

# Civil Justice (Miscellaneous Amendments) Ordinance 2008

## Amendments to Lands Tribunal Ordinance (Cap. 17)

### Remarks

#### 8. Jurisdiction of the Tribunal

- (1) The Tribunal shall have jurisdiction to determine the amount of compensation (if any) payable by the Government in respect of any claim submitted to it under any Ordinance specified in the Schedule.
- (2) The Tribunal shall have jurisdiction to determine the amount of compensation (if any) payable by the Government in respect of any claim submitted to it under an Ordinance other than an Ordinance specified in the Schedule if –
- (a) the claim arises from any action taken by or on behalf of the Government in connexion with –
    - (i) the compulsory acquisition of land or any interest therein;
    - (ii) the extinguishment or variation of any rights pertaining to land;
    - (iii) the creation of any easements in, over or under any land; or
    - (iv) the authorization of any undertaking affecting any land or any interest therein; and
  - (b) the claim is submitted to the Tribunal for determination by agreement by or on behalf of both the Government and the claimant.
- (3) Subsection (2) shall apply notwithstanding any other provision made in any such Ordinance for the determination of any such claim.
- (4) The Tribunal shall have jurisdiction to determine any appeal submitted to it for determination under any Ordinance specified in the Schedule.
- (5) The Tribunal shall have such other jurisdiction as may be vested in it under any Ordinance including any Ordinance specified in the Schedule.  
(Amended 27 of 1993 s. 43)

~~(6) The Tribunal shall have jurisdiction to make orders for possession under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), including an order for possession to take effect on termination of the current tenancy where it does not make an order for the grant of a new tenancy under section 119G of that Ordinance. (Added 49 of 1982 s. 8. Amended 30 of 1983 s. 2)~~

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(6) The Tribunal shall have jurisdiction to make an order for the recovery of possession of any premises or for the ejection of a tenant from those premises, whether under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) or otherwise.

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~~(7) The Tribunal shall have jurisdiction to make orders for possession or for ejection in relation to premises to which Part I, or tenancies or sub-tenancies to which Part II, Part IV or Part V of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) applies where the contractual period of a tenancy or sub-tenancy has been terminated by forfeiture, by surrender (including surrender under the former section 52A, or under section 117, of that Ordinance), by notice of termination within the meaning of Part IV or Part V of that Ordinance or by notice to quit given by the landlord to the tenant, the tenant to the landlord, the principal tenant to the sub-tenant or the sub-tenant to the principal tenant. (Added 30 of 1983 s. 2. Amended 32 of 1985 s. 27; 102 of 1995 s. 2; 32 of 2002 s. 40)~~

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(8) The Tribunal shall have jurisdiction, in any application for possession or for ejection, under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) or otherwise, and in any application for a new tenancy under Part IV of that Ordinance, whether or not it grants any such application, ~~to make orders for the payment of rent, mesne profits, including interim payments of rent and mesne profits, for the payment of any other money which is due under the tenancy or sub-tenancy, and for the disposal of any property left in the premises concerned by the tenant or sub-tenant. (Added 30 of 1983 s. 2. Amended 32 of 2002 s. 40)~~ **to make one or more of the following orders –**

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- (a) an order for the payment of rent and mesne profits (including interim payments of rent and mesne profits);**
- (b) an order for the payment of any other money which is due under the tenancy or sub-tenancy;**
- (c) an order for the disposal of any property left in the premises concerned by the tenant or sub-tenant; and**
- (d) an order for the payment of damages in respect of any breach of a condition of the tenancy or sub-tenancy.**

(8A) The Tribunal shall have jurisdiction to determine any claim or counterclaim or set-off and counterclaim transferred to it under section 7 or 10 of the Small Claims Tribunal Ordinance (Cap. 338). (Added 28 of 1999 s. 18)

(9) In the exercise of its jurisdiction, the Tribunal shall have the same jurisdiction to grant remedies and reliefs, equitable or legal, as the Court of First Instance. (Added 30 of 1983 s. 2. Amended 27 of 1993 s. 43; 25 of 1998 s. 2)

(10) The jurisdiction conferred by subsections (6), ~~(7)~~ and (8) in respect of tenancies to which Part IV or V of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) applies is subject to the repeal of certain provisions of those Parts by the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (16 of 2004). (Added 16 of 2004 s. 16)

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~~(11) The Tribunal shall have jurisdiction to make an order for possession~~  
~~(a) upon the expiry of a transitional termination notice served pursuant to section 5(2) of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (16 of 2004);~~

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- ~~(b) upon an application by a landlord for possession as provided by section 7(2) of that Ordinance;~~
- ~~(c) upon the termination of a tenancy to which section 9(2) of that Ordinance applies;~~
- ~~(d) upon the termination by effluxion of time of a new tenancy entered into on or after the commencement\* of that Ordinance. (Added 16 of 2004 s. 16)~~

**(12) Except as provided by any other Ordinance, the Tribunal does not have jurisdiction to make an order for the costs of and incidental to a dispute in relation to which no proceedings have been commenced in the Tribunal.**

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### **8B. Jurisdiction under section 8(7)**

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~~The Tribunal shall be regarded for any purpose as always having had the jurisdiction conferred by section 8(7), as amended by section 2 of the Lands Tribunal (Amendment) Ordinance 1995 (102 of 1995).  
(Added 102 of 1995 s. 3)~~

## **10. Practice and procedure of Tribunal**

~~(1) The Tribunal shall have the powers which are vested in the Court of First Instance in the exercise of its civil jurisdiction in respect of the following matters —~~

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

~~and, so far as it thinks fit, may follow the practice and procedure of the Court of First Instance in the exercise of its civil jurisdiction. (Amended 49 of 1982 s. 10; 30 of 1983 s. 3; 25 of 1998 s. 2)~~

**(1) The Tribunal may, so far as it thinks fit, follow the practice and procedure of the Court of First Instance in the exercise of its civil jurisdiction, and for this purpose, has the same jurisdiction, powers and duties of the Court of First Instance in respect of such practice and procedure.**

**(1A) Without prejudice to the generality of subsection (1), the Tribunal has the same jurisdiction, powers and duties of the Court of First Instance**

in respect of the punishment of a person guilty of contempt.

(2) Without prejudice to the generality of the powers vested in it under subsection (1), the Tribunal may –

- (a) on the application of any party to any proceedings before it, or of its own motion, order any party to the proceedings to disclose to the Tribunal the existence of any document which is in the power of such party to produce and which the Tribunal considers is or may be material to the determination of the matter being heard by the Tribunal;
- (b) order any party to any proceedings before it –
  - (i) to produce to the Tribunal any document which it may require and which is in the power of such party to produce; and
  - (ii) to afford to any other party to the proceedings an opportunity to examine any such document or copy thereof and to take copies thereof;
- (c) together with the parties to any proceedings before it and any expert witness of any such party, enter on and inspect any land, premises or place which relates to the proceedings before the Tribunal or any land, premises or place contiguous or adjacent thereto; and (Amended 32 of 2002 s. 40; 16 of 2004 s. 16)
- (d) for good cause, enlarge the time, whether or not that time has already expired, fixed by any Ordinance –
  - (i) for the giving of any notice (and whether or not the notice relates to any proceedings); (Replaced 32 of 2002 s. 40)
  - (ii) for the taking of any step in any proceedings; (Amended 32 of 2002 s. 40)
  - (iii) for the filing or lodging of any document in any proceedings. (Added 30 of 1983 s. 3. Amended 32 of 2002 s. 40; 16 of 2004 s. 16)
- (e) (Repealed 16 of 2004 s. 16)

(3) The Chief Justice after consultation with the President may make rules prescribing – (Amended 49 of 1982 s. 10)

- (a) the form of any document to be made or issued by any party or intending party for the purpose of any proceedings before the Tribunal;
- (b) the fees payable in respect of any proceedings before the Tribunal;
- (ba) the practice and procedure to be followed for dealing with any action or proceedings transferred from the Court of First Instance or the District Court;**
- (c) the practice and procedure to be followed in any proceedings before the Tribunal or in any appeal from a decision of the Tribunal in so far as no provision is made therefor in this Ordinance;
- (d) the evidence which may be required or admitted in any proceedings before the Tribunal; (Added 80 of 1978 s. 3)
- (e) the award, taxation and recovery of costs; and (Added 49 of 1982 s. 10)
- (f) provisions generally for the better operation of this Ordinance.

(Added 49 of 1982 s. 10)

- (4) The President may –
- (a) determine any form of document to be made or issued by the Tribunal;
  - (b) determine any matter of procedure and practice in so far as no provision therefor is made under this Ordinance; and
  - (c) give directions as to the distribution and disposal of the business of the Tribunal. (Replaced 49 of 1982 s. 10)
- (5) (a) The proceedings of the Tribunal shall be conducted with as much informality as is consistent with attaining justice and, for this purpose, the President may give directions as to the manner and form in which proceedings shall be conducted.
- (b) Directions by the President under paragraph (a) may be given in such manner as he thinks fit and need not be published in the Gazette. (Added 49 of 1982 s. 10)
- (6) The Tribunal may admit in evidence any statement, document, information or matter, whether or not it would otherwise be admissible in evidence and attach such weight to it as may be appropriate in the circumstances. (Added 49 of 1982 s. 10)

## 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~~ **judgment, order or decision** of the Tribunal on the ground that such ~~determination or order~~ **judgment, order or decision** is erroneous in point of law.

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(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.**

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

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(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” (司法常務官) 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.

## 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 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) Notwithstanding subsection (1) and section 12C but subject to 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.

#### 12A. Costs in transferred cases, etc.

Section 42  
Lands Tribunal

(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.

(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

Section 42  
Lands Tribunal

(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” (被告人) means the person from whom the plaintiff seeks the debt or damages;

“plaintiff” (原告人) 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.