



1. Introduction

1.1 In recent years, the local community has been concerned about the impact of high private housing rental costs on low-income tenants.¹ There are increasing suggestions for the Government to re-introduce tenancy control in Hong Kong, notwithstanding the complete removal of tenancy control in 2004 and the negative stance iterated by the Government against re-introducing the control measures.² Against this, the Panel on Housing has requested the Research Office to study the impact of introducing tenancy control measures. This information note studies (a) the current situation of local leasing market; (b) the intended effects of tenancy control measures and issues of concerns over these measures; (c) historical development of tenancy control in Hong Kong; and (d) tenancy control in selected places.³

2. Current leasing market in Hong Kong

2.1 There were 2.51 million households in the first quarter of 2017, of which 53.2% lived in private permanent housing and 31.0% in public rental housing ("PRH") of the Hong Kong Housing Authority and the Hong Kong Housing Society.⁴ Among those households living in private permanent

¹ See, for example, South China Morning Post (2016), 《信報》(2015), 《香港社區組織協會》(2015), 《香港社會服務聯會》(2017) and 《明愛基層組織發展計劃》(2013).

² See, for example, Transport and Housing Bureau (2014) and GovHK (2017). According to GovHK (2017), "[e]mpirical findings, both local and overseas, suggest that tenancy control measures often lead to an array of unintended consequences, including those detrimental to the tenants whom the measures seek to assist...[T]he Government considers that introducing tenancy control measures under the current tight housing supply situation will be counter-productive and will not be in the interest of the inadequately housed households and the general public."

³ Tenancy control may apply to both residential and non-residential properties, and this information note confines the study to residential properties only.

⁴ There were another 15.1% of households living in subsidized home ownership housing and 0.7% in temporary housing.

housing, some 28% or 374 500 were sole tenants occupying the whole quarters they rented. As such, about 46% of households in Hong Kong were living in public and private rental housing in the first quarter of 2017.

2.2 The Hong Kong Housing Authority's long established policy is to set the PRH rents at affordable levels, with the maximum rental increase capped at 10% under the Housing Ordinance (Cap. 283). In addition, PRH rent reviews are conducted every two years and the rental adjustment mechanism is based on changes in tenants' overall household incomes. In contrast to PRH, the private residential rental market is governed by market forces with rental levels determined by the negotiations between landlords and tenants. The subsequent rental adjustment and renewal/termination of tenancies are subject to the mutual agreement according to the terms of the tenancies or as agreed between the parties.

2.3 As a result of the above, tenants living in private rental housing are faced with greater pressure of rising rent than their counterparts in PRH. This is particularly the case in recent years, as the tight housing supply has boosted the flat prices and people unable to buy homes of their own have been forced into the leasing market. The resulting tightening of demand-supply balance in the leasing market has inevitably pushed up rents in private residential market. Low-income tenants are more vulnerable to a rising leasing market, and they have been complaining about (a) rising rent burden; (b) housing conditions of sub-divided units ("SDU"); and (c) long waiting time for PRH.⁵

Rising rent burden

2.4 Hong Kong has experienced an almost uninterrupted rise in flat prices over the years. Tight supply of new residential flats, combined with strong end-user and investment demand, and fuelled further by the environment of low interest rates since 2009, have resulted in successive increases in flat prices over the past decade. Alongside with the surge in flat prices, the private residential rental market has persistently on the rise during the period.

2.5 Reflecting the rising residential property market, average flat prices surged by 176.4% during 2007-2016. Overall flat rentals rose by 65.2% over the same period, with the increase being more pronounced for small- and medium-sized flats (71.3%) than large flats (22.7%). However, the median

⁵ See 《全港關注劏房平台》(2017) and 《明愛基層組織發展計劃》(2016).

monthly household income has only increased by 42.9% during 2007-2016, reflecting the burden of rising rent on general households. Those households which earn below average incomes are the most affected by rising rents, as the bottom three deciles (i.e. the households with the lowest 30% of incomes) living in private housing spent a high of 46% of their monthly household income on rental payment in 2016.

Housing conditions of sub-divided units

2.6 According to a survey conducted by the Census and Statistics Department in 2015, there were 87 600 households or some 200 000 people living in SDUs.⁶ The average area per capita for all persons living in SDUs was a mere 5.8 sq m (or 62.4 sq ft). Apart from the small living space, rental affordability is another concern for households living in SDUs. In 2015, the median monthly rental payment of SDU tenants increased by 10.5% over a year earlier, higher than the 5.9% increase in their monthly median household income. The difference resulted in an increase in their median rent-to-income ratio from 30.8% to 32.3%. Added to this, there were also reported cases about some SDU tenants being subject to frequent rental increases and evictions by landlords.⁷

Long waiting time for public rental housing

2.7 Production of PRH flats averaged at 13 654 units per year between 2007-2008 and 2016-2017. Yet, this has fallen short of meeting the increase in demand for PRH units fuelled by rising leasing market in recent years. Reflecting the high demand, the number of applications for PRH flats has more than doubled from 116 000 to 275 900 over the last decade.⁸ The average waiting time for general applications has thus exceeded the three-year target, reaching 4.6 years as at end-March 2017. The latest projection of PRH supply by the Transport and Housing Bureau adds to the concern over the long waiting time for a PRH flat. It is projected that a total of 78 365 PRH flats will

⁶ See Census and Statistics Department (2016).

⁷ It was reported that some landlords offered very short term tenancy to SDU tenants to allow frequent rental adjustments and tenants would be asked to move out when they did not agree to the asking rentals. See 《香港社區組織協會》(2015) and 《AM730》(2017).

⁸ It was reported that among the applicants were grass-roots households which could not afford the high rental of private flats, new immigrants and households living in SDUs, and even fresh school graduates and university students. See Takungpao.com.hk (2017).

come on stream over a five-year period between 2017-2018 and 2021-2022, less than half of the 10-year supply target of 200 000 PRH flats under the Long Term Housing Strategy.

3. Intended effects of tenancy control

3.1 Amid the aforementioned complaints from low-income households, the Government has pledged to expedite the building of more PRH units and ensure adequate and stable supply of land for private housing, thereby helping stabilize the private rental levels and relieve the rent burden on the public.⁹

3.2 As to the Government's pledge, some consider that increasing the supply of both public and private housing is a long-term solution and cannot be done within a short period of time.¹⁰ In this connection, tenancy control should be re-introduced as an interim measure to keep rental levels affordable and provide security of tenure to sitting tenants.

3.3 Tenancy control measures that have been suggested may take the form of rent control and/or security of tenure. For rent control, the actual schemes might vary from one place to another. Nevertheless, these schemes can be broadly classified into two main types, namely control over the absolute level of rent, and over the rate of increase in rent. Supporters of rent control argue that introducing the control can cap the rent payable at "reasonable level" and protect tenants from excessive rental increases particularly at times when there are shortages of housing supply.

3.4 As for security of tenure, it restricts landlords from evicting a tenant except under prescribed circumstances, such as non-payment of rent or landlord's repossession of the property for self-use. Security of tenure is often a prerequisite for rent control, as the absence of which might allow landlords to circumvent rent control by evicting existing tenants and entering into new leases with new tenants willing to pay higher rent. Landlords are bound by tenure control to give "justifiable causes" to the sitting tenants when they decide not to continue with a tenancy.

⁹ See GovHK (2017).

¹⁰ See, for example, Takungpao.com.hk (2017), 《香港社會服務聯會》(2017) and 《全港基層爭取住屋權益聯會》(2017).

3.5 The intended effects of tenancy control are not limited to the provision of affordable rental housing and guarantee to sitting tenants of their rights to continue to rent the property after the expiry of the tenancy agreement. In some overseas places, tenancy control adopted might also be used to achieve one or more of the following policy objectives:¹¹

- (a) *addressing the imbalance of bargaining power between landlords and tenants* – there are views that tenancy control can be justified when there is market failure, such as those stemming from unequal bargaining power between landlords and tenants. With relatively limited bargaining power, tenants might be forced to pay excessively high rent or evicted by landlords without "justifiable cause" if without tenancy control. This problem is more acute in the midst of a tight housing supply, as landlords often demand a higher rent to take advantage of tenants' pressing need for accommodation;
- (b) *preserving the social linkages among tenants by reducing eviction* – there are views that the government should implement measures to prevent frequent move of tenants or tenants being evicted by landlords in order to preserve a close community network. This in turn allows the government to provide the necessary community services with precision and continuity; and
- (c) *stabilizing the property market and relieving the inflationary pressure* – some researches have suggested that tenancy control may suppress the rental level of the controlled units. There are also views suggesting that with a reduced rental return, the property prices would also go down, making the private residential units more affordable to the general public.

4. Issues of concerns over tenancy control measures

4.1 While tenancy control may provide tenants with affordable housing and/or security of tenure, there are still areas of concerns over its unintended consequences. These include (a) reducing supply of rented accommodation; (b) generating inadvertent spillover effect on the uncontrolled sector;

¹¹ See Transport and Housing Bureau (2014).

(c) making landlords more selective about tenants; (d) discouraging proper maintenance of rented accommodation; and (e) encouraging landlords to take mitigation measures against tenancy control.

Reduced supply of rented accommodation

4.2 Tenancy control, in particular rent control, might reduce the incentive and willingness of the landlords to lease out their flats. Some may convert their flats into other uses (e.g. second homes) or even leave them vacant. On the demand side, the lowered rent might provide incentive for the split of large families into smaller ones living separately or a switch from owner-occupier to tenant households. With the increase in housing demand concomitant with a reduction in flat supply, this will become more difficult for prospective tenants to find rental units that best meet their means and needs.

4.3 Apart from the short-term impact, the artificially suppressed rental returns for landlords would lower their investment demand for flats. This will reduce the incentive for property developers to start new construction projects, leading to a further decrease in the number of rental flats available in the long run.

Inadvertent spillover effect on the uncontrolled sector

4.4 In order not to disincentivize future construction of flats, some overseas places have excluded new developments from their tenancy control regimes. If the tenancy control is imposed only on a particular market sector, there may be unintended spillover effects on the uncontrolled sector. For example, as some tenants may not be able to rent flats in the controlled sector, they are forced to seek accommodation in the uncontrolled sector, thus pushing up the rental level of the latter.

4.5 Consequently, existing tenants living in rent-controlled flats are indisposed to move out even if their needs or financial situations have changed or when their flats have deteriorated over time. Moving out might mean the need for them to pay a higher market rent for a smaller flat. In view of the above, rent control reduces tenants' mobility which might lead to anomalous situations such as retired couples living alone in a large apartment as their children moved out while families with children being unable to find a rent-controlled flat.

Landlords becoming more selective of tenants

4.6 Under tenancy control, it will be more difficult for a landlord to terminate a tenancy. Some landlords may become more selective about their tenants, preferring those with stable jobs and higher income. They are likely to discriminate against retirees, families with children, ethnic minorities, persons with disabilities, or other socially disadvantaged groups.

Discouraging proper maintenance of rented accommodation

4.7 Tenancy control tends to discourage the proper maintenance of rented accommodation. As landlords would not receive any additional rental return for their investment on repair and maintenance, they would simply let their flats deteriorate in conditions.

Encouraging landlords to take mitigation measures against tenancy control

4.8 To mitigate the impacts of the tenancy control measures, landlords may also ask for more deposit money, demand different kinds of side payments, overcharge their tenants on certain payment (e.g. water charges and electricity fee), or ask them to pay for the rental of other items (such as furniture and appliances), as a way to compensate for the lower rental payment they can receive.

5. Historical development of tenancy control in Hong Kong

5.1 While being renowned as one of the freest economies in the world, there were times when Hong Kong implemented tenancy control to deal with acute shortage of rental accommodation in the territory. Tenancy control in Hong Kong started with the enactment of the Rents Ordinance in 1921 to protect the tenants from unreasonable rent increases and arbitrary evictions. Since then, the two forms of tenancy control – rent control and security of tenure – had been implemented through the amendment and/or enactment of various relevant ordinances. In early years, these included the enactment of (a) the Landlord and Tenant Ordinance in 1947 to protect tenants of pre-war domestic premises against eviction and increase of rent; and (b) the Rent

Increases (Domestic Premises) Control Ordinance in 1963 as the first piece of comprehensive legislation affecting the relationship between landlords and tenants of post-war domestic premises.¹² See the [Appendix](#) for a chronology of major development of tenancy control in Hong Kong.

5.2 In the early 1970s, the Government considered that measures should be introduced to allow controlled rents to be increased gradually to the market levels, in a move to prevent an abrupt rental rise should tenancy control be allowed to expire. Against such background, the Government enacted the Landlord and Tenant (Consolidation) Ordinance ("LTO") in 1973 to bring an array of ordinances concerning landlord and tenant matters into one new legislation. The 1973 Ordinance had a rent control mechanism to bring controlled rents to the market levels.¹³

5.3 In the early 1980s, the Government set up the Committee of Review, Landlord and Tenant (Consolidation) Ordinance ("the Review Committee") to review LTO and make recommendations on various aspects of the tenancy control legislation. On the rent control regime, the Review Committee recommended that, as soon as circumstances permitted, every effort consistent with the need to avoid adverse social consequences should be made to accelerate the phasing out of rent control.

5.4 The Government implemented most of the Review Committee's recommendations in stages through a series of legislative amendments from 1981 to 1988. In 1992, it went further ahead with the introduction of the Landlord and Tenant (Consolidation) (Amendment) Bill 1992 into the Legislative Council ("LegCo"), which provided for controlled rents to be progressively increased up to the market levels so that rent control could be removed by the end of 1994. The Bill was subsequently passed in 1993, albeit with an amendment to extend rent control until 31 December 1996.

¹² For example, the Ordinance limited rental increase of existing post-war domestic premises to only 10% in every two years.

¹³ According to Cheng (1988), rental increases were controlled in two ways. First, the amount of the rental increase was calculated by dividing a factor into the difference between the controlled rent and the estimated fair market rent. Secondly, in cases of premises having a rateable value of HK\$30,000 or less, the increase was subject to a ceiling of 21% in every two years. The objective of these controls was to try to close the gap between the controlled and market rents by gradually decreasing the factor over time while minimizing the abrupt effects of rental increases on tenants.

5.5 In December 1996, LegCo passed a motion to extend rent control for two years, as some Members considered it inappropriate for the Government to allow rent control to lapse without any complementary measures to improve the rent-to-income ratio of tenants living in rent controlled premises. In December 1998, rent control was finally abolished.¹⁴

5.6 As to the remaining tenure control, the Government commenced a public consultation exercise in January 2003 on whether and how the security of tenure provisions under LTO should be removed.¹⁵ Taking public views into account, the Government introduced the Landlord and Tenant (Consolidation) (Amendment) Bill 2003 into LegCo on 11 June 2003 to remove security of tenure. The 2003 Amendment Bill was passed on 30 June 2004, and the tenure control was eventually removed on 9 July 2004.

5.7 From the inception of tenancy control in 1921 until its abolition in 2004, the Government had all along emphasized that tenancy control only served as a short-term measure to counter the unusually high rent increases at a time when there was an acute shortage of rental accommodation in Hong Kong. Tenancy control was always intended to be removed when the supply of and demand for housing was reasonably balanced. During the tenancy control period, the Government also iterated the importance of not to mix up rent regulation with the social welfare subsidy. According to the Government¹⁶, rent control was not devised solely to help the low-income tenants and it was applied regardless of tenants' financial position. Hence, rent control was not means tested as was the social welfare subsidy.

6. Tenancy control in selected places

6.1 Tenancy control was not unique to Hong Kong. It has also been introduced as temporary measure in many overseas places during and/after war times (e.g. the two World Wars) amid housing shortage and surging rents,

¹⁴ Before the abolition, rental increases were controlled under LTO in the following types of tenancies: (a) tenancies in pre-war domestic premises built before 17 August 1945; and (b) most tenancies in post-war domestic premises built before 19 June 1981.

¹⁵ Under the provisions, if a tenant wished to renew the tenancy at the prevailing market rents, the landlord would have to agree to the tenancy renewal. Only on certain exceptional grounds, such as default of rental payments by tenants or self-occupation or redevelopment of premises by landlords, could the landlord refuse to renew the tenancy.

¹⁶ See Official Record of Proceedings of the Legislative Council (1996).

or in periods of high inflation (e.g. the Energy Crisis in the early 1970s).¹⁷ Today, relatively fewer places have tenancy control with gradual removal of the control in a number of places since the late 1980s.¹⁸ Nevertheless, there are still places such as the Netherlands, Germany and New York City of the United States ("US") with tenancy control to protect tenants through a controlled, and hence possibly lower and more affordable rent, accompanied by a certain level of tenancy protection.

Tenancy control in the Netherlands

6.2 In the Netherlands, rented accommodation is provided by the social housing sector and the non-subsidized private sector. Social housing is built and owned by housing associations, accounting for 75% of the three million rental flats in the Netherlands. It houses older people, people with disabilities and those needing assisted housing, who pay a lower-than-market rent.

6.3 The Netherlands was faced with a huge housing shortage after the Second World War. The Dutch government imposed a rent freeze between 1940 and 1951, followed by a series of rental increases during the 1950s and 1960s to allow rental payments gradually reflecting the value of underlying rental properties. In 1971, a rent points system for calculating maximum rent based on housing quality was introduced. At present, the Netherlands has put in place a comprehensive tenancy control regime regulating the absolute levels of rent, the rates of rental increase and security of tenure.

Absolute levels of rent

6.4 In the Netherlands, a rent below or equivalent to the "liberalization rent limit" is regulated. If the rent exceeds the limit, it is deregulated subject to the negotiations between landlords and tenants. The "liberalization rent limit" is set and announced by the Dutch government each year, which currently stands at €710.68 (HK\$6,226) a month.

¹⁷ See Transport and Housing Bureau (2014).

¹⁸ For example, England and Wales removed rent control in 1988 and so did Singapore in 2001.

6.5 If a rental property is regulated, the maximum rent payable is determined by a rent points system under which the property in question will be awarded points based on its quality, size, location and facilities. The points rating of a property stipulates the maximum rent which can be charged per month, but the ceiling only applies to properties with up to 144 points. For properties with 145 points or above, the rent paid can be freely negotiated between landlords and tenants.¹⁹

6.6 For those low-income tenants living in rent-controlled properties, they can apply for the government's means-tested rent allowance if they cannot afford the maximum rent charged by the landlords. Applicants are subject to the asset and income tests, as well as other eligibility criteria such as age and the number of family dependents.

Rates of rental increase

6.7 Landlords of rent-controlled properties may increase the rent once a year. The maximum rental increase used to be in line with the inflation rate in the preceding year. Since 2013, the Dutch government has set out an income-related rent policy, under which the maximum rate of rental increase is based on the inflation rate in the preceding year plus an income-related component.²⁰ The inclusion of the income-related component is to encourage the higher income households to move up the housing ladder and vacate their rent-controlled flats to less well-off tenants.

Security of tenure

6.8 Unlike rent control, tenure control applies across the board to protect tenants in both the controlled and uncontrolled sectors. Landlords can only terminate a lease by serving a tenant no less than three months of

¹⁹ The quality points only indicate a maximum rent level but not a minimum, and the landlord can decide to lease a property with a lower rent. There are cases where a property in a particular area could exhibit 145 points or above due to its objective characteristics, but due to the rental market in that area the landlord can only rent the property below the "liberalization rent limit", which would result in that property being in the regulated sector.

²⁰ The income-related component is the permissible incremental percentage increase in rents after adjusting for inflation in the preceding year. It varies with a tenant's annual household income, being set at 2.5% for income level of €40,349 (HK\$353,457) or less and 4% for income exceeding €40,349 (HK\$353,457).

notice subject to permissible reasons stipulated in the Dutch Civil Code.²¹ The notice to vacate the rental flats can be extended to a maximum of six months.

Other protection measures

6.9 In the Netherlands, tenancy agreements should clearly state the basic rent and the service charges for items such as utilities (e.g. water and electricity) and cleaning costs tenants are required to pay. Tenants pay the service charges in advance and at the end of each year, the landlords must provide an annual final calculation including an itemized list of the actual service costs incurred and the advance payment made by the tenants. Any overpayments for the service charges must be refunded to the tenants.

6.10 In addition, tenants can only be charged annually a maximum of 20% of the purchase price for non-durable goods such as rugs, pans and small household appliances provided by the landlords. Tenants only need to pay this amount for goods which are not older than five years. For goods over five years old, the maximum charge is 20% of their second-hand value. As to durable goods (e.g. stoves, boilers and fridges), the maximum annual charge is 10% of the purchase price. After 10 years, the durable items must be reappraised for the maximum charge to be imposed on the tenants.

Latest developments

6.11 The Dutch government has improved its rent points system over the years in order to boost the supply of rented accommodation. For example, extra points may be given to homes located in areas with supply shortage and high demand, properties with higher tax value, and houses with better energy efficiency devices.²² As mentioned above, the government has also allowed annual rental increase in excess of the inflation rate in an effort to discourage high income earners from occupying rent-controlled flats. Added to this, the rent points system was reformed in 2015 to include the popularity of the location of rented premises as a factor for calculating the points rating, thereby encouraging property developers to invest in those regions with shortage in housing supply.

²¹ Permissible reasons include rent arrears or the landlord re-possessing the rented accommodation for his or her own use.

²² According to the Dutch government, affordability of the property is determined not only by the level of rent or mortgage, but also by the energy expenses. See Ministry of the Interior and Kingdom Relations (2011).

Tenancy control in Germany

6.12 Germany is a country where a large number of people rent rather than own the property they live in.²³ It has a long history of being pro-tenant, with the country introducing rent control as a temporary measure after the Second World War and maintaining the control measures until the late 1950s. Housing market was deregulated in 1960, and the German government incrementally decontrolled rent regulation in those cities with adequate housing supply. In the beginning of 1970, the only cities with rent regulation were Hamburg, Munich and West-Berlin.

6.13 In 1971, the Rent Regulation Act was enacted to regulate rental increase of existing tenancies and provide security of tenure. According to this regulation, a rental increase must not exceed an upper limit established with reference to existing comparable tenancies. However, there was no restriction on the rental level at which a new letting was initially made, provided that it did not exceed the average local rents by a certain percentage. Ever since 1971, the regulation of residential leases in Germany has featured the following: free negotiation of rents in new lease, limit on rental increase that could be applied during a tenancy, and the security of tenure.

Free negotiation of rent in new lease

6.14 Initial rent of a new tenancy can be freely negotiated between landlords and tenants, but it cannot exceed the rents for comparable properties in the same area by more than 20%. In 2015, a new law known as the Mietpreisbremse ("rental price brake") came into effect in Germany. It allows state governments to cap the initial rents in areas that have been designated as "tight housing markets". In those areas, landlords are prohibited from charging rent that is more than 10% of a reference value, which is calculated based on average local rents for similar properties.²⁴ The prohibition only applies to new leases.

²³ According to The Economist (2015), only 46% of Germans owned their homes in 2015, the lowest rate in the European Union.

²⁴ Under the Mietpreisbremse, these areas need to prove that: (a) local rents grow faster than the national average; (b) the average local rents as a share of household income is significantly high than the national average; (c) population increases faster than the construction of new housing; and (d) the vacancy rate is lower than the high demand for housing.

Limit on rental increase

6.15 In Germany, rents cannot be increased by more than 20% over a three-year period. Since 2013, landlords have been debarred from increasing the rent by more than 15% in three years in areas with tight housing supply. Yet, landlords may further increase their rent if they have carried out modernization works, but the increase of the annual rent may not amount to more than 11% of the costs spent on the modernization.

6.16 Meanwhile, landlords are restricted to maintaining rents at a given level for at least 12 months. Tenants also have a month to decide whether or not to accept the rent increase and, in the case of rejecting the proposed increase, two further months' notice period before moving out. Tenants can therefore be guaranteed 15 months of renting at a set rental amount.

Security of tenure

6.17 In Germany, tenants enjoy strong security of tenure. A tenancy agreement may be concluded for a "limited" or "unlimited" period. Contracts can only be limited for very good reason, such that the landlord will, at the end of the contract, need the premises for his or her family or renovations will be done at expiration. There is no maximum period for "limited" agreements, but they are in theory not renewable. Any contract that lasts more than a year must be in writing.

6.18 For contracts of "unlimited period", a landlord must provide compelling reasons to terminate a contract. These include non-repayment of rent, repossession of the property for his or her own use, and substantial disadvantages experienced by continuing with the tenancy agreement. The notice period for landlords to terminate a lease increases with the tenancy period in the following manner: (a) three months for the first five years; (b) six months between the sixth and eighth year; and (c) nine months for a longer tenure.

Latest developments

6.19 Economists are almost united in opposing the recent rent brake policy.²⁵ A report by the German Institute for Economic Research, a think-tank in Germany, has also detailed the concerns. For example, a black market is likely to spring up under the rent brake policy, in which property agents pass bribes to landlords from potential tenants who are willing to pay more than the brake permits. Alternatively, landlords may stay within the 10% cap prescribed under the Mietpreisbremse, but they might overcharge their tenants on certain payments (e.g. the use of kitchen equipment) to compensate for the lower rent received.

Tenancy control in New York City

6.20 In the US, tenancy control is not exercised at the federal level and each state government can decide on its own whether to implement the control measures. New York City's current tenancy control programme, which began in 1943, is the longest-running programme in the US. The inception of the programme was consequential to the enactment of the Emergency Price Control Act in 1942 and the ensuing establishment of a nationwide price regulatory system that included control for rental payments.²⁶ With the end of the Second World War and the return to a peacetime economy, the Emergency Price Control Act was allowed to expire in June 1947. Nevertheless, New York City continued the tenancy control with the enactment of its own set of regulations in 1951 to regulate the relationships between landlords and tenants.

6.21 New York City's tenancy control regime has undergone many changes since its inception in 1943, but the current regime largely evolved from the one established in the 1940s. At present, there are two forms of rent regulation in New York City, namely rent control and rent stabilization. In 2014, 48.4% or 1.06 million of rental flats in New York City were subject to tenancy control, of which 27 039 were rent controlled and 1.03 million were rent stabilized.

²⁵ See The Economist (2015) and The Maybachufer (2016).

²⁶ Price controls were the government's response to inflationary pressures resulting from a fully employed wartime economy that channelled resources exclusively to the war effort.

Rent regulation of rent controlled flats

6.22 Rent control applies to the rental housing constructed before 1 February 1947. In 2014, only 2.6% of rental flats subject to rent regulation in New York City were rent controlled. For a flat to be qualified for rent control, the tenants must (a) have been living in that flat continuously since 1 July 1971 or (b) be the qualifying family member who succeeds to such tenancy, as well as paying a rent of less than US\$2,700 (HK\$21,057).²⁷ When a rent controlled flat becomes vacant, it becomes rent stabilized. If the flat is in a building with less than six units, it will become deregulated after a vacancy and future rents will be determined by the market.

6.23 In New York City, the Division of Housing and Community Renewal ("DHCR") is responsible for determining the maximum rents that can be charged on individual rent-controlled flats under the Maximum Base Rent ("MBR") system. Under the system, MBR is adjusted every two years to reflect changes in cost factors such as maintenance expenses, water and sewer charges, and real estate taxes. If the rent paid by rent-controlled tenants is less than MBR, the landlord concerned is entitled to raise it by up to 7.5% each year until the MBR limit is reached. After that, the subsequent rental increase will be in line with biennial adjustment of MBR.

Rent regulation of rent stabilized flats

6.24 Rent stabilization sets the maximum rates for annual increase in rents. It covers buildings which are mostly constructed between 1 February 1947 and 1 January 1974 with more than six units, as well as those removed from the rent control programme. In 2014, as many as 97.4% of rental flats subject to rent regulation in New York City were rent stabilized. However, a flat might be deregulated from the rent stabilization programme if (a) the tenant's annual household income is more than US\$200,000 (HK\$1.6 million); or (b) the monthly rent payable exceeds the threshold of US\$2,700 (HK\$21,057). This arrangement is reportedly to curb possible abuses of the rent stabilization system by the well-off tenants, since the system is intended to provide rental increase protection to low-income households.

²⁷ Against these requirements, it was reported most occupants of rent-controlled flats were low-income elderly people. See Renthop (2017).

6.25 Each year the Rent Guidelines Board²⁸ sets the guidelines governing the rate of rental increase in rent stabilized flats. The guidelines are legally binding on landlords and take into account a basket of economic and housing market factors, including (a) sewer and water rates; (b) maintenance costs; (c) interest rates; (d) cost of living; (e) the supply of housing units; and (f) vacancy rates. During 2016-2017, the permissible annual rental adjustments for rent stabilized flats are set out as follows:

- (a) rent freeze for one-year renewal lease commencing on or after 1 October 2016 and on or before 30 September 2017; and
- (b) 2% increase for two-year renewal lease commencing on or after 1 October 2016 and on or before 30 September 2017.

Further rental increase

6.26 Both the rent control and rent stabilization systems allow a landlord to further increase rent if he or she makes an improvement to the premises with the tenant's consent. The improvement works must be new and repairing of existing equipment does not count. In 2017, the additional rent increase allowed is capped at 6% of annual rent payable for rent stabilized flats and 15% for rent controlled flats.

Security of tenure

6.27 Tenants of the rent controlled and rent stabilized flats in New York City are conferred with unlimited security of tenure, and they may file complaints with DHCR about the misdemeanors of the landlords. Tenancies under the rent control and rent stabilization schemes may only be terminated under certain statutory grounds, including self-occupation by the landlord, non-payment of rent by the tenant, tenant's breach of lease conditions, tenant's creation of nuisance, etc. A landlord is required to serve a notice on the tenants before eviction. For causes not the tenant's fault such as the landlord's repossession for demolition, approval from DHCR is required.

²⁸ In New York City, the Rent Guidelines Board is mandated to establish rent adjustments for some one million rental flats in New York City.

Protection of vulnerable tenants

6.28 Vulnerable tenants living in rent controlled and rent stabilized flats are protected by a rent increase exemption programme and enhanced security of tenure. They are granted exemptions from rent increase under the New York City Rent Freeze Program.²⁹ As to security of tenure, landlords of rent stabilized flats are not allowed to evict vulnerable tenants unless they compensate them with an equivalent or superior flat at the same rent or lower rent in a nearby area. Furthermore, landlords of rent controlled and rent stabilized flats cannot evict the following tenants even though they want to re-possess the flats for self-use: vulnerable tenants and tenants who have been living in the flats for 20 years or more.³⁰

Recent developments

6.29 For the past two years, the Rent Guidelines Board has voted to freeze rents for one-year leases and allow a 2% rental increase for two-year leases. This year, the Board voted in June 2017 in favour of a 1.25% increase for one-year leases and a 2% increase for two-year leases, with effect from October 2017. The result seems to reflect a compromise made amid the pressure from tenants and landlords, with the former lobbying for another year of rent freeze and the latter for a higher rental increase.

7. Concluding remarks

7.1 Tenancy control is a controversial issue in terms of the intended and unintended effects it might bring about to the local community. While facilitating the provision of affordable housing to the low-income households and ensuring the security of tenure to sitting tenants, the implementation of tenancy control is not without concerns. These include reducing supply of

²⁹ In New York City, vulnerable tenants comprise elderly tenants and disabled tenants. As such, the New York City Rent Freeze Program comprises (a) the Senior Citizen Rent Increase Exemption Program for elderly tenants aged 62 or above; and (b) the Disability Rent Increase Exemption Program for disabled tenants aged 18 or above. In order to qualify for the Rent Freeze Program, the annual household income of vulnerable tenants must be less than US\$50,000 (HK\$389,950) and the rent paid by them must be at least one-third of their household income. The affected landlords will receive tax credits against their real estate taxes from the city government. The amount of tax credit equals to the difference between the tenant's frozen rent and the higher rent he or she should have paid.

³⁰ See New York State Attorney General (2017).

rented accommodation, generating inadvertent spillover effect on the uncontrolled sector, making landlords more selective about tenants, discouraging proper maintenance of rented accommodation, and encouraging landlords to take mitigation measures against tenancy control.

7.2 The tenancy control regime differs among the overseas places studied in terms of the form and coverage of the control measures. Nevertheless, these regimes share one or more of the following salient features in balancing the interests of landlords, tenants, property developers and other key stakeholders:

- (a) excluding new leases and/or new property development from tenancy control so as not to disincentivize construction of new flats in the long run;
- (b) applying rent control only to lower-end flats which are predominantly occupied by low-income households with pressing need for rented accommodation;
- (c) preventing well-off tenants from taking advantage of tenancy control through monitoring the household income of tenants living in rent-controlled flats and setting an income limit above which the control measures will be reduced or fully withdrawn;
- (d) taking account of the tenants' household income, along with other economic and housing factors, when determining the rate of rental increases for flats subject to rent regulation;
- (e) allowing landlords to further increase rents to recoup the expenses incurred on the modernizing or improvement works they have made to the rental flats, in order to encourage proper maintenance of the rented accommodation;
- (f) prohibiting landlords from over-charging their tenants for the use of durable goods and the service costs for items such as utilities and water in order to compensate for the lower rent received under the rent control scheme; and
- (g) ensuring adequate protection for vulnerable tenants (the elderly and disabled people) through a rent increase exemption programme and enhanced security of tenure.

A chronology of major development of tenancy control in Hong Kong

Early years	
1921	<ul style="list-style-type: none"> Rent control was first introduced in Hong Kong with the enactment of the Rents Ordinance to deal with the rental hikes resulting increased demand from the influx of refugees from the Mainland.
1926	<ul style="list-style-type: none"> Rent control was extended annually until 1926 when adverse economic conditions had led to increased flat vacancies, rendering the control no longer necessary.
1938	<ul style="list-style-type: none"> Tenancy control was re-introduced in 1938 with the enactment of the Prevention of Eviction Ordinance to prevent unreasonable eviction of tenants.³¹
1941	<ul style="list-style-type: none"> The Prevention of Eviction Ordinance was extended annually until the end of 1941 when the Japanese occupied Hong Kong.
Tenancy control after the Second World War	
1947	<ul style="list-style-type: none"> The Landlord and Tenant Ordinance was enacted to protect tenants of pre-war domestic premises³² against eviction and limit rental increase to 30% of the "standard rent" (i.e. the rent as at December 1941).³³
1952	<ul style="list-style-type: none"> The Tenancy (Prolonged Duration) Ordinance 1952 was enacted to prevent landlords of post-war domestic premises from evicting a tenant for three years from the date the latter took residence in the premises concerned, and to stipulate that rents should be set at mutually agreed rates.
1953	<ul style="list-style-type: none"> The Landlord and Tenant Ordinance was amended to provide for further increase of 25% of the standard rent for pre-war domestic premises.³⁴

³¹ The 1938 Ordinance was enacted because of another round of influx of refugees from the Mainland. It was only applicable to unfurnished accommodation of domestic premises.

³² Pre-war domestic premises were those premises built in or before August 1945.

³³ The 1947 Ordinance was originated from the Proclamation No. 15 (Landlord and Tenant) announced in 1945 by the then Provisional Hong Kong Military Government. The 1947 Ordinance was enacted in response to the return of a large number of residents to Hong Kong and a severe shortage of accommodation.

³⁴ In the ensuing years, the Government allowed rent increases intermittently by prescribing a statutory incremental percentage for the standard rent.

A chronology of major development of tenancy control in Hong Kong

Tenancy control after the Second World War (cont'd)	
1963	<ul style="list-style-type: none"> The Rent Increases (Domestic Premises) Control Ordinance was enacted to limit the permitted rate of rental increases of existing post-war domestic premises to 10% in every two years.
1966	<ul style="list-style-type: none"> The Rent Increases (Domestic Premises) Control Ordinance was allowed to expire in 1966, when rents began to decline after the onset of economic recession resulting from the banking crisis in 1965.
1970	<ul style="list-style-type: none"> The Rent Increases (Domestic Premises) Control Ordinance was enacted again due to shortages existed in all classes of domestic accommodation and the ensuing substantial rental hikes. This time, the legislation allowed a 15% increase in rents over two years with exclusions. For example, it did not apply to new premises completed after June 1970.
Tenancy control measures implemented after 1973	
1973	<ul style="list-style-type: none"> The Landlord and Tenant (Consolidation) Ordinance was enacted to bring most of the then existing legislation affecting landlords and tenants together under one ordinance. The 1973 Ordinance had a rent control mechanism designed to (a) close the gap between controlled and market rents in about 10 years; and (b) subject the biennial rental increase of premises having a rateable value of HK\$30,000 or less to a ceiling of 21%.
1980	<ul style="list-style-type: none"> The Landlord and Tenant (Consolidation) (Amendment) Ordinance 1980 was enacted to extend the 21% biennial cap to all post-war domestic premises. In the same year, the Government set up a committee chaired by the then Secretary for Housing ("the Review Committee") to review the overall tenancy control policy. The outcome was a suggestion to accelerate the phasing out of rent control as soon as circumstances permitted.
1981	<ul style="list-style-type: none"> The report of the Review Committee was published. The Government accepted the report in principle, and implemented most of the recommendations in stages through a series of legislative amendments from 1981 to 1988.

A chronology of major development of tenancy control in Hong Kong

Removal of tenancy control in the 1990s and early 2000s	
1992	<ul style="list-style-type: none"> In pursuit of the recommendation of the Review Committee, the Government introduced the Landlord and Tenant (Consolidation) (Amendment) Bill 1992 into LegCo to phase out all rent controls by the end of 1994.
1993	<ul style="list-style-type: none"> The 1992 Bill was passed with an amendment to extend the rent controls until 31 December 1996.
1996	<ul style="list-style-type: none"> LegCo passed a motion to delay the expiry of rent control until 31 December 1998.
1998	<ul style="list-style-type: none"> Rent control expired, but security of tenure remained in place.
2003	<ul style="list-style-type: none"> The Government introduced the Landlord and Tenant (Consolidation) (Amendment) Bill 2003 into LegCo to remove security of tenure. The Bill was passed on 30 June 2004.
2004	<ul style="list-style-type: none"> The security of tenure for residential premises was eventually removed on 9 July 2004.

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 7 July 2017
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References

Hong Kong

1. Census and Statistics Department. (2016) *Housing conditions of sub-divided units in Hong Kong*. Available from: <http://www.statistics.gov.hk/pub/B11302602016XXXXB0100.pdf> [Accessed July 2017].
2. Cheng, C.M. (1988) *An evaluative analysis of rent control in Hong Kong*. Available from: <https://hub.hku.hk/bitstream/10722/27016/1/FullText.pdf?accept=1> [Accessed July 2017].
3. GovHK. (2017) *Press release: LCQ2: Measures to address demand for housing*, 17 May 2017. Available from: <http://www.info.gov.hk/gia/general/201705/17/P2017051700472.htm> [Accessed July 2017].
4. Hong Kong Housing Authority. (2016) *2016 Rent Review of Public Renting Housing*. Available from: <https://www.housingauthority.gov.hk/en/common/pdf/about-us/housing-authority/ha-paper-library/SHC32-16.pdf> [Accessed July 2017].
5. *Official Record of Proceedings of the Legislative Council* (1981) 24 June.
6. *Official Record of Proceedings of the Legislative Council* (1996) 11 December.
7. Rating and Valuation Department. (1975) *A Background to Tenure and Rent Restrictions in Hong Kong*.
8. South China Morning Post. (2016) *Hong Kong's poorest squeezed as rents for tiny subdivided flats rise at double rate for other homes*. 9 October. Available from: <http://www.scmp.com/news/hong-kong/article/2026530/hong-kongs-poorest-squeezed-rents-tiny-subdivided-flats-rise-double> [Accessed July 2017].
9. Takungpao.com.hk. (2017) *With 4.6-year waiting time for PRH, land resumption still difficult*. Available from: <http://news.takungpao.com.hk/paper/q/2017/0516/3450792.html> [Accessed July 2017].

10. Transport and Housing Bureau. (2014) *Tenancy Control*. Available from: <http://www.legco.gov.hk/yr13-14/english/panels/hg/papers/hg0707cb1-1709-1-e.pdf> [Accessed July 2017].
11. 《深水埗劏房需求大，業主不簽約隨時加租》，《AM730》，2017年4月24日。
12. 全港基層爭取住屋權益聯會：《就立法會房屋事務委員會紓緩分間樓宇單位居民住屋困難的短中期措施會議提交基層房屋需要》2017年，網址：<http://www.legco.gov.hk/yr16-17/chinese/panels/hg/papers/hg20170703cb1-1210-11-c.pdf> [於2017年7月登入]。
13. 全港關注劏房平台：《回應為非公屋、非綜援的低收入住戶提供的支援措施》2017年，網址：<http://www.legco.gov.hk/yr16-17/chinese/panels/ws/papers/ws20170304cb2-929-2-c.pdf> [於2017年7月登入]。
14. 明愛基層組織發展計劃：《租住私樓基層人士住屋處境及需要調查報告書》2016年，網址：<http://cd.caritas.org.hk/report/20160930.pdf> [於2017年7月登入]。
15. 明愛基層組織發展計劃：《深水埗私樓基層租戶住屋困境及解決方法調查報告書》2013年，網址：<http://cd.caritas.org.hk/report/201306.pdf> [於2017年7月登入]。
16. 信報：《租金貴私樓一倍，劏房戶家不成家》2015年12月21日，網址：<https://forum.hkej.com/node/128115> [於2017年7月登入]。
17. 香港社區組織協會：《水電費研究調基報告》2016年，網址：http://www.soco.org.hk/publication/publication_index.htm [於2017年7月登入]。
18. 香港社區組織協會：《基層私樓租戶迫遷情況問卷調查報告》2015年，網址：http://www.soco.org.hk/publication/private_housing/rent%20research_2015_4_26.pdf [於2017年7月登入]。

19. 香港社會服務聯會：《利用短中長期措施紓緩房屋問題》2017 年，網址：<http://www.legco.gov.hk/yr16-17/chinese/panels/hg/papers/hg20170703cb1-1210-1-c.pdf> [於 2017 年 7 月登入]。
20. 關注基層住屋聯席：《基層租戶權益備受剝削，租務穩定機制刻不容緩》2017 年，網址：<https://grassmediation.files.wordpress.com/2016/02/e59fbae5b1a4e7a79fe58b99e78b80e6b381e5958fe58db7e8aabfe69fa5e5a0b1e5918a.pdf> [於 2017 年 7 月登入]。

Germany

21. BPD. (2016) *Germany, France, The Netherlands: Housing markets in perspective 2016*. Available from: http://www.bpdeurope.com/media/107467/q540_bpd_dunefra-2016_engels-lr-web.pdf [Accessed July 2017].
22. Institute for Public Policy Research. (2017) *Lessons from Germany: Tenant Power in the Rental Market*. Available from: <http://www.ippr.org/files/publications/pdf/lessons-from-germany-jan17.pdf?noredirect=1> [Accessed July 2017].
23. The Economist. (2015) *Braking bad - a coming "rent brake" will sap a strengthening property market*. 4 April. Available from: <https://www.economist.com/news/finance-and-economics/21647658-coming-rent-brake-will-sap-strengthening-property-market-braking-bad> [Accessed July 2017].
24. The Maybachufer. (2016) *Rent Controls Not Working, Reports German Institute for Economic Affairs*. Available from: <https://themaybachufer.com/2016/06/01/rent-controls-not-working-reports-german-institute-for-economic-affairs/> [Accessed July 2017].

Netherlands

25. Czech Dutch Chamber of Commerce. (2016) *Starting 1 July 2016, more options for temporary leases of residence in The Netherlands*, 3 June 2016. Available from: <http://www.cdcc.nl/starting-1-july-2016-more-options-for-temporary-leases-of-residence-in-the-netherlands/> [Accessed July 2017].

26. Ministry of Economic Affairs. (2015) *National Reform Programmes 2015: The Netherlands*. Available from: http://ec.europa.eu/europe2020/pdf/csr2015/nrp2015_netherlands_en.pdf [accessed July 2017].
27. The Knowledge Centre for Housing Economics. (2013) *The Dutch Private Rented Sector*. Available from: http://www.bvc.dk/SiteCollectionDocuments/Analyser/The%20Dutch%20Private%20Rental%20Sector%20Review_3.pdf [Accessed July 2017].

New York City

28. Metropolitan Council on Housing. (2016) *About Rent Control*. Available from: http://metcouncilonhousing.org/help_and_answers/about_rent_control [Accessed July 2017].
29. New York City Housing Preservation and Development. (2015) *Selected Initial Findings of the 2014 New York City Housing and Vacancy Survey*. Available from: <http://www1.nyc.gov/assets/hpd/downloads/pdf/2014-HVS-initial-Findings.pdf> [Accessed July 2017].
30. New York State Attorney General. (2017) *Tenants' Rights Guide*. Available from: https://ag.ny.gov/sites/default/files/pdfs/publications/Tenants_Rights.pdf [Accessed July 2017].
31. New York State Homes and Community Renewal. (2016) *Rent Stabilization and Rent Control*. Available from: <http://www.nyshcr.org/Rent/FactSheets/orafac1.pdf> [Accessed July 2017].
32. RentHop. (2017) *Rent Stabilized vs Rent Controlled Apartment*. Available from: <https://www.renthop.com/guides/nyc/rent-stabilized-vs-rent-controlled-apartments-in-nyc>. [Accessed July 2017].
33. The New York Times. (2017) *New York City Approves Rent Increases for Regulated Apartments*. Available from: <https://www.nytimes.com/2017/06/27/nyregion/new-york-city-approves-rent-increases-for-stabilized-apartments.html> [Accessed July 2017].

Others

34. LSE London. (2011) *Towards a sustainable private rented sector: the lessons from other countries*. Available from: http://eprints.lse.ac.uk/56070/1/Towards_a_sustainable_private_rented_sector.pdf [Accessed July 2017].
35. University of Cambridge. (2012) *The Private Rented Sector in the New Century: A Comparative Approach*. Available from: <http://www.cchpr.landecon.cam.ac.uk/Projects/Start-Year/2010/Private-Rented-Sector-New-Century-Comparative-Approach/Project-Report> [Accessed July 2017].
36. University of Cambridge. (2016) *Understanding the Role of Private Renting: A Four-Country Case Study*. Available from: http://www.bvc.dk/SiteCollectionDocuments/Analyser/Understanding%20the%20Role%20of%20Private%20Renting_Web.pdf [Accessed July 2017].