

LS/B/34/02-03
2869 9467
2877 5029

Secretary for Housing, Planning and Lands
Housing, Planning and Lands Bureau
(Attn: Mr Gilbert KO
Assistant Director (Private Housing))
33 Fat Kwong Street
Homantin
Kowloon

By Fax (27617444)

2 June 2003

Dear Mr KO

**Landlord and Tenant (Consolidation)
(Amendment) Bill 2003**

I am scrutinizing the above Bill with a view to advising Members on the its legal and drafting aspects.

My observations on the Bill are set out in the attached Schedule for your consideration.

I would be grateful if you could let me have the Administration's response before 10 June 2003, so that I may take it into consideration in preparing the report to the House Committee.

Yours sincerely

(KAU Kin-wah)
Assistant Legal Adviser

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cc LA

Schedule

Clause 5

The savings provisions in clause 5 would have the effect of making tenants whose tenancies would expire within 3 months before or 4 months after the appointed date the first group of tenants to be affected by the enacted Bill. This is because section 119A of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (LTCO) only allows a tenant to request a new tenancy not earlier than 4 months and not less than 3 months before the expiry of the current tenancy. Tenants whose tenancies would only expire within 4 months of the appointed date could request a new tenancy and enjoy protection against eviction for one more term. It appears that tenants are not all treated equally. Please clarify whether such effect is intended by the Administration.

Clause 7(4)

Please clarify what proceedings may be commenced in the Lands Tribunal relating to provisions of Part V saved by the provisions of this clause 7.

Schedule

1. Jurisdiction of the Tribunal

The meaning of the proposed section 8(10) of the Lands Tribunal Ordinance (Cap. 17) is not entirely clear. Please clarify what is intended by the proposed subsection.

4. Forms

It is not clear why the reference to "(if application under section 53(2)(b) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7))" in Form 7 in the Schedule to the Lands Tribunal Rules is not deleted. Please clarify.

5. General Powers of Commissioner

Please clarify whether the right of the public to have access to the information gathered under the Rating Ordinance should be preserved. This would facilitate landlords and tenants in ascertaining the level of market rent and consequently in the reaching of agreement on rents.

6. General Powers of Commissioner

Please clarify whether the right of the public to have access to the information gathered under the Government Rent (Assessment and Collection) Ordinance should be preserved. This would facilitate the public in relation to property transactions.

Items 8, 9, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27 & 28

In all these provisions, reference to section 53(4)(a) or (7)(a) of Part II of LTCO is retained when in fact the provisions have already expired. It seems to us that either the proposed deletion should not be made or the reference to provisions of Part II of LTCO should also be deleted. Please clarify.

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10 June 2003

Mr Kau Kin-wah
Assistant Legal Adviser
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Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Mr Kau,

Landlord and Tenant (Consolidation) (Amendment) Bill 2003

Thank you for your letter of 2 June 2003.

I would like to comment on the points raised in your letter as follows.

Clause 5

Clause 5 is intended to preserve, by way of a transitional arrangement, the right of a tenant or landlord who has started the statutory renewal procedure under Part IV of the Landlord and Tenant (Consolidation) Ordinance (LTO) before the appointed date. The proposed transitional arrangement caters for tenancies in respect of which the statutory notice period for seeking tenancy renewal (by a tenant) or terminating a tenancy (by a landlord) under the existing provisions in Part IV of LTO falls before the appointed date.

In your opinion, it appears that tenants would not be all treated equally under this arrangement. You would like to know whether such effect is intended by the Administration. Our view is that applying the same treatment universally to all tenancies would prolong the existing security of tenure restrictions. This is not in line with our intention to restore the free operation of the private rental market as soon as possible.

Clause 7(4)

There may be proceedings arising from the termination of tenancy by way of a notice served under section 122 of LTO before the appointed date. The commencement of such proceedings in the Lands Tribunal may not commence until after the appointed date. You asked us to clarify what such proceedings may be. An example of such proceedings is as follows. A landlord has served a notice on his/her tenant to terminate a tenancy under section 122 of LTO. Subsequently, this landlord applies for possession of premises pursuant to section 8(7) of the Lands Tribunal Ordinance.

Schedule – 1. Jurisdiction of the Tribunal

You find the meaning of the proposed section 8(10) of the Lands Tribunal Ordinance not entirely clear. The purpose of the proposed section 8(10) is to stipulate that the jurisdiction of the Lands Tribunal under sections 8(6), 8(7) and 8(8) concerning Parts IV and V of LTO will change as a result of the amendments to these two Parts as proposed in the Bill. For instance, the question of a landlord opposing tenancy renewal under section 119E of LTO would not arise after the security of tenure provisions have been removed, hence no need for Lands Tribunal proceedings relating to section 119E. As there can be many different scenarios under Parts IV and V of LTO which may give rise to proceedings in the Lands Tribunal, it is not practicable to spell out exhaustively all possible circumstances. The Lands Tribunal will decide in each case whether it still has jurisdiction having regard to the relevant provisions in the amended LTO.

Schedule – 4. Forms

You consider that it is not clear why the reference to “(if application under section 53(2)(b) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7))” in Form 7 in the Schedule to the Lands Tribunal Rules is not deleted. The proposed amendment relating to Form 7 seeks to remove the reference to section 119E(1)(b) (under Part IV of LTO) which is to be repealed by the Bill. The reference to section 53(2)(b) under Part II of LTO is retained because the Bill does not touch on Part II. Furthermore, although Part II expired in 1998, there are still some outstanding Lands Tribunal cases relating to Part II by virtue of section 74B(5) of LTO.

Schedule – 5. & 6. General powers of Commissioner

You asked us to clarify whether the right of the public to have access to information gathered under the Rating Ordinance and the Government Rent (Assessment and Collection) Ordinance should be preserved. At present, if an application for a new tenancy has been filed with the Lands Tribunal, the landlord or the tenant concerned may, upon payment of a fee, obtain from the Commission of Rating and Valuation rental information relating to comparable premises. The purpose of this arrangement is to make available rental information to help the landlords and tenants in these situations to resolve disputes arising from tenancy renewal or to help them prepare their cases to be considered by the Lands Tribunal. Once the security of tenure restrictions have been removed, landlords and tenants will be free to determine tenancy terms based on mutual agreement. It will no longer be necessary for Government to assist by making rental information available to them. In any case, the public already has access to such rental information, which is available in different formats in the commercial market.

Schedule – Items 8, 9, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27 & 28

The reference to sections 119E(2) and 119H(1)(a) under Part IV of LTO is proposed to be deleted from certain ordinances. You

are of the view that either the proposed deletions should not be made or the reference to sections 53(4)(a) and 53(7)(a) under Part II of LTO should also be deleted. We do not consider it necessary to delete the reference to sections 53(4)(a) and 53(7)(a) under Part II of LTO because the Bill does not touch on Part II. Furthermore, as explained above, although Part II expired in 1998, there are still some outstanding Lands Tribunal cases relating to Part II by virtue of section 74B(5) of LTO.

I hope you find the above information useful. Please let me know if further clarification is required.

Yours sincerely,

(Gilbert Ko)
for Secretary for Housing, Planning and Lands

ccD of J (Attn: Ms Shirley So,
Mr John Wilson,
Ms Carmen Chu)
CRV (Attn: Mr K F Chan)

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By Fax (27617444)

5 September 2003

Dear Mr KO

**Landlord and Tenant (Consolidation)
(Amendment) Bill 2003**

Thank you for your letter of 10 June 2003.

I would not at this stage further pursue the matters raised in my last letter except the following:-

Jurisdiction of the Tribunal

It is agreed that ultimately it is for the tribunal to decide on the applicability of the relevant legislation in each specific case. However, this does not mean that the proposed amendment to section 8 of Cap. 17 could not make some general statements of principle on the jurisdiction of the Tribunal after the abolition of the tenure protection regime. It would be very helpful if, for instance, it is clearly stated whether the Tribunal would have jurisdiction when a contractual tenancy has expired by effluxion of time and the Landlord seeks to recover possession.

Further, it is observed that the proposed deletion of subsections 6(a) and 7(a) of section 144 of Cap. 7 would render the meaning of the words "that commencement" in the remaining paragraphs (b) ambiguous and unclear. Please consider whether any consequential amendment may be necessary.

I would be grateful if you would let me have the response of the Administration before the first meeting of the Bills Committee.

Yours sincerely

(KAU Kin-wah)
Assistant Legal Adviser

cc LA

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18 November 2003

Mr Kau Kin-wah
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Mr Kau,

Landlord and Tenant (Consolidation) (Amendment) Bill 2003

Thank you for your letter of 5 September 2003. I would like to respond to the two points raised in your letter as follows:

Jurisdiction of the Lands Tribunal (item 1 in the Schedule to the Bill)

You considered that our proposed amendment to section 8 of the Lands Tribunal Ordinance (Cap. 17) should make some general statements of principle on the jurisdiction of the Lands Tribunal after the abolition of security of tenure. You suggested spelling out whether the Lands Tribunal will have jurisdiction in cases (after the abolition of security of tenure) where the contractual tenancy has run its course and the landlord seeks to repossess his premises.

The present jurisdiction of the Lands Tribunal does not cover possession of premises where the tenancy ends by effluxion of time. Such cases do not arise given the existing notice requirements under Parts

IV and V of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7). However, with the removal of the notice requirements after the passage of the Bill, a landlord may indeed need to seek repossession of his premises should the tenant refuse to move out after the tenancy has run its natural course. Arguably, these cases could be dealt with in the ordinary courts.

However, considering that the Lands Tribunal is already empowered under the existing provisions to make orders for possession (such as in cases where the tenancy has been terminated by forfeiture or by surrender), it seems logical for the Lands Tribunal to handle requests for possession in “effluxion of time” cases. We are exploring this proposal with the relevant parties and will report the outcome of our consideration to the Bills Committee.

Syntax problem arising from a deletion proposed in Clause 14

Clause 14 is a consequential amendment seeking to amend section 144 of Cap. 7 by repealing subsection 6(a) and subsection 7(a), which stipulate that the amendments made in 2002 to section 119F(4) (regarding a new method for computing redevelopment compensation) are applicable to cases occurring on or after the commencement of those amendments. The proposed repeal of these two subsections is consequential to the repeal of section 119F(4).

You considered that upon the deletion of these two subsections, the meaning of the cross-referencing words in subsections 6(b) and 7(b) will be rendered ambiguous. These words include:

- (a) “that commencement” referring to the commencement (of the amendments in 2002) mentioned in subsections 6(a) and 7(a); and
- (b) “so opposes” and “so applies” in subsections 6(b) and 7(b) respectively referring to opposition or application in accordance with rule 69 of the Lands Tribunal Rules mentioned in subsections 6(a) and 7 (a).

We agree with your observation and will propose a Committee Stage Amendment to suitably amend subsections 6(b) and 7(b) to remove the ambiguity.

Thank you again for your views on our Bill.

Yours sincerely,

(Gilbert Ko)
for Secretary for Housing, Planning and Lands