

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

**Summary of concerns  
(as at 6 January 2004)**

<b><u>Subject/Clause</u></b>	<b><u>Organization</u></b>	<b><u>Concern/View</u></b>	<b><u>Administration's response and follow-up action</u></b>
Removal of security of tenure for domestic tenancies	Chartered Institute of Housing Asian Pacific Branch (CB(1)585/03-04(01))	Supports the relaxation of excessive security of tenure provisions so as to restore the balance of interests between the landlords and tenants, and to allow the property market to operate freely.	<ul style="list-style-type: none"> <li>Noted.</li> </ul>
	Hong Kong Institute of Housing (CB(1)585/03-04(02))	Supports the removal of security of tenure for domestic tenancies.	<ul style="list-style-type: none"> <li>Noted.</li> </ul>
	Hong Kong Institute of Surveyors (HKIS) (CB(1)585/03-04(03))	While supporting the removal of security of tenure for domestic tenancies, a hasty arrangement in applying the removal of security of tenure may create chaos in the rental market and stir up undesirable tension between landlords and tenants. Consideration should be given to providing a 24-month grace period for existing tenancies.	<ul style="list-style-type: none"> <li>The proposal to remove security of tenure is not a hasty arrangement. It was announced in November 2002 and was widely publicized during the public consultation process. Upon passage of the Bill but before its commencement, the Administration will launch extensive publicity to inform the public of the changes. Tenants will be able to take timely action to negotiate new tenancies if necessary.</li> <li>The Bill contains a saving provision whereby a tenant who has, before the commencement of the Bill, given notice for a new tenancy will still enjoy security of tenure in respect of the tenancy concerned. This is a better arrangement than a 24-month grace period across the board.</li> </ul>

<u>Subject/Clause</u>	<u>Organization</u>	<u>Concern/View</u>	<u>Administration's response and follow-up action</u>
Removal of security of tenure for domestic tenancies	Urban Renewal Authority (URA) (CB(1)585/03-04(04))	While favouring the removal of statutory compensation provisions, the rehousing and cash payments by URA will continue to be necessary to achieve a smooth implementation of projects and address the needs of affected people, whether or not the Bill is enacted.	<ul style="list-style-type: none"> <li>The Administration supports URA's position that URA will continue to offer eligible domestic tenants affected by its redevelopment projects a choice of rehousing or cash payments, regardless of whether or not the Bill is enacted. This is consistent with Government's people-oriented approach to urban renewal.</li> </ul>
	Resident Association on (Kwun Tong) Old Urban Renewal (CB(1)585/03-04(05))	<p>The removal of security of tenure will have adverse impact on the rights of tenants affected by redevelopment projects of URA. The Association proposes that-</p> <p>(a) Tenants affected by redevelopment projects of URA should be exempted from the provisions in the Bill. This will protect tenants from eviction before the freezing survey;</p> <p>(b) The exemption is only valid for a period of five years, after which landlords will come under the jurisdiction of the Bill. This will protect the interest of landlords in the event that the redevelopment projects do not proceed; and</p> <p>(c) Well-behaved tenants should be given removal allowance.</p>	<ul style="list-style-type: none"> <li>The main purpose of the Bill is to remove security of tenure, which impedes the free operation of the private rental market. Proposals (a) and (b) put forward by the Association seek to exempt property owners and tenants in URA's announced redevelopment projects from the removal of security of tenure. This conflicts with the objective of the Bill. Also, there is no justification on the grounds of fairness to give special treatment to this group of owners and their tenants.</li> <li>As regards proposal (c), an <i>ex gratia</i> removal allowance is currently payable to tenants who accept rehousing in the case of resumption by Government.</li> </ul>

<u>Subject/Clause</u>	<u>Organization</u>	<u>Concern/View</u>	<u>Administration's response and follow-up action</u>
Removal of security of tenure for domestic tenancies	Cooperative Social Service Centre (CB(1)602/03-04(01))	Need to address the impact of removal of security of tenure provisions on the rights of tenants affected by urban redevelopment.	<ul style="list-style-type: none"> <li>The Administration shares the concerns about possible termination of tenancies by property owners in URA's announced projects with a view to obtaining more Home Purchase Allowance (HPA) from URA upon redevelopment. To reduce the incentive for these owners to evict their tenants intentionally, URA will implement more control over HPA payment. For example, if an owner moves into a previously tenanted flat as recorded in URA's freezing survey, he still has to meet a number of criteria to establish his status as an owner-occupier for full HPA. One of these criteria is the requirement that the flat must be the owner's sole residence in Hong Kong.</li> <li>Notwithstanding the above, the Administration's position remains that there is no justification to give special treatment to tenants in URA project areas.</li> </ul>
	Property Agencies Association Ltd (PAA) (CB(1)602/03-04(02))	The Bill will deprive tenants' contractual right of renewal of tenancies which expire after the appointed commencement date of the Bill.	<ul style="list-style-type: none"> <li>The Bill seeks to remove the statutory rights of tenancy renewal currently given to tenants. It should not affect their contractual rights of tenancy renewal. In other words, if a tenancy stipulates that a tenant is eligible to renew a tenancy upon expiry, the landlord will have to fulfill this contractual obligation.</li> </ul>

<b><u>Subject/Clause</u></b>	<b><u>Organization</u></b>	<b><u>Concern/View</u></b>	<b><u>Administration's response and follow-up action</u></b>
Minimum notice period in domestic tenancies	HKIS	The Bill is silent on the treatment of existing statutory notice procedure for residential tenancies, including notices such as Forms CR 101 and CR 102, in the new regime. If the security of tenure is removed, a minimum notice period should be maintained and spelt out in the new law.	<ul style="list-style-type: none"><li>• A tenancy is a contractual matter privy to the landlord and the tenant. Government should not intervene. It would be up to the two parties to the contract to agree on a contractual notice requirement if they consider this necessary.</li><li>• Upon passage of the Bill but before its commencement, the Administration will launch extensive publicity to inform the public of the removal of the notice requirements under the current regime. Tenants will be able to negotiate new tenancies with their landlords and agree on any contractual notice requirement as they consider necessary.</li></ul>

<b><u>Subject/Clause</u></b>	<b><u>Organization</u></b>	<b><u>Concern/View</u></b>	<b><u>Administration's response and follow-up action</u></b>
Minimum notice period in non-domestic tenancies	HKIS	To strike a balance of free market principle and minimum protection for tenants, the statutory minimum notice requirement should remain and will be overridden where there is an agreed term on notice period explicitly stated in the tenancy.	<ul style="list-style-type: none"> <li>As in the case of a domestic tenancy, a non-domestic tenancy is a contract privy to the landlord and the tenant, and Government should not intervene through a statutory minimum notice requirement. To retain the existing statutory minimum notice requirement for non-domestic tenancies is not in line with Government's policy objective to restore the free operation of the private rental market by minimizing government intervention.</li> <li>With the removal of the existing statutory notice requirement, landlords and tenants of non-domestic tenancies will be free to agree between themselves on any notice period they consider necessary. The Administration will launch extensive publicity to inform the public of these changes upon passage of the Bill but before its commencement.</li> </ul>
	PAA	The Bill will deprive non-domestic tenants' right of renewal of tenancies expire after the appointed commencement. Consideration should be given to maintaining a minimum notice period of three months for both landlords and tenants.	<ul style="list-style-type: none"> <li>Ditto</li> </ul>

<u>Subject/Clause</u>	<u>Organization</u>	<u>Concern/View</u>	<u>Administration's response and follow-up action</u>
Other concerns	<p>Hong Kong Owners Club (CB(1)602/03-04(02))</p> <p>Hong Kong Real Estate Agencies General Association (CB(1)624/03-04(01))</p>	(a) There should be statutory requirement on provision of personal information by tenants.	<p>(a)</p> <ul style="list-style-type: none"> <li>• It is not appropriate to make it a statutory requirement for tenants to provide their personal information to landlords.</li> <li>• Whether a tenant could afford the rent and whether he would pay the rent on schedule may or may not be related to his sources of income, financial circumstances, etc. Non-payment of rent may be due to many different reasons. Mandatory disclosure of tenants' personal information does not necessarily eliminate the problem of non-payment of rent.</li> <li>• A statutory requirement for disclosure of personal information may also contravene Article 17 of the International Covenant on Civil and Political Rights incorporated through Article 39 of the Basic Law. Article 17 prohibits "arbitrary and unlawful" interference with privacy. It requires that any interference with privacy should be proportional to the legitimate aim sought and should be necessary in the circumstances of any given case. The Department of Justice advises that mandatory disclosure does not appear to be proportional to the aim of minimizing the number of non-payment cases and is, therefore, not justified.</li> </ul>

<b><u>Subject/Clause</u></b>	<b><u>Organization</u></b>	<b><u>Concern/View</u></b>	<b><u>Administration's response and follow-up action</u></b>
Other concerns			<ul style="list-style-type: none"><li>• Even without such a statutory provision, a landlord can ask a prospective tenant for reference and check it before letting out his premises.</li><li>• To reduce the risk of non-payment of rent, the landlord can also ask for a higher security deposit.</li><li>• The Estate Agents Authority has issued a circular advising its members, on a voluntary basis and without contravening privacy protection, to suggest to their client tenants that they provide their landlords with information on or proof of their occupation, income, financial status or past rental records.</li><li>• A landlord has the full right <u>not</u> to let his property to a potential tenant if he is not satisfied with the information provided by the tenant on request.</li></ul>

<u>Subject/Clause</u>	<u>Organization</u>	<u>Concern/View</u>	<u>Administration's response and follow-up action</u>
Other concerns		(b) Summary procedures should be put in place to enable landlords to repossess their premises in the event of default of payment of rents by tenants.	(b) <ul style="list-style-type: none"><li>• The proposal to introduce summary procedures to enable landlords to repossess premises in the event of default in payment of rents by tenants is outside the scope of the present Bill.</li><li>• This proposal had also been raised by the Bills Committee on the Landlord and Tenant (Consolidation) (Amendment) Bill 2001. The Judiciary considered the proposal unnecessary.</li><li>• The Housing, Planning and Lands Bureau met with the Association on 30 December 2003 to further exchange views on this matter. The Association's suggestions were subsequently forwarded to the relevant authorities for consideration. If necessary, the suggestions can be further discussed at the LegCo Panel on Administration of Justice and Legal Services.</li></ul>



<b><u>Subject/Clause</u></b>	<b><u>Organization</u></b>	<b><u>Concern/View</u></b>	<b><u>Administration's response and follow-up action</u></b>
Other concerns	PAA	<p>(a) Criminality liability should be imposed on rogue tenants;</p> <p>(b) Repossession procedures should be further streamlined; and</p> <p>(c) Tenancy agreements should be standardized.</p>	<p>(a)</p> <ul style="list-style-type: none"> <li>Non-payment of rent is a breach of contract for which civil remedies such as repossession are already available. There are insufficient grounds to justify the creation of a new criminal offence for habitual defaults in rent payment. The proposal may also have implications on similar creditor-debtor relationships governed by the law of contract.</li> </ul> <p>(b)</p> <ul style="list-style-type: none"> <li>A number of improvement measures to streamline repossession procedures were already introduced through the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002.</li> <li>The Housing, Planning and Lands Bureau met with the Association on 30 December 2003 to further exchange views on this matter. The Association's suggestions were subsequently forwarded to the relevant authorities for consideration. If necessary, the suggestions can be further discussed at the LegCo Panel on Administration of Justice and Legal Services.</li> </ul> <p>(c)</p> <ul style="list-style-type: none"> <li>The needs of landlords and tenants vary depending on the circumstances of each case. It may not be in their best interest to require all of them to adopt standard tenancy terms.</li> <li>The Consumer Council and the Estate Agents Authority have already published a booklet providing some advisory guidelines on tenancy agreement terms for public reference.</li> </ul>

<b><u>Subject/Clause</u></b>	<b><u>Organization</u></b>	<b><u>Concern/View</u></b>	<b><u>Administration's response and follow-up action</u></b>
Other concerns	The Law Society of Hong Kong (CB(1)602/03-04(04))	The existing distress procedure is too cumbersome.	<ul style="list-style-type: none"><li>• The same concern previously expressed by the Law Society was discussed by the Bills Committee on the Landlord and Tenant (Consolidation) (Amendment) Bill 2001. At that time, the Judiciary had reviewed the distress procedure and considered that the existing steps were necessary.</li><li>• This matter may be further discussed at the LegCo Panel on Administration of Justice and Legal Services if necessary.</li></ul>

Council Business Division 1  
Legislative Council Secretariat  
6 January 2004