Extract from report of the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001 for the House Committee meeting on 6 December 2002

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Purpose

1. This paper reports on the deliberations of the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001.

Background

2. The Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (the Ordinance) was enacted in 1973 by consolidating all previous legislation relating to landlord and tenant matters, protection and determination of tenancies as well as control and recovery of rent.

3. The Landlord and Tenant (Consolidation) (Amendment) Bill 1999 (the 1999 Amendment Bill) was introduced into the Legislative Council in December 1999 consequent upon a review of the Ordinance. However, the 1999 Amendment Bill was not scrutinized by the Legislature before the end of the 1999/2000 session owing to time constraints. In response to public concern over the lengthy and complicated statutory procedures for repossession of rented premises, the Government set up a Working Group on the Review of Statutory Procedures for Repossession of Domestic Premises and Recovery of Rent in September 1999. The recommendations of the Working Group were endorsed by the Administration in August 2000. As some of the recommendations required legislative amendments, these were included in the Landlord and Tenant (Consolidation) (Amendment) Bill 2001 in addition to the proposals in the 1999 Amendment Bill.

The Bill

4. The Landlord and Tenant (Consolidation) (Amendment) Bill 2001 seeks to amend the Ordinance to -

(a) improve the operation of the Ordinance;

(b) simplify tenancy renewal procedures;

(c) improve the basis of calculating compensation for the tenant and sub-tenant occupying small premises repossessed by the landlord for redevelopment;

(d) increase penalties for harassment of the tenant and unlawful eviction;

(e) streamline the statutory repossession procedures; and

(f) ensure that the provisions of the Ordinance are consistent with the human rights provisions in the Basic Law.

The Bills Committee

5. At the House Committee meeting on 22 June 2001, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Audrey EU Yuet-mee, the Bills Committee has held 11 meetings. The membership list of the Bills Committee is at **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from interested parties. Six groups, including two from the legal profession, have made written and/or oral representation to the Bills Committee. A list of these groups is at **Appendix II**.

Deliberations of the Bills Committee

Tenancy renewal procedures

6. The Bill proposes to shorten the statutory period by three months (from the original six to seven months to the proposed three to four months) for the service of notice by a landlord terminating a tenancy (Form CR 101) or by a tenant requesting a new tenancy (Form CR 103) and by one month (from the original two months to the proposed one month) for the service of the respective counter-notices (Form CB 102/CR 104). The Bills Committee notes that with the reduction of the lead time, the service of notice by the landlord requiring the tenant to apply to the Lands Tribunal for a new tenancy (Form CR 105) is considered redundant as there will not be much room for the tenant to procrastinate application to the court for the granting of a new tenancy. It therefore raises no objection to the proposed repealing of Form CR 105. To facilitate landlords and tenants in reaching agreement on the level of rent for renewal of tenancy without recourse to the Lands Tribunal, the Bills Committee also agrees to the proposal of empowering the Commissioner of Rating and Valuation to provide tenancy information of comparable premises to the landlord terminating a tenancy and to the tenant seeking a new tenancy on application at a fee.

7. Members however express concern on the proposed provision of allowing landlords to change or add grounds of opposition to a tenancy renewal application owing to changed circumstances arising after the service of notice of termination or opposition lest this may be subject to abuse. The Administration's explanation is that while there may be situation where a landlord deliberately mis-states his grounds of opposition on the form and then uses different grounds before the court, his defence will fail should the court find that the landlord has mis-stated his grounds of opposition.

Penalties on harassment of tenants and unlawful eviction

8. The Bill proposes to impose heavier penalties in relation to harassment and unlawful eviction of tenants. An offender will be subject to a fine of $500,000 and imprisonment for 12 months on first conviction and a fine of $1 million and imprisonment for three years on a subsequent conviction. It also proposes to simplify

the evidential burden by requiring the prosecution to prove that the defendant knows or has reasonable cause to believe that his act is likely to cause the tenant to give up occupation of the premises, rather than to prove the defendant's intention.

9. While recognizing the need to deter harassment and unlawful eviction of tenants, members question the deterrent effect of heavier penalties given the limited number of past successful prosecutions in relation to and the relatively low levels of penalty for harassment. They hold the view that apart from landlords, agents hired by landlords should also be subject to criminal liability if they resort to harassing acts to evict tenants. According to the Administration, the revised penalties are proposed in response to public concern over harassment acts. Although harassment activities are less proliferating in recent years, harassment of tenants is a serious offence and should be addressed with due severity despite short-term fluctuations in the property market. The proposed penalties are appropriate to deter such offences. Moreover, the criminal liability on harassing acts leading to unlawful eviction applies to both landlords and their agents. Where an agent resorts to harassing acts and it is the principal who is the actual perpetrator of the acts as shown by the evidence available, the principal will be held liable. As such, a landlord should make sure that no harassing acts would be committed by himself and/or his agent if he does not want to be caught by the provision.

10. Noting that the Police will not intervene in any disputes arising from occupation, possession of premises or rent arrears between landlords and tenants, unless a breach of the peace may occur or a criminal offence has been disclosed, members query how the provisions in the Bill can be effectively enforced. The Administration's explanation is that there are established internal guidelines on the procedures to be adopted by the Police in dealing with reports of alleged offences which emanate from tenancy disputes between landlords and tenants. In the light of the Bill, the Police has included additional provisions in the guidelines to draw the attention of police officers to address the problem of unscrupulous behaviour of landlords and tenants that attracts criminal liability. A Crime Investigation Team will take up the case if it is reasonably believed that a criminal offence has been committed by either party. If no evidence of criminal liability is found, the case will be referred to the Rating and Valuation Department (RVD) for mediation as appropriate. The Police will further revise the internal guidelines after the passage of the Bill to take account of further changes in the provisions of the Bill. Meanwhile, the Police will continue to monitor the situation of tenancy disputes.

Rebuilding compensation for tenants and sub-tenants

11. When premises are repossessed for redevelopment, the statutory compensation payable by the landlord to the tenant and sub-tenant is calculated according to a sliding scale of compensation levels viz. the higher the rateable value, the lower the compensation multiplier. Under the existing method of calculation, compensation is calculated in accordance with the rateable value of the whole flat and then apportioned among the tenant and sub-tenant. Owing to the higher rateable value and lower compensation multiplier for the whole flat (as compared with that for a part or sub-let portion within the flat), the apportioned compensation to each tenant or sub-tenant is much reduced. Given that tenants and sub-tenants are often citizens in the underprivileged category who should receive more assistance to alleviate hardship arising from relocation, the Bill proposes to amend the method of calculating compensation to make reference to the rateable value of the actual portion of the flat

which the tenant or sub-tenant occupies. Under the proposed amendment, the court will first apportion the rateable value according to the portion each occupant retains, and then work out the amount of compensation payable based on the apportioned rateable value. As a result, the compensation received by each occupant will be higher than that under the current arrangement. A comparison of compensation under the existing and proposed methods of calculation is at **Appendix III**.

Statutory repossession procedures

12. At present, a straightforward case of repossession of premises for non-payment of rent where a notice of opposition has been filed will take a total of 103 days. This involves an application stage of 35 days, a minimum mandatory relief period of 28 days, a processing stage of 10 days and an execution stage of 30 days. The purpose of the relief period is to allow the tenant a final opportunity to settle the rent in arrears before the Order for Possession is executed. To minimize the abuse of the relief period by habitually defaulting tenants, the Bill proposes to shorten the relief stage from 28 to seven days.

13. While agreeing that the proposal is a step forward in the right direction, the Bills Committee holds the view that the statutory procedures for repossession can be further streamlined to protect the interest of landlords, particularly in the event of repeated defaults in payment of rent by tenants. Consideration should be given to carrying out some steps in parallel to shorten the lead time. These include -

(a) allowing landlords to set down the case for hearing at the time of lodging an application for Order for Possession;

(b) enabling automatic execution of a possession order by the Bailiff without the need to apply to court for leave to issue a Writ of Possession; and

(c) putting in place under the Bill a similar summary judgement procedure as that in the High Court.

14. On allowing a landlord to set down the case for hearing simultaneously, the Administration's explanation is that legal advice reveals that it will not save time as court waiting time can be lengthened or wasted. Currently, there are about 50% of repossession cases where tenants do not file a notice of opposition and hence the landlords are able to obtain repossession through default judgement without a hearing. The time for a tenant to file a notice of opposition is 14 days after receiving the notice of application for possession by landlord. If parallel steps are taken, by the time it is known that the tenant has not filed the notice of opposition and the landlord applies to vacate the hearing, the hearing date is just a few days ahead. It is most unlikely that the Tribunal will be able to fix another hearing in the freed time slot. Therefore, the proposal will result in a waste of resources and in turn lengthen the court waiting time.

15. On the feasibility of removing the need to apply to the court for leave to issue a Writ of Possession, the Administration's explanation is that the court has a duty to consider each application for repossession carefully, and if a tenant pays up the rent in arrears before the lapse of the 28-day relief period (seven day as proposed in the Bill), he shall be entitled to relief from repossession by the landlord. Under Order 45 rule 3

of the Rules of the High Court, the Writ of Possession shall not be issued without the leave of the court. Such leave shall not be granted unless it is shown that every person in the actual possession has received such notice of the proceedings. The purpose of such a provision is to alert each and every person or sub-tenant that there is a proceeding between the landlord and tenant. While the principal tenant fails to pay rent, the sub-tenants may have made punctual payments to the tenant. It will be unfair to sub-tenants for any automatic execution of order without their knowledge, thereby depriving them of their rights of relief given under Order 45 rule 3.

16. On the proposed summary judgement procedures, the Administration's view is that under Order 14 rule 1 of the Rule of High Court, the summary judgement procedures arise when though the defendant (tenant) has given notice of intention to defend the action, the plaintiff (landlord) seeks to get a summary judgement on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed. This will involve a court hearing, and application must be made by summons supported by an affidavit. The summons together with a copy of the affidavit must be served on the tenant not less than 10 clear days before the hearing date. The introduction of the Order 14 procedures in the Lands Tribunal may prolong rather than expedite repossession, unless it is very clear that the tenant has no defence to the claim.

17. Members are not convinced of the Administration's explanation. They remain of the view that efforts should be made to expedite the repossession process taking into account the plight of aggrieved landlords. A fast-track procedure may have to be worked out for landlords to claim repossession of premises, particularly in the event of repeated defaults in payment of rent by tenants. In the light of members' concern, the Administration agrees to introduce an implied forfeiture clause in the Bill to assist landlords who fail to put in the tenancy agreement a forfeiture clause in respect of persistent delay in payment. The same will apply to the use of premises for an immoral or illegal purpose. CSAs will be moved to that effect.

18. To facilitate the courts in handling these claims, the Bills Committee considers that additional manpower and financial resources may be required. Consideration should also be given to vesting RVD with the power to deal with tenancy disputes not exceeding a prescribed amount of money as in the case of labour disputes by the Labour Department. At members' request, RVD has studied the adjudication and mediation services for employment disputes, and has sought advice from the Judiciary Administrator, who has strong reservation. Members agree that the proposal be shelved at the moment, and may be brought up in the future where appropriate. Meanwhile, the Panel on Administration of Justice and Legal Services will be requested to continue discussing with the Administration the financial and manpower required to facilitate the courts in handling tenancy claims.

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