

立法會
Legislative Council

LC Paper No. LS34/06-07

**Paper for the House Committee Meeting
on 2 February 2007**

**Legal Service Division Report on
Housing (Amendment) Bill 2007**

I. SUMMARY

- 1. Objects of the Bill** To amend the Housing Ordinance (Cap. 283) to-

 - (a) remove the 10% median rent-to-income ratio cap and the three-year interval restriction on rent adjustment;
 - (b) introduce a new rent adjustment framework that provides for both upward and downward rent adjustments according to changes in public rental housing tenants' household income.

- 2. Comments** The Bill amends the Housing Ordinance by replacing section 16(1A) to (1E) with provisions-

 - (a) relating to review of the rent of certain residential units;
 - (b) requiring the Housing Authority (HA) to vary the rent of those units with reference to the change in an index reflecting the level of household income of certain tenants of residential units;
 - (c) specifying when HA shall not make such a variation; and
 - (d) empowering HA to round down the amount of the rent in such a variation and to make determinations in relation to the compilation of the said index.

- 3. Public Consultation** The Authority has undertaken public consultation. A consultation paper was issued in March 2006.

- 4. Consultation with LegCo Panel** The Panel on Housing was briefed and was consulted on the Administration's proposals at a series of meeting in the 2005-06 and 2006-07 sessions.

- 5. Conclusion** It is recommended that a Bills Committee be formed to study the Bill in detail.

II. REPORT

Objects of the Bill

The objects of the Bill are to amend the Housing Ordinance (Cap. 283) (the Ordinance) so as to-

- (a) remove the cap of 10% of the median rent-to-income ratio (MRIR) and the three-year interval restriction on rent adjustment imposed by section 16(1A) of the Ordinance;
- (b) introduce a rent adjustment framework that provides for both upward and downward rent adjustments according to changes in public rental housing tenants' household income.

LegCo Brief Reference

2. HD (CR) 20/231 issued by the Housing, Planning and Lands Bureau on 17 January 2007.

Date of First Reading

3. 31 January 2007.

Comments

Background

4. Prior to 1997, the Housing Authority (HA) used to review and adjust public rental housing (PRH) rent at two-year interval taking into account factors including tenants' affordability to ensure that the rent was affordable to PRH tenants while adequate to cover the recurrent expenditure for managing and maintaining its estates. The affordability was measured by MRIR.

5. Section 16(1A) of the Ordinance (enacted on 27 June 1997 by a Private Member's Bill) provides that any determination of variation of rent shall only take effect at least three years after the preceding determination and that the overall MRIR of all public housing estates shall not exceed 10% after any rent variation. In a judicial review of HA's refusal to reduce rent when MRIR has exceeded 10% owing to a general reduction of income during an economic downturn¹, the Court of Final Appeal (by majority) held, *inter alia*, that HA is not under a statutory duty to review rents and

¹ HO Choi-wan v Hong Kong Housing Authority (2005) 8 HKCFAR 628

revise them so as to ensure that the 10% MRIR cap is not exceeded. Further, the 10% MRIR cap would only apply to a decision to increase rent and would not extend to a decision to reduce rent.

6. In January 2001, HA appointed an ad hoc Committee on Review of Domestic Rent Policy (CDRP) to review the domestic rental policy (the Review). Its work was suspended during the said judicial review. A consultation paper was published in March 2006 (File Ref.: CB(1)1045/05-06). A recommendation of the Review is to develop an income-based rent adjustment mechanism to determine the extent of rent adjustments according to changes in PRH tenants' household income. To provide a starting point for the proposed income-based adjustment mechanism, HA has proposed to adjust the existing PRH rent by an across-the-board rent reduction of 11.6%. It would be implemented once the Bill is passed.

7. Members may refer to the Background Brief on Review of Rent Policy of Public Rental Housing prepared by LegCo Secretariat (LC Paper No. CB(1)2241/05-06 (02)) for more background information.

The Bill

8. Clause 3 of the Bill repeals section 16(1A) to (1E) of the Ordinance, which provides for the 10% MRIR cap and the three-year interval restriction on rent adjustment and related provisions.

9. Clause 4 of the Bill introduces a new section 16A, which -

- (a) relates to review of the rent of certain residential units;
- (b) requires HA to vary the rent of those units with reference to the change in an index reflecting the level of household income of certain tenants of residential units;
- (c) specifies when HA shall not, or is not required to, make such a variation;
- (d) empowers HA to round down the amount of the rent in such a variation and to make determination in relation to the compilation of such an index.

Rent Review Mechanism

10. Section 16A(1) requires HA to review the PRH rent after the second anniversary of the commencement date of the Bill and the second anniversary of the last review. Section 16A(8) provides that HA may determine that an index is to be compiled to reflect the level of the mean monthly household income of any class of residential tenant over the "first period" and an index is to be compiled to reflect the

level of the "adjusted mean monthly household income" of that class of residential tenant over the "second period". HA may also determine whether such an index is to be compiled by HA itself, or a tertiary institution in Hong Kong, or a public body appointed by the Authority in such manners to be determined by HA.

11. "First period" and "second period" are defined in section 16A(9). For the first review after the commencement date of the Bill, the "first period" is a period of 12 months expiring on the day immediately before the commencement date. The "second period" is a period of 12 months expiring on the second anniversary of the expiry date of the first period for the review.

12. For the "first period" in relation to a subsequent review of the rent, there are different computations depending on whether rent was varied in the last review. Regarding "second period" in relation to a subsequent review, it is a period of 12 months expiring on the second anniversary of the expiry date of the second period for the last review.

13. In calculating "adjusted mean monthly household income", any change of household size that may have taken place between the first and second period is excluded. The reason for the exclusion has been set out in a paper issued by the Housing, Planning and Lands Bureau attached to a letter dated 20 October 2006 to the Panel on Housing (File Ref. CB(1)144/06-07(01)).

Rent Variation Mechanism

14. Section 16A(2) restricts HA's power to vary rent, unless the variation is carried out under section 16A(4). Section 16A(4) requires HA to increase (or reduce) the rent by the rate of increase (or reduction) of the income index if, after a rent review, the income index for the second period is higher (or lower) than that of the first period.

15. Section 16A(5) provides that HA shall not vary the rent within two years of the commencement date of the Bill or if rent is varied under section 16A(4), within two years of the last variation.

Exceptions to the Application of section 16A

16. Section 16A(3) excludes certain rent adjustments from the application of section 16A. They are rent adjustments that require additional rent to be paid by "well-off tenants" whose total household income or total value of the household assets is greater than the threshold determined by HA and rent adjustments that permit reduced rent to be paid by low-income tenants who are eligible for HA's Rent Assistance Scheme. Section 16A(3) also excludes subsequent re-adjustments which reflect changes in the level of total household income or total value of assets of the "well-off tenants" and low-income tenants. Section 16A(3) is similar to the existing section 16(1C) but is more detailed and extensive.

17. Section 16A(6) empowers HA not to vary the rent if in its opinion, the amount of variation required under subsection (4) is insignificant.

Rounding down the Amount

18. Section 16A(7) empowers HA to round down the amount of rent to the nearest dollar.

Public Consultation

19. The Administration appointed CDRP in January 2001 to review the rent policy. Its work was suspended during the aforesaid judicial review. On 9 March 2006, CDRP issued a consultation paper (LC Paper No. CB(1)1045/05-06) and launched a three month public consultation. The public consultation ended on 9 June 2006.

Consultation with LegCo Panel

20. The Panel on Housing has discussed issues related to the Review at a series of meetings in the 2005-06 and 2006-07 sessions. At the meeting on 17 March 2006, the Panel received a briefing on the findings and proposals in the consultation paper on the Review. The Panel then held three special meetings on 19 April and 16 and 25 May 2006 to discuss and meet with deputations for views on the Review. The Administration briefed the Panel on the initial recommendations of the Review at the meetings on 26 September and 6 November 2006, and reported to the Panel the final recommendations as well as legislative proposals to amend the Ordinance at the meeting on 4 December 2006. Members of the Panel have expressed different views on the recommendations of the Review and the relevant legislative proposals.

Conclusion

21. The legislative proposals of the Bill will change the frequency and mechanism of reviewing and varying PRH rent, affecting a considerable number of PRH tenants and have been of much concern to them. It is recommended that a Bills Committee be formed to securitize the Bill in detail.

22. Scrutinizing of the legal and drafting aspects of the Bill is continuing.

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