



中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China



立法會 LEGISLATIVE COUNCIL

葉劉淑儀 議員 GBS, GBS, 太平紳士 Hon. Mrs Regina IP LAU Suk-ye GBS, GBS, JP

《2021年業主與租客(綜合)(修訂)條例草案》  
法案委員會主席  
鄭泳舜議員, MH, JP

尊敬的鄭泳舜主席

有關「分間單位」(subdivided unit)的定義

早前在法案委員會上，本人曾提出《2021年業主與租客(綜合)(修訂)條例草案》第 120AA 條訂明有關「分間單位」(subdivided unit)的定義可能不包括「沒有被分間的單位」。舉例而言，在一個處所內，若其圖則含三個房間，而業主把兩個沒有被分間的房間租出，或不被條例涵蓋。因此，若政府使用此條例向這類業主進行監管，可能會引來法律挑戰。

政府官員對本人的詮釋表示不同意，認為建築物單位裡所有處所，不論「分間」與否，均受法律規管。就此，本人曾諮詢黨內持有註冊建築師資格的義務大律師的意見。該大律師回覆本人的三個問題(見附件)，當中指出此條例草案不包括「沒有被分間的單位」。也就是說，即使議員沒提出修訂，把「『獲豁除租賃』的涵蓋範圍擴展至『業主把家中空餘空間分租予另一家庭作居所』的情況」，這類單位也不受此條例規管。

就此問題，現本人請求本委員會的法律顧問提供法律意見，同時也希望政府能回應。敬請 主席閣下代為轉達。肅此奉達，並頌

鈞祺

委員 葉劉淑儀

葉劉淑儀

謹啟

2021年9月3日

## Question No.1.

As presently drafted, tenancies involving units shown as separate units in building plans and which have not been sub-divided are **not** covered by the bill;

Answer to Q1:

The answer is YES. As regards the application of Part IVA, it is provided in section 120AAB that

- (1) Subject to subsection (2), this Part applies to a tenancy—
- (a) that commences on or after the material date;
  - (b) that is a domestic tenancy;
  - (c) **the subject premises of which are a subdivided unit;**
  - (d) the tenant of which is a natural person; and
  - (e) the purpose of which is for the tenant's own dwelling,

The Bill defines:

*subdivided unit* (分間單位) means premises that form **part of a unit** of a building, as per section 120AA- Interpretation.

In the same section the Bill defines unit (單位) as

*premises of the building falling within either or both of the following descriptions—*

- a) *premises that are **demarcated or shown as a separate unit** (however described) in the **building plan** of the building;*
- b) *premises that are referred to in the deed of mutual covenant of the building as a unit (however described) the owner of which is entitled to its exclusive possession, as opposed to the owners or occupiers of other parts of the building.*

I would like to elaborate further on the definition of “unit”.

BD requires AP to submit the General Building Plan to show all the structural walls, and also **demarcation within an individual** unit if:

- a) Such demarcation affect UFA (Usable Floor Area), i.e. 實用面積, or
- b) MOE (i.e. means of escape)

BD also requires the AP to use dotted line to show the future internal demarcation to be erected by the users in future.

However, there is **NO such requirement** on demarcation if the flat is sold as what we called “Core and Shell” unit, i.e. 清水樓。

It is hence clear from the above information that the proposed addition part of the Ordinance **intends to catch just those subdivided units which are NOT shown in the Building Plan.**

**Arguably it could catch those units formed through the demarcation of the Core and Shell units.**

## **Question No. 2.**

**If so, the government is vulnerable to legal challenge by landlords who have leased non-sub-divided units to tenants;**

Answer to Q2:

Although I have the benefit of reading the answers provided by TK, I would still incline to say NO as my answer to your Q2 because Part IVA does not apply to non-sub-divided units.

## **Question No. 3.**

**As a matter of policy, is it necessary to bring under control tenancies which are not sub-divided, a room or two leased by an elderly person to augment his or her income?**

Answer to Q3:

I would say that this is not a question on legal issue, but a public policy or political issues.

No doubt that the property price and rental level nowadays are really excessive high. If the demand is a real demand, the only viable solutions must be increase of supply.

What I fear is that if we extend the catchment areas of the Bill to cover all the leased units, sub-divided or not, there will be likelihood that the landlord will cease to lease out their “unused” units (i.e. not the subdivided). The supply will decrease which will only drive up the rent further.

Besides, as you said, an elderly, wanting to get some income from the unused unit will also suffer.

From social support point of view, there will be advantage to have some one to live with an elderly. At the least he or she would not die unaware for days or weeks.

The short term remedy to increase supply is to allow (but maintain control and regulation) more properties to be sub-divided so that the rent, due to supply and demand, can fall.