

Consultation Paper
Landlord and Tenant (Consolidation) Ordinance (LTO) (Cap.7)
Security of Tenure

Purpose

On 13 November 2002, the Secretary for Housing, Planning and Lands announced that a thorough review of the Landlord and Tenant (Consolidation) Ordinance (LTO) (Cap.7) would be conducted with a view to enabling the private rental market to operate as freely as possible. This paper aims to set out a number of possible approaches to remove certain security of tenure provisions in the LTO and reduce intervention by the Government where appropriate. Comments and views on the extent, method and timing of such relaxation are invited.

Background

2. With the provisions of security of tenure for residential premises under Part IV of the LTO, landlords are restricted from repossessing their properties even at the end of the tenancy period so long as tenants are willing to pay the prevailing market rent. Section 119E of the LTO provides that landlords can apply to the Lands Tribunal for permission not to renew tenancies upon such grounds as redevelopment, self-occupation or non-payment of rent.

3. The LTO was enacted in 1973 by consolidating all previous legislations relating to rent control and landlord and tenant matters. Parts I and II dealt respectively with rent control and security of tenure of pre-war and certain post-war tenancies. With the expiry of both of these Parts on 31 December 1998, most domestic tenancies are now protected under Part IV which accords security of tenure to tenants subject to payment of prevailing market rent. Part IV was introduced into the LTO in 1981 against the background of a serious shortfall of domestic accommodation in Hong Kong leading to significant rental increases on renewal of tenancies. The intention at that time was to protect tenants from the risk of being evicted by unscrupulous landlords.

4. While security of tenure affords protection to tenants when their bargaining power was weak, the protection has impeded the free operation of the private rental market and has discouraged investors from renting out their properties. The protection has become excessively restrictive in the light of the following –

(a) Sufficient supply of flats

At present, the total private housing stock exceeds one million units. The annual production of private housing continues to remain at a stable level, presently about 30,000 units.

(b) Falling rentals for private housing

Rentals levels have been falling in recent years. The latest data available as at the end of November 2002 show a drop of the average rental level of about 40% compared with the peak in October 1997.

(c) Adequate and affordable public housing

The number of families on the Waiting List for public rental housing has reduced from 150,000 in 1997 to about 90,000 at present. The average waiting time for public rental housing has been reduced significantly from nine years in 1990 to about 2.6 years at present.

In light of the above changed circumstances, the bargaining power of tenants has risen significantly. There is no longer any justification for providing excessive protection to tenants. The Government considers that it is timely to relax the excessive security of tenure provisions so as to restore the balance of interests between landlords and tenants, and allow the property market to operate more freely.

Implications

5. The removal of security of tenure provisions will entail the following implications –

- (a) Without the security of tenure provisions, landlords would be at full liberty to act according to the terms of the agreement and repossess the leased premises at the end of the tenancy period or negotiate new terms with the tenants for the renewal of the tenancy.
- (b) At present, a landlord can apply to the Lands Tribunal to repossess his/her premises at the end of the tenancy period because of, *inter alia*, redevelopment, but the landlord is obliged to pay compensation to the tenant in accordance with the scale prescribed under section 119F(4) of the LTO. If the security of tenure provisions are removed, landlords who wish to redevelop their premises would be able to repossess the premises at the end of the tenancy period without the need to pay statutory compensation.
- (c) The determination of rent and other terms of the tenancy by the Lands Tribunal provided under sections 119C and 119N of the LTO would become redundant and unnecessary, as landlords and tenants would have full liberty to negotiate the terms of their tenancy agreement.

Possible options

6. Different possible options for relaxation of the security of tenure provisions have been explored and they are as follows –

Option A - Partial removal delineated by Rateable Value (RV)

7. Under this option, the relaxation would proceed in two phases. Under Phase 1, leased premises above certain RV (say \$180,000 per year

or \$15,000 per month) will no longer be entitled to security of tenure protection, while those below that level will continue to be protected by security of tenure. Under Phase 2, complete relaxation would follow after a review.

Pros

- This approach would cause minimal disruption to leased premises of lower RV.

Cons

- The proposal would be unfair to landlords of mass domestic accommodation below the specified RV. For instance, the number of properties with RV below \$180,000 constitutes 81% of all of the domestic tenancies (totalling 240,000) in Hong Kong.
- It is difficult to draw a line on what premises should continue to be subject to the restriction of security of tenure and what should not.

Option B - Removal for new tenancies only

8. Under this option, new tenancies entered into after a date appointed by the Secretary for Housing, Planning and Lands will not be entitled to security of tenure. Tenancies entered into before the appointed date and are renewed afterwards will continue to be accorded protection.

Pros

- It would not affect tenants who have entered into tenancy agreements before the appointed date.

Cons

- The protection of security of tenure could carry on perpetually in theory for tenancies that are entered into before the appointed date. The security of tenure regime may take a prolonged period of time before it is completely phased out.

Option C - Complete removal at one go

9. Under this option, security of tenure would be completely removed on a date appointed by the Secretary for Housing, Planning and Lands. All tenancies would no longer be protected by security of tenure.

Pros

- The restriction on security of tenure would be removed across the board immediately after the appointed date.
- Intervention in the private domestic property market through the provision of security of tenure would be completely removed after that date.

Cons

- This option may be too disruptive.

Option D - Complete removal with a grace period

10. Under this option, security of tenure would be **removed for all new tenancies** entered into after a date to be appointed by the Secretary for Housing, Planning and Lands (the appointed date).

11. For **existing tenancies** entered into before the appointed date, **a grace period** (say 12 months) starting from the appointed date would be allowed. If the **tenancy expires during the grace period**, tenants may still apply for statutory tenancy renewal under the protection of security of tenure. If a landlord refuses to renew the tenancy, he/she would have to raise the statutory ground(s) of opposition under section 119E(1), and have to go through all the statutory renewal procedures. If a landlord raises the ground of redevelopment (section 119E(1)(c)) to oppose the tenant's application for tenancy renewal, he/she would still be liable to pay redevelopment compensation to tenants in accordance with section 119F(2) and (4).

12. For those tenancies which **expire after the grace period**, there will be no protection of security of tenure after the expiry of the current tenancy. In such cases, the landlords would be allowed to

repossess the leased premises freely at the end of the tenancy period.

Pros

- This proposal would ensure fairness to all tenancies because the restrictions on security of tenure will be removed for all tenancies, irrespective of the rateable values of the premises, or whether they are new or existing tenancies.
- The proposal would allow a reasonable transitional period for phasing out the security of tenure restrictions, enabling landlords and tenants to get prepared for de-control.

13. The Government considers that this option is a balanced approach which is fair for all tenancies and allows a reasonable transitional period for landlords and tenants to get prepared for change. It is regarded as the most practicable means to gain broadly-based public acceptance to Government's intentions to allow the market to operate freely.

14. You are invited to indicate to the Government your preference for either Options A, B, C or D.

Review on Minimum Notice Requirement under Part V of the LTO

15. Section 122 under Part V of the LTO provides that non-domestic tenancies (e.g. commercial, office, industrial, welfare) could not be terminated at the end of the tenancy period, unless notice is served by landlords to tenants not less than 6 months, or by tenants to landlords not less than 1 month, before the end of the tenancy period. If no party has given such notice, the tenancy would not end though the term agreed on the tenancy agreement expires, unless and until such notice is served and the notice period has expired.

16. The Government considers that since landlords and tenants have already agreed on the tenancy period when entering into the tenancy agreement, the Government should not intervene in such matters.

17. You are invited to advise on whether Section 122 of Part V should be deleted.

Provision of False Information by Tenants

18. In the course of vetting of the Landlord and Tenant (Consolidation) (Amendment) Bill 2001, the Legislative Council Bills Committee suggested that the Administration might require, by legislation, tenants to provide certain personal information such as name, occupation, salary and past rental records to landlords when entering into a tenancy agreement. Criminal liability should be imposed on tenants should they provide such personal information falsely. The Bills Committee was of the view that the proposal would reduce the number of non-payment of rent cases, as currently some rogue tenants gave wrongful personal information to the landlords to obstruct discovery of the actual financial situation of the tenant before entering into the tenancy agreement.

19. While the Bills Committee considered the proposal would reduce the number of default of rent payment cases, the mandatory requirement on tenants to provide information to landlords would contravene the International Covenant on Civil and Political Rights incorporated into Hong Kong Laws through the Basic Law. In fact, the provision of false information involving fraudulent act has already been covered by the existing laws. The Police have also committed that they would follow the same criminal investigation procedures in future for landlord-tenant disputes involving any criminal act.

20. You are invited to let us have your views on this issue.

The position of Sub-tenants if the Principal Tenant Defaults on Rent Payment

21. The Bills Committee also suggested that where landlords apply for repossession on the ground that the principal tenant defaults on rent payment, the interest of sub-tenants who pay rent to the principal

tenant punctually would be prejudiced as they would be deprived of accommodation.

22. Legal advice to the Government is that where the tenancy for the principal tenant is forfeited by the landlord due to non-payment of rent, under section 58(4) of the Conveyancing and Property Ordinance (Cap. 219) (CPO), courts are empowered with discretion to grant sub-tenants a tenancy which term is not longer than the tenancy term between the principal tenant and the landlord.

23. You are invited to let us have your views on this issue.

Views Sought

24. To conclude, your comments are invited regarding –

- (a) the practicability and desirability of and your preferred option for relaxation of security of tenure restriction set out in paragraphs 7 to 13 above;
- (b) whether notice requirements imposed on landlords and tenants of non-domestic premises should be abolished (paragraphs 15 and 16 above);
- (c) whether tenants should be statutorily required to submit personal information to landlords when entering into tenancy agreements, and whether the provision of false information by tenants should attract criminal liability (paragraphs 18 and 19 above); and
- (d) whether the existing statutory protection for sub-tenants is adequate for cases in which the principal tenancy is terminated by the landlord due to non-payment of rent by the principal tenant (paragraphs 21 and 22 above).

Submission of Views

25. Please forward your views, on or before **1 March 2003**, to –

By mail : Housing Department
33 Fat Kwong Street
Homantin
Kowloon

or

By fax : 2761 6700 / 2761 7444

or

By E-mail : lto@housingauthority.gov.hk

**Housing Department
Housing, Planning and Lands Bureau
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