

THE HONG KONG HOUSING AUTHORITY

Memorandum for the Commercial Properties Committee

Rent Relief for Tenants of Commercial Premises

PURPOSE

To seek Members' approval to extend the rent freeze to tenants of commercial premises where tenancies commenced between the period from 1 October 1997 to 31 January 1998, and the waive of requirements for service of advance notice-to-quit and/or payment of penalty for early surrender of premises.

BACKGROUND

2. At the Housing Authority meeting held on 22 January 1998, Members agreed in principle to freeze increase in rents for a period of one year for commercial premises with tenancy renewals commencing from 1 February 1998 to 31 December 1998 (Phase 1) for the following types of premises -

- a) shops including graded shops;
- b) shopstalls;
- c) cooked food stalls; and
- d) factory units.

3. This was approved by the Commercial Properties Committee vide Paper No. CPC 7/98. In the same CPC paper, Members were advised that a separate paper would be prepared shortly on the arrangements for premises with rents adjusted before 1 February 1998 as some of the Housing Authority Members were of the opinion that the economic recession might also have impact on the operation of these premises.

THE DEPARTMENT'S VIEW

4. Under existing policy, letting of the Authority's commercial premises is on a commercial basis. Rents are fixed by reference to market evidence and form part of binding contracts between the Authority and commercial tenants. Although there may be frequent changes in market condition, adjustment on rents, other than these prescribed in the agreement, can only be made upon renewal of tenancies. This represents part of the commercial risks for which an entrepreneur is expected to bear in a business investment.

5. Although there has been a softening of retailing industry, the market has been adjusting to this for some time. What was not foreseen was the sudden occurrence of the currency crisis and financial turmoil in October 1997.

6. The decision to grant rent relief to tenants of renewal tenancies commencing between 1 February 1998 to 31 December 1998 represented a departure from this principle, but was a positive step by the Housing Authority to assist retailers of public housing estates in adapting to an exceptional economic condition within the Asian Region.

7. The decision by the Authority to implement a freeze on rents for tenancies commencing 1 February 1998 was a direct result of economic events that commenced in October 1997. Arising from this decision, there is an argument to extend the grant of rent relief also to all tenancies that were renewed after 1 October 1997. As for Phase I, this should be limited to the premises listed in paragraph 2 and should not be extended to other types of premises including educational or welfare premises.

8. To assist tenants who entered into or renewed their tenancies prior to October 1997 and now wish to wind up their businesses, it is proposed that consideration should be given to waive the requirement for service of advance notice-to-quit. Similarly, for tenants holding existing tenancies which do not provide a break clause, it is proposed that consideration should also be given to allow the tenants to quit without the need for service of advance notice and payment of penalty. These tenants should be allowed to participate in the Authority's subsequent re-tendering if they are still interested in renting any premises in the Authority's estates. This is considered to be the fairest way to assist those facing genuine difficulties.

RECOMMENDATION

9. It is recommended that -
- (a) increase in rents imposed on renewal tenancies commenced between 1 October 1997 and 31 January 1998 for shops, shopstalls, cooked food stalls and factory units be frozen, and tenants be asked to pay the old rents reserved in the previous tenancy agreements for a period of one year effective from 1 February 1998; rents reserved in the renewed tenancy agreements shall become payable effective 1 February 1999;
 - (b) the requirement for service of advance notice-to-quit (normally a period of three months) for premises be waived for existing tenants; and
 - (c) the requirement for service of advance notice-to-quit and payment of penalty be also waived for existing tenants holding tenancies which contain no provision for early surrender;
 - (d) that the concessions proposed in (b) and (c) be effective until 31 December 1998.

FINANCIAL IMPLICATIONS

10. It is estimated that the proposal to freeze rent increase to tenants as outlined in Paragraph 9 (a) will cost the Authority a loss of rental income amounting to \$33 Million (**Annex A**). Together with the rent relief estimated at \$47.8 Million already approved for premises with tenancies commencing from 1 February 1998 to 31 December 1998 (Paper No. CPC 7/98), the total rent relief granted to tenants will be about \$80.8 Million.

11. The proposal to lift the requirement for service of advance notice-to-quit (para 9 (b)) has a negligible financial impact on the Authority. It is considered that the number of requests or early surrender (para 9 (c)) will be very small and the amount of rental loss arising from the lift of the requirement for payment of compensation is not expected to be significant.

TENANTS' REACTIONS AND PUBLICITY

12. The proposal to extend the grant of rent relief for premises not covered in Phase 1 will be welcomed by tenants, however, the recommended amount of relief and the extent of premises covered by the proposal may fall short of expectation by some tenants and merchants' associations. The proposals are aimed at assisting tenants to adapt to the economic recession. To help those who are in genuine hardship, tenants can choose to quit without a financial penalty, and will be given the opportunity to participate in future tender exercise should they so wish.

13. The proposals provide equitable treatment for all tenancies renewed since the economic turmoil, and waive notice requirements and penalties for all tenants wishing to terminate their agreement. This will need to be explained to tenants. A press release on the grant of rent relief will be issued after the meeting.

DISCUSSION

14. At the special meeting of the Commercial Properties Committee to be held on 5 March 1998, Members will be requested to approve the recommendations as stated in Paragraph 9.

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