

立法會
Legislative Council

LC Paper No. CB(1)84/07-08(07)

Ref: CB1/PL/DEV

Panel on Development

Meeting on 23 October 2007

**Background brief on land administration and building control issues
in relation to short-term tenancies**

Purpose

This paper provides background information on short-term tenancies and a summary of the past deliberations at the relevant committees of the Legislative Council on land administration and building control issues in relation to short-term tenancies (STT).

General information on short-term tenancies

2. As advised by the Administration in September 2006, the Hong Kong Special Administrative Region had a total land area of 110 372 hectares (ha). Some 34 517 ha was unleased Government land or land held under licence or STT. This land requires management by the Lands Department (LandsD). The Administration's established policy is that where there is vacant Government land which has not been designated for a specific use or is not required for development in the near future, opportunity will be taken to make the land available through STT for temporary use. The policy objectives relating to STT can be summarized as follows --

- (a) to ensure temporary beneficial use of the land with consequential reduction in the costs of preventing sites from unlawful occupation or creating environmental/health problems;
- (b) to obtain revenue from what would otherwise be idle resources; and

- (c) to establish a system of temporary tenure which can be administered easily, fairly and cost effectively.

3. Currently, STT may be created in four ways, namely by open tender, by direct grant, by regularization of unauthorized occupation of Government land and by conversion from Government land licence/permit. A breakdown of the 4 542 STT (as at 1 July 2006) by types is as follows-

	Type	No. of STTs
(a)	Open Tender	356
(b)	Direct Grant	1 561
(c)	Regularization of unauthorized occupation of Government land	1 572
(d)	Conversion from Government Land Licence/Permit	1 053
	Total	4 542

4. LandsD enforces the contractual right to effect rectification by the tenant for his breaches. The sequence of enforcement actions can be summarized as follows --

- (a) notify the tenant of the detected breach on site verbally, if appropriate, or in writing and ask him to rectify the breach;
- (b) send warning letter to the tenant if the breach is not purged within a reasonable period of time;
- (c) issue a notice of Intended Re-entry if the warning is ignored;
- (d) deliver a Notice to Quit to the tenant by fax or by mail. The same to be posted;
- (e) take action to recover possession of site; and
- (f) arrange demolition of any structures on site, as appropriate or as necessary.

Deliberations by the Panel on Planning, Lands and Works

5. The former Panel on Planning, Lands and Works (now renamed as Panel on Development) discussed the land administration issues arising from a case involving an STT site in Kwun Yam Shan of Sha Tin at the special meeting on 20 September 2006. During the discussion, some members queried whether STTs

were granted in a fair and open manner, as some STTs were granted without going through an open tender and preferential treatment might have been given to those with higher social standing.

6. On the effectiveness of LandsD's enforcement actions, some members queried whether the Administration had adopted the same standard for all parties in carrying out enforcement actions. They considered that the case in question revealed that LandsD had not taken resolute enforcement actions within specific time limits notwithstanding the repeated breaches committed by the tenant concerned. The case also revealed that LandsD adopted a lenient approach and could be easily satisfied that breaches were purged. Members therefore questioned whether there were established procedures and clear guidelines for carrying out enforcement actions and for deciding whether there were any irregularities during inspections. Members were also dissatisfied that there were no penalties for committing repeated breaches. There was also a concern on whether LandsD had sufficient manpower for conducting inspections.

7. In response to members' views and concerns, the Administration affirmed that LandsD had established procedures for the enforcement of tenancy conditions and explained the sequence of enforcement actions as set out in paragraph 4 above. The Administration assured members that LandsD would strengthen follow-up inspections and consider tightening up the enforcement of tenancy conditions. The Administration also explained that the established policy on STTs was that minor breaches of tenancy conditions would be tolerated provided that the tenants took actions to purge the breaches within a reasonable period of time. From land management angle, compliant tenants of STTs could lighten the Administration's burden of managing vacant Government land.

8. While acknowledging that LandsD did not have sufficient manpower for land administration, the Administration affirmed that the department had an established mechanism for setting priorities for handling complaints about breach of tenancy conditions. LandsD had been treating all STT tenants alike and handling breaches in the proper priority based on considerations such as urgency and gravity of the breach. The department was considering outsourcing part of the patrol and tenancy enforcement work, and if this could materialize, its target was that at least one inspection could be carried out for each STT every year.

9. The Administration also explained that given that STTs were private contracts, the Administration being a landlord could not impose any penalty on tenants of STTs, though the Administration might exercise the right of forfeiture over the deposits paid by tenants according to the terms and conditions of the tenancy agreement.

10. The Panel noted that the following improvement measures were being considered or taken to enhance the effectiveness of LandsD in administering the STT system --

- (a) formulation of a set of indicators to complete enforcement action from issuing warning letters to notice of termination within specific time limit;
- (b) outsourcing part of the patrol and tenancy enforcement work with a view to conducting inspection on every STT case at least once a year;
- (c) for recurring breaches, a shorter warning period would be given to expedite case handling;
- (d) demanding higher deposits from tenants found to have repeatedly caused minor breaches;
- (e) reviewing and optimizing the existing guidelines of the department, especially on the handling of rent arrears, monitoring tenant's performance in fulfilling the tenancy conditions and the taking of tenancy enforcement actions by the staff;
- (f) revision of the standard tenancy conditions with a view to strengthening tenancy enforcement. This included the Administration's right to set off rent arrears owed by a tenant, against his rent deposits held for other STTs;
- (g) introduction of a system for self-certification of compliance by private professionals for specific tenancies involving large areas or with mixed users; and
- (h) for some specific tenancies, the Administration might carry out financial audit of the prospective tenant prior to the granting of STT to ensure that the prospective tenant is financially capable to operate the permitted facilities under the tenancy.

11. As regards the STT site in Kwun Yam Shan, the Administration informed the Panel in October 2006 that LandsD was examining the case with the Department of Justice to decide whether the Government should institute legal action to claim damages from the tenant and information could not be disclosed at that that to avoid prejudicing Government's position in subsequent actions. On the suggestion of some members that the case should be referred to the Independent Commission

Against Corruption, the Administration responded that the case had been referred to the relevant authority for follow-up action.

Report of the Public Accounts Committee

12. The Audit Commission has conducted a review of LandsD's administration of STTs with reference to its laid down objectives and procedures, vide the Director of Audit's Report No. 47 published in October 2006. The review focused on the following areas --

- (a) administration of rent arrears;
- (b) monitoring of tenant's performance; and
- (c) enforcement of tenancy conditions.

13. The Public Accounts Committee (PAC) has considered the above review of the Audit Commission, and the findings are contained in the Report No. 48 of PAC published in July 2007. On the administration of rent arrears, PAC was astonished and seriously dismayed that once a tenant of an STT had commenced legal proceedings against the Government, LandsD had difficulties in recovering the rent arrears. The tenant could continue occupying the sites without paying rent for a lengthy period. The LandsD had difficulties in repossessing the sites even after termination of the tenancies because of the ongoing legal proceedings. Moreover, the LandsD's practice of not issuing rent demand notes to an STT tenant while there were ongoing legal proceedings between the tenant and the Government might create an impression that a tenant could avoid paying rent by taking legal action against the Government.

14. Regarding the enforcement action on unauthorised use of sites for car-park purposes, PAC was gravely dismayed and found it unacceptable that three non-car-park STT tenants had breached the tenancy conditions by using the sites as fee-paying car-parks, and there were variations among different District Lands Offices (DLOs) in taking enforcement actions against tenants in breach of STT conditions. Although inspections carried out outside office hours were more effective for obtaining evidence of unauthorised use of sites for car-park purposes, the LandsD guidelines did not require the DLOs to carry out site inspections outside office hours.

15. With regard to the STT site in Kwun Yam Shan, Sha Tin, PAC found it unacceptable and inexcusable that the LandsD had failed to take rigorous enforcement action against the unauthorised use of the site for residential purposes.

Despite the repeated breaches of the tenancy conditions at the site, the relevant DLO approved the granting of a new tenancy to the tenant in 1993 without submitting the case to the District Lands Conference for making a recommendation. In making the decision, the DLO had attached a greater weighting to the need to avoid leaving the site vacant as it would cause management problems and a loss of rental income, than the need to enforce tenancy conditions by terminating the tenancy.

16. PAC found it equally unacceptable and inexcusable that, as revealed by the above Sha Tin STT case, the LandsD's inspection of STT sites was not effective for checking if there was unauthorised use of the sites for residential purposes. This was because, despite the fact that the tenant had a past record of tenancy breaches, the LandsD gave prior notification to the tenant before inspecting the site. The LandsD did not have specific guidelines on the circumstances under which an STT site should be regarded as being used for residential or storage purposes. Furthermore, some LandsD staff who conducted site inspections adopted a lenient standard in judging whether there was a tenancy breach.

17. PAC urged the Director of Lands to ensure that all LandsD staff would strictly comply with the LandsD's guidelines and instructions on the enforcement of tenancy conditions, including those on site inspection, and provide adequate training to LandsD staff who were responsible for carrying out inspection of STT sites.

18. The relevant extract of the Government Minute in response to the Report No. 48 of the Public Accounts Committee tabled at the Council meeting on 17 October 2007 is in **Appendix I**.

19. A list of relevant papers is in **Appendix II**.

(EXTRACT)

**THE GOVERNMENT MINUTE IN RESPONSE TO THE
PUBLIC ACCOUNTS COMMITTEE REPORT NO. 48
DATED JULY 2007**

**REPORT ON THE RESULTS OF VALUE FOR
MONEY AUDITS (Report No. 47)**

Chapter 1 – Administration of short term tenancies

The Director of Audit has conducted a review of the Lands Department (Lands D)'s administration of short term tenancies (STTs), with its focus on administration of rent arrears, monitoring of tenants' performance and enforcement of tenancy conditions. Lands D has accepted Audit's recommendations, and has proactively taken steps to implement them.

Administration of rent arrears

2. Lands D agrees with the Audit that Standing Accounting Instruction (SAI) 1020 should be fully complied with when preparing annual returns of arrears of revenue. In response to Audit's specific recommendations in this area, Lands D conducted a review of the rent arrears in the 2005-06 returns of revenue to ensure compliance with this SAI. Lands D has also updated the relevant departmental accounting circulars and instructions to require all District Lands Officers (DLOs) to report all debts and charges falling due, even if a demand note has not been raised, strictly in accordance with SAI 1020. Furthermore, Lands D has revised its departmental instructions to require timely action to write off rent arrears.

3. We have taken note of the Public Accounts Committee (PAC)'s concern over Lands D's difficulties in recovering the rent arrears once an STT tenant has commenced legal proceedings against the Government. The Government's legal position as a landlord under STTs is similar to that of any private landlord, and therefore subject to the usual restraints imposed by court procedures on a private landlord. However, the Government takes practical actions to protect its interest. During the course of the legal proceedings, the Government may seek an order under Order 29 of the Rules of the High Court Ordinance (Cap. 4) for payment of rent by the tenant. Clear departmental instructions have also been devised to deal

with the situation whereby an STT tenant puts up a settlement proposal in the course of legal proceedings. Lands D staff have been clearly advised on whether, and if so when and how, to make a counter offer to the settlement proposal.

4. As a prudent precautionary measure, Lands D has taken on board Audit's recommendation to vet the financial capability of STT tenants. Only those tenants with proven financial capability will be awarded with new STTs.

Monitoring of tenants' performance

5. For STT tenants with records of tenancy breaches, their performance is being monitored. DLOs are required to report STT tenants with a history of tenancy breaches to the Land Administration Meeting (LAM) chaired by a Deputy Director of Lands. LAM considers, and advises DLOs, whether new STTs would be awarded to such tenants on a case-by-case basis. Effective implementation of this measure requires timely dissemination of LAM decisions to DLOs. Since January 2006, LAM decisions have been disseminated to DLOs immediately after ratification, and this is done via circulation of memoranda as well as through Lands D's intranet.

6. As there have been many problems and complaints relating to car-park STT tenants, a reporting mechanism has been introduced to monitor regularly the performance of such tenants. Lands D agrees with the Audit that there is room for improvement in implementing this mechanism. Particular emphasis has been put on measures to ensure timely submission of performance report and standardisation of the reporting format.

Enforcement of tenancy conditions

7. Lands D has reviewed the existing departmental guidelines on monitoring tenants' performance in complying with the tenancy conditions, and on enforcement actions taken by Lands D staff. The Department has drawn up clear guidelines for DLOs stipulating the types and timing of enforcement actions DLOs should take against tenants in breach of tenancy conditions. In response to concerns expressed over a case whereby DLO staff had refunded the rental deposit to a tenant before deducting outstanding debts due to the Government, a clear reminder on the proper refund procedure has been sent to all staff concerned. Lands D has taken on board PAC's comment that some inspections could be more effective if they are carried out outside office hours. DLO staff are now required to conduct site inspections outside office hours if warranted.

Survey of all STTs

8. Lands D has responded positively to Audit's recommendation to inspect all STTs in the territory to find out unauthorized use of the sites. Lands D completed this extensive task in January 2007. A total of 4 472 STTs all over Hong Kong were covered in this comprehensive survey exercise. Of these, 2 034 STTs (almost 45%) were detected with breaches. Due to this large number of detected breaches, a pragmatic incremental action plan has been devised. Priority is accorded to those major breaches, followed by actions against the minor ones. DLOs submit their work plans on how to tackle breaches found in their respective STTs and then submit quarterly implementation reports. In view of the competing demands on its limited staff resources, Lands D is in the process of exploring the option of outsourcing part of the patrol and tenancy enforcement work, and is consulting the Department of Justice (D of J) on this exercise.

Way forward

9. PAC has expressed its wish to be kept informed of any measures taken by the Director of Lands (D of L) to ensure that Lands D staff will diligently comply with all the guidelines and instructions on monitoring tenants' performance in fulfilling tenancy conditions and on the enforcement of tenancy conditions, including those on site inspection. D of L would wish to report that a Management Services Team has been set up to perform an internal auditing function. This team is tasked to do some random checks so as to identify issues of non-compliances within Lands D. D of L has also convened an internal committee, comprising the different units involving in STT administration, to monitor and advise on the implementation of the Audit recommendations and other related issues.

Appendix II

Land administration and building control issues in relation to short-term tenancies

List of relevant papers

Date	Meeting/Event	References
20 September 2006	The then Panel on Planning, Lands and Works discussed with the Administration the subject of "Land administration issues arising from the case involving a site under short-term tenancy in Kwun Yam Shan, Sha Tin".	Information paper http://www.legco.gov.hk/yr05-06/english/panels/plw/papers/plw0920cb1-2208-1e.pdf Minutes of meeting http://www.legco.gov.hk/yr05-06/english/panels/plw/minutes/pl060920.pdf Follow-up paper http://www.legco.gov.hk/yr05-06/english/panels/plw/papers/plw0920cb1-18-1-e.pdf
11 July 2007	The Public Accounts Committee released PAC Report No. 48 with its conclusions and recommendations on administration of short-term tenancies.	Report http://www.legco.gov.hk/yr06-07/english/pac/reports/48/m_4a.pdf