

**For discussion
on 23 October 2007**

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

**Land Administration and Building Control
in relation to Short-Term Tenancies**

Purpose

This paper sets out the policies and practices relating to the administration of Short Term Tenancies (STTs) by the Lands Department (LandsD) and reports on LandsD's present review on these policies and practices.

STT Policies and Practices

2. We have in the Hong Kong Special Administrative Region a total land area of 110,397 hectares, of which 73,741 hectares (67%) mainly comprise land for country parks, private developments, use by public bodies and infrastructures. The remaining 36,656 hectares (33%) are managed by LandsD, except for those allocated to other government departments.

3. Land is a scarce resource in Hong Kong and if feasible and practicable should be put to optimal use to meet the many development needs. Where there is a readily usable Government land which has not been designated for a specific use or is not required for development in the near future, LandsD will take the opportunity to explore making the land available through an STT for suitable temporary use.

4. While STTs are granted primarily through open tender (for fee-paying public car parks, plant nurseries and stores, etc), some STTs are granted directly where the land is of no general commercial interest and there is only one interested party (for works areas by utility companies, etc). Unlawful occupation of Government land may be regularized by the issue of STTs to the

occupiers if such unlawful occupation is not violating Government policies or not causing nuisance, as this is considered to be a pragmatic way of resolving the unlawful occupation problem of Government land and obviates the need for deploying considerable manpower in conducting inspections to prevent its re-occupation.

5. For STTs, market rent is charged except for those granted to non-profit making organizations for non-profit making activities for which policy support by the relevant policy bureau has been given. Revenue therefore has been derived from what would otherwise be idle land resources. Furthermore, the STT arrangement helps reduce the cost of preventing the land from unlawful occupation or environmental/health problems. It is designed to establish a system of temporary tenure which can be administered easily, fairly and cost-effectively. In 2006-07, LandsD raised \$1,043M rental income from a total of 4,492 STTs.

6. The Audit Commission conducted in 2006 a review of LandsD's administration of STTs, and tabled its Report No. 47 at the Legislative Council on 15 November 2006 which was subsequently discussed in the Report of the Public Accounts Committee No. 48. In the Audit Report, a number of recommendations were made, focusing on administration of rent arrears; monitoring of tenants' performance; and enforcement of tenancy conditions. LandsD has accepted all Audit's recommendations and has actively responded to them; the position is set out in Annex A.

7. In response to a specific Audit recommendation on enforcement of tenancy conditions, LandsD conducted a full survey on all STTs in January 2007. Out of the 4,472 STTs surveyed, 2,034 (about 45%) are detected to have tenancy breaches. In view of the substantial number involved and resource constraint, LandsD is adopting a pragmatic approach to tackling the breaches and the actions are coordinated and overseen by a committee chaired by the Director of Lands comprising among others all the 12 District Lands Officers (DLOs). So far, 117 breaches have been purged by the tenants themselves and 18 STTs have been terminated. For the remaining STTs, 5 of them are pending termination and warnings have been issued to 663 tenants.

8. STT breaches are mainly split between minor breaches (e.g. change of tenant's particulars, minor expansion of the STT area, unsatisfactory maintenance of fence, etc.) and major breaches (e.g. change of land use, refusal

to pay rent and installation of structures, etc.). While tenants should rectify the breaches to conform with STT conditions, some tenants apply for regularization of their breaches through modification of their STTs or issue of new STTs as a practical way of resolving the breaches. Such regularization applications, if approved, would result in tenants paying additional rents.

9. For technical breaches (such as variations in the lot boundary, change of tenant's particulars, etc.), the relevant DLOs may consider regularizing them. For other breaches, the DLO circulate the relevant regularization application to other departments (the Planning Department, Buildings Department (BD), Transport Department, Highways Department and Drainage Services Department, etc.) and the District Office for comments. When there is no objection, the DLO may approve such an application. Where there is a contentious case having significant and complicated problems, the application is put to the District Lands Conference (DLC) chaired by an Assistant Director of Lands for discussion and the tenant may attend to present the case to the departments attending the DLC. If the DLC rejects such application, the tenant will be required to rectify the breaches or enforcement action will be taken against them. Out of the breaches detected in the January 2007 survey (as referred to para. 7 above), 5 of them have been regularized and 224 regularization applications are being processed.

A case in point : Grant of STT No. 1233 at Hung Kiu Lane, Kau To

10. The above grant was the subject of a few media reports on 25-26 September 2007. A chronology of events relating to this STT is set out in Annex B. The Director of Lands has now decided to review this case in accordance with the established policies and practices (para. 9 above). The case has been circulated to other departments and will be put to the DLC for discussion.

Review on STT Administration

11. In view of the substantial number of STT breaches detected in the January 2007 survey (which will continue to be dealt with under the existing policies and practices), the Director of Lands considers it appropriate to expand the terms of reference of her monitoring committee (as referred to in para. 7 above) to include a review on the application of the long-established STT policies and practices. The aim is to identify, and implement, improvements

which will help better meet the intended objective to provide, through the STT arrangement, a system of temporary tenure which can be administered easily, fairly and cost-effectively (para. 5 above).

12. In the conduct of the review, LandsD will continue to be guided by the following considerations –

- (a) LandsD’s legal position as landlord under STTs is similar to that of any private landlord. While spot checks can be conducted to ensure compliance of tenancy conditions and inspections should be made on STTs with previous records of breaches, it is not practicable nor cost effective to conduct full inspections on all STTs on a regular basis;
- (b) LandsD should remind STT tenants to respect and observe the conditions set out in the STT agreements and seek prior approval for any changes which they may wish to make to the STT conditions instead of directly or indirectly “encouraging” retrospective regularization of de facto breaches;
- (c) in administering STTs, there should be consultations with the relevant Government departments. The policies and practices pertaining to STT administration should as far as practicable be consistent with the parallel policies and practices adopted by other Government departments; and
- (d) STT policies and practices should be effectively administered by LandsD and should also be easily understood by the tenants. There should be clear guidelines and instructions to LandsD staff to ensure that the policies and practices are being administered consistently and fairly. There should also be means to ensure that tenants properly understand such policies and practices and observe the STT conditions with due diligence.

13. LandsD will consult other departments and gather feedback from relevant community groups in the review process.

Conclusion

14. In an ongoing effort to optimize the use of scarce land resource to meet the many development needs in Hong Kong, land administration policies and practices will continue to be updated to keep pace with community needs.

Lands Department
Buildings Department

October 2007

**Report on Progress on Audit's Recommendations in
Audits Enquiry on Administration of STT in Report No. 47
(Position as at 30.9.2007)**

Serial No.	Summary of enquiry/investigation	Actions taken and present position on the enquiry/investigation
	<p><u>Part 2: Administration of Rent Arrears</u></p> <p>Para. 2.12 (Standing Accounting Instruction (SAI) requirements)</p>	
1	(a) Comply with SAI 1020 when preparing annual returns of arrears of revenue by including in the returns debts or charges not formalized by demand notes.	(a) Action completed. LandsD has updated its departmental accounting circular and added a new provision in the LAO Instruction stating that DLO should report all debts and charges falling due (even if no demand note has been raised) in accordance with the SAI.
2	(b) Conduct a review of the rent arrears in the 2005-06 returns of arrears of revenue to ensure compliance with SAI 1020.	(b) Action completed.
3	(c) Conduct a review of the long outstanding cases of rent arrears and take timely actions if Lands D is satisfied that recovery actions would be futile.	(c) LandsD has added a new provision in the LAO Instruction stipulating that timely action to write off rent arrears is required and if any of the rent arrears has happened more than 2 years ago, the DLO will be required to give reasonable explanation.
	<p>Para. 2.18 (Measures to improve STT administration)</p> <p>- Expedite implementation of the following measures to improve the administration of STTs –</p>	
4	(a) Require a personal guarantee from a shareholder or director of the company concerned.	(a) Revised Tender Document is being finalized upon clarification on implementation details.
5	(b) Add a new clause in the STT agreement stipulating that only the written contents of the tenancy agreement would form the STT.	(b) Action completed.

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6	(c) Add a new clause in the STT agreement permitting the Government to set off rent arrears by the rent deposits held for all other STTs of the same tenant.	(c) Action completed. The new tenancy agreement is promulgated with new deposit condition added. It also allows Government to use the deposit to offset the rent arrears of another site held by the same tenant.
7	(d) Require a special deposit to ensure the due performance of the tenancy conditions by a tenant where substantial upgrading works are required of the tenant.	(d) Action completed. To ensure that the tenant carries out certain works before he can use the site for the intended purpose, he will be demanded to pay a special deposit to guarantee that he will complete the work. Upon completion of the work, the special deposit will be refunded.
8	(e) Require STT tenderers to provide a statutory declaration of the ownership and directorship details of all related companies, including those registered overseas.	(e) Revised Tender Document is being finalized upon clarification on implementation details.
9	(f) Revise a tenancy clause which would require a tenant to bear the costs of all diversion of utilities.	(f) Action completed.
10	(g) Add a new clause in the STT agreement to require a car-park STT tenant to commence and continue to operate the STT site as a car park.	(g) Action completed.
11	(h) Reduce the fixed term of new car-park STTs to one year, though the STTs may be renewable. This arrangement would allow a tenant to opt out after one year.	(h) Action completed.

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12	<p>Para. 2.29 (Significant provision of car-parks by STTs)</p> <p>(a) Consider introducing procedures for vetting the financial position of major car-park STT tenants before awarding new car-park STTs.</p>	<p>(a) This measure is being implemented. Vetting action is being taken.</p>
13	<p>(b) Prescribe the circumstances under which the DLOs should seek the approval of a LandsD Deputy Director (DD) or Land Administration Meeting (LAM) before making a counter-offer to a tenant's settlement proposal.</p>	<p>(b) LandsD has drawn up new guidelines in the LAO Instruction to the effect that</p> <p>(i) any counter-offer to a tenant's settlement proposal of more than \$20,000 per case has to seek the approval of Regional Assistant Director; and</p> <p>(ii) any counter-offer to a tenant's settlement proposal more than \$100,000 per case has to seek the approval of DD/G.</p>
14	<p>(c) Ensure that the Secretary for Financial Services and the Treasury (SFST) is consulted before making a counter-offer to a tenant's settlement proposal involving write-off or waiver of revenue of over \$500,000.</p>	<p>(c) LandsD has added a new provision at LAO Instruction stipulating the requirement for consulting SFST prior to making a counter offer to a tenant's settlement proposal of more that \$500,000 per case.</p>
15	<p><u>Part 3: Monitoring of Tenants' Performance</u></p> <p>Para. 3.17 (Development of a performance review system)</p> <p>(a) Disseminate LAM decisions to the DLOs on a timely basis and adopt more efficient methods to disseminate LAM decisions to the DLOs, e.g. by electronic mail.</p>	<p>(a) LAM decisions since January 2006 have been disseminating to the DLOs immediately after they are ratified by LAM. All LAM decisions on STTs are also posted on LandsD's intranet.</p>

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16	<p>(b) Require the Technical Information Unit (TIU) staff to comply with the three-monthly review requirement stipulated by LAM.</p> <p>(c) Improve the mechanism for submitting reports on car-park STT tenants to LAM by:</p>	<p>(b) Practices are observed, but LandsD may consider changing the frequency of submission depending on the performance of the car park tenants.</p>
17	<p>(i) Require the TIU staff to show the up-to-date performance of the tenants in the reports;</p>	<p>(i) & (ii) The practices are observed, but LandsD may consider changing the frequency of submission depending on the performance of the car park tenants.</p>
18	<p>(ii) Require the TIU staff to submit reports on a regular basis;</p>	
19	<p>(iii) Set out the nature of the tenants' unsatisfactory performance necessitating the DLOs' reports.</p>	<p>(iii) Action completed.</p>
20	<p><u>Part 4: Enforcement of Tenancy Conditions</u></p> <p>Para. 4.16 (Breaches of STT conditions)</p> <p>(a) Issue guidelines to the DLOs stipulating the types and timing of enforcement actions the DLOs should take against tenants in breach of tenancy conditions.</p>	<p>LandsD has added new provisions at LAO Instruction to the effect that:</p> <p>(i) 1st warning letter be given within 7 days of date of discovery and with 28 days for expiry;</p> <p>(ii) 2nd inspection be conducted within 7 days of expiry of 1st warning and if the breach still exists, 2nd warning be made within 7 days and with 14 days for expiry;</p> <p>(iii) 3rd inspection be given within 7 days of expiry of 2nd warning and if breach persists, tenancy termination be pursued;</p>

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21	(b) Closely monitor the DLO's performance to ensure that they take prompt and effective enforcement actions.	<p>(iv) Breach of conditions should normally be rectified in 1 to 3 months; and subject to agreement of Regional Assistant Director, a further extension of not more than 3 months time can be given.</p> <p>(v) For encroachment of adjacent Government land by tenant, posting of notice under Cap. 28 should also be considered and carried out in parallel; S12(c) of Cap. 28 has stipulated the power to demolish unauthorized structures under the lease/licence, and the DLO should consider this as a possible option to reinforce the tenancy enforcement; and</p> <p>(vi) For enforcement action against unauthorized change of use; the Planning Department should be informed.</p> <p>(b) A management services team (MST) has been set up in May 2007 with the objective to ensure that actions being or have been taken are in full compliance with the guidelines, procedures and prescribed timeframe that have been set down in departmental instructions. MST has commenced investigation assignment in September 2007.</p>
22	(c) Issue guidelines requiring DLO staff to conduct site inspections outside office hours, if warranted.	(c) LAO Instruction has been revised to require DLO staff to carry out inspection outside office hours if so warranted.
23	(d) Remind DLO staff to deduct outstanding debts due to the Government before making a refund of rental deposit to a tenant.	(d) LandsD has added a new clause at the LAO Instruction for car-park STT to set off rental deposit as against default payments in other tenancies.

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24	<p>(e) Take action to recover the loss of rental income from the tenant to Case 5-2 if the Government is entitled to do so.</p>	<p>(e) DoJ advised that the Government had by conduct waived the breach as the deposit was refunded as a gesture of satisfaction on performance of the Tenant's obligation, which the Government has not expressly reserved the right of recovery when the refund was made.</p>
25	<p>Para. 4.31 (a) Take effective enforcement action against an STT tenant in breach of tenancy conditions by:</p>	<p>(i) Action completed.</p>
26	<p>(i) Issuing a warning letter to the tenant upon finding a breach. (ii) Carrying out a timely follow-up inspection to ascertain whether the breach has been rectified.</p>	<p>(ii) LandsD has supplemented the LAO Instruction to specify that :</p> <p>(a) Each tenancy should be inspected at least once a year; (b) The DLO after considering the work priorities has the discretion to determine other intervals (but at least on triennially basis) for different category of case as appropriate; and (c) The standard Situation Report should be updated and that each completed report needs the endorsement of an officer at the rank of Senior Estate Surveyor or Chief Land Executive.</p>
27	<p>(iii) If suspected unauthorized building structures are found in an STT site, requesting the Buildings Department to carry out an investigation and take necessary action.</p>	<p>(iii) Action completed.</p>
28	<p>(iv) Require the tenant to remove fixtures not compatible with the designated use of the STT site.</p>	<p>(iv) Physical and visual inspection may not be sufficient to establish the legality of the fixtures. LandsD has added a new provision at LAO Instruction to that effect.</p>

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29	(b) Take effective enforcement action against unauthorized occupation of government land, such as clearing the occupied site.	(b) Action completed. The LAO Instruction has been revised with reference to Cap. 28.
30	(c) Remind Lands D staff to check the business registration and company particulars of a tenant (who is holding an STT in the name of a firm) in a timely and thorough manner.	(c) Action completed.
31	(d) Clarify the circumstances under which an STT case should be regarded as contentious, requiring a submission to the DLC.	(d) Lands D has added a new provision at LAO Instruction to that effect.
32	(e) Implement additional measures to deter an STT tenant from committing recurring breaches.	(e) LandsD has added the new provision at LAO Instruction specifying that upon rent review of cases not granted by tender and for tenants who have been issued 3 or more warnings during the passing 3 years, the DLO has the discretion to charge a double deposit. The normal deposit can be resumed if the DLO is satisfied that the tenant's performance has been improved.
33	(f) Consider taking more stringent enforcement action (such as terminating the tenancy) against a tenant with recurring breaches.	(f) LandsD has added a new provision at LAO Instruction that if the same breach after purged is discovered within a 12-month time, the DLO has the discretion to issue an immediate warning letter with 14 days for expiry.
34	(g) Remind Lands D staff that all STT agreements must be signed by a Government's representative.	(g) Director of Lands had raised this issue at a meeting with all the directorate grade officers on 22.8.06.
35	(h) Based on legal advice, consider taking appropriate action against the tenant in Case 5-4.	(h) According to legal advice, at most only nominal damages could be recoverable. Such legal action is considered not worth pursuing.

Serial No.	Summary of enquiry/investigation	Actions taken and present position on the enquiry/investigation
36	<p>(i) Conduct a check of other STTs with a view to finding out unauthorized use of the sites and take appropriate action as soon as possible.</p>	<p>(i) The full STT survey was completed in January 2007. Due to the large number of detected breaches, pragmatic action plans have been devised by the DLOs. A working group on administration of STT was set up on 5.9.2007 to monitor progress. The working group held its first meeting on 17.9.2007.</p>
37	<p>Para. 4.43 (remind DLO staff handling Notices-to-quit) (a) They should:</p>	
38	<p>(i) comply with LACO's advice in computing the required notice period of a Notice-to-quit (NTQ); and</p>	<p>(i) & (ii) The LAO Instruction has expressly mentioned that a demand note should be issued together with the NTQ to collect the rent up to the expiry date of the NTQ.</p>
39	<p>(ii) check that, before issuing an STT rent demand note, the rental period stated in the demand note should not cover any period after the expiry date of a related Notice-to-quit which has been issued.</p>	
40	<p>(b) Issue guidelines to the DLOs to clarify the basis of calculating mesne profits.</p> <p>Para. 4.53 (Sharing of management information) (a) Liaise with relevant government departments to devise suitable arrangements for sharing tenants' information.</p>	<p>(b) LandsD has added a new provision at LAO Instruction clarifying that the basis of assessment (subject to endorsement by LAM) is based on prevailing rent or full market rent of existing tenancy whichever is the higher.</p> <p>(a) Initial views from relevant government departments have been collected.</p>
41	<p>(b) Seek legal advice on the way forward to share tenants' information among relevant government departments.</p>	<p>(b) LAM agreed on 31.1.07 to pursue information sharing with other departments subject to the Tender Document being revised to permit the sharing. Lands D is awaiting DoJ's advice on privacy issues.</p>

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Short Term Tenancy
Government land adjoining Lot No. 53 R.P. in D.D. 175
Hung Kiu Lane, Kau To, Sha Tin, N.T.

The ex-STT 1062 with permitted area of 1,490 square metres was granted to Winco Properties Limited (owner of the adjoining lot No. 53 R.P. in D.D. 175) for a fixed term of 5 years from 31.12.1997 for private garden purposes. No structures other than boundary walls and fences were permitted on site.

2. Mr. CHOI Chee-ming (the Director of Winco Properties Limited) sent a letter to District Lands Office, Sha Tin (DLO/ST) on 7.5.2002 and informed that structures had been erected within the tenancy area and requested for regularization. Mr. Choi sent another letter to DLO/ST on 1.11.2002 and informed that he had erected the structures on or about 28.3.2002. Staff of DLO/ST inspected the tenancy area on 9.5.2002 and found that a covered carport with a cage, a dog shed and a storage place had been erected thereon.

3. DLO/ST circulated a regularization proposal, in response to an application from Mr. Choi, for the unauthorized structures within the tenancy site to the departments concerned for comments. Some departments raised some issues on the application and DLO/ST asked the tenant to address those issues. Specifically, the Buildings Department advised that the existing structures were unauthorised building works and no retrospective approval or consent for these works would be given under the Buildings Ordinance.

4. District Survey Office, Sha Tin carried out a survey of the tenancy area in December 2002 and ascertained that the STT occupation area had been increased from 1,490 square metres to 1,580 square metres. As the tenant had undertaken to carry out investigation to establish the structural stability of the structures so as to address the comments made by some departments, DLO/ST decided on 20.1.2003 to approve the grant of STT No. 1233 to replace STT No. 1062 to cover the existing structures and additional tenancy area. The tenancy conditions stated that the tenant acknowledged that the structures were erected by him without

obtaining the prior approval of the Building Authority and that the inclusion of these structures into the tenancy shall not prejudice any enforcement action by the Building Authority or other Government authorities in respect of these structures under the Buildings Ordinance or other enactments. The grant of the new tenancy was also subject to the tenant paying additional rent of \$254,000 (already paid by the tenant on 13.2.2003) to cover the period from 28.3.2002 (date of existence of the structures) to 30.12.2002 (date just before the grant of STT No. 1233) for the structures erected and for the occupation area of 1,580 sq. metres.

5. Pursuant to the DLO/ST's decision on 20.1.2003, STT No. 1233, in the place of the ex-STT No. 1062, was granted to Winco Properties Limited on 9.10.2003 with a commencement date of 31.12.2002 for a term of 3 years and thereafter on a quarterly basis.

6. In a subsequent site inspection, the tenancy area is found to have been extended with additional structures erected. Following warning from DLO/ST, a substantial part of the additional structures has been removed. The tenant's agent asks for regularization of the remaining additional structures and extended land.

7. This tenancy will be reviewed at the DLC, after the case has been circulated to departments concerned for comments and a further site inspection.

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