

**Bills Committee on
Civil Justice (Miscellaneous Amendments) Bill 2007**

Draft Committee Stage Amendments

Purpose

This paper presents the draft Committee Stage Amendments (“CSAs”), which the Steering Committee on Civil Justice Reform (“the Steering Committee”) has proposed for introduction to the Civil Justice (Miscellaneous Amendments) Bill 2007 (“the Bill”).

Background

2. At the meeting on 20 November 2007, the Bills Committee noted **CJRB Paper No. 12/2007** on “Proposed Committee Stage Amendments”, and requested the Administration / Judiciary Administration to provide the wording of the proposed CSAs at the meeting in December 2007.

Draft Committee Stage Amendments

3. The draft CSAs are at **Annex A**. The reasons for the proposed CSAs are set out below. The marked-up version of the draft CSAs, highlighted in red against the affected provisions in the Bill or existing provisions in the relevant Ordinances, is at **Annex B**.

Annex A

Annex B

Clause	Reasons for the Proposed CSAs
Part 2 – Costs-only Proceedings	
Clauses 3 and 5	- To better reflect the policy intent that the reference to “costs” in the proposed section 52(B)(3)(b) and (c) of the High Court Ordinance (“HCO”) (Cap. 4) and section 53A(3)(b) of the District Court Ordinance

Clause	Reasons for the Proposed CSAs
	("DCO") (Cap. 336) refer to the costs of and incidental to the <u>costs-only proceedings</u> , but not the costs of and incidental to the <u>substantive dispute</u> . Draft CSAs on Pages 1 - 3 of Annex B .
Part 4 – Interim Relief and Mareva Injunctions in Aid of Proceedings outside Hong Kong	
Clause 10	- To delete the reference to " <i>arbitral tribunal</i> " from the proposed section 21N of HCO in Clause 10, as Clause 11 already amends section 2GC of the Arbitration Ordinance (Cap. 341) to deal with the grant of interim measures in aid of <i>arbitral proceedings</i> . Draft CSAs on Page 4 of Annex B .
Part 6 – Discovery	
New	- To introduce consequential amendments to the relevant sections in the HCO and DCO, following the amendments in Part 6 to extend pre-action discovery from personal injuries and death claims to all civil claims. Draft CSAs on pages 5 - 6 at Annex B .
Part 8 – Leave to Appeal	
Clauses 21 & 25	- To replace the phrase " <i>some other compelling reason</i> " by " <i>some other reason in the interests of justice why the appeal should be heard</i> " in the proposed section 14AA(4)(b) of the HCO and the proposed section 63A(2)(b) of the DCO. Draft CSAs on pages 7 - 8 at Annex B .

Clause	Reasons for the Proposed CSAs
New Part 10A – Rules of Court	
New	<ul style="list-style-type: none">- To introduce enabling provisions in the HCO and DCO for rules of court to be made to empower the Registrar to (i) disallow costs already awarded by the Court of Appeal and the Court of First Instance if there has been undue delay in commencing or proceeding with taxation, (ii) disallow interest for undue delay in commencing or proceeding with taxation, and (iii) impose interest sanctions to penalize a party for unnecessary taxation as a result of his failure to accept “sanctioned offers and payments” on costs. Draft CSAs at pages 9 - 10 at Annex B.
Part 12 – Lands Tribunal	
New	<ul style="list-style-type: none">- To introduce a leave requirement for interlocutory and final appeals from the Lands Tribunal to the Court of Appeal, so that it can be ascertained that the appeal involves a question of law, and to achieve consistency with the grounds for granting leave for appeals to the Court of Appeal in the HCO and DCO. Draft CSAs on pages 11 - 12 at Annex B.- At the meeting of 20.11.2007, Members noted that appeals from the Labour Tribunal (“LabT”) and the Small Claims Tribunal (“SCT”) concerning points of law required leave (para. 6 of CJRB Paper 11/2007 refers). The Administration / Judiciary Administration were requested to (i) advise whether there are similar grounds for granting leave to appeal in respect of decisions from the LabT and the SCT, and (ii) consider whether there should be consistency in the grounds for granting leave

Clause	Reasons for the Proposed CSAs
	<p>to appeal on points of law.</p> <ul style="list-style-type: none">- Appeals from the LabT and the SCT are governed by section 32 of the Labour Tribunal Ordinance (Cap. 25) and section 28 of the Small Claims Tribunal Ordinance (Cap. 338) respectively. There are no similar grounds for granting leave as those proposed for the HCO, DCO and LTO. As the appeals from the LabT and SCT are made to the Court of First Instance (not to the Court of Appeal), we do not intend to introduce the same grounds for granting leave to appeal from these two Tribunals.
Clauses 33 & 34	<ul style="list-style-type: none">- To amend the proposed section 12 and to add new sections 12B and 12C regarding (i) interest on claims for debt and damages, and (ii) interest on judgments to the LTO for consistency with the HCO and DCO. Draft CSAs on pages 12 - 16 at Annex B.

Proposed Way Forward

4. Subject to Members' comments on the draft CSAs, the Administration will introduce the CSAs accordingly.

Administration Wing
Chief Secretary for Administration's Office

Judiciary Administration

December 2007

CIVIL JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 2007

DRAFT COMMITTEE STAGE

Amendments to be moved by the Chief Secretary for Administration

<u>Clause</u>	<u>Amendment Proposed</u>
3	<p>In the proposed section 52B, by adding –</p> <p>“(3A) A reference to costs in subsection (3)(b) and (c) is a reference to the costs of and incidental to the proceedings commenced under subsection (2) or transferred to the Court of First Instance under section 53B of the District Court Ordinance (Cap. 336).”.</p>
5	<p>In the proposed section 53A, by adding –</p> <p>“(3A) A reference to costs in subsection (3)(b) and (c) is a reference to the costs of and incidental to the proceedings commenced under subsection (2) or transferred to the Court under section 52C of the High Court Ordinance (Cap. 4).”.</p>
10	<p>In the proposed section 21N(1)(b), by deleting “or arbitral tribunal”.</p>
New	<p>By adding immediately after clause 15 –</p> <p>“15A. Powers of the Court exercisable before commencement of action</p> <p>Section 47D(1) is amended by repealing “for personal injuries or arising out of the death of a person”.</p>
New	<p>By adding immediately after clause 16 –</p> <p>“16A. Provisions supplementary to sections 41 and 42</p> <p>Section 43(3) is repealed.</p> <p>16B. Application to Government of sections 41 to 44</p> <p>Section 45(1) is amended by repealing “involving a claim in respect of personal injuries to a person or in respect of a person’s death”.</p>

New By adding immediately after clause 17 –

“17A. Application to Government of sections 47A to 47D

Section 47E(1) is amended by repealing “for personal injuries or arising out of the death of a person”.

- 21 (a) In the proposed section 14AA(4)(b), by deleting “compelling reason” and substituting “reason in the interests of justice”
(b) In the proposed section 14AA, by adding –

“(5) This section does not apply in relation to an interlocutory judgment or order of the Court of First Instance made before the commencement of this section.”

- 25 In the proposed section 63A(2)(b), by deleting “compelling reason” and substituting “reason in the interests of justice”.

New By adding –

“PART 10A
RULES OF COURT

High Court Ordinance

28A. Section added

The High Court Ordinance (Cap. 4) is amended by adding –

“55D. Rules as to costs and interest

(1) Notwithstanding sections 49 and 52A, the power to make rules of court under section 54 includes power to make provision for enabling the Registrar, in such circumstances as may be specified in the rules, to –

- (a) disallow all or part of any costs awarded by the Court of First Instance or the Court of Appeal;
(b) disallow all or part of any interest otherwise payable under section 49 on taxed costs, or reduce the period for which such interest is payable or the rate prescribed in section 49 at which such interest is payable; and
(c) increase the rate prescribed in section 49 at which interest on taxed costs or costs of taxation is payable.

(2) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the

Rules Committee may consider necessary or expedient.”.

District Court Ordinance

28B. Section added

The District Court Ordinance (Cap. 336) is amended by adding –

“72CA. Rules as to costs and interest

- (1) Notwithstanding sections 50 and 53, the Rules Committee may make rules of court for enabling the Registrar, in such circumstances as may be specified in the rules, to –
 - (a) disallow all or part of any costs awarded by the Court;
 - (b) disallow all or part of any interest otherwise payable under section 50 on taxed costs, or reduce the period for which such interest is payable or the rate prescribed in section 50 at which such interest is payable; and
 - (c) increase the rate prescribed in section 50 at which interest on taxed costs or costs of taxation is payable.
- (2) Rules made under this section may include incidental, supplementary and consequential provisions that the Rules Committee considers expedient.
- (3) In this section, “Registrar” () includes a Master.”.”.

New By adding –

“32A. Decisions of Tribunal final

Section 11 is amended –

- (a) in subsection (2) –
 - (i) by adding “section 11AA and” after “Subject to”;
 - (ii) by repealing “determination or order” and substituting “judgment, order or decision”;
- (b) in subsection (4), by repealing “of the making of the determination or order appealed against” and substituting “on which leave to appeal is granted under section 11AA”.”.

32B. Sections added

The following are added immediately after section 11 –

“11AA. Leave to appeal

(1) Subject to subsection (2), no appeal may be made under section 11(2) unless leave to appeal has been granted by the Tribunal or the Court of Appeal.

(2) Subject to subsection (4), an appeal lies as of right to a presiding officer from a judgment, order or decision of a registrar.

(3) An appeal under subsection (2) is subject to rules made under section 10(3).

(4) Where rules made under section 10(3) provide that an appeal from a specified judgment, order or decision of a registrar lies to the Court of Appeal, the appeal may be made to the Court of Appeal with leave of a registrar or the Court of Appeal.

(5) Leave to appeal may be granted –

(a) in respect of a particular issue arising out of the judgment, order or decision; and

(b) subject to such conditions as the Tribunal, the Court of Appeal or the registrar hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(6) Leave to appeal shall not be granted unless the Tribunal, the Court of Appeal or the registrar hearing the application for leave is satisfied that –

(a) the appeal has a reasonable prospect of success; or

(b) there is some other reason in the interests of justice why the appeal should be heard.

(7) This section does not apply in relation to a judgment, order or decision of the Tribunal or a registrar of the Tribunal made before the commencement of this section.

(8) In this section, “registrar” () includes a deputy registrar or assistant registrar of the Tribunal.

11AB. Decision on leave to appeal final

No appeal lies from a decision of the Court of Appeal as to whether or not leave to appeal to it should be granted.”.

33 In the proposed section 12(7), by deleting “Subject to” and substituting “Notwithstanding subsection (1) and section 12C but subject to”.

34 (a) In the heading, by deleting “**Section**” and substituting “**Sections**”.
(b) By deleting “The following is added” and substituting “The following are

added”.

(c) By adding immediately after the proposed section 12A –

“12B. Interest on claims for debt and damages

(1) In proceedings (whenever instituted) before the Tribunal for the recovery of a debt or damages there may be included in any sum for which judgment is given simple interest, at such rate as the Tribunal thinks fit or as rules made under section 10(3) may provide, on all or any part of the debt or damages in respect of which –

- (a) judgment is given; or
- (b) payment is made before judgment.

(2) Interest under subsection (1) may be awarded for all or any part of the period between the date when the cause of action arose and –

- (a) in the case of any sum paid before judgment, the date of the payment; and
- (b) in the case of the sum for which judgment is given, the date of the judgment.

(3) Where –

- (a) there are proceedings (whenever instituted) before the Tribunal for the recovery of a debt; and
- (b) the defendant pays the whole debt to the plaintiff (otherwise than in pursuance of a judgment in the proceedings),

the defendant is liable to pay the plaintiff interest at such rate as the Tribunal thinks fit or as rules made under section 10(3) may provide on all or any part of the debt for all or any part of the period between the date when the cause of action arose and the date of the payment.

(4) Interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs.

(5) Interest under this section may be calculated at different rates in respect of different periods.

(6) Subsections (1) and (3) are subject to rules made under section 10(3).

(7) In this section –

“defendant” () means the person from whom the plaintiff seeks the debt or damages;

“plaintiff” () means the person seeking the debt or damages.

12C. Interest on judgments

(1) Subject to any other Ordinance, judgment debts carry simple interest on the aggregate amount of the debts, or on such part of the debts as for the time being remains unsatisfied, from the date of the judgment until satisfaction.

- (2) Interest under this section is –
 - (a) at such rate as the Tribunal may order; or
 - (b) in the absence of such order, at such rate as may be determined from time to time by the Chief Justice by order.
- (3) Interest under this section may be calculated at different rates in respect of different periods.”.

CIVIL JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 2007

DRAFT COMMITTEE STAGE
Amendments to be moved by the Chief Secretary for Administration

Part 2 – Costs-only Proceedings

Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

3 **High Court Ordinance (Cap. 4)**

52B. Costs-only proceedings

(1) This section applies where –

- (a) the parties to a dispute have agreed on all the issues in dispute, including who is to pay the costs of and incidental to the dispute;**
- (b) the agreement has been made or confirmed in writing;**
- (c) no proceedings relating to the dispute have been commenced; and**
- (d) the parties have failed to agree on the amount of the costs of and incidental to the dispute.**

(2) Subject to any other Ordinance, either party to the agreement may commence proceedings for an order for the costs of and incidental to the dispute, in accordance with rules of court.

(3) In any proceedings commenced under subsection (2) or transferred to the Court of First Instance under section 53B of the District Court Ordinance (Cap. 336), the Court of First Instance may –

- (a) make an order for the costs of and incidental to the dispute to be taxed or assessed;**
- (b) make an order awarding costs to or against any party to the proceedings; and**
- (c) make an order awarding costs against a person who is not a party to the proceedings, if it is satisfied that it is in the interests of justice to do so.**

(3A) A reference to costs in subsection (3)(b) and (c) is a reference to the costs of and incidental to the proceedings commenced under subsection (2) or transferred to the Court of First Instance under section 53B of the District Court Ordinance (Cap. 336).

Key

Red – Proposed CSAs

Black boldtyped – Provisions in the Bill

Black – Existing provisions in the relevant Ordinance

Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

(4) In subsection (3), “Court of First Instance” (原訟法庭) includes the Registrar and a Master.

5

District Court Ordinance (Cap. 336)

53A. Costs-only proceedings

(1) This section applies where –

- (a) the parties to a dispute have agreed on all the issues in dispute, including who is to pay the costs of and incidental to the dispute;
- (b) the agreement has been made or confirmed in writing;
- (c) no proceedings relating to the dispute have been commenced; and
- (d) the parties have failed to agree on the amount of the costs of and incidental to the dispute.

(2) Subject to any other Ordinance, either party to the agreement may commence proceedings for an order for the costs of and incidental to the dispute, in accordance with rules of court.

(3) In any proceedings commenced under subsection (2) or transferred to the Court under section 52C of the High Court Ordinance (Cap. 4), the Court may –

- (a) make an order for the costs of and incidental to the dispute to be taxed or assessed;
- (b) make an order awarding costs to or against any party to the proceedings; and
- (c) make an order awarding costs against a person who is not a party to the proceedings, if it is satisfied that it is in the interests of justice to do so.

(3A) A reference to costs in subsection (3)(b) and (c) is a reference to the costs of and incidental to the proceedings commenced under subsection (2) or transferred to the Court under section 52C of the High Court Ordinance (Cap. 4).

(4) The Court has jurisdiction to make an order under subsection (3) if the amount of the party’s claim for those costs does not exceed \$1,000,000.

Key

Red – Proposed CSAs

Black boldtyped – Provisions in the Bill

Black – Existing provisions in the relevant Ordinance

Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

(5) In this section, “Court” (區域法院) includes the Registrar and a master of the Court.

Key

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Black boldtyped – Provisions in the Bill

Black – Existing provisions in the relevant Ordinance

Part 4 – Interim Remedies and Mareva Injunctions in Aid of Proceedings outside Hong Kong

Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

10 **High Court Ordinance (Cap. 4)**

21N. Supplementary provisions as to interim relief in the absence of substantive proceedings

(1) In exercising the power under section 21M(1), the Court of First Instance shall have regard to the fact that the power is –

- (a) ancillary to proceedings that have been or are to be commenced in a place outside Hong Kong; and**
- (b) for the purpose of facilitating the process of a court ~~or arbitral tribunal~~ outside Hong Kong that has primary jurisdiction over such proceedings.**

(2) The Court of First Instance has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an order granted under section 21M as if the order were granted under section 21L in relation to proceedings commenced in Hong Kong.

Key

Red – Proposed CSAs

Black boldtyped – Provisions in the Bill

Black – Existing provisions in the relevant Ordinance

Part 6 – Discovery

Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

New 15A

District Court Ordinance (Cap. 336)

47D. Powers of the Court exercisable before commencement of action

- (1) A person authorized by the rules may, in proceedings in an action, in which a claim ~~for personal injuries or arising out of the death of a person~~ is made, apply to the Court for an order for and the Court may order-
- (a) the inspection, photographing, preservation, custody and detention of property which may become the subject-matter of the proceedings or as to which any question may arise in the proceedings;
 - (b) the taking of samples of the property mentioned in paragraph (a) and the carrying out of any experiment on or with the property.
- (2) An application under this section is to be made in accordance with rules of court.
- (3) Rules may be made to include-
- (a) the manner in which an application for an order can be made and by whom;
 - (b) the circumstances in which an order can be made; and
 - (c) the incidental, supplementary and consequential provisions which the Rules Committee may consider necessary or expedient.
- (4) In this section, “property” (財產) includes any land, chattel or other physical property of any description.

New 16A

High Court Ordinance (Cap. 4)

43. Provisions supplementary to sections 41 and 42

- (1) The power to make rules of court under section 54 shall include power to make rules of court as to the circumstances in which an order under section 41 or 42 can be made; and any such rules may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.

Key

Red – Proposed CSAs

Black boldtyped – Provisions in the Bill

Black – Existing provisions in the relevant Ordinance

Part 8 – Leave to Appeal

Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

21 High Court Ordinance (Cap. 4)

14AA. Leave to appeal required for interlocutory appeals

(1) Except as provided by rules of court, no appeal lies to the Court of Appeal from an interlocutory judgment or order of the Court of First Instance in any civil cause or matter unless leave to appeal has been granted by the Court of First Instance or the Court of Appeal.

(2) Rules of court may specify a judgment or order of any prescribed description to which subsection (1) does not apply and accordingly an appeal lies as of right from the judgment or order.

(3) Leave to appeal for the purpose of subsection (1) may be granted –

(a) in respect of a particular issue arising out of the interlocutory judgment or order; and

(b) subject to such conditions as the court hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(4) Leave to appeal for the purpose of subsection (1) shall not be granted unless the court hearing the application for leave is satisfied that –

(a) the appeal has a reasonable prospect of success; or

(b) there is some other ~~compelling reason~~ **reason in the interests of justice** why the appeal should be heard.

(5) **This section does not apply in relation to an interlocutory judgment or order of the Court of First Instance made before the commencement of this section.**

25 District Court Ordinance (Cap. 336)

63A. Leave to appeal

(1) Leave to appeal granted under section 63 may be granted –

(a) in respect of a particular issue arising out of the judgment, order or

Key

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Black – Existing provisions in the relevant Ordinance

Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

decision; and

(b) subject to such conditions as the judge, the master or the Court of Appeal hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(2) Leave to appeal shall not be granted unless the judge, the master or the Court of Appeal hearing the application for leave is satisfied that –

(a) the appeal has a reasonable prospect of success; or

(b) there is some other ~~compelling reason~~ **reason in the interests of justice why the appeal should be heard.**

(3) In this section, “master” (聆案官) means the Registrar, a deputy registrar or assistant registrar.

Key

Red – Proposed CSAs

Black boldtyped – Provisions in the Bill

Black – Existing provisions in the relevant Ordinance

New Part 10A – Rules of Court

Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

New 28A **High Court Ordinance (Cap. 4)**

55D. Rules as to costs and interest

(1) Notwithstanding sections 49 and 52A, the power to make rules of court under section 54 includes power to make provision for enabling the Registrar, in such circumstances as may be specified in the rules, to –

- (a) disallow all or part of any costs awarded by the Court of First Instance or the Court of Appeal;
- (b) disallow all or part of any interest otherwise payable under section 49 on taxed costs, or reduce the period for which such interest is payable or the rate prescribed in section 49 at which such interest is payable; and
- (c) increase the rate prescribed in section 49 at which interest on taxed costs or costs of taxation is payable.

(2) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.

New 28B **District Court Ordinance (Cap. 336)**

72CA. Rules as to costs and interest

(1) Notwithstanding sections 50 and 53, the Rules Committee may make rules of court for enabling the Registrar, in such circumstances as may be specified in the rules, to –

- (a) disallow all or part of any costs awarded by the Court;
- (b) disallow all or part of any interest otherwise payable under section 50 on taxed costs, or reduce the period for which such interest is payable or the rate prescribed in section 50 at which such interest is payable; and
- (c) increase the rate prescribed in section 50 at which interest on taxed costs or costs of taxation is payable.

(2) Rules made under this section may include incidental, supplementary and

Key

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Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

consequential provisions that the Rules Committee considers expedient.

(3) In this section, “Registrar” () includes a Master.

Key

Red – Proposed CSAs

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Part 12 – Lands Tribunal

Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

New 32A **Lands Tribunal Ordinance (Cap. 17)**

11. Decisions of Tribunal final

(1) Subject to subsection (2) and section 11A, the decision of the Tribunal in determining- (Amended 49 of 1982 s. 11)

- (a) the amount of compensation payable by the Government in the case of any claim submitted to it under section 8(1) or (2); or
- (b) any appeal submitted to it under section 8(4),

shall be the final determination thereof.

(2) Subject to **section 11AA and** the provisions of any Ordinance relating to appeals from the Tribunal, any party to proceedings before the Tribunal may appeal to the Court of Appeal against a determination or order of the Tribunal on the ground that such ~~determination or order~~ **judgment, order or decision** is erroneous in point of law.

(3) Subject to subsection (4), any appeal under subsection (2) shall be brought in such manner and shall be subject to such conditions as are prescribed by the Rules of the High Court (Cap 4 sub. leg. A) (Amended 25 of 1998 s. 2)

(4) The time within which a notice of appeal must be served shall be calculated from the date ~~of the making of the determination or order appealed against~~ **on which leave to appeal is granted under section 11AA.**

New 32B **11AA. Leave to appeal**

(1) Subject to subsection (2), no appeal may be made under section 11(2) unless leave to appeal has been granted by the Tribunal or the Court of Appeal.

(2) Subject to subsection (4), an appeal lies as of right to a presiding officer from a judgment, order or decision of a registrar.

(3) An appeal under subsection (2) is subject to rules made under section 10(3).

(4) Where rules made under section 10(3) provide that an appeal from a

Key

Red – Proposed CSAs

Black boldtyped – Provisions in the Bill

Black – Existing provisions in the relevant Ordinance

Clause

Marked up Version of Proposed Committee Stage Amendments (in Red)

specified judgment, order or decision of a registrar lies to the Court of Appeal, the appeal may be made to the Court of Appeal with leave of a registrar or the Court of Appeal.

(5) Leave to appeal may be granted –

(a) in respect of a particular issue arising out of the judgment, order or decision; and

(b) subject to such conditions as the Tribunal, the Court of Appeal or the registrar hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(6) Leave to appeal shall not be granted unless the Tribunal, the Court of Appeal or the registrar hearing the application for leave is satisfied that –

(a) the appeal has a reasonable prospect of success; or

(b) there is some other reason in the interests of justice why the appeal should be heard.

(7) This section does not apply in relation to a judgment, order or decision of the Tribunal or a registrar of the Tribunal made before the commencement of this section.

(8) In this section, “registrar” () includes a deputy registrar or assistant registrar of the Tribunal.

11AB. Decision on leave to appeal final

No appeal lies from a decision of the Court of Appeal as to whether or not leave to appeal to it should be granted.

33

Lands Tribunal Ordinance (Cap. 17)

12. Costs

~~(1) Subject to the provisions of the Ordinance giving the Tribunal jurisdiction in any matter, the Tribunal may award costs to and against any party to any proceedings and may order that those costs be taxed on the basis of any one of the Scales of Costs set out in the Schedules to Order 62 of— (Amended 32 of~~

Key

Red – Proposed CSAs

Black boldtyped – Provisions in the Bill

Black – Existing provisions in the relevant Ordinance

Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

~~2002 s. 40)~~

~~(a) the Rules of the High Court (Cap 4 sub. leg. A); or~~

~~(b) the Rules of the District Court (Cap 336 sub. leg. H). (Amended 32 of 2002 s. 40)~~

~~(2) Subject to any rules made by the Chief Justice under section 10(3), Order 62 of the Rules of the High Court (Cap 4 sub. leg. A) shall apply to the award, taxation and recovery of costs in the Tribunal.~~

~~(Replaced 49 of 1982 s. 13. Amended 25 of 1998 s. 2)~~

(1) The costs of and incidental to all proceedings in the Tribunal are in the discretion of the Tribunal, and the Tribunal has full power to determine by whom and to what extent the costs are to be paid.

(2) Without prejudice to the generality of subsection (1), the Tribunal may make an order awarding costs against a person who is not a party to the relevant proceedings, if the Tribunal is satisfied that it is in the interests of justice to do so.

(3) In any proceedings before it, the Tribunal may by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs.

(4) When determining whether or not to make an order under subsection (3), the Tribunal shall, in addition to all other relevant circumstances, take into account the interest that there be fearless advocacy under the adversarial system of justice.

(5) Where the Tribunal has made an award of costs under subsection (1), (2) or (3), it may order that those costs be taxed in accordance with -

(a) the First Schedule and the Second Schedule to Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A); or

(b) Schedule 1 and Schedule 2 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H).

(6) The Registrar or a Master of the High Court, or the registrar or a deputy registrar or assistant registrar of the Tribunal may tax the costs ordered to be taxed under subsection (5).

(7) ~~Subject to~~ Notwithstanding subsection (1) and section 12C but subject to

Key

Red – Proposed CSAs

Black boldtyped – Provisions in the Bill

Black – Existing provisions in the relevant Ordinance

Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

subsection (5) and any rules made by the Chief Justice under section 10(3), Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies, with the necessary modifications, to the award, taxation and recovery of costs in the Tribunal.

(8) In this section –
“legal representative” (法律代表), in relation to a party to any proceedings, means a counsel or solicitor conducting litigation on behalf of the party;
“Master” (聆案官) has the meaning given to it by sections 37, 37AC, 37A and 37B of the High Court Ordinance (Cap. 4);
“wasted costs” (虛耗訟費) means any costs incurred by a party as a result of –
(a) any improper or unreasonable act or omission; or
(b) any undue delay or any other misconduct or default,
on the part of any legal representative, whether personally or through an employee or agent of the legal representative.

Lands Tribunal Ordinance (Cap. 17)

34 **Sections added**

The following ~~is~~ **are** added -

“12A. Costs in transferred cases, etc.

(1) This section applies to an action or proceedings transferred –
(a) from the Court of First Instance or the District Court to the Tribunal;
or
(b) from the Tribunal to the Court of First Instance or the District Court.

(2) The court or the Tribunal that orders the transfer may make an order for costs prior to the transfer and of the transfer.

(3) The costs of the whole action or proceedings both before and after the transfer are in the discretion of the court or the Tribunal to which the action or proceedings are transferred subject to any order made by the Tribunal or the court which ordered the transfer.

Key

Red – Proposed CSAs

Black boldtyped – Provisions in the Bill

Black – Existing provisions in the relevant Ordinance

Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

(4) The court or the Tribunal to which the action or proceedings are transferred may make –
(a) an order for costs; and
(b) an order as to the scales on which the costs of the action or proceedings are to be taxed,
as if the action or proceedings were originally commenced in the court or the Tribunal.

(5) Subject to section 12(6), the costs of the whole action or proceedings are to be taxed in the court or the Tribunal to which the action or proceedings are transferred.

12B. Interest on claims for debt and damages

(1) In proceedings (whenever instituted) before the Tribunal for the recovery of a debt or damages there may be included in any sum for which judgment is given simple interest, at such rate as the Tribunal thinks fit or as rules made under section 10(3) may provide, on all or any part of the debt or damages in respect of which –

- (a) judgment is given; or**
(b) payment is made before judgment.

(2) Interest under subsection (1) may be awarded for all or any part of the period between the date when the cause of action arose and –

- (a) in the case of any sum paid before judgment, the date of the payment; and**
(b) in the case of the sum for which judgment is given, the date of the judgment.

(3) Where –

- (a) there are proceedings (whenever instituted) before the Tribunal for the recovery of a debt; and**
(b) the defendant pays the whole debt to the plaintiff (otherwise than in pursuance of a judgment in the proceedings),

the defendant is liable to pay the plaintiff interest at such rate as the Tribunal thinks fit or as rules made under section 10(3) may provide on all or any part of the debt for all or any part of the period between the date when the cause of action arose and the date of the payment.

(4) Interest in respect of a debt shall not be awarded under this section for a

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Clause Marked up Version of Proposed Committee Stage Amendments (in Red)

period during which, for whatever reason, interest on the debt already runs.

(5) Interest under this section may be calculated at different rates in respect of different periods.

(6) Subsections (1) and (3) are subject to rules made under section 10(3).

(7) In this section –
“defendant” () means the person from whom the plaintiff seeks the debt or damages;

“plaintiff” () means the person seeking the debt or damages.

12C. Interest on judgments

(1) Subject to any other Ordinance, judgment debts carry simple interest on the aggregate amount of the debts, or on such part of the debts as for the time being remains unsatisfied, from the date of the judgment until satisfaction.

(2) Interest under this section is –
(a) at such rate as the Tribunal may order; or
(b) in the absence of such order, at such rate as may be determined from time to time by the Chief Justice by order.

(3) Interest under this section may be calculated at different rates in respect of different periods.”

Key

Red – Proposed CSAs

Black boldtyped – Provisions in the Bill

Black – Existing provisions in the relevant Ordinance