

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

Follow-up to meeting on 9 January 2004

- (5) To provide, before 29 January 2004, a paper on the feasibility of further streamlining the repossession procedures after the removal of security of tenure provisions.

Reply

As we stated in our previous reply to the list of follow-up actions arising from the first Bills Committee meeting held on 20 November, after the removal of security of tenure, a tenancy will end upon expiry. If no new tenancy is entered into and the tenant refuses to move out, then the landlord can apply for a repossession order from the Lands Tribunal, the proposed procedure for which is similar to the prevailing repossession procedure applicable to tenancy terminated in accordance with the statutory grounds provided under the Landlord and Tenant (Consolidation) Ordinance, such as forfeiture due to structural alteration to premises by the tenant (referred to as “existing repossession procedure” hereafter). It will take 75 or 82 days, depending on whether a notice of opposition to the landlord’s application is filed by the tenant (see **Annex**).

2. As explained in our last reply, the proposed repossession procedure can be broadly divided into three stages:

- (a) Application stage: a landlord will submit an application to the Lands Tribunal, and a period of 14 days will be allowed for the tenant to file an opposition. If an opposition is filed by the tenant, the application will be listed for a court hearing (if no opposition is filed by the tenant, the landlord can apply for a default judgment by the court).
- (b) Processing stage: after the court hearing and an order for possession has been made, the landlord will have to post up the notice of the court order to the tenant. If the tenant fails to move out within the period specified in the notice of the court order, the landlord will apply to the court for leave to issue a Writ of Possession and will then dispatch the Writ to the Bailiff’s Office for execution.

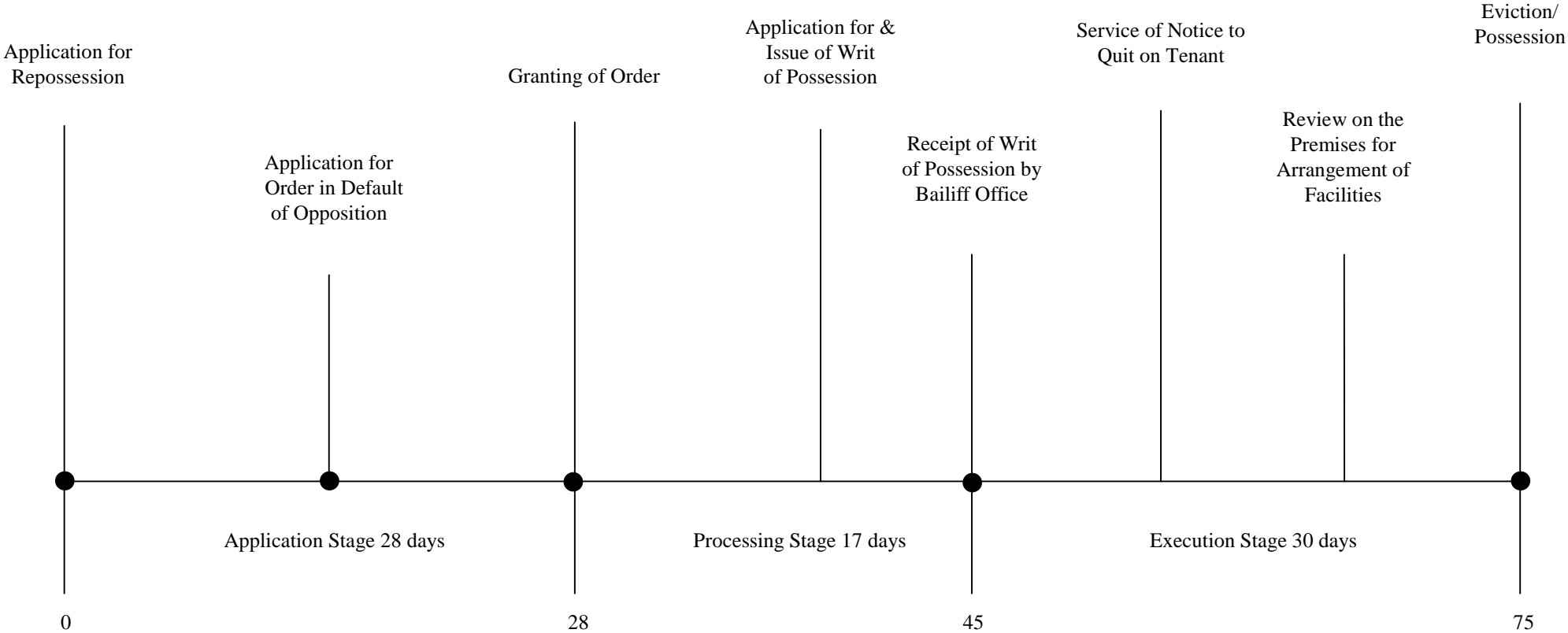
- (c) Execution stage: the landlord will make an appointment with the Bailiff's Office for execution of the Writ.

3. The above-mentioned steps in the proposed procedure would be applicable, after the removal of security of tenure, to a tenancy which has run its course. These steps are largely the same as those in the existing repossession procedure. The possibility of streamlining these steps were thoroughly examined by the Bills Committee on the Landlord and Tenant (Consolidation) (Amendment) Bill 2001. Some improvements to the procedure were subsequently made, but further streamlining might have resource implications on the courts and were not considered feasible. The matter was therefore referred to the Panel on Administration of Justice and Legal Services for discussion. Pending the outcome of the Panel's discussion, further improvements to the existing procedure might also be applied to the proposed procedure for a tenancy ended by effluxion of time after the removal of security of tenure.

4. Meanwhile, it is considered that unlike in forfeiture cases, a tenant of a tenancy which has run its course should not have any legitimate grounds to stay in the same premises. In other words, he should have no reason not to move out. In view of this, the possibility of removing the 14-day notice period for a tenant to file an opposition to the landlord's application (at the application stage) has been considered. However, the Department of Justice has advised that such a proposal will deprive a tenant of any opportunity to present his case to the court and may therefore raise fair hearing concern under Article 10 of the Hong Kong Bill of Rights.

5. We are therefore examining, in consultation with the Judiciary Administrator and the Department of Justice, the possibility of shortening, instead of abolishing, the 14-day notice period. This proposal will, on the one hand, take into account the lack of obvious legitimate grounds for a tenant to stay in the premises after the tenancy has run its course, and provide a chance for the tenant to file an opposition (if there is any deserving ground) on the other. We will inform Members of the outcome of our consideration as soon as possible.

Time Chart **Repossession of Premises upon Expiry of Tenancy where a Notice of Opposition has not been filed**

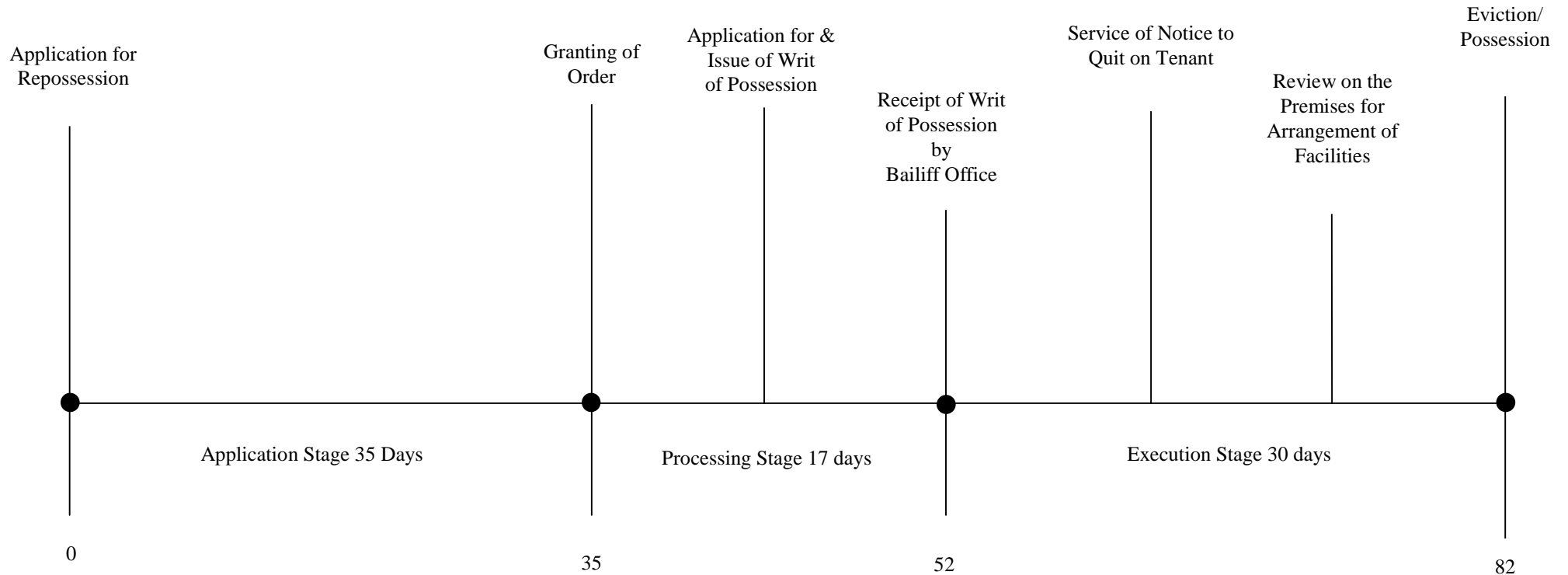


Notes:

1. The Chart illustrates a straightforward case which takes a total of 75 days. During the period an order is granted in about 28 days from the application date. The same process can however, take longer time depending on the circumstances of the case.

Time Chart

Repossession of Premises upon Expiry of Tenancy where a Notice of Opposition has been filed



Notes:

1. The Chart illustrates a straightforward case which takes a total of 82 days. During the period an order is granted in about 35 days from the application date. The same process can however, take longer time depending on the circumstances of the case.