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6 May 2004

The Hon Audrey EU, SC., JP
Chairman
Bills Committee on Landlord and Tenant
(Consolidation)(Amendment) Bill 2003
Room 429, Central Government Offices
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URGENT BY FAX
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Dear

**Landlord and Tenant (Consolidation)(Amendment) Bill 2003
Committee Stage Amendment by Hon Albert Ho**

At the Bills Committee meeting held on 23 April, the Hon Albert Ho tabled a Committee Stage Amendment (CSA) to the Landlord and Tenant (Consolidation) (Amendment) Bill 2003 (the Bill) seeking to retain security of tenure restrictions for tenements with Ratable Values (RV) below \$60,000 (\$5,000 per month). Mr Ho has set out his rationale for proposing the CSA in his letter of 23 April addressed to Members. I would like to provide you and Members of the Bills Committee with the Administration's views on the CSA.

The Administration has serious reservations about the CSA, for the reasons set out below.

(A) Undermining Government's policy objective

The proposed CSA will significantly undermine Government's policy objective to minimize intervention and to restore fully the free operation of the rental market. How the rental market is to operate should be left to

market forces and should not be dictated by a regulatory regime. Furthermore, both landlords and tenants should have the same right and freedom to determine their contractual tenancy obligations by mutual agreement. It is therefore necessary to remove the existing security of tenure regime. The CSA to partially retain the regime would result in the Bill not being able to achieve our policy objective and legislative intent. It would also result in a highly undesirable and confusing situation where the provisions to be repealed by the Bill will continue to apply to tenancies below the \$60,000 RV threshold after the Bill has come into effect. The amended legislation would end up partially reflecting our policy goal while at the same time partially reflecting the old regime. The legislation would look very untidy and would be difficult for the public to follow.

(B) Weakening the effectiveness of Government's policy

With a dividing line of an RV of \$60,000, we estimate that around 50% of the 240 000 existing rented tenements might be exempted from the coverage of the Bill. In other words, half of the private rental market might continue to be subject to the existing security of tenure regime even though the regime is no longer justified. As tenants in the high-end market are likely to be better able to take care of their tenancy needs than their counterparts in the low-end market, the CSA would render our Bill largely useless.

(C) Giving unfair treatment to some landlords

The two-tier system created by the CSA is unfair to landlords in the low-end market. There is no reason for continuing to deprive certain quarters of landlords of their liberty to change tenants upon tenancy expiry, simply by virtue of the RV of their properties. Landlords may want to change tenants for various reasons. Experience of the Rating and Valuation Department (RVD), supported by claims of an organization representing landlords' interest, suggests that many want to do so because of the roguish, uncooperative or outright malicious behaviour of their tenants. The CSA in effect neglects the interests and rights of landlords owning low-RV properties and would mean that some landlords will have to continue to face their ordeals with "problem" tenants.

(D) Dividing up the community

The CSA will inevitably split our community into a "protected class" and an "unprotected class" in an arbitrary manner. We are not aware of any objective basis for arriving at the RV threshold of \$60,000 and justifying the

retention of security of tenure for tenancies below this threshold. Besides, landlords at the lower-end of the market are more likely to be abused by “problem” tenants and less able to protect their own property right than those at the upper-end. Such arbitrary delineation, as proposed in the CSA, is likely to attract strong criticisms from the public for depriving them of the right to protect themselves for the segment of the community which is most in need of such right.

(E) Lack of justification for partial retention of security of tenure

There is no evidence to suggest that tenants in tenements with an RV below \$60,000 are in any particular need of security of tenure protection. According to RVD’s data, about 89% of the tenancies involving tenements with an RV below \$60,000 lasted less than four years, among which 69% lasted for one term of two years or less. Their staying pattern is largely similar to that of tenants in tenements with an RV exceeding \$60,000. This suggests that many tenants do not rely heavily on security of tenure protection. Furthermore, there is already an adequate supply of low-value rental units in the market. As at the end of 2003, there were over 52 000 vacant flats with a saleable area less than 70 m², representing 6.4% of the stock. Lifting security of tenure is likely to further increase the supply of rental units and make the rental market more competitive, which should be in the interest of both property owners and tenants.

(F) Existence of sufficient safety net and adequate transitional arrangement

Landlords of low-RV tenements are likely to be people of small means. It is unreasonable to impose upon them the responsibility of taking care of the accommodation needs of the poor and even the not-so-poor. As we have informed Members before, a comprehensive safety net is already in place to provide housing assistance to tenants who have difficulties in finding alternative accommodation in the event of repossession of properties upon tenancy expiry. Details of the assistance available are set out in Appendix. Also, our proposed transitional arrangement, which requires landlords of existing tenancies to provide 12 months’ notice to tenants prior to termination of tenancy, will in essence guarantee all existing tenants security of tenure protection for at least one year after the Bill has come into force. This should give tenants ample time to get adjusted to the new system and to find alternative accommodation if necessary. With the safety net and the transitional arrangements in place, there is no real need to partially retain the security of tenure regime.

(G) Other complications

The CSA proposes that the RV threshold should be pitched at \$60,000 at the time the Bill commences operation. This would cause a host of problems. For instance, in the case of new buildings completed after the commencement date and properties exempted from rating assessment, the landlords and the tenants will not know what the RV of their tenements was as at the commencement date. They will need to apply for RV assessment. The same is true for part-let and sub-let units, for which the RV is not readily known as RV assessment for rating purposes is based on the whole property. This could generate a large number of requests for RV assessment, but there is no provision in the Rating Ordinance for landlords and tenants to contest RV assessments for such purposes. Also, landlords of properties with an RV marginally below the threshold would likely want to contest RVD's assessments hoping to increase the RV to a level above the threshold. Tenants, on the other hand, might want to object to RVD's assessments in an attempt to stay within the "protected" zone. However, the period allowed under the Rating Ordinance for making objection to this year's RV assessment will have expired by the time the Bill comes into effect.

We hope Members will take into account the above factors in considering the CSA. We will be happy to further elaborate on our concerns at the Bills Committee meeting scheduled for 10 May.

(TAM Wing-pong)
for Secretary for Housing, Planning and Lands

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Members, Bills Committee on Landlord and Tenant (Consolidation)
(Amendment) Bill 2003

Provision of housing assistance by the Housing Authority (HA)

- For an evicted family referred from the Bailiff Office executing a possession order, HA will first accommodate the family in a temporary shelter in a Transit Centre (TC), so long as its members are Hong Kong residents.
- During their stay in TC, upon verification of their genuine homelessness and subject to meeting the eligibility criteria for PRH application through the General Waiting List (GWL), which include (i) income-cum-asset test, and (ii) no-domestic-property test, the HA will rehouse them to an Interim Housing (IH) unit to wait for maturity of their GWL application. In arranging the TC and subsequently an IH unit to the evicted family, the HA will not consider if it fulfills the 7-year residence requirement, which has to be met only when the family is rehoused from an IH unit to a PRH unit.
- In case the evicted family cannot fulfill the eligibility criteria for PRH, they could stay in the TC for a maximum of 3 months. During this period, they can seek assistance from the Social Welfare Department (SWD) and Non-government Organisations (NGOs), such as Hong Kong Family Welfare Society, Caritas-Hong Kong, Christian Family Services Centre, and Neighbourhood Advice Action Council, through the 66 Family Services Centres/Integrated Family Services Centre they operate.

Assistance by SWD and NGOs

Provision of accommodation

- Those who have genuine need and immediate housing problem, coupled with other justified financial, social and/or medical grounds, can apply for Compassionate Rehousing (CR) at Social Welfare Department (SWD) for a PRH unit.
- Residential Placement including (a) Aged Home Placement and (b) Urban Hostel for Single Persons could be arranged for the evicted individuals if they meet the eligibility criteria. Under (a), emergency placement in subvented aged homes can be arranged for singleton or

couple aged over 60. Under (b), placement in the two urban hostels operated by NGOs (聖雅各福群會李節街單身人士宿舍 and 救世軍怡安宿舍) can be arranged for single adults. The two hostels offer 80 placements with a maximum staying period of 6 months.

Finding suitable accommodation

- Information such as advertisement on suitable accommodation and on estate agencies will be passed to the evicted individuals or families if they do not have adequate support network (e.g. New Arrivals).
- If need be, the caseworkers will escort and accompany the individuals or families in searching the right tenement.
- Trust funds could be released by SWD to help the evicted tenants to settle the rent deposits and other expenses arising from the removal. The 4 major charitable/trust funds included Li Po Chun Charitable Trust Fund, Tang Shui Kin and Ho Tim Charitable Fund, Brewin Trust Fund and Kwan Fong Trust Fund for the Needy.

Counselling service

- Counselling service is offered to the evicted tenants to help them cope with the stress and anxiety which may arise from the eviction and removal.