



# THE HONG KONG INSTITUTE OF SURVEYORS

4 March, 2003

Housing Department  
33 Fat Kwong Street  
Homantin  
Kowloon

Dear Sirs/Madams,

## **HKIS's Response to the Government's Consultation Paper – Landlord and Tenant (Consolidation) Ordinance (LTO) (Cap.7) Security of Tenure**

On behalf of the Hong Kong Institute of Surveyors, I wish to submit our views in response to your consultation paper – Landlord and Tenant (Consolidation) Ordinance (Cap.7) Security of tenure.

We have studied the validity and desirability of the various options set out in the consultation paper. As the proposal spells out significant changes from the current practice, we have also assessed the potential impacts to landlords and tenants and the property market at large.

While in principle we support the proposal, we recommend the Government to exercise duty of care for sitting tenants and spare more efforts in educating tenants as well as landlords once the proposal is put into implementation. I have pleasure in attaching herewith the response paper.

Should you have any queries, please don't hesitate to contact the undersigned at 25263679.

Yours faithfully,

Kenneth CHAN  
President



## **HKIS's Response to the Government's Consultation Paper – Landlord and Tenant (Consolidation) Ordinance (LTO) (Cap.7) Security of Tenure**

### **A. Security of Tenure**

The Hong Kong Institute of Surveyors believes that the private rental market should be allowed to operate as freely as possible, with government intervention being kept to a minimal.

We welcome the government's proposal to remove the security of tenure provisions in LTO.

Due to a marked change in market conditions in recent years, the supply of rental flats has increased and their rentals have become more affordable. Tenants now have more selections in rental flats, resulting in more bargaining power to negotiate with the landlords on tenancy renewal.

The existing arrangement restricts severely the ability and freedom of the landlord to re-gain possession so long as the tenant pays the prevailing market rent and fulfils the tenancy conditions. It also creates an undesirable effect of deterring owners to lease out vacant properties or investors to purchase domestic properties for investment purposes.

With the removal of the security of tenure arrangement, we believe that the price mechanism can function more freely and help achieve the best allocation and use of landed resources.

While the Government has lifted the rental control through expiry of Part I and Part II of the LTO in 1998, we believe the removal of security of tenure from LTO is another significant move to reduce government intervention and restore the market mechanism in the private rental market. The move also brings the practice of residential tenancies in line with the existing commercial tenancies.

#### **1. Our comments on Option A (Partial Removal Delineated by Ratable Value)**

Given the principle stated in the above paragraphs, we do not see the rationale of a different treatment based on rental levels. It would be unfair to landlords of premises in low rental brackets if the security of tenure provision was still imposed on them.

This proposal if adopted will not help free up and/or attract the owners of such affected premises to put their units to the market for leasing.

The proposed delineating mechanism based on ratable value would not be providing fair balance of interests between landlords and tenants.

#### **2. Our comments on Option B (Removal for New Tenancies Only)**



We do not recommend this option, as it would create two different rental markets, one for new tenancies and another for old tenancies. Consequently only a portion of the market benefits, leaving part of the problems unresolved.

The restriction on old tenancies will not be lifted and will be unfair to these owners.

### **3. Our comments on Option C (Complete Removal in One Go)**

This proposed option would create some undesirable disruptions to tenants of existing tenancies.

Given the security of tenure has been in place for such a long time, tenants in the residential market rarely seek for option to renew in the tenancies simply because such right has been entrusted through the LTO's security of tenure provision.

An abrupt removal of this provision might result in these tenants being caught off the guard and possibly subject to unreasonable rental demand by landlord if they wish to stay on the premises upon the next tenancy expiry date.

### **4. Our comments on Option D (Complete Removal with Grace Period)**

This is our preferred option.

To smooth out the process, we agree that it is appropriate to have a transition arrangement for existing tenancies signed before the Appointed Date.

But we would like to make the following comments on this proposal:

- We noticed that a 12-month grace period starting from the appointed date has been allowed. For tenancies expiring during the grace period, tenants may still apply for statutory tenancy renewal under the protection of security of tenure. If this option was to be adopted by the Government, we believe that a 24-month grace period may be more appropriate, given this term is the usual lease term in the residential tenancy.
- We expect there may be initial confusions from existing tenants when the new LTO comes into play. However, the existing market mechanism for commercial tenancies has some effective alternatives to achieve the security of tenure, for example, negotiation of an option to renew in the tenancy agreement – which we believe can be adopted in the residential tenancies in future.
- We suggest the Government to educate the general public once this proposal has been implemented on such issues like period allowed for negotiation of new rental, availability of comparable information in the market to facilitate the negotiation, option to renew arrangement as in the



commercial tenancies, and the rental disputes settlement mechanism by an independent valuer or by the arbitration etc.

- As in the new regime, both parties may be able to negotiate a longer lease term, in a similar fashion of the existing practice in commercial tenancies. Guidance should be given on the Notice to Quit (NTQ) procedures once this proposal has been adopted.
- We would suggest further clarification be given in respect of the compensation to tenants, if the ground of redevelopment is invoked to regain possession by relevant landlords during the grace period. Would compensation stipulated in the current provisions of LTO be still payable?
- Our interpretation of the grace period in this consultation paper is that the compensation requirement on landlords would still be applicable. With the grace period proposal, it could mean that there would be possibly another 2 – 4 years before landlords can regain possession without having to pay any compensation to tenants - this may help ease the tension of some of the sitting tenants in the old blocks with imminent tenancy expiry dates.

## **B. How HKIS can help to educate the public in the new regime?**

Members of HKIS have been active in serving both landlords and tenants in tenancy matters. Our members provide extensive valuation and dispute resolution services in existing Part IV tenancies. Should further assistance be required from us, we are happy to discuss the issues further and offer our help, for example, the preparation of information pamphlet and/ or standard tenancy agreement for the general public.

## **C. Minimum Notice Period Requirement**

### **1. Commercial Tenancies**

We would suggest the NTQ procedures by landlord should be maintained. The NTQ serves the purpose to remind tenants of the imminent expiry of the tenancy. The tenants need to get themselves ready in future space planning.

It puts in place "checks and balances" to protect the tenant who is ill-informed.

As regards the duration of the notice, the current 6-month notice works well in the market. Compared with residential tenants, commercial tenants in general occupy larger floor space and need more time to fit and move to a new space in case they have to vacate from the existing premises.

The current practice for tenancy renewal could last 3 – 6 months and it should be completed at least 2 months before the expiry date. We understand that previously there are proposals to reduce the NTQ period to 4 months which we would consider to be too short.



## **2. Residential Tenancies**

The consultation paper has not mentioned about the treatment of the existing statutory notice procedure including such notices like Forms CR 101, CR 102 in the new regime. If the security of tenure is removed, we reckon the existing practice will have to be adjusted.

We are of the view that a minimum notice period should be maintained. A notice of tenancy determination served by either one of the parties before the tenancy expiry has the effect to determine the tenancy, trigger the mechanism of the negotiation process for a new tenancy and reduce disputes that may arise if no such notice is served.

On the basis that there would be no security of tenure for residential tenancies and no notice to quit is required, ill-informed tenants could be held to pay hefty compensation / mense profit for occupation to the landlord after the expiry of the existing tenancies.

We support the recent amendment in LTO and that the notice period by landlords should be maintained at 4 months.

The current market situation still allows sufficient time for tenants to find replacement premises if the negotiation with the existing landlord cannot be reached within this four months period.

### **D. Mandatory provision of information by Tenant**

We share the views that the mandatory requirement would contravene the International Covenant on Civil and Political Rights.

Given the fact that the existing laws have already covered the provision of false information involving fraudulent act, we are of the view that this proposal is not necessary.

However, we suggest that the Government should put in more efforts on landlords education, e.g. how to protect their rights, how to check the information provided by the tenants with due diligence and care, how to deal with rental default cases, etc.

In this regard, the HKIS is able to offer assistance, e.g. a collaborated effort in preparing information pamphlet.

### **E. Conclusion**

We welcome the proposal by the Government to review the security of tenure under LTO. The removal of security of tenure will enable greater market force to play in private rental market, a view that the HKIS has long been advocating.

We think the proposal will serve the purpose to restore the balance of interests between landlords and tenants while to encourage more investments in



property. The security of tenure has been seen as a deterrent for property investors.

Once the proposal has been enacted into law, we envisage it is important to provide guidance and education to tenants so that they can make use of appropriate contractual arrangement to fulfill their occupation needs under the new market environment.

HKIS is happy to provide further views in this matter should the Government wishes to. Please contact the Secretary General of HKIS Mr. Gordon Ng at [secgen@hkis.org.hk](mailto:secgen@hkis.org.hk).