

11 December 2003

Clerk to Bills Committee
Legislative Council Secretariat
3rd Floor Citibank Tower
3 Garden Road
Central
Hong Kong

Attn: Miss Mandy Poon

Dear Sirs

Re: HKIS Submission to the Bills Committee on the Landlord and Tenant (Consolidation) (Amendment) Bill 2003 ("the Bill")

We thank you for inviting us to submit our institute's views to the Bills Committee on the Bill.

The HKIS in responding to the Government's public consultation on the Landlord and Tenant (Consolidation) Ordinance – Security of Tenure, submitted a paper on 4th March 2003 in which we advocated:

- Option D – Removal with a Grace Period is our preferred option to ensure enough time for the private market to react for the new changes.
- The minimum notice requirement for commercial tenancies should be maintained.
- In addition, with the removal of security of tenure, the current statutory notice requirement in residential tenancies will no longer be applicable. We call for the Government to spell out a new requirement of the notice period for the residential tenancies.

We noticed that the Bill proposes a complete removal of security of tenure after an appointed date, which according to the Legislative Council Brief submitted by the Housing, Planning and Lands Bureau, would be two months after the passage of the Bill, at the very latest, June 2004.

We are concerned that such hasty arrangement might create chaos in the rental market, stir up undesirable tensions between landlords and tenants and defeat the good intentions upon which the removal of security of tenure was made.

Removal of Security of Tenure

We support the removal of security of tenure for the following reasons:

- Security of tenure is a legacy of the rent control era
- The removal will reduce intervention to the rental market, a view long held by the HKIS.
- Change of market fundamentals in recent years warrants for a call to restore the balance of power between landlords and tenants
- Without the statutory protection, residential tenants can still protect their right of security of tenure through other effective market measures which can be mostly achieved through private negotiation.
- Such market measures have been widely adopted in commercial tenancies and we expect the proposed change will bring residential leasing practice to be in line with the commercial market.

In the long run, with the removal of security of tenure, we believe the positive impacts to the residential market would be:

- Stimulate property investment in residential properties
- Facilitate sale of rented properties
- Facilitate urban redevelopment by private sector
- Create longer lease term
- Encourage private settlement on rent dispute

The removal of the statutory right will allow the private rental market to operate more freely and lead to better utilization of our landed resources.

Given the long history (some 20 years) of the operation of the residential security of tenure, market measures to secure occupation rights by tenants such as: (1) long lease term (with or without rent review) and (2) option to renew have not been seen in the residential leasing market.

We would recommend public education prior to the implementation of the legislative change so as to ensure smooth transition in the rental market. The public needs to be aware of how their occupation rights would be affected by the law change and how they can secure their needs through contract arrangement. The Government is in the best position to handle this education process.

The immediate effect of removal of security of tenure after the appointed date as proposed by the Bill is that existing tenants will be deprived of their rights for statutory renewal. Existing tenants would not have anticipated that the security of tenure would be removed by law at the time of negotiating the tenancies and would not have introduced contractual terms to safeguard their occupation rights. These tenants would be put into disadvantageous position when negotiating with landlords upon tenancy renewals and some of these tenants might be subject to unreasonable rental demand by landlords if the tenants wish to stay on the premises upon tenancy expiry.

We therefore believe the appointed date should be set at a later time, to allow the public to be aware of the imminent changes in the residential tenancy legislation and get prepared for such change.

Alternatively, the Government should consider giving a grace period to the existing tenancies as we originally proposed during the consultation period. For tenancies expiring during the grace period, tenants have the right to apply for tenancy renewal for one more term.

We believe a 24-month grace period may be more appropriate, given that it is the usual lease term in the residential leasing market.

Minimum Notice Requirement in Non-domestic Tenancies

We believe the existing minimum notice period requirement is good market practice, as it serves tenant a reminder and kick-starts tenancy renewal negotiation process. Without the notice requirement, ill-informed tenants could be most vulnerable.

The minimum notice period doesn't hinder landlord's right of possession nor constraint the market rent. The existing notice requirement provides guidance to landlords and their property manager in tenancy management. We are not aware of strong voice from the market calling for its abolishment.

We therefore opine that the minimum notice requirement should remain in the law.

On the other hand, we also see the merit of the Government's view in the proposal for removal of notice requirement as to reduce intervention in the private market as much as possible. Landlord and tenant should be free to negotiate the duration and terms of the notice period in their tenancy contracts.

To strike a balance of free market principle and minimum protection for the tenants, we suggest that where there is an agreed term on notice period explicitly stated in tenancy, the statutory requirement will be overridden.

Minimum Notice Requirement in Domestic Tenancies

The Bill is silent on the treatment of the existing statutory notice procedure for residential tenancies including such notices like Forms CR 101, CR 102 in the new regime. If the security of tenure is removed, we are of the view that a minimum notice period should be maintained and it should also be spelt out in the new law.

Assuming there would be no security of tenure and no minimum notice period by landlords, ill-informed tenants could be held to pay hefty compensation / mense profit for occupation after expiry of tenancies.

We support the amendment made by the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002 that the minimum notice period by residential landlords is shortened to not less than 3 months.

Such notice need not be in prescribed form but should be in writing, in the same manner like the non-domestic tenancies sector.

Yours faithfully

Kenneth Chan
President