

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

**List of follow-up actions arising from the discussion
at the meeting on 23 April 2004**

- (1) To review clause 5(2) in the light of common law in respect of change in the parties to the tenancy, particularly in the event of change of tenant.

Administration's Reply

As we informed Members at the meeting on 23 April, change of property ownership together with a running tenancy is allowed under law, and is not uncommon in Hong Kong. Notwithstanding the change in ownership, the tenancy which exists between the “old” landlord and the sitting tenant will continue.

2. To ensure that the right of the sitting tenant to protection under the transitional arrangement is not affected because of the change in property ownership, we propose that the “new” landlord would have to serve a Transitional Termination Notice (TTN) on the existing tenant to terminate the tenancy, which was in existence before the commencement date. In case the “old” landlord has already served a TTN on the sitting tenant, the TTN could continue to run as if there had not been any change in ownership of the property.

3. On the other hand, if the “new” landlord chooses to enter into a new tenancy with the sitting tenant or if the terms of the existing tenancy are changed on or after the commencement date, the two parties would not be bound by the TTN requirement.

4. Change of tenant is also allowed under common law. Unless it is prohibited by the terms of the tenancy, a tenant can assign his tenancy right to another person without the need to obtain the consent of the landlord. If such an assignment has taken place, the tenancy between the landlord and the assignor tenant will continue notwithstanding this change in party to the tenancy. However, as the main purpose of the transitional requirement is to protect the interest of a sitting tenant and the “new” tenant comes into play on or after the commencement of the Bill, we propose that the TTN requirement should not be applicable in such a scenario.

- (2) To advise whether the delivery of transitional termination notice to the mailbox of tenant by landlord in person complies with the requirements under clause 5A(4) and whether this is acceptable in other legislation. To also consider replacing the phrase “posted for 3 successive days” in clause 5A(5)(b) with “posted on 3 successive days”.

Administration's Reply

As advised by the Department of Justice, delivery of a notice to the letterbox of the recipient is allowed under some legislation such as the Buildings Management Ordinance (Cap. 344), but not in some other legislation requiring service of notice. There is no legal rule as to what modes of service of notice should or should not be allowed.

2. In respect of Transitional Termination Notice (TTN), we consider that it would be desirable for it to be served in ways which are familiar to landlords as set out in section 119Y of the Landlord and Tenant (Consolidation) Ordinance. This section is applicable to the service of any Part IV notice, certificate or other document. As this provision has been working well and landlords have had no difficulty in complying with it in the past, we recommend following the existing practice.

3. Separately, we agree that the phrase “posted for 3 successive days” in clause 5A(5)(b) should be replaced by “posted on 3 successive days”.