

**The Legislative Council Meetings of
28 November and 5 December 2018
Motion on
“Studying the enactment of an ordinance
on regulating subdivided units”**

Progress Report

Purpose

The motion “Studying the enactment of an ordinance on regulating subdivided units” moved by Hon Mrs Regina IP as amended by Hon Alice MAK, Hon LEUNG Yiu-chung and Hon Andrew WAN was passed at the Legislative Council meeting of 5 December 2018 (full text of the motion at **Annex**). This paper briefs Members on the progress of work by relevant policy bureaux and government departments in respect of the issues raised in the motion.

Introducing a licensing or landlord registration system to regulate subdivided units

2. The Transport and Housing Bureau (THB) advised that the Long Term Housing Strategy Steering Committee (the Steering Committee) had launched a three-month public consultation on Hong Kong’s Long Term Housing Strategy (LTHS) in September 2013. During the consultation, there was an extensive and in-depth discussion on subdivided units (SDUs). The community expressed considerable reservations over the suggestion to introduce a licensing or landlord registration system to regulate SDUs. There were concerns that a licensing or landlord registration system would increase the operating cost of landlords, and hence reduce the supply of SDUs and drive up their rents, which would further increase the financial burden of tenants of SDUs. There were also concerns that introducing a licensing or registration system might be regarded as legitimising dilapidated SDUs, which would in turn compromise the safety of tenants living in these SDUs. The Government later promulgated the LTHS in December 2014, and stated in the LTHS that in view of the concerns expressed by the community, the Government would not introduce any licensing or landlord registration system for SDUs. This however does not imply that the building safety of tenants of SDUs will be compromised. The Government will continue to regulate building works associated with SDUs per the Buildings Ordinance (the BO) to ensure the safety of these units.

Regulation of and Enforcement Actions against building works associated with SDUs

Regulation

3. SDUs do offer accommodation to some members of the public. The Government's policy is not to eradicate all SDUs but to ensure their safety. Building works associated with SDUs have to comply with the requirements of the BO. Such works usually include erection of non-load bearing block walls, laying of solid floor screedings, erection or alteration of aboveground drains.

4. The Development Bureau has amended the Building (Minor Works) Regulation in October 2012. Prior to the amendment, building works commonly associated with SDUs were mostly exempted works. To enhance safety standards of these works, they have been included under the Minor Works Control System of the Buildings Department (BD), in which owners are required to hire qualified professionals and registered contractors to carry out such works in a manner in compliance with the relevant mechanism. In case the building works associated with SDUs would involve substantial alterations and do not meet the specifications for minor works, the owners concerned should obtain prior approval and consent to commence works from BD in accordance with the BO before these works can be carried out.

5. As regards public education and publicity, BD has enhanced its effort in educating the public about the common irregularities found in flat subdivision works, the potential risks thereof, and points to note in carrying out such works through a variety of channels, including road shows, the annual Building Safety Week, building safety certificate courses, online seminars, pamphlets, advertisements, etc.

Law Enforcement

6. On the other hand, BD will continue to take enforcement actions on SDUs in domestic buildings (including residential buildings and composite buildings) which violate building and fire safety requirements, and step up prosecution against flat owners who fail to comply with the statutory orders. The Government will also enhance public education in order to raise the awareness of the public in regard to building and fire safety. Apart from responding to referrals from government departments and reports from the

public, BD has also conducted large-scale operations for rectification of irregularities of building works associated with SDUs in domestic and composite buildings. Where actionable irregularities (for example, obstruction to means of escape and structural problem) are identified, BD will issue removal orders to the owners concerned, and consider instigating prosecution against those who fail to comply with the removal orders. In relation to support and assistance, BD has collaborated with the Housing Department, Social Welfare Department and Home Affairs Department to render suitable assistance to eligible occupants affected by enforcement actions. Besides, the social services teams of BD will provide necessary social and emotional support for affected occupants.

7. From April 2011 to June 2019, BD has inspected around 1 350 target domestic or composite buildings involving around 6 600 SDUs. Over the same period, a total of around 2 900 removal orders were issued against irregularities associated with SDUs-related works found in these buildings, and around 1 700 of these removal orders have been complied with. BD also instituted around 720 criminal prosecutions against owners who failed to comply with the orders, and 70% of these cases were convicted. The heaviest penalty was a fine of \$50,500 and the average amount of fine imposed was about \$3,900.

Enacting legislation to regulate the rental of SDUs and providing tenants of SDUs with tenancy protection

8. THB has expressed its views on tenancy control (including rent control and security of tenure) in the LTHS and on various occasions. Empirical findings, both local and overseas, suggest that tenancy control measures often lead to an array of unintended consequences with some to the detriment of the tenants whom the measures seek to assist. The unintended consequences include reducing supply of rented accommodation; limiting access to adequate housing by those with unstable financial means, persons with disabilities, ethnic minorities, and other socially disadvantaged groups as landlords would become more selective about their tenants; encouraging certain behaviour from landlords to offset the impact of the tenancy control measures (including charging a higher initial rent and demanding excessive miscellaneous charges), and discouraging proper maintenance of the rented accommodation by landlords.

9. There are views suggesting the Government to implement tenancy control only on SDUs. However, as seen from the experience of some overseas economies, if tenancy control is imposed only on a particular market sector

(often on lower-end residential properties), there may be inadvertent spillover effects on the uncontrolled sector. For example, as some tenants fail to rent flats in the controlled sector, they may be forced to seek accommodation in the uncontrolled sector, hence pushing up the rent level of the latter. Besides, some overseas experience suggests that tenancy control has failed to effectively address the housing needs of the grassroots, since control measures often target at specific classes of premises instead of particular groups of households. Other overseas experience also suggests that, with the implementation of tenancy control, prospective tenants may find it difficult to secure a tenancy through the open market, and can only obtain information of rented accommodation through indirect means, which will not be easily accessible by the socially disadvantaged groups. Weighing the pros and cons, the Government is of the view that introducing tenancy control in any form amid the current tight housing supply may be counterproductive and will not be in the interest of tenants of SDUs or the general public.

10. With regard to issues concerning the formulation of tenancy agreements, as the circumstances of each case are different, the Government considers it more appropriate to allow landlords and tenants to negotiate and agree on the format (e.g. oral or written tenancy agreement) and detailed terms and conditions of the tenancy agreement (e.g. the notice period and arrangement for the termination of tenancy, the level and basis for calculating rents and other charges (e.g. water and electricity charges), etc.). This provides greater flexibility for both the landlords and tenants to formulate tenancy arrangements that suit their practical needs.

11. Landlords and tenants may refer to the “Notes on Signing a Tenancy Agreement” and “A Guide to Tenancy” published by the Estate Agents Authority for a better understanding of various matters that they should pay attention to when entering into tenancy agreements. Landlords and tenants in need may use the free tenancy advisory services provided by the Rating and Valuation Department (RVD). RVD also provides free mediatory services on tenancy matters subject to the agreement of both the landlord and the tenant.

Rent subsidy

12. There are views that the Government could provide rent subsidy to tenants of SDUs who have been waiting for allocation of public rental housing (PRH) for three years or more, thereby easing the rental pressure that they are facing. Nevertheless, the Government is concerned that such measure may not be effective in alleviating the housing burden of these households as intended by the advocates. In the midst of the present tight housing supply, providing rent subsidy to tenants may prompt the landlords to increase rent, thereby

indirectly turning the rent subsidy into additional rent, leaving the tenants with no effective assistance. Furthermore, providing rent subsidy to a selected group of tenants may increase the demand for rented accommodation, thereby triggering a rise in rental level and increasing the burden of households who are unable to receive the subsidy due to various reasons.

Enacting legislation to require the installation of separate water meter and electric meter for each SDU

Installation of separate water meters

13. According to the current policy of the Water Supplies Department (WSD), the landlords or the tenants of premises are allowed to apply for installation of separate water meters. WSD will approve their applications provided that their premises can fulfill the requirements stipulated by WSD. Regarding mandatory installation of separate water meters for SDUs, there are legal considerations as well as constraint in property management and operational limitations. Therefore, the Government has no plan to amend the relevant regulations at this stage. Having said that, in response to the difficulties that the tenants of SDUs frequently encounter when applying for separate water meters, WSD has relaxed the existing relevant requirements for making such applications, including:

- (a) Allow the tenant of SDU to provide an email address instead of a formal mailing address so that WSD can send the correspondence to the tenant by email; and
- (b) If the tenant/owner of SDFs has difficulty finding a communal area for installation of a separate meter, WSD can allow the tenant/owner to apply for installation of the water meter inside the SDU. In this case, if WSD anticipates difficulty in entering into the SDU to take meter readings, WSD can install a smart water meter, which can allow taking meter readings remotely.

14. According to Regulation 47(2) of the Waterworks Regulations, the registered consumer of the inside service of a premises (usually the owner of the premises for the cases of SDUs) can recover from the occupier of the premises in which the inside service exists the cost of water. The cost of water includes water charge and other reasonable cost for supplying water through the inside

service, e.g. maintenance cost of the inside service, but not profit. If the tenant suspects that the owner overcharges for water and reports the case to WSD, WSD will carry out investigation. If evidence is sufficient, WSD will take prosecution action against the owner. A person who is guilty of an offence shall be liable on summary conviction to a fine at level 3, the current amount of which is HK\$10,000.

15. WSD has adopted a proactive approach on the issue of overcharging tenants of SDUs for water. Apart from conducting investigation into the referral cases, WSD has also conducted inspection of suspected subdivided units proactively to investigate overcharging for water. In addition, WSD has published relevant posters and leaflets and distributed the leaflets to the residents' mailboxes during inspections. This can help landlords and tenants understand that overcharging for water is a criminal offence.

Installation of separate electric meters

16. According to Environment Bureau, the power companies have to obtain prior consent from relevant landlords and building management before the installation of separate meters for customers. They will also consider whether the electrical installations and other facilities in the units concerned meet the safety standards under the Electricity Ordinance and the Supply Rules of the power companies. Given the various site constraints and safety considerations, the Government has no plan to amend the relevant regulations.

17. The Government entered into the post-2018 Scheme of Control Agreements (SCAs) with the CLP Power Hong Kong Limited (CLP) and Hongkong Electric Company Limited (HKE) in April 2017. Following the establishment of the Community Energy Saving Funds under the SCAs, the two power companies have introduced programmes to assist the disadvantaged groups, including tenants of SDUs. For instance, subsidies will be provided to landlords of SDUs for carrying out rewiring work for installation of separate electricity meters. The programme commenced on 1 January 2019.

Surveys on tenants of SDUs

18. In the 2016 Population By-census, the Census and Statistics Department (C&SD) collected information on the population and households living in SDUs

and their socio-economic characteristics. Relevant data were released in January 2018. We believe that such data will enable the Government to understand the situation of SDUs. C&SD will further collect data on SDUs in the 2021 Population Census and publish detailed statistics based on the results.

19. On the other hand, according to LTHS, THB updates the long term housing demand projection annually and presents a rolling ten-year housing supply¹. The housing demand projection takes into account different demand components, including the number of inadequately housed households (IHHs). Details of the relevant projections are provided at the annex to the LTHS Annual Progress Report 2018².

Other measures to assist grassroots households

20. Apart from striving to increase housing supply, the Government has adopted various measures to alleviate the housing problems of households living in inadequate housing (including SDUs). For those who have genuine and imminent long-term housing needs but have no other feasible means to solve their housing problems, they can approach the Social Welfare Department (SWD) for relevant welfare services or assistance. SWD will assess each case and recommend eligible cases to the Housing Department for Compassionate Rehousing for early allocation of PRH units. Also, eligible PRH applicants may join the Express Flat Allocation Scheme for early allocation of PRH units.

21. Different government departments have been providing appropriate assistance to low-income households from different perspectives including housing, social welfare, community support, etc. For instance, the Comprehensive Social Security Assistance (CSSA) Scheme provides a safety net for those who are unable to support themselves financially to meet their basic needs. Under the CSSA Scheme, recipients (including tenants of PRH and private residential units) are entitled to rent allowance for covering their cost of accommodation. Besides, other recurrent cash schemes, such as the Working Family Allowance Scheme (previously known as the “Low-income Working Family Allowance Scheme”) and the Work Incentive Transport Subsidy Scheme, provide further support to low-income households.

¹ Long Term Housing Strategy (<https://www.thb.gov.hk/eng/policy/housing/policy/lths/LTHS201412.pdf>).

² LTHS Annual Progress Report 2018
(https://www.thb.gov.hk/eng/policy/housing/policy/lths/LTHS_Annual_Progress_Report_2018.pdf).

Transitional housing and establishing a dedicated fund for transitional housing

22. Since it takes time to identify land for housing construction, the Government will, on top of the long-term housing policy and measures, support and facilitate the implementation of various short-term initiatives put forward and carried out by the community to increase the supply of transitional housing for alleviating the hardship faced by families awaiting PRH and other families living in IHHs. These short term measures may make use of the potential and resources in the community outside the Government, and offer flexible and multiple relief measures for the beneficiaries.

23. The Task Force on Transitional Housing (the Task Force) under THB is led by the Under Secretary for Transport and Housing. Upon consultation with relevant bureaux and departments, the Task Force will provide appropriate assistance and facilitation according to the needs of the proposed projects, and offer advice on relevant administrative or statutory procedures and assistance in funding applications etc. Five new posts have been created under THB to handle the relevant work, including two project directors. The Task Force is currently providing support to facilitate the implementation of more than ten projects advocated by non-governmental organisations, including the Modular Social Housing Scheme on Yen Chow Street initiated by the Hong Kong Council of Social Service (HKCSS), providing some 210 units. The project has been submitted to the Shum Shui Po District Council and gained its support.

24. The Financial Secretary announced in the 2019-20 Budget Speech that \$2 billion would be set aside to support non-governmental organisations (NGOs) in constructing transitional housing. THB will work out the detailed arrangements after incorporating the operational experience gathered from transitional housing projects and listen to views from different sectors of the community. The Government will submit the funding proposal to the Legislative Council soonest possible.

**Development Bureau
Transport and Housing Bureau
Environment Bureau
Buildings Department
Water Supplies Department**

July 2019

(Translation)

**Motion on
“Studying the enactment of an ordinance on regulating subdivided units”
moved by Hon Mrs Regina IP
at the Council meetings of 28 November and 5 December 2018**

**Motion as amended by Hon Alice MAK, Hon LEUNG Yiu-chung
and Hon Andrew WAN**

That the housing problem of grass-roots families in Hong Kong is acute and there are over 150 000 families and elderly singletons waiting for public rental housing, with an average waiting time of 5.3 years, and quite a number of applicants live in units of flats subdivided into separate units (commonly known as ‘subdivided units’); according to the estimate of the Government in 2017, there were about 91 800 households living in subdivided units across the territory; the Chief Executive has undertaken in the newly released Policy Address that the Government will actively facilitate various short-term community initiatives to increase the supply of transitional housing and allow wholesale conversion of industrial buildings for transitional housing; in the light of these new initiatives, it is believed that quite a number of transitional housing units leased out in the form of subdivided units will emerge in Hong Kong, but the existing Buildings Ordinance cannot comprehensively regulate the safety of flat subdivision works; in this connection, this Council urges the Government to adopt appropriate measures to regulate subdivided units by, among others, studying the enactment of an ordinance; the relevant measures include:

- (1) by drawing reference from the Housing Act 2004 of the United Kingdom and the experience of other countries, formulating policies on the regulation of subdivided units, which include establishing a licensing system for regulating the operation of subdivided units, and setting standards for the facilities, number of occupants and area of units, so as to ensure a comfortable and safe living environment for households;
- (2) enacting legislation to require the installation of separate water and electricity meters for each subdivided unit to prevent overcharging of water and electricity tariffs by landlords;
- (3) enacting legislation to regulate the rental of subdivided units,

including regulating the rate of rental increase for subdivided units to prevent the households from being heavily burdened by rental;

- (4) before legislating for regulation, expeditiously providing a rental allowance for all grass-roots families which have been waitlisted for public rental housing for over three years and living in subdivided units;
- (5) reviewing the Landlord and Tenant (Consolidation) Ordinance to provide tenants of subdivided units with appropriate tenancy protection, e.g. requiring landlords to sign stamped tenancy agreements with their tenants, stipulating such information as the charging mode for electricity and water tariffs and the notification period for deferred vacation in tenancy agreements; and
- (6) establishing a dedicated fund for transitional housing to be used for, among others, supporting the conversion of industrial buildings into subdivided units as transitional housing to ensure that the transitional housing units leased out in the form of subdivided units after conversion and their facilities are compliant with the legal requirements, so as to improve the living environment of grass-roots families; and
- (7) extensively consulting the community on the study of the enactment of an ordinance on regulating subdivided units and the review of the Landlord and Tenant (Consolidation) Ordinance; and
- (8) enacting legislation to allow tenants of subdivided units to open water and electricity accounts of their own for paying tariffs;

moreover, this Council also urges the Government to establish a registration system for households of subdivided units or conduct an annual survey on households of subdivided units (including those living in factory buildings) through the Census and Statistics Department, so as to ensure that the Government can grasp the actual number of households of subdivided units, thereby formulating appropriate regulatory policies for them.