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Legislative Council

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

Purpose

1. This paper reports on the deliberations of the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2003.

Background

2. The Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (the Ordinance) was enacted in 1973 to consolidate all previous legislation relating to landlord and tenant matters, protection and determination of tenancies as well as control and recovery of rent.

The Bill

3. The Landlord and Tenant (Consolidation) (Amendment) Bill 2003 seeks to -
- (a) remove security of tenure provisions for domestic tenancies under Part IV of the Ordinance; and
 - (b) remove the minimum notice requirement for terminating non-domestic tenancies under Part V of the Ordinance.

The Bills Committee

4. At the House Committee meeting on 13 June 2003, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Audrey EU Yuet-mee, the Bills Committee has held 13 meetings. The membership list of the Bills Committee is at **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from interested parties. 19 groups/individuals have made written and/or oral representation to the Bills Committee. A list of these groups/individuals is at **Appendix II**.

Deliberations of the Bills Committee

Security of tenure for domestic tenancies

5. Security of tenure was introduced in 1981 when there was a serious shortfall of domestic accommodation leading to significant rental increases upon renewal of tenancies. Under the security of tenure provisions in Part IV of the Ordinance, if a tenant seeks to renew the tenancy and is willing to pay the prevailing market rent, the landlord will have to agree to the tenancy renewal. Only on certain statutory grounds stipulated in the Ordinance, such as default of rent payment by tenant or self-occupation or redevelopment of premises by landlord, can the landlord refuse to renew the tenancy.

6. A tenant who wants to renew a tenancy must serve a notice of renewal on the landlord no more than four months but no less than three months before the commencement date of the new tenancy which the tenant has specified on the notice. If the landlord does not want to renew the tenancy, he must serve a notice of termination on the tenant no more than four months but no less than three months before the date of termination he has specified on the notice. A tenancy will continue automatically if the landlord does not initiate any action to seek termination.

7. According to the Administration, these restrictions discourage property investors from leasing their residential properties and impede the free operation of the private rental market. Removing the restrictions will help restore the free operation of the private rental market. It will encourage more owners of residential properties to let out their properties as they know they can repossess their properties upon the expiry of the tenancies. It may also be easier for negative equity property owners to obtain the consent of their mortgage banks to lease their residential properties as the banks will be able to sell the properties with vacant possession at the end of the tenancies in the event of mortgage default. The rental income will help ease the financial hardship of negative equity owners.

8. The Bill seeks to remove the existing security of tenure restrictions by a date to be appointed by the Secretary for Housing, Planning and Lands, after which security of tenure provisions will no longer be applicable to any tenancies, except those which are in existence immediately prior to the appointed date in respect of which -

- (a) the landlord has served a notice of tenancy termination on the tenant before the appointed date. If the tenant succeeds in opposing the landlord's request for termination, the tenant will be entitled to one more tenancy renewal; or
- (b) the tenant has served a notice of tenancy renewal on the landlord before the appointed date. If the tenant's request is successful, he will be entitled to one more tenancy renewal.

9. Concern has been raised that the proposed removal of security of tenure may push up rents in the private market, thereby unduly affecting tenants, particularly those underprivileged groups such as elderly singletons, dwellers living in cubicles and bedspace apartments and those with chronic illness who may have difficulties in finding suitable alternative accommodation. To minimize disruption to tenements of lower Rateable Value (RV) which comprise major dwellings of low-income households, some members hold the view that consideration should be given to partial removal of security of tenure to be delineated by RV.

10. The Administration's explanation is that the purposes of the introduction of security of tenure in 1981 were to protect tenants from eviction by unscrupulous landlords and impose a right of renewal of tenancies at prevailing market rent. While it has helped protect the interest of tenants when their bargaining power were weak at the time when there was a serious shortfall of domestic accommodation, it also impedes the free operation of the private rental market and discourages investors from renting out their properties. In light of the changed circumstances where there is ample supply of flats and rentals have dropped drastically, the Administration holds the view that such protection is no longer justified. According to information, the total private housing stock has been increasing over the years to about one million units as at the end of 2002. Of these units, some 74 000 are vacant. The average rentals in 2002 and in September 2003 have also dropped by about 40% and 49% respectively compared with the peak in October 1997. To ascertain the impact of the removal of security of tenure on the lower income group, the Rating and Valuation Department (RVD) has conducted a sample survey on the tenants living in shared households in the second quarter of 2003. The findings reveal that the vacancy rate of flats with shared households is 23.6% which suggests that the supply of such units is not inadequate. It is also found that 72% and 86% of the 480 respondents stay in the same premises for less than two and four years respectively. It appears that most of the tenants do not avail themselves of security of tenure protection. As such, the Administration considers it an opportune time for removing the security of tenure restrictions in one go.

Transitional arrangement for removal of security of tenure

11. Since domestic tenancies will no longer be statutorily protected after the Amendment Ordinance (after enactment of the Bill) comes into force, members express concern that in order to avoid eviction, tenants whose tenancies have already run the course of their original terms but are statutorily continued under the present security of tenure regime and those whose tenancies will end within four months after the commencement of the Amendment Ordinance may make use of the existing tenancy renewal mechanism and submit, before the Amendment Ordinance comes into force, applications to the Lands Tribunal (LT) for a new tenancy. This can drastically increase the workload of LT, thereby prolonging the current lead time for processing applications and creating a serious backlog of cases.

12. In light of members' concern, the Administration proposes to include a provision in the Bill such that after the commencement of the Amendment Ordinance, landlords of all existing tenancies will be required to serve (after the original term of the tenancy has ended) a notice of termination no less than 12 months before the intended termination date. During this notice period, the tenancy will continue to run on all existing terms until the date specified in the notice. The 12-month termination notice requirement will take precedence over any notice period agreed by both parties before the Amendment Ordinance comes into force. However, such a notice requirement will be overridden by any notice period agreed by the two parties after the commencement of the Amendment Ordinance. As a transitional arrangement, the 12-month termination notice requirement will only apply to existing tenancies but not to those entered into after the Amendment Ordinance comes into force, and the notice requirement will only be in force for one year after the commencement of the Amendment Ordinance. Any dispute that may arise from the 12-month termination notice requirement will be determined by LT. Tenants will also have the option of terminating the tenancy by serving a termination notice no less than one month before the day on which it is to take effect.

13. According to the Administration, the proposed arrangement will ensure all existing tenants will have at least 12 months to stay in their tenements after the removal of the statutory protection, hence reducing the need for tenants to rush in applications to LT for a new tenancy before the Amendment Ordinance comes into force. The 12-month termination notice requirement will also ensure that tenants will have enough time to find alternative accommodation. The proposed arrangement also applies to sub-tenancies. If a principal tenant wants to terminate a sub-tenancy, he will have to serve a 12-month termination notice to the sub-tenant. If it is the landlord who wants to repossess the entire property, he will have to post the termination notice he serves on the principal tenant on the front door or entrance of the premises to terminate any sub-tenancies created under the principal tenancy. With the transitional arrangement in place, it is proposed that Amendment Ordinance will come into force on the gazettal date, instead of on a separate appointed date as originally intended.

14. While agreeing that the proposed arrangement will help avert a possible upsurge in tenancy renewal applications to LT before the Amendment Ordinance commences operation, members consider that the proposal is somewhat complicated as landlords may have to figure out whether it will be in their best interest to serve the 12-month termination notice right after the Amendment Ordinance comes into effect or wait until the transitional period of one year lapses and then serve one month's notice to quit. It also obliges a landlord to wait for one year after serving a termination notice even if he has an urgent and genuine need to repossess his property such as for self-occupation. To this end, the Administration is requested to consider allowing all tenancies to be automatically protected from termination for one year after the commencement of the Amendment Ordinance so that landlords are not required to serve prior notice. Landlords should also be given the option of applying to LT for repossession of premises on statutory grounds without the need to wait till the expiry of the 12-month period.

15. The Administration's concern is that the proposed automatic protection will mean that landlords will not be required to give prior notice, thereby leaving little time for tenants to make relocation arrangements. The ending of tenancies all on the same day (one year after the commencement of the Amendment Ordinance) may result in a rush in the number of tenants seeking new rental accommodation, thus putting pressure on the private rental market. To address members' concern, the Administration suggests simplifying the transitional arrangement by removing the one-year time limit to make it an open-ended approach. Under the revised arrangement, a landlord who wishes to terminate an existing tenancy must, on or after the tenancy's contractual end date, serve a transitional termination notice (TTN) on his tenant no less than 12 months before his intended termination date. In the case of a periodic tenancy which does not have a contractual end date and is automatically renewed at the end of each term, the landlord can serve a 12-month TTN on or after the end date of the first term following the commencement of the Amendment Ordinance. Tenants, on the other hand, will have the option of terminating the tenancy by serving a TTN no less than one month before the day on which it is to take effect. Tenancies entered into after the coming into operation of the Amendment Ordinance will not be subject to this transitional arrangement.

16. The Administration also agrees that the original proposal, which obliges a landlord to wait for 12 months after serving a termination notice, may cause hardship to those landlords who need to repossess their properties for self-occupation or occupation by their immediate family members. It is proposed that after a tenancy has expired, a landlord who needs to repossess his property for self-occupation can apply to LT for immediate repossession regardless of whether he has served a TTN or not. However, the landlord cannot let or assign the premises within two years after repossession.

17. As regards repossession on other statutory grounds, the Administration holds the view that landlords should not be exempted from the TTN requirement on the ground of redevelopment. As redevelopment usually involves a lengthy process, the transitional arrangement should not cause any real hardship to landlords who plan to redevelop their properties. Besides, there are already existing provisions under the Ordinance which allow landlords to apply to LT to forfeit a tenancy on grounds of non-payment of rent or immoral/illegal use of premises by tenants. Hence, there is no need to make separate provisions under the proposed transitional arrangement to cater for these situations.

18. Concern has also been raised on the application of the transitional arrangement in the event of the death of a tenant. According to the Administration, there are existing provisions under the Ordinance dealing with issues of tenancy arising from the death of a tenant. Committee Stage amendments (CSAs) will be moved to include these as part of the savings provisions in the Bill. In gist, any benefits and protection afforded in the tenancy will be made available to the widow, widower, mother, father or any daughter or son over the age of 18 years of the tenant who

resides with the tenant at the time of the tenant's death. Given the changes in social relationships over the years, some members opine that consideration should be given to extending the protection to a sibling, personal representative or any person who resides with the tenant at the time of the tenant's death. In this connection, Mr James TO indicates that he will move CSAs to extend the protection to cover any person, Mr Fred LI will move CSAs to cover a sibling while Mr Albert HO will move CSAs to cover a sibling or personal representative who resides with the tenant at the time of the tenant's death. Having regard to members' views and similar provisions in other legislation, the Administration agrees to the suggestion to extend the protection also to siblings. CSAs will be moved by the Administration to give effect to the TTN arrangement.

Partial retention of security of tenure

19. While not opposing to the relaxation of security of tenure, Mr Albert HO has advised the Bills Committee that Members of the Democratic Party (DP) do not agree to the proposed removal of security of tenure in one go which is too drastic given that security of tenure provision has been protecting the underprivileged groups from eviction for the past 30 years. To this end, Mr HO will move CSAs to retain security of tenure for tenements with RV below \$60,000. Question has been raised on the basis upon which the proposed RV threshold of \$60,000 is arrived at. There is also concern that the proposed CSAs may be unfair to landlords of low-RV properties. Mr Albert HO admits that the dividing line is set arbitrarily since there are divergent views among DP Members on the proposed RV threshold. Consideration can be given to reviewing the threshold after this has come into operation for two or three years.

20. The Bills Committee notes that the Administration has strong objection to Mr HO's CSAs. According to the Administration, the proposed CSAs will significantly undermine Government's policy objective to minimize market intervention and to restore fully the free operation of the rental market. With a dividing line set at RV of \$60,000, it is estimated that around 50% of the 240 000 existing rented tenements may be exempted from the coverage of the Bill. In other words, half of the private rental market may continue to be subject to the existing security of tenure regime even though the regime is no longer justified. More importantly, the proposal is grossly unfair to landlords of low-RV tenements who are likely to be people of small means. It is unreasonable to impose upon them the Government's responsibility of taking care of the accommodation needs of the poor. Further, it is unfair to continue to deprive these landlords of their liberty to change tenants upon tenancy expiry while at the same time restoring such freedom for landlords of tenements in the upper-end market. There is also no evidence to suggest that tenants in tenements of an RV below \$60,000 are in any particular need of security of tenure protection. According to RVD, 89% of the tenancies involving tenements with an RV below \$60,000 lasted less than four years, among which 69% lasted for one term of two year or less. This suggests that many tenants do not heavily rely on security of tenure protection.

21. According to the Administration, a comprehensive safety net is already in place to provide housing assistance to tenants who have difficulties in finding alternative accommodation in the event of repossession of properties upon tenancy expiry. Details are at **Appendix III**. Also, the transitional arrangement will in effect guarantee all existing tenants tenure protection for at least one year after the Amendment Ordinance has come into force. This should give tenants ample time to get adjusted to the new system and to find alternative accommodation if necessary. With the safety net and the transitional arrangements in place, there is no real need to partially retain the security of tenure regime. Meanwhile, the pitching of the RV threshold at \$60,000 at the time the Bill commences operation will cause a host of implementation problems. For instance, in the case of new buildings not yet assessed to rates before the commencement date or properties exempted from rating assessment, the landlords and the tenants will not know the RV of their tenements as at the commencement date. They will need to apply for RV assessment. The same is true for part-let and sub-let units, for which RV is not readily known since RV assessment for rating purposes is based on the whole property. This can generate a large number of requests for RV assessment, but there is no provision under the Rating Ordinance (Cap. 116) for landlords and tenants to contest RV assessments for such purposes.

22. Notwithstanding the Administration's objection, Mr Albert HO remains of the view that his proposed CSAs are necessary to protect the interests of tenants residing in low-RV tenements, but acknowledges the need to include additional provisions in the proposed CSAs to cover part-let and sub-let tenements.

23. Mr James TIEN opines that the RV threshold under Mr HO's proposal is too high, resulting in 50% of tenements being exempted from the coverage of the Bill. He however agrees that extra protection should be given to tenants residing in the low-RV tenements. To this end, Mr TIEN indicates that Members of the Liberal Party (LP) will move CSAs to the effect that security of tenure will be retained for tenements of RV below \$36,000 for a period of three years, after which the security of tenure restrictions will be completely removed.

24. The Bills Committee notes that the Administration is opposed to the proposal. According to the Administration, without a proper transitional arrangement, the proposal will only bring uncertainty and hardship to tenants living in tenements below the threshold. Landlords will not be required to inform tenants of their intention to repossess their premises. Upon the expiry of the three-year grace period, they will only need to serve one month's notice (after their tenancies have run out) to evict their tenants. Tenants may therefore have to move out and find accommodation elsewhere at short notice. Mr TIEN later indicates that LP Members will modify the CSAs to extend the period of TTN served by landlords from 12 months to 36 months.

Repossession procedure

25. The long lead time for repossession of premises has all along been a cause of concern among Members. The Bills Committee notes that the repossession procedure has been reduced by 21 days consequent upon the amendment of the Ordinance in 2002. Members have examined whether there is room for further streamlining of the repossession process following the proposed removal of security of tenure. The Administration agrees that unlike in forfeiture cases, a tenant should have no reason not to move out upon completion of a tenancy when the security of tenure regime no longer exists. After consultation with relevant departments, it is proposed that the “opposition period” for a tenant to file an opposition to the landlord’s application be reduced from 14 days to seven days. CSAs will be moved by the Administration to this effect. Members are also informed that the Judiciary Administrator (JA) has implemented business process re-engineering initiatives, which have resulted in a reduction of average time required for Bailiff to execute Writs of Possession from 30 days to 25 days. The proposed repossession procedure in respect of a tenancy which has expired will therefore take around 63 days or 70 days, depending on whether an opposition is filed by the tenant to the landlord’s application.

26. Question has been raised on the long lead time for the court to take 11 days in the application stage and 10 more days in the processing stage for granting a default order for repossession, particularly when there is no opposition filed by the tenant. The JA’s explanation is that after the expiry of the time limit for filing Notice of Opposition, the applicant may apply for default judgement under the Rule 15 of the Lands Tribunal Rules. The applicant has to submit an application form with supporting evidence consisting tenancy agreement, information on arrears of rent, demand notes for rates, management fees etc. On receipt of application, the registry of LT will check whether there is indeed no Notice of Opposition, the evidence submitted as well as the service of the originating application. When all the papers are in order, the file will be passed to the Deputy Registrar for final checking and endorsement. The applicant will then be notified that an order in default has been made. At present, the number of possession cases disposed of by way of default judgement is about eight times those dealt with by hearing and the actual processing time is about 10 days on average. Effort is being made to improve the situation through re-engineering initiatives and internal staffing redeployment within LT in the near future. It is hoped that the processing time can be reduced from 11 days to an average of seven days if the case load remains steady.

27. JA further advises that after compliance with Practice Direction 16.4, an applicant can file an application to LT for leave to issue a writ of possession. The application will first be processed by the clerks to the Presiding Officers who have to check the relevant court file to ensure that there has not been any order for stay of execution and to check the information set out in the application. On completion, the file will be passed to a Presiding Officer who will grant leave if satisfied that the application is in order. LT will then advise the applicant by letter of the granting of leave. The applicant then pays the deposit for execution, the timing of which also forms part of the 10-day period in the processing stage. After payment of the deposit,

a writ of possession will be issued and LT will despatch the signed writ to the Bailiff for execution. Given the number of steps involved, there may not be room for shortening the processing time.

28. In the course of deliberation, the Bills Committee notes that LT has adjusted its listing practice from January 2004 with a view to giving priority to repossession cases. At least one day in a week a court is now assigned to deal exclusively with repossession cases, with hearing in the form of a callover hearing. A large number of cases (about 15 to 20 cases) will be listed and straightforward cases can be disposed of immediately. More complicated cases will be adjourned to follow the regular listing schedule. It is estimated that 80% of the cases are straightforward as opposed to more complicated cases.

29. While welcoming the new arrangement, members hold the view that instead of one day per week, consideration can be given to assigning a few hours every morning to deal with repossession cases to further expedite the repossession process. According to the Administration, such concept is indeed being practiced by LT to some extent as repossession cases are listed for callover hearings on other days whenever there are vacant slots in a court's diary.

Compensation for domestic tenants affected by redevelopment

30. Members note that apart from removal of security of tenure, the Bill also removes the existing provisions for payment of statutory compensation by landlords, including developers and the Urban Renewal Authority (URA), to tenants in acquisition of domestic properties for redevelopment. They point out that the removal will not only run contrary to the legitimate expectation of tenants, particularly those of the remaining projects announced by the former Land Development Corporation (LDC) who have been waiting for redevelopment for so long, but is also at variance with the people-oriented approach advocated by URA. According to URA, its policies on rehousing and cash payments for domestic tenants are designed to fulfil its corporate purpose of improving the standard of housing and to assist the relocation of people affected by redevelopment projects in line with the people-oriented approach to urban renewal. While the enactment of the Bill will enable URA to eliminate or reduce certain abuses arising from or made worse by the existing provisions for statutory compensation, such as retention of tenancies in project areas by tenants with alternative accommodation, moving into premises within another project area after receipt of payments in one project and moving into a project area after its announcement in order to claim compensation, URA envisages that rehousing and cash payments will continue to be offered to eligible domestic tenants to address the needs of affected people.

31. On the difference in compensation for domestic tenants before and after the passage of the Bill, the URA's explanation is that at present, tenants are offered the option of re-housing or compensation under the Ordinance plus an ex gratia amount equivalent to 70% of the basic cash compensation (subject to a maximum amount of \$200,000). Payments are subject to a minimum of \$70,000 for a one-person

household and \$80,000 for a two-person or larger household. The principles applied in tenants' compensation are at **Appendix IV**. While the compensation arrangements after the passage of the Bill have yet to be agreed by the URA Board, there are two possible options as follows -

- (a) the ex gratia allowance can be based on a maximum of two times of RV since most domestic tenancies are for a period of two years. It is estimated that the ex gratia allowance for an average unit will be about \$90,000 taking into account the experience of the first batch of URA projects of which the average RV is about \$45,000; or
- (b) a disruption allowance, based on the incidental cost allowance paid to owner-occupiers of domestic properties (currently about \$87,000) but converted to a unit rate per square metre, can be paid to reflect the costs and disruption incurred by tenants when required to move.

In either options, sliding scale will apply viz. the longer the tenants have resided in the project before clearance the more compensation they will receive. By way of illustration, a tenant who has resided in the area for two years or more will receive the maximum. A tenant with one year's residence will receive one time of RV or 50% of the disruption allowance. The sliding scale will be subject to a minimum of 0.5 time of RV (about six months' rent) or 25% of the disruption allowance to cover basic removal costs. The intention of the sliding scale is to pay more to long-term residents who face greater disruption on moving.

32. Members note with grave concern that the proposed level of compensation is far less than that of the prevailing statutory compensation under the Ordinance. Besides, the decrease in compensation is at variance with the undertaking which the Administration has made at the passage of the URA Bill in 2000 that the cash allowance offered to tenants affected by URA projects will not be less than the statutory compensation payable to tenants by owners or private developers under the Ordinance in a redevelopment. They point out that the problem becomes more acute for tenants of the remaining former LDC projects as they will receive compensation much less than their counterparts in the commenced former LDC projects after enactment of the Bill. To ensure impartiality, consideration should be given to retaining the statutory compensation for these tenants.

33. According to the Administration, the undertaking was that the URA's cash compensation to the affected domestic tenants would not be less than the statutory compensation required by the Ordinance in force. According to URA, the URA Board will set rehousing and compensation policies from time to time to reflect prevailing circumstances based on the following principles rather than the question of whether the project is a former LDC project or otherwise -

- (a) rehousing and ex gratia compensation should be designed to form a coordinated package to address the need of clearerees as flexibly as possible;

- (b) physical rehousing should be the primary means of addressing clearerees' housing needs subject to their meeting the normal eligibility criteria;
- (c) ex gratia allowances should be set at a level, which addresses the needs of clearerees but should not be so high as to discourage people from opting for rehousing; and
- (d) the policy should facilitate clearance and be simple to administer.

URA is also concerned about the confusion to the community if there is a distinction between former LDC projects and new projects.

34. Nevertheless, URA is prepared to provide the following in light of members' concern -

- (a) domestic tenants affected by future URA projects commencing after enactment of the Bill will be offered rehousing in estates of the Housing Authority (HA) or Housing Society (HS) or in URA owned accommodation if eligible;
- (b) tenants not eligible for rehousing or who are eligible but do not wish to accept rehousing will be offered ex gratia cash payments based on three times of RV of the premises they occupy plus an additional 0.5 time of RV as an incentive if they sign an agreement to surrender the premises within 28 days of the offer; and
- (c) the existing minimum payments of \$70,000 for a one-person household and \$80,000 for a two-person household will be maintained.

35. Members consider that the revised compensation arrangements are still far from being acceptable for tenants of the remaining former LDC projects who have been waiting for redevelopment since the announcement of the projects by the former LDC in 1998. They stress that lengthy discussion and negotiation on compensation and rehousing arrangements for tenants affected by URA projects have been made in the course of deliberation of the URA Bill, and that the URA Bill could not have been passed had the Administration failed to make the undertaking that the cash allowance offered to tenants affected by URA projects would not be less than the statutory compensation payable to tenants by owners or private developers under the Ordinance in a redevelopment.

36. After repeated requests from members, the Administration has finally obtained the agreement of URA to apply the following to eligible domestic tenants of properties required for redevelopment of the remaining projects announced by the former LDC in January 1998 -

- (a) adopt the existing compensation formula under the Ordinance on an ex gratia basis;
- (b) retain the minimum payments currently payable under URA policy viz. \$70,000 for a one-person household and \$80,000 for a household of two or more persons.

Under the revised arrangement, the URA Board will set policies for future non-LDC projects based on the proposal in paragraph 34 above and may adjust such policies to reflect prevailing circumstances and the requirements of individual projects. The Administration will include in the speech to be delivered by the Secretary for Housing, Planning and Lands at the resumption of Second Reading debate of the Bill the URA's undertaking as well as URA's confirmation that priority has been accorded to the remaining former LDC projects by including them in its latest approved Corporate Plan. While welcoming the proposed arrangement, members note that this only deals with the part on statutory compensation, and that the part on non-statutory compensation will have to be followed up by the relevant Panel with URA.

37. Question has also been raised on how URA can prevent eviction of tenants by landlords before redevelopment commences. The URA's explanation is that at present, an owner can only repossess a tenanted property under the Ordinance for redevelopment or self occupation. While URA cannot prevent landlords from repossessing the property from tenants upon expiry of the tenancy, policies are designed to discourage this as far as possible. In acquiring domestic properties, URA broadly follows the same compensation policies which Government applies in resumption cases which are set by the Finance Committee. These comprise payment of the open market value of the property plus Home Purchase Allowance (HPA) or Supplementary Allowance (SA). HPA is the difference between the value of a notional replacement flat (based on a notional seven-year old flat of a size similar to the acquired flats and in the same locality) and the open market value of the acquired flat. HPA is paid to owner-occupiers. SA is paid to owners of tenanted and vacant flats at 50% of HPA. In addition, URA pays an ex gratia Incidental Costs Allowance to cover costs and as incentive to owners to encourage early sale of their properties. The principles applied in acquisition of properties are at **Appendix V**.

38. HPA is only paid to owner-occupiers. After passage of the Bill, domestic tenants will no longer have security of tenure and it will be easier for landlords to require them to leave at the end of their tenancy periods. To guard against abuses by landlords, URA will -

- (a) continue the policy that owners of both tenanted and vacant flats receive SA at 50% HPA;
- (b) continue to apply the criteria for determining whether the owner is an owner-occupier;

- (c) reserve the right, on a case-by-case basis, to treat properties in the announced project areas as tenanted properties if the landlord requires a tenant to leave after enactment of the Bill and then occupies the premises himself (or move in immediate family members) in an attempt to benefit from HPA. In such cases, URA may pay SA (50% of HPA) to the owner and offer rehousing/compensation to the former tenant provided that the tenant is not in breach of his tenancy such as default in payment of rent. Full HPA may also be paid if the owner can show he has a genuine need to occupy the premises himself as sole residence. In this case, no compensation will be payable to the tenant; and
- (d) in cases where landlords repossess the property upon expiry of the tenancy and move in more tenants to exploit tenant compensation policies, URA may decline to compensate the new tenants.

Eligibility of evicted tenants for public rental housing

39. Concern has been raised that many evicted tenants, particularly those past beneficiaries of subsidized home ownership schemes (SHOS), will not be eligible for public rental housing (PRH) given the stringent prevailing eligibility criteria for PRH. Tenants affected by URA redevelopment projects will also face the same problem. Members also enquire about the assistance available from both Government and non-government organizations to those past SHOS beneficiaries who cannot afford rented accommodation in the private sector.

40. According to the Administration, the restriction for SHOS beneficiaries to apply for PRH again even after the sale of their flats is necessary to safeguard the rational allocation of scarce public housing resources. However, HA has been exercising discretion to allocate PRH to those who are in genuine hardship and have to dispose of their flats. In early 2002, HA has endorsed the following revised criteria for considering such applications -

- (a) bankruptcy;
- (b) financial hardship resulting in the need for Comprehensive Social Security Assistance;
- (c) adverse changes to family circumstances such as divorce, death of bread-winners etc;
- (d) a significant drop in household income resulting in difficulties in financing the home purchases; or
- (e) households beset with medical and social problems but not to the extent to qualify for compassionate rehousing.

These measures will allow households beset with hardship, financial or otherwise which prevent them from continued home ownership, to have access to PRH while safeguarding the rational allocation of public housing resources at the same time. URA also indicates that households which do not meet the normal eligibility criteria may be re-housed on compassionate grounds if they will otherwise face genuine hardship arising from factors such as ill health, disability or family circumstances.

Committee Stage amendments

41. A copy of the Committee Stage amendments to be moved by the Administration, Mr Albert HO, Mr James TO, Mr Fred LI and Mr Howard YOUNG is at **Appendix VI**.

Recommendation

42. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 30 June 2004.

Consultation with the House Committee

43. The House Committee at its meeting on 11 June 2004 supported the recommendation of the Bills Committee to resume the Second Reading debate on the Bill on 30 June 2004.

Prepared by
Council Business Division 1
Legislative Council Secretariat
23 June 2004

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

Membership list

Chairman Hon Audrey EU Yuet-mee, SC, JP

Members Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon HUI Cheung-ching, JP
Hon CHAN Yuen-han, JP
Hon CHAN Kam-lam, JP
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, SBS, JP
Hon Abraham SHEK Lai-him, JP
Hon IP Kwok-him, JP
Hon LAU Ping-cheung

(Total : 12 Members)

Clerk Miss Becky YU

Legal Adviser Ms Bernice WONG

Date 20 November 2003

Appendix II

List of groups/individuals which have made written and/or oral representations to the Bills Committee

- (a) Chartered Institute of Housing Asian Pacific Branch
- (b) Cooperative Social Service Centre
- (c) Hong Kong Bar Association
- (d) Hong Kong Housing Society
- (e) Hong Kong Institute of Housing
- (f) Hong Kong Institute of Surveyors
- (g) Hong Kong Owners Club
- (h) Hong Kong Real Estate Agencies General Association
- (i) Individual District Council members
- (j) Law Society of Hong Kong
- (k) Property Agencies Association Ltd
- (l) Real Estate Developers Association of Hong Kong
- (m) Referral by Duty Roster Members
- (n) Resident Association on (Kwun Tong) Old Urban Renewal
- (o) Urban Renewal Authority
- (p) 士丹頓街及永利街重建租客組
- (q) 關注舊區住屋權益社工聯席
- (r) 大角咀重建租客關注組
- (s) 舊區重建租客大聯盟

Provision of housing assistance by the Housing Authority (HA)

- For an evicted family referred from the Bailiff Office executing a possession order, HA will first accommodate the family in a temporary shelter in a Transit Centre (TC), so long as its members are Hong Kong residents.
- During their stay in TC, upon verification of their genuine homelessness and subject to meeting the eligibility criteria for PRH application through the General Waiting List (GWL), which include (i) income-cum-asset test, and (ii) no-domestic-property test, the HA will rehouse them to an Interim Housing(IH) unit to wait for maturity of their GWL application. In arranging the TC and subsequently an IH unit to the evicted family, the HA will not consider if it fulfills the 7-year residence requirement, which has to be met only when the family is rehoused from an IH unit to a PRH unit.
- In case the evicted family cannot fulfill the eligibility criteria for PRH, they could stay in the TC for a maximum of 3 months. During this period, they can seek assistance from the Social Welfare Department (SWD) and Non-government Organisations (NGOs), such as Hong Kong Family Welfare Society, Caritas-Hong Kong, Christian Family Services Centre, and Neighbourhood Advice Action Council, through the 66 Family Services Centres/Integrated Family Services Centre they operate.

Assistance by SWD and NGOs

Provision of accommodation

- Those who have genuine need and immediate housing problem, coupled with other justified financial, social and/or medical grounds, can apply for Compassionate Rehousing (CR) at Social Welfare Department (SWD) for a PRH unit.
- Residential Placement including (a) Aged Home Placement and (b) Urban Hostel for Single Persons could be arranged for the evicted individuals if they meet the eligibility criteria. Under (a), emergency placement in subvented aged homes can be arranged for singleton or couple aged over 60. Under (b), placement in the two urban hostels operated by NGOs (聖雅各福群會李節街單身人士宿舍 and 救世軍怡安宿舍) can be arranged for single adults. The two hostels offer 80 placements with a maximum staying period of 6 months.

Finding suitable accommodation

- Information such as advertisement on suitable accommodation and on estate agencies will be passed to the evicted individuals or families if they do not have adequate support network (e.g. New Arrivals).
- If need be, the caseworkers will escort and accompany the individuals or families in searching the right tenement.
- Trust funds could be released by SWD to help the evicted tenants to settle the rent deposits and other expenses arising from the removal. The 4 major charitable/trust funds included Li Po Chun Charitable Trust Fund, Tang Shui Kin and Ho Tim Charitable Fund, Brewin Trust Fund and Kwan Fong Trust Fund for the Needy.

Counselling service

- Counselling service is offered to the evicted tenants to help them cope with the stress and anxiety which may arise from the eviction and removal.

The Principles Adopted by Urban Renewal Authority (URA) for Domestic Tenant Cash Compensation

Domestic Tenants

Basic Cash Compensation

1. All eligible tenants who are affected by URA redevelopment projects, and whose landlords sell the property to URA subject to existing tenancies will be offered re-housing. Tenants who are not allocated re-housing unit due to various reasons, may receive basic cash compensation.
2. The basic cash compensation is calculated in accordance with the prevailing formula of calculating statutory compensation as stipulated in the Landlord and Tenant (Consolidation) Ordinance (LTO).

The present formula for calculating statutory compensation is as follows:

<u>Rateable Value (RV) – HK\$</u>	<u>Statutory Compensation</u>
the first \$30,000 RV	7 times RV
the next \$30,000 RV	5 times RV
the next \$30,000 RV	3 times RV
the remaining RV	1 times RV


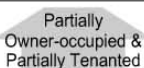


3. The amount of basic cash compensation will be reviewed by URA at its absolute discretion if there is any change in law relating to the payment of the said statutory compensation.

Cash Incentive



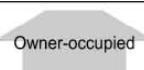
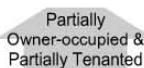
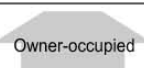

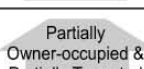
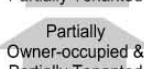
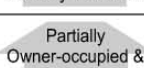
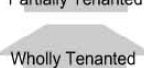




1. URA will offer a cash incentive of 70% of the basic cash compensation (subject to a maximum amount to be reviewed by the URA from time to time) to those tenants who accept the offers within a specified period as ex-gratia payments.
2. A minimum amount of HK\$70,000 for a one-person household and a minimum amount of HK\$80,000 for a two-person or larger household, inclusive of the cash incentive, will be payable to those tenants who have been genuinely living in the project area before the project occupancy survey and since then. The said minimum amounts are not applicable to those tenants with alternative accommodation.
3. Tenants (legal domestic tenants only) who moved into the project area after the project occupancy survey will only receive statutory compensation under LTO plus a 10% over such statutory compensation as cash incentive for acceptance within a specified period.
4. The above cash incentive and minimum amounts will be reviewed by URA at its absolute discretion if there is any change in law relating to the payment of statutory compensation under LTO.

Domestic Properties - Diagrammatic Illustration of HPA, SA & EUV



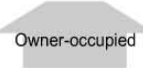

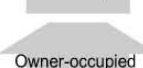
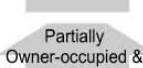
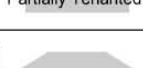
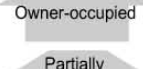
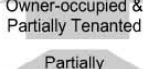
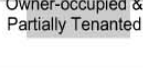
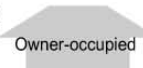
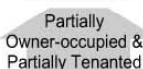

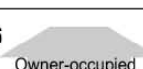
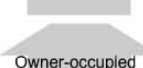


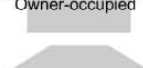
 One Flat

Occupation Status	HPA	SA	Market Value
1  Owner-occupied	100%		EUV(VP)
2  Partially Owner-occupied & Partially Tenanted	Owner-occupied portion : 100%	Tenanted portion : 75%	EUV(ET)
3  Wholly Tenanted		50%	EUV(ET)
4  Vacant		50%	EUV(VP)

 Two Flats

Occupation Status	HPA	SA	Market Value
5  Owner-occupied	100%		EUV(VP)
 Owner-occupied	100%		EUV(VP)
6  Owner-occupied	100%		EUV(VP)
 Partially Owner-occupied & Partially Tenanted	Owner-occupied portion : 100%	Tenanted portion : 75%	EUV(ET)
7  Owner-occupied	100%		EUV(VP)
 Wholly Tenanted		50%	EUV(ET)
8  Partially Owner-occupied & Partially Tenanted	Owner-occupied portion : 100%	Tenanted portion : 75%	EUV(ET)
 Partially Owner-occupied & Partially Tenanted	Owner-occupied portion : 100%	Tenanted portion : 75%	EUV(ET)
9  Partially Owner-occupied & Partially Tenanted	Owner-occupied portion : 100%	Tenanted portion : 75%	EUV(ET)
 Wholly Tenanted		50%	EUV(ET)
10  Wholly Tenanted		50%	EUV(ET)
 Wholly Tenanted		25%	EUV(ET)
11  Vacant		50%	EUV(VP)
 Vacant		25%	EUV(VP)

 Three Flats

Occupation Status	HPA	SA	Market Value
12  Owner-occupied	100%		EUV(VP)
 Owner-occupied	100%		EUV(VP)
 Owner-occupied	100%		EUV(VP)
13  Owner-occupied	100%		EUV(VP)
 Owner-occupied	100%		EUV(VP)
 Partially Owner-occupied & Partially Tenanted	Owner-occupied portion : 100%	Tenanted portion : 75%	EUV(ET)
14  Owner-occupied	100%		EUV(VP)
 Partially Owner-occupied & Partially Tenanted	Owner-occupied portion : 100%	Tenanted portion : 75%	EUV(ET)
 Partially Owner-occupied & Partially Tenanted	Owner-occupied portion : 100%	Tenanted portion : 75%	EUV(ET)
15  Owner-occupied	100%		EUV(VP)
 Partially Owner-occupied & Partially Tenanted	Owner-occupied portion : 100%	Tenanted portion : 75%	EUV(ET)
 Wholly Tenanted		50%	EUV(ET)
16  Owner-occupied	100%		EUV(VP)
 Owner-occupied	100%		EUV(VP)
 Wholly Tenanted		50%	EUV(ET)
17  Owner-occupied	100%		EUV(VP)
 Wholly Tenanted		50%	EUV(ET)
 Wholly Tenanted		25%	EUV(ET)

Occupation Status	HPA	SA	Market Value
18 Partially Owner-occupied & Partially Tenanted Partially Owner-occupied & Partially Tenanted Partially Owner-occupied & Partially Tenanted	Owner-occupied portion : 100%	Tenanted portion : 75%	EUV(ET)
19 Partially Owner-occupied & Partially Tenanted Partially Owner-occupied & Partially Tenanted Wholly Tenanted	Owner-occupied portion : 100%	Tenanted portion : 75%	EUV(ET)
20 Partially Owner-occupied & Partially Tenanted Wholly Tenanted Wholly Tenanted	Owner-occupied portion : 100%	Tenanted portion : 75%	EUV(ET)
21 Wholly Tenanted Wholly Tenanted Wholly Tenanted		50%	EUV(ET)
22 Vacant Vacant Vacant		50%	EUV(VP)
		25%	EUV(VP)
			EUV(VP)

Abbreviations:

HPA Home Purchase Allowance
SA Supplementary Allowance
EUV Existing Use Value
VP Vacant Possession
ET Subject to Existing Tenancy

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary for Housing,
Planning and Lands

<u>Clause</u>	<u>Amendment Proposed</u>
1	(a) In the heading by deleting " and commencement ". (b) By deleting subclause (2).
2	By deleting the definition "appointed day" and substituting - " commencement date " (生效日期) means the date on which this Ordinance is published in the Gazette;".
5	(a) In subclause (1)- (i) by deleting "appointed day" wherever it appears and substituting "commencement date"; (ii) by deleting "之前已存在的屬" and substituting "的前一天屬存在的". (b) By deleting subclause (2) and substituting -

"(2) On and after the commencement date, a tenancy to which Part IV applies and which is in existence on the day before the commencement date, but in respect of which no notice or request has been given or made before the commencement date under section 119 or 119A of the principal Ordinance, may, subject to subsections (2B) and (2C), only be terminated by a transitional termination notice as provided for by section 5A."

(c) By adding -

"(2A) The term "the tenancy" (該租賃) as used in subsection (1)(c) and (d) does not include any new tenancy granted pursuant to Part IV on or after the commencement date.

(2B) The requirement in subsection (2) for a transitional termination notice in respect of a tenancy, and any such notice that has been issued in respect of a tenancy, ceases to apply if, on or after the commencement date -

(a) the parties to the
tenancy -

(i) agree to some
other period for
notice of
termination; or

(ii) alter any other
term of the
tenancy; or

(b) the tenancy is assigned to
a new tenant.

(2C) Subsection (2) is without
prejudice to -

(a) section 5B(1) as to the
making of an order for
possession;

(b) any right of forfeiture
conferred on a landlord;

(c) any right of surrender or
early termination
conferred on a tenant.

(2D) (a) The benefits and
protection afforded by
this Part shall, in any
tenancy to which it
applies, be available to
the widow, widower,
mother, father or any
daughter or son over the

age of 18 years of the tenant where she or he was residing with the tenant at the time of the tenant's death; and, for the purposes of this Part, references to a tenant shall except in this subsection include a reference to such widow, widower, mother, father, daughter or son.

- (b) Only one person mentioned in paragraph (a) shall be entitled to the benefits and protection of this Part at one time and, in default of agreement by those persons, the Tribunal shall nominate that person on such grounds as appears to it to be just and equitable.
- (c) The benefits and protection afforded by this Part shall not be

available to a personal representative of a deceased tenant or, notwithstanding any will or the law of succession on intestacy, any other person who is not a person mentioned in paragraph (a) as entitled to those benefits and that protection.

(2E) On and after the commencement date, a tenancy which would have terminated, but for the requirement in subsection (2) for a transitional termination notice, shall, until terminated by such a notice, but subject to section 5B, continue at the same rent and upon the same covenants, conditions and other terms of the original tenancy as are appropriate to a month to month tenancy."

(d) In subclause (3) -

- (i) by deleting "appointed day" and substituting "commencement date";
- (ii) by deleting "that day" and substituting "that date".

- (e) In subclause (4) -
 - (i) by deleting "appointed day" and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".
- (f) In subclause (5) -
 - (i) by deleting "appointed day" where it twice appears and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".
- (g) In subclause (6), by deleting "appointed day" and substituting "commencement date".

New

By adding immediately before Part 3 -

"5A. Transitional termination notice

(1) For the purpose of section 5(2), a "transitional termination notice" (過渡性終止通知書) means a written notice of termination of a tenancy served on or after the commencement date in accordance with this section.

(2) A transitional termination notice must be served -

- (a) by a landlord, not less than 12 months; or

- (b) by a tenant, not less than 1 month,

before the day on which it is to take effect.

(3) A transitional termination notice may be served at any time on or after the commencement date, but -

- (a) in respect of a tenancy for a fixed term which was in existence on the day before the commencement date, may not be served earlier than the last day of the term;

- (b) in respect of a periodic tenancy which was in existence on the day before the commencement date, may not be served earlier than the last day of the period of the tenancy current at the commencement date.

(4) A transitional termination notice may be served in any of the ways specified in section 119Y(1) of the principal Ordinance and subsection (2) of that section applies to such service.

(5) Where a transitional termination notice is served on a tenant, if -

- (a) the notice is in both Chinese and English; and
- (b) the notice is posted on 3 successive days upon the main door or entrance of the premises affected,

the notice shall take effect terminating also any sub-tenancies created out of the tenancy to which it relates.

(6) Subject to section 5(2B), a transitional termination notice duly served in respect of a tenancy in accordance with this section takes effect according to its terms, notwithstanding -

- (a) a change of landlord that does not create a new tenancy;
- (b) any express or implied provision in the tenancy regarding the giving of notice of termination (subject to section 5(2C)(c) as to early termination); or
- (c) any other rule of law regarding the date on which a termination notice takes effect.

5B. Other transitional provisions

(1) During the continuance of a tenancy as described in section 5(2E), the Tribunal may, on the application of the landlord, make an order for possession of the premises to which the tenancy relates, or any part of them, notwithstanding that a transitional termination notice in respect of the premises has not been served, or has been served but has not expired, if the Tribunal is satisfied that the premises are, or that that part of them is, reasonably required by the landlord for occupation as a residence for himself, his father, his mother or any son or daughter of his over the age of 18.

(2) The Tribunal shall not make an order for possession under subsection (1) if -

- (a) in the case of a tenancy, the tenant satisfies the Tribunal that, in all the circumstances of the case, it would manifestly not be just and equitable to make the order; or
- (b) in the case of a sub-tenancy, the Tribunal is satisfied in all the circumstances of the case, including whether other accommodation is available for

the principal tenant or the sub-tenant, greater hardship would be caused by making the order than by refusing it.

(3) If the Tribunal makes an order for possession under subsection (1) -

- (a) the Tribunal must specify the name of the person for whose occupation it is satisfied the premises are, or the part of the premises is, required;
- (b) subject to subsection (4), the landlord must not, for a period of 24 months after the date of the order, use, or allow the use of the premises, or the part of the premises, other than as a residence for the person specified under paragraph (a);
- (c) subject to subsection (4), the landlord must not, for a period of 24 months after the date of the order -
 - (i) let the premises or any part of them; or

- (ii) assign, transfer or part with possession of the premises or any part of them.

(4) If the Tribunal makes an order for possession under subsection (1), the Tribunal may authorize the landlord to -

- (a) let the premises or any part of them;
- (b) assign, transfer or part with possession of the premises or any part of them; or
- (c) use, or allow the use of, the premises, or any part of them, other than as a residence for the person specified under subsection (3)(a).

(5) The Tribunal, when granting an authority under subsection (4) to let, must specify the terms, including the rent, on which the premises are, or the part of the premises is, to be let, and the rent must not be more than that payable by the tenant last in possession.

(6) Without prejudice to subsection (8), a landlord who contravenes subsection (3)(b)

or (c) commits an offence and is liable on conviction on indictment -

- (a) to a fine of \$500,000;
- (b) in addition, on a second or subsequent conviction, to imprisonment for 12 months;
- (c) in any case, to forfeit a sum not exceeding the equivalent of -

- (i) in the case of a contravention of subsection (3)(c)(i), 2 years' rent calculated at the rate at which the premises were let without the authority of the Tribunal; or

- (ii) in the case of a contravention of subsection (3)(c)(ii), the difference, at the date of the contravention, between the market value of the premises

with vacant
possession and the
market value of the
premises with the
former tenant in
possession.

(7) A court which sentences a landlord for an offence under subsection (6) may, in addition to imposing a penalty under that subsection, make an order under subsection (8) after hearing the former tenant and the landlord.

(8) If -

- (a) an application for an order for possession is made by the landlord under subsection (1) and it is subsequently made to appear to the Tribunal that the application was successful by reason of the misrepresentation or concealment of material facts by the landlord; or
- (b) the landlord is shown to have acted in contravention of subsection (3)(b) or (c),

the Tribunal or, as the case may be, the court referred to in subsection (7) may order the

landlord to pay to the former tenant such sum as it thinks fit by way of compensation for damage or loss sustained by that tenant as a result of the application.

(9) A letting, assignment, transfer or parting with possession of premises or part of them shall not be void, voidable or unenforceable by reason only of a contravention of subsection (3)(b) or (c).

(10) A landlord who has been granted an order for possession pursuant to subsection (1) shall be presumed, until the contrary is shown, to have knowledge of the making of the order, of the terms of the order, and of any consent given by the tenant or sub-tenant in connection with the delivery of vacant possession.

(11) For the purpose of this section - "his father, his mother or any son or daughter of his" (其父親、母親、兒子或女兒) includes the father, mother, son or daughter of one or more landlords, holding the premises jointly or in common, with the other landlord or landlords so holding assenting to the application for an order for possession;

"landlord" (業主) includes one or more

landlords, holding the premises jointly or in common, with the other landlord or landlords so holding assenting to the application for an order for possession."

7

(a) In subclause (1) -

- (i) by deleting "appointed day" and substituting "commencement date";
- (ii) in paragraph (a), by deleting "that day" and substituting "that date".

(b) In subclause (2) -

- (i) by deleting "appointed day" wherever it appears and substituting "commencement date";
- (ii) by deleting everything after "日期" where it first appears and before "，則" and substituting "的前一天屬存在的第v部適用的租賃而言，如在生效日期之前並無根據主體條例第122(1)條就該租賃送達的終止租賃通知書".

(c) In subclause (3) -

- (i) by deleting "appointed day" where it twice appears and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".
- (d) In subclause (4), by deleting "appointed day" and substituting "commencement date".

14 By deleting the clause.

Schedule,
section 1

By adding -

"(11) The Tribunal shall have jurisdiction to make an order for possession -

- (a) upon the expiry of a transitional termination notice served pursuant to section 5(2) of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (of 2004);
- (b) upon an application by a landlord for possession as provided by section 5B(2) of that Ordinance;
- (c) upon the termination of a tenancy to which section 7(2) of that Ordinance applies;

(d) upon the termination by
effluxion of time of a new
tenancy entered into on or
after the commencement of that
Ordinance."

Schedule By adding immediately before section 4 -

"3A. Commencement of proceedings

Rule 68 of the Lands Tribunal Rules (Cap.
17 sub. leg. A) is amended by adding -

"(1A) Proceedings for an order for
possession and other reliefs upon the
termination of a tenancy by a
transitional termination notice served
pursuant to section 5(2) of the Landlord
and Tenant (Consolidation) (Amendment)
Ordinance 2004 (of 2004) shall be
commenced by the applicant filing with
the Registrar a notice of application
substantially in accordance with Form
22A.

(1B) Proceedings for an order for
possession and other reliefs under
section 5B(1) of the Landlord and Tenant
(Consolidation) (Amendment) Ordinance 2004
(of 2004) shall be commenced by the
applicant filing with the Registrar a

notice of application substantially in accordance with Form 22B."

3B. Notice of opposition

Rule 69 is amended -

- (a) by renumbering it as rule 69(1);
- (b) in subrule (1), by repealing "The" and substituting "Subject to subrule (2), the";
- (c) by adding -

"(2) The period of 14 days mentioned in subrule (1) is reduced to 7 days in the case of an application for an order for possession made on or after the commencement of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (of 2004) if the tenancy has been terminated by -

- (a) notice of termination within the meaning of

Part IV or
Part V of
the
Landlord
and Tenant
(Consolida-
tion)
Ordinance
(Cap. 7);

(b) notice to
quit given
by the
landlord or
tenant;

(c) surrender;

(d) a transi-
tional
termination
notice
served
pursuant to
section
5(2) of the
Landlord
and Tenant
(Consolida-
tion)

(Amendment)

Ordinance

2004 (of

2004); or

(e) effluxion

of

time."."

Schedule,
section 4

- (a) By renumbering the section as section 4(1).
- (b) In subsection (1), by deleting "to the Lands Tribunal Rules (Cap. 17 sub. leg. A)".
- (c) By adding -

"(2) The Schedule is amended by
adding -

NOTICE OF APPLICATION UNDER LANDLORD AND TENANT
(CONSOLIDATION) (AMENDMENT) ORDINANCE 2004

Pursuant to section 5(2)

No. LD /

Applicant's Name: _____ *(Landlord/Tenant)

and Address: _____

Respondent's Name: _____ *(Tenant/Sub-tenant)

and Address: _____

Address of premises: _____

Duration of tenancy
before service of
Transitional

Termination Notice: From _____ To _____ Existing rent:\$ _____ /month

Transitional Date of Date of Expiry
Termination Notice: Service: _____ of Notice: _____

Mode of Service: _____

Nature and particulars of application:

The tenancy having been terminated upon the expiry of a transitional termination notice, the applicant applies for recovery of possession of the suit premises and claims against the respondent for the following item(s):

(1) Arrears of rent/mesne profits from _____ to the date of delivery of vacant possession of the suit premises and costs.

(2) And others _____

Dated this _____ day of _____

(Signature of *Applicant/authorized representative of Applicant)
Full name of authorized representative: _____

To: 1. The Registrar, Lands Tribunal.
2. The Respondent.

Applicant's address for service: _____

+ If the applicant is a company/incorporation, please affix the company seal and write down the full name of the signatory.

* Delete whichever is inapplicable.

Note: If you intend to oppose this application, you must personally attend at the Lands Tribunal Registry within 7 days of the date of service of this notice or within the time as ordered by the Tribunal, and file a notice of opposition (Form 7).

NOTICE OF APPLICATION UNDER LANDLORD AND TENANT
(CONSOLIDATION) (AMENDMENT) ORDINANCE 2004

Pursuant to section 5B(1)

No. LD /

Applicant's Name: _____ *(Landlord/Tenant)

and Address: _____

Respondent's Name: _____ *(Tenant/Sub-tenant)

and Address: _____

Address of premises: _____

Duration of tenancy: From _____ To _____ Existing rent: \$ _____ /month

Transitional Termination Date of Date of Expiry
Notice (if any): Service: _____ of Notice: _____

Mode of Service: _____

Nature and particulars of application:

The applicant applies for possession of the suit premises on the ground that the suit premises are reasonably required by the applicant as a residence for -

[Names, ages and relationship to the applicant of person(s) for whom occupation of the suit premises is required]

And further claims against the respondent for the following item(s):

(1) Arrears of rent/mesne profits from _____ to the date of delivery of vacant possession of the suit premises and costs.

(2) And others _____

Dated this _____ day of _____

(Signature of *Applicant/authorized representative of Applicant)
Full name of authorized representative: _____

To: 1. The Registrar, Lands Tribunal.
2. The Respondent.

Applicant's address for service: _____

+ If the applicant is a company/incorporation, please affix the company seal and write down the full name of the signatory.

* Delete whichever is inapplicable.

Note: If you intend to oppose this application, you must personally attend at the Lands Tribunal Registry within 7 days of the date of service of this notice or within the time as ordered by the Tribunal, and file a notice of opposition (Form 7).".".

Schedule By adding -

**"Standard Chartered Bank (Hong Kong)
Limited (Merger) Ordinance**

29. Interests in land

Section 17(1)(a) of the Standard Chartered Bank (Hong Kong) Limited (Merger) Ordinance (6 of 2004) is amended by repealing ", 119E(2) or 119H(1)(a)".

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Honourable Albert HO Chun-yan

Clause

Amendment Proposed

3 By deleting "The following provisions" and substituting "Subject to section 3A, the following provisions".

New By adding —

"3A. Tenancies not affected by repeal

(1) Nothing in this Part shall affect a tenancy or sub-tenancy of premises of which the rateable value on the commencement date is less than \$60,000, and on and after that date—

(a) the provisions repealed by section 3 of this Ordinance shall continue to apply to such a tenancy or sub-tenancy as if they were not repealed;

(b) the enactments amended by sections 8 to 15 and the Schedule to this Ordinance shall, if applicable, apply to such a tenancy or sub-tenancy as if they were not amended.

(2) For the purposes of subsection (1), the rateable value of

any premises shall be—

- (a) in the case of premises included in the valuation list declared under section 13 of the Rating Ordinance (Cap. 116), the rateable value contained in that list on the commencement date;
 - (b) in any other case, the rateable value which would have been contained in the list referred to in paragraph (a) on the commencement date had the premises been included in that list, as certified by the Commissioner of Rating and Valuation.
- (3) If any part of premises is let or sublet—
- (a) "premises" in subsection (1) refers to that part of the premises which—
 - (i) in the case of the tenant, is the subject of the tenancy and not the subject of the sub-tenancy;
 - (ii) in the case of the sub-tenant, is the subject of the sub-tenancy and not the subject of any other sub-tenancy;
 - (b) The rateable value of part of the premises that is let or sublet shall be the amount of rateable value of the premises attributable to that part, as certified by the Commissioner of Rating and Valuation.⁹⁹

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Honourable Albert HO Chun-yan

<u>Clause</u>	<u>Amendment Proposed</u>
5	<p>(a) In subclause (1) —</p> <p>(i) by deleting "appointed day" whenever it appears and substituting "commencement date";</p> <p>(ii) by deleting "之前已存在的屬" and substituting "的前一天屬存在的"</p> <p>(b) By deleting subclause (2) and substituting —</p> <p>" (2) On and after the commencement date , a tenancy to which Part IV applies and which is in existence on the day before the commencement date, but in respect of which no notice or request has been given or made before the commencement date under section 119 or 119A of the principal Ordinance, may, subject to subsections (2A) and (2B), only be terminated by a transitional termination notice as provided for by</p>

section 5A. ";

(c) By adding -

" (2A) The requirement in subsection (2) for a transitional termination notice in respect of a tenancy, and any such notice that has been issued in respect of a tenancy, ceases to apply if, on or after the commencement date -

- (a) the parties to the tenancy -
 - (i) agree to some other period for notice of termination; or
 - (ii) alter any other term of the tenancy; or
- (b) the tenancy is assigned to a new tenant.

(2B) Subsection (2) is without prejudice to -

- (a) section 5B(1) as to the making of an order for possession;
- (b) any right of forfeiture conferred on a landlord;
- (c) any right of surrender or early termination conferred on a tenant.

(2C) (a) The benefits and protection afforded by

this Part shall, in any tenancy to which it applies, be available to the widow, widower, mother, father or any sister, brother, daughter or son over the age of 18 years of the tenant where she or he was residing with the tenant at the time of the tenant's death, or to a personal representative over the age of 18 years not being a person mentioned above where she or he was residing with the tenant at the time of the tenant's death; and, for the purposes of this Part, references to a tenant shall except in this subsection include a reference to such widow, widower, mother, father, sister, brother, daughter or son or personal representative.

(b) Only one person mentioned in paragraph (a) shall be entitled to the benefits and protection of this Part at one time and, in default of agreement by those persons, the Tribunal shall nominate

that person on such grounds as appears to it to be just and equitable.

- (c) The benefits and protection afforded by this Part shall not be available to a personal representative not residing with the tenant at the time of tenant's death or, notwithstanding any will or the law of succession on intestacy, any other person who is not a person mentioned in paragraph (a) as entitled to those benefits and that protection.

(2D) On and after the commencement date, a tenancy which would have terminated, but for the requirement in subsection (2) for a transitional termination notice, shall, until terminated by such a notice, but subject to section 5B, continue at the same rent and upon the same covenants, conditions and other terms of the original tenancy as are appropriate to a month to month tenancy."

(d) In subclause (3) -

- (i) by deleting "appointed day" and

- substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that day".
- (e) In subclause (4) -
- (i) by deleting "appointed day" and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".
- (f) In subclause (5) -
- (i) by deleting "appointed day" where it twice appears and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".
- (g) In subclause (6), by deleting "appointed day" and substituting "commencement date".

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

5

(a) In subclause (1) —

- (i) by deleting "appointed day" whenever it appears and substituting "comencement date";
- (ii) by deleting "之前已存在的屬" and substituting "的前一天屬存在的"

(b) By deleting subclause (2) and substituting —

" (2) On and after the commencement date , a tenancy to which Part IV applies and which is in existence on the day before the commencement date, but in respect of which no notice or request has been given or made before the commencement date under section 119 or 119A of the principal Ordinance, may, subject to subsections (2A) and (2B), only be terminated by a transitional termination notice as provided for by

section 5A. ";

(c) By adding -

" (2A) The requirement in subsection (2) for a transitional termination notice in respect of a tenancy, and any such notice that has been issued in respect of a tenancy, ceases to apply if, on or after the commencement date -

- (a) the parties to the tenancy -
 - (i) agree to some other period for notice of termination; or
 - (ii) alter any other term of the tenancy; or
- (b) the tenancy is assigned to a new tenant.

(2B) Subsection (2) is without prejudice to -

- (a) section 5B(1) as to the making of an order for possession;
- (b) any right of forfeiture conferred on a landlord;
- (c) any right of surrender or early termination conferred on a tenant.

(2C) (a) The benefits and protection afforded by

this Part shall, in any tenancy to which it applies, be available to any person over the age of 18 years where he was residing with the tenant at the time of the tenant's death; and, for the purposes of this Part, references to a tenant shall except in this subsection include a reference to such person.

(b) Only one person mentioned in paragraph (a) shall be entitled to the benefits and protection of this Part at one time and, in default of agreement by those persons, the Tribunal shall nominate that person on such grounds as appears to it to be just and equitable.

(c) The benefits and protection afforded by this Part shall not be available to a personal representative not residing with the tenant at the time of tenant's death or, notwithstanding any will

or the law of succession
on intestacy, any other
person who is not a person
mentioned in paragraph (a)
as entitled to those
benefits and that
protection.

(2D) On and after the
commencement date, a tenancy which would
have terminated, but for the requirement
in subsection (2) for a transitional
termination notice, shall, until
terminated by such a notice, but subject
to section 5B, continue at the same rent
and upon the same covenants, conditions
and other terms of the original tenancy
as are appropriate to a month to month
tenancy."

(d) In subclause (3) -

- (i) by deleting "appointed day" and
substituting "commencement date";
- (ii) by deleting "that day" and
substituting "that day".

(e) In subclause (4) -

- (i) by deleting "appointed day" and
substituting "commencement date";
- (ii) by deleting "that day" and
substituting "that date".

(f) In subclause (5) -

- (i) by deleting "appointed day" where it
twice appears and substituting

"commencement date";

(ii) by deleting "that day" and
substituting "that date".

(g) In subclause (6), by deleting "appointed day"
and substituting "commencement date".

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Honourable Fred LI Wah-ming

Clause

Amendment Proposed

5

(a) In subclause (1) —

- (i) by deleting "appointed day" whenever it appears and substituting "comencement date";
- (ii) by deleting "之前已存在的屬" and substituting "的前一天屬存在的"

(b) By deleting subclause (2) and substituting —

" (2) On and after the commencement date , a tenancy to which Part IV applies and which is in existence on the day before the commencement date, but in respect of which no notice or request has been given or made before the commencement date under section 119 or 119A of the principal Ordinance, may, subject to subsections (2A) and (2B), only be terminated by a transitional termination notice as provided for by

section 5A. ";

(c) By adding -

" (2A) The requirement in subsection (2) for a transitional termination notice in respect of a tenancy, and any such notice that has been issued in respect of a tenancy, ceases to apply if, on or after the commencement date -

- (a) the parties to the tenancy -
 - (i) agree to some other period for notice of termination; or
 - (ii) alter any other term of the tenancy; or
- (b) the tenancy is assigned to a new tenant.

(2B) Subsection (2) is without prejudice to -

- (a) section 5B(1) as to the making of an order for possession;
- (b) any right of forfeiture conferred on a landlord;
- (c) any right of surrender or early termination conferred on a tenant.

(2C) (a) The benefits and protection afforded by

this Part shall, in any tenancy to which it applies, be available to the widow, widower, mother, father or any sister, brother, daughter or son over the age of 18 years of the tenant where she or he was residing with the tenant at the time of the tenant's death; and, for the purposes of this Part, references to a tenant shall except in this subsection include a reference to such widow, widower, mother, father, sister, brother, daughter or son.

(b) Only one person mentioned in paragraph (a) shall be entitled to the benefits and protection of this Part at one time and, in default of agreement by those persons, the Tribunal shall nominate that person on such grounds as appears to it to be just and equitable.

(c) The benefits and protection afforded by

this Part shall not be available to a personal representative of a deceased tenant or, notwithstanding any will or the law of succession on intestacy, any other person who is not a person mentioned in paragraph (a) as entitled to those benefits and that protection.

(2D) On and after the commencement date, a tenancy which would have terminated, but for the requirement in subsection (2) for a transitional termination notice, shall, until terminated by such a notice, but subject to section 5B, continue at the same rent and upon the same covenants, conditions and other terms of the original tenancy as are appropriate to a month to month tenancy."

(d) In subclause (3) -

- (i) by deleting "appointed day" and substituting "commencement date";
- (ii) by deleting "that day" and substituting "that day".

(e) In subclause (4) -

- (i) by deleting "appointed day" and substituting "commencement date";

- (ii) by deleting "that day" and substituting "that date".

(f) In subclause (5) –

- (i) by deleting "appointed day" where it twice appears and substituting "commencement date";

- (ii) by deleting "that day" and substituting "that date".

(g) In subclause (6), by deleting "appointed day" and substituting "commencement date".

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Honourable Howard YOUNG

5

(a) In subclause (1)-

(i) by deleting "appointed day" wherever it appears and substituting

"commencement date";

(ii) by deleting "之前已存在的屬" and

substituting "的前一天屬存在的".

(b) By deleting subclause (2) and substituting -

"(2) On and after the commencement date, a tenancy to which Part IV applies and which is in existence on the day before the commencement date, but in respect of which no notice or request has been given or made before the commencement date under section 119 or 119A of the principal Ordinance, may, subject to subsections (2B) and (2C), only be terminated

by a transitional termination notice as provided
for by section 5A.” .

(c) By adding –

“(2A) The term “the tenancy” (該租賃) as
used in subsection (1)(c) and (d) does not
include any new tenancy granted
pursuant to Part IV on or after the
commencement date.

(2B) The requirement in subsection (2) for a
transitional termination notice in respect
of a tenancy, and any such notice that
has been issued in respect of a tenancy,
ceases to apply if, on or after the
commencement date –

(a) the parties to the
tenancy –

(i) agree to
some other
period for

notice of

termination;

or

(ii) alter any

other term

of the

tenancy; or

(b) the tenancy is assigned to
a new tenant.

(2C) Subsection (2) is without prejudice

to –

(a) section 5B(1) as to the
making of an order for
possession;

(b) any right of forfeiture
conferred on a landlord;

(c) any right of surrender or
early termination
conferred on a tenant.

(2D) (a) The benefits and protection afforded by this Part shall, in any tenancy to which it applies, be available to the widow, widower, mother, father, or any sister, brother, daughter or son over the age of 18 years of the tenant where she or he was residing with the tenant at the time of the tenant's death; and, for the purposes of this Part, references to a tenant shall except in this subsection include a reference to such widow, widower, mother, father, sister, brother, daughter or son.

(b) Only one person mentioned in paragraph (a) shall be entitled to the benefits and protection of this Part at one time and, in default of agreement by those persons, the Tribunal shall nominate that person on such grounds as appears to it to be just and equitable.

(c) The benefits and protection afforded by this Part shall not be available to a personal representative of a deceased tenant or, notwithstanding any will or the law of succession

on intestacy, any other person who is not a person mentioned in paragraph (a) as entitled to those benefits and that protection.

(2E) On and after the commencement date, a tenancy which would have terminated, but for the requirement in subsection (2) for a transitional termination notice, shall, until terminated by such a notice, but subject to section 5B, continue at the same rent and upon the same covenants, conditions and other terms of the original tenancy as are appropriate to a month to month tenancy."

(d) In subclause (3) –

- (i) by deleting "appointed day" and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".

- (e) In subclause (4) –
 - (i) by deleting "appointed day" and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".

- (f) In subclause (5) –
 - (i) by deleting "appointed day" where it twice appears and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".

- (g) In subclause (6), by deleting "appointed day" and substituting "commencement date".

New

By adding immediately before Part 3 –

"5A. Transitional termination notice

(1) For the purpose of section 5(2), a "transitional termination notice" (過渡性終止通知書) means a written notice of termination of a tenancy served on or after the commencement date in accordance with this section.

(2) A transitional termination notice must be served –

(a) by a landlord, in the case of a tenancy of premises of which the rateable value does not exceed \$36,000, not less than 36 months, and in any other cases; not less than 12 months; or

(b) by a tenant, not less than 1 month,

before the day on which it is to take effect.

(3) A transitional termination notice may be served at any time on or after the commencement date,

but –

(a) in respect of a fixed term tenancy which was in existence on the day before the commencement date, may not be served earlier than the last day of the term;

(b) in respect of a periodic tenancy which was in existence on the day before the commencement date, may not be served earlier than the last day of the period of the tenancy current at the commencement date.

(4) A transitional termination notice may be served in any of the ways specified in section 119Y(1) of the principal Ordinance and subsection (2) of that section applies to such service.

(5) Where a transitional termination notice is served on a tenant, if –

- (a) the notice is in both Chinese and English; and
- (b) the notice is posted on 3 successive days upon the main door or entrance of the premises affected,

the notice shall take effect terminating also any sub-tenancies created out of the tenancy to which it relates.

(6) Subject to section 5(2B), a transitional termination notice duly served in respect of a tenancy in accordance with this section takes effect according to its terms, notwithstanding –

- (a) a change of landlord that does not create a new tenancy;
- (b) any express or implied provision in the tenancy regarding the

giving of notice of termination
(subject to section 5(2C)(c) as to
early termination); or

- (c) any other rule of law regarding
the date on which a termination
notice takes effect.

(7) For the purposes of subsection (2)(a),
the rateable value of any premises shall
be —

- (a) in the case of premises included
in the valuation list declared in
March 2004 under section 13 of
the Rating Ordinance (Cap. 116),
the rateable value contained in
that list;

- (b) in any other case, the rateable
value which would have been
contained in the list referred to in
paragraph (a) had the premises
been included in that list, as
certified by the Commissioner of
Rating and Valuation.

(8) For the purpose of subsection (7),

where any part of premises is let or sublet-

(a) "premises" refers to that part of the premises which-

(i) in the case of the tenant, is the subject of the tenancy and not the subject of the sub-tenancy;

(ii) in the case of the subtenant, is the subject of the sub-tenancy and not the subject of any other sub-tenancy;

(b) The rateable value of part of the premises that is let or sublet shall be the amount of rateable value of the premises attributable to that part, as certified by the Commissioner of Rating and Valuation.

5B. Other transitional provisions

(1) During the continuance of a tenancy as described in section 5(2E), the Tribunal may, on the

application of the landlord, make an order for possession of the premises to which the tenancy relates, or any part of them, notwithstanding that a transitional termination notice in respect of the premises has not been served, or has been served but has not expired, if the Tribunal is satisfied that the premises are, or that that part of them is, reasonably required by the landlord for occupation as a residence for himself, his father, his mother or any son or daughter of his over the age of 18.

(2) The Tribunal shall not make an order for possession under subsection (1) if -

- (a) in the case of a tenancy, the tenant satisfies the Tribunal that, in all the circumstances of the case, it would manifestly not be just and equitable to make the order; or
- (b) in the case of a sub-tenancy, the Tribunal is satisfied in all the

circumstances of the case,
including whether other
accommodation is available for
the principal tenant or the
sub-tenant, greater hardship
would be caused by making the
order than by refusing it.

(3) If the Tribunal makes an order for possession
under subsection (1) –

- (a) the Tribunal must specify the
name of the person for whose
occupation it is satisfied the
premises are, or the part of the
premises is, required;
- (b) subject to subsection (4), the
landlord must not, for a period of
24 months after the date of the
order, use, or allow the use of the
premises, or the part of the

premises, other than as a
residence for the person specified
under paragraph (a);

(c) subject to subsection (4), the
landlord must not, for a period of
24 months after the date of the
order –

(i) let the premises or
any part of them;

or

(ii) assign transfer or
part with
possession of the
premises or any
part of them.

(4) If the Tribunal makes an order for possession
under subsection (1), the Tribunal may authorize the
landlord to –

- (a) let the premises or any part of them;
- (b) assign, transfer or part with possession of the premises or any part of them; or
- (c) use, or allow the use of, the premises, or any part of them, other than as a residence for the person specified under subsection (3)(a).

(5) The Tribunal, when granting an authority under subsection (4) to let, must specify the terms, including the rent, on which the premises are, or the part of the premises is, to be let, and the rent must not be more than that payable by the tenant last in possession.

(6) Without prejudice to subsection (8), a landlord who contravenes subsection (3)(b) or (c) commits an offence and is liable on conviction on indictment –

- (a) to a fine of \$500,000;
- (b) in addition, on a second or subsequent conviction, to imprisonment for 12 months;
- (c) in any case, to forfeit a sum not exceeding the equivalent of –
 - (i) in the case of a contravention of subsection (3)(c)(i), 2 years' rent calculated at the rate at which the premises were let without the authority of the Tribunal; or
 - (ii) in the case of a contravention of subsection

(3)(c)(ii), the
difference, at the
date of the
contravention,
between the
market value of
the premises with
vacant possession
and the market
value of the
premises with the
former tenant in
possession.

(7) A court which sentences a landlord for an
offence under subsection (6) may, in addition to
imposing a penalty under that subsection, make an order
under subsection (8) after hearing the former tenant and
the landlord.

(8) If—

(a) an application for a possession order by the landlord is made under subsection (1) and it is subsequently made to appear to the Tribunal that the application was successful by reason of the misrepresentation or concealment of material facts by the landlord;

or

(b) the landlord is shown to have acted in contravention of subsection (3)(b) or (c),

the Tribunal or, as the case may be, the court referred to in subsection (7) may order the landlord to pay to the former tenant such sum as it thinks fit by way of compensation for damage or loss sustained by that tenant as a result of the application.

(9) A letting, assignment, transfer or parting with possession of premises or part of them shall not be void,

voidable or unenforceable by reason only of a
contravention of subsection (3)(b) or (c).

(10) A landlord who has been granted an order for
possession pursuant to subsection (1) shall be presumed,
until the contrary is shown, to have knowledge of the
making of the order, of the terms of the order, and of
any consent given by the tenant or sub-tenant in
connection with the delivery of vacant possession.

(11) For the purpose of subsection (1) –
"his father, his mother or any son or daughter of his" (其

父親、母親、兒子或女兒) includes the father,
mother, son or daughter of one or more
landlords, holding the premises jointly or in
common, with the other landlord or landlords so
holding assenting to the application for an order
for possession;

"landlord" (業主) includes one or more landlords,
holding the premises jointly or in common, with
the other landlord or landlords so holding

assenting to the application for an order for
possession."