) 1 day hearing by Tribunal and grant of repossession order
Day 40-46	3 days posting up of order at suit premises and 4 clear days grace period (PD 16.4) Concurrent running of 7-day relief period for non-payment of rent cases under s 21F of High Court Ordinance
Day 47	Filing of Application for Writ of Possession

Total: 47 days

Reformed Procedures

Day 1	Filing of application & affidavit of service
Day 3	Service of application effected – PD19.2 Posting of Notice (3 + 4 days under PD16.4)
Day 4-10	Opposition period (7 days under revised Rule 69(1))
Day 11	Listing officer to fix date and send out notice
Day 12-28	2 days for service to be effected – PD19.2 14 days as required under Rule 14(1)(b) 1 day hearing by Tribunal and grant of repossession order
Day 29	Filing of Application for Writ of Possession (other than non-payment of rent cases)
Day 29-35	7-day relief period for non-payment of rent cases under s 21F of High Court Ordinance
Day 36	Filing of Application for Writ of Possession for non-payment of rent cases

Total: 29 days (Other than non-payment of rent cases)
36 days for non-payment of rent cases

Note: The chart illustrates a straightforward case. The same process can, however, take longer time depending on the circumstances of the case.