

立法會
Legislative Council

LC Paper No. CB(1)1317/20-21
(These minutes have been seen
by the Administration)

Ref : CB1/BC/9/20

**Bills Committee on Landlord and Tenant (Consolidation)
(Amendment) Bill 2021**

**Minutes of the second meeting on
Thursday, 29 July 2021, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon Vincent CHENG Wing-shun, MH, JP (Chairman)
Hon YUNG Hoi-yan, JP (Deputy Chairman)
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBM, GBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Ir Dr Hon LO Wai-kiwok, GBS, MH, JP
Hon Wilson OR Chong-shing, MH
Hon CHAN Chun-ying, JP
Dr Hon CHENG Chung-tai
Hon Tony TSE Wai-chuen, BBS, JP
- Members absent** : Hon Abraham SHEK Lai-him, GBS, JP
Hon CHAN Han-pan, BBS, JP
- Public officers attending** : Agenda item I
Transport and Housing Bureau

Dr Raymond SO, BBS, JP
Under Secretary for Transport and Housing

Mr Carlson CHAN, JP
Director (Special Duties)

Miss Kathy CHAN
Assistant Director
(Tenancy Control on Subdivided Units)

Rating and Valuation Department

Ms Sandy JIM, JP
Assistant Commissioner (Special Duties)

Department of Justice

Ms Rayne CHAI
Deputy Law Draftsman II (Acting)

Ms Lonnie NG
Senior Government Counsel

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Mr Keith WONG
Senior Council Secretary (1)2

Ms Clara LO
Legislative Assistant (1)9

Ms Michelle LEE
Clerical Assistant (1)5

Action

I. Meeting with the Administration

(LC Paper No. CB(3)771/20-21 — The Bill

*(issued by the Transport and Housing— Legislative Council Brief
Bureau on 6 July 2021)*

LC Paper No. LS91/20-21 — Legal Service Division Report

LC Paper No. CB(1)1148/20-21(01) — Marked-up copy of the Bill
prepared by the Legal Service
Division (Restricted to
members only)

LC Paper No. CB(1)1148/20-21(02) — Assistant Legal Adviser's letter
dated 28 July 2021 to the
Administration (English
version only)

LC Paper No. CB(1)1148/20-21(03) — Paper on Landlord and Tenant
(Consolidation) (Amendment)
Bill 2021 prepared by the
Legislative Council Secretariat
(background brief)

The Chairman advised that submissions on the Landlord and Tenant (Consolidation) (Amendment) Bill 2021 ("the Bill") received would be circulated to members for reference and forwarded to the Administration for response.

2. The Chairman said that members would be notified of the Bills Committee's meetings scheduled for August 2021 in due course.

(Post-meeting note: Members were informed vide LC Paper No. CB(1)1168/20-21 issued on 30 July 2021 of the meeting schedule of the Bills Committee in August 2021.)

Discussion

3. The Bills Committee deliberated (index of proceedings in the **Appendix**).

Action

Follow-up actions

4. The Administration was requested to provide information on:
 - (a) the number of illegal subdivided units ("SDUs") displaced under the enforcement action taken by the Buildings Department and other relevant departments/bureaux in the past five years, and whether the Administration would undertake to provide regular reports to the Legislative Council on the enforcement action taken by the Buildings Department and other relevant departments/bureaux against illegal SDUs after the passage of the Bill;
 - (b) details of the extra resources, including resources in manpower, or the plan for them, that the Rating and Valuation Department had or would have in anticipation of the work involved in administering the new provisions in the Bill, including promoting public awareness of the new regulatory regime, handling enquiries, providing advisory and mediatory services on tenancy matters, publishing summary information about SDU rents reported after implementation of the new law, and taking enforcement action; and
 - (c) considering that the tenancy of any domestic premises with one room was rented out would fall under the definition of "regulated tenancy" in the Bill, and as such, the number of targeted premises to be regulated by the Bill would be much more than the number of SDUs, which were commonly understood to be inadequate housing resided by the grass-roots tenants who needed protection,
 - (i) the number of domestic premises that would be regulated by the Bill;
 - (ii) among (i), the number of SDUs resided by inadequately-housed households, and the number of premises other than SDUs such as those with one room rented out; and
 - (iii) the respective figures for (ii) among the 110 000 SDUs in Hong Kong which provided accommodation to tenants (according to the findings of the survey commissioned by the Task Force for the Study on Tenancy Control of SDUs).

Action

(*Post-meeting note:* The Administration's supplementary information was issued to members vide LC Paper No. CB(1)1190/20-21(02) on 13 August 2021.)

II. Any other business

4. There being no other business, the meeting ended at 6:28 pm.

Council Business Division 1
Legislative Council Secretariat
10 September 2021

**Proceedings of the second meeting of the
Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2021
on Thursday, 29 July 2021, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Meeting with the Administration			
000352 – 000623	Chairman	Opening remarks	
000624 – 003103	Chairman Mr Tommy CHEUNG Mrs Regina IP Administration	Briefing by the Administration on the Landlord and Tenant (Consolidation) (Amendment) Bill 2021 ("the Bill") with the aid of PowerPoint presentation materials (LC Paper No. CB(1)1167/20-21(01)).	
003104 – 003744	Chairman Mr Tommy CHEUNG Administration	<p>Mr Tommy CHEUNG indicated that the Liberal Party supported the implementation of tenancy control on subdivided units ("SDUs") only for the purpose to safeguard the interests of grass-roots tenants of SDUs. He noted with concern that under the proposed tenancy control, the tenancy of one room in domestic premises, notwithstanding such premises did not involve any subdivision or alteration, would fall under the scope of "regulated tenancy". As such, the Bill would have an effect of broadening the scope of regulation to cover more domestic tenancies than originally intended. He further raised the following enquires –</p> <p>(a) the Administration's considerations in defining SDUs as "premises that form part of a unit of a building" in the Bill; and</p> <p>(b) reasons for not adopting the definition of SDUs as stated in the "Hong Kong 2016 Population By-census - Thematic Report: Persons Living in Subdivided Units" ("the Report") published by the Census and Statistics Department in 2018.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that –</p> <ul style="list-style-type: none"> (a) it had taken note of the findings of the Report and its definition of SDUs when drafting the Bill. The Administration considered that, if the definition of SDUs in the Report was adopted in the Bill, the proposed tenancy control would cover fewer types of SDUs, leaving some grass-roots SDU tenants out of the protection; (b) by defining SDUs as "premises that form part of a unit of a building", the proposed tenancy control could fulfil its policy objective in protecting a wide range of grass-roots tenants, which was the common aspiration of different sectors and Members of the Legislative Council ("LegCo"); and (c) landlords of domestic premises which did not involve any subdivision or alteration were still allowed to rent out rooms to tenants to make a profit albeit being subject to the proposed tenancy control. 	
003745 – 004320	Chairman Mrs Regina IP Administration	<p>Mrs Regina IP raised the following suggestions/enquires –</p> <ul style="list-style-type: none"> (a) to expedite the implementation of the proposed tenancy control of SDUs, the Administration should have considered drafting a new ordinance which might involve less and simpler work than amending the existing Landlord and Tenant (Consolidation) Ordinance (Cap. 7); (b) Members of LegCo in general did not support the displacement of SDUs as they provided basic accommodation to some low-income individuals and families pending the availability of sufficient public and transitional housing to meet their housing needs; 	

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		<p>(c) the Administration should narrow down the scope of "regulated tenancy" by excluding tenancy of one room in domestic premises not involving any subdivision or alteration; and</p> <p>(d) it was inappropriate to regulate the "initial rent" of SDU tenancies under the proposed tenancy control as the Administration did not have a complete set of data on the current rent level of SDU rental market.</p> <p>The Administration advised that –</p> <p>(a) when introducing the proposed tenancy control, the Administration aimed at adopting measures which were legally sound, relatively easy to administer and could be implemented speedily whilst bringing real protection for SDU tenants. Drafting a new ordinance would probably require more time for law drafting when compared to amending the Landlord and Tenant (Consolidation) Ordinance; and</p> <p>(b) there were suggestions from society that the Administration should displace SDUs which did not fully comply with the relevant regulatory requirements. Nonetheless, considering that SDUs did provide basic accommodation for some low-income families and individuals pending the availability of sufficient public and transitional housing to meet their housing needs, the Administration would like to emphasize that the objective of the Bill was not to displace SDUs.</p>	
004321 – 004827	Chairman Mr Wilson OR Administration	<p>Mr Wilson OR raised the following views/enquires –</p> <p>(a) the Administration should provide a clearer definition of SDUs under the proposed tenancy control;</p>	

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		<p>(b) whether tenancy of one room in domestic premises not involving any subdivision or alteration would be regulated under the proposed tenancy control; and</p> <p>(c) whether landlords of SDUs could terminate the tenancy agreement prematurely under the proposed tenancy control in the following scenarios:</p> <p>(i) the premises concerned was acquired by a third party for redevelopment; and</p> <p>(ii) the SDUs concerned consisted of unauthorized structures and required demolition.</p> <p>The Administration advised that –</p> <p>(a) tenancy of one room in domestic premises not involving any subdivision or alteration would be regulated under the proposed tenancy control;</p> <p>(b) it would be difficult for the Administration to determine whether an SDU involved alteration by the landlord when taking the enforcement action under the proposed tenancy control. In fact, it was common that the internal partitioning of premises in some old buildings were not shown in the building plans, allowing the landlords to subdivide the premises into a number of rooms as they wished; and</p> <p>(c) the Administration considered that the scope of proposed tenancy control should be relatively broad to cover as many SDUs as possible such that more SDU tenants could be protected.</p>	
004828 – 005612	Chairman Mr CHAN Chun-ying Administration	Mr CHAN Chun-ying noted that the legal team of the Task Force for the Study on Tenancy Control of Subdivided Units ("the	

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		<p>Task Force") had advised in its report that any new tenancy or land use restrictions imposed after the acquisition by an owner might be found to be an infringement of and a derogation from the owner's property rights, and such restrictions might be held unconstitutional unless the "proportionality test" was satisfied. He noted that similar legal issue was raised by the Legal Adviser to the Bills Committee in her letter to the Administration dated 28 July 2021. He asked whether the Administration had sought legal advice on whether the proposed tenancy control could satisfy the "proportionality test".</p> <p>Mr CHAN also raised the following suggestions/enquires –</p> <ul style="list-style-type: none">(a) noting that unauthorized building works on private lanes or yards, squatter structures or unauthorized structures erected on private land or government land, as well as "New Territories Exempted Houses" were not covered under the proposed tenancy control, he asked if there were any other types of premises or SDUs that would not be covered under the new regime; and(b) the Administration should consider imposing a cap on the level of rent per square foot for SDUs tenancy under the proposed tenancy control. <p>The Administration advised that –</p> <ul style="list-style-type: none">(a) given that tenancy control on SDUs would possibly restrict the property rights of SDU landlords, the Administration was mindful of possible challenge by members of the public in the court through judicial review of the proposed regime and thus has carefully evaluated the implications when drafting the legislative proposals;	

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		<p>(b) the Administration believed that the proposed framework of tenancy control could achieve its objective of providing a reasonable degree of protection to SDU tenants, particularly in respect of the provision of the much needed security of tenure and prevention of unwarranted rent hike upon renewal of tenancy, without unduly compromising the interests of the landlords and their property rights; and</p> <p>(c) it was estimated that about 90% of SDUs currently available in the SDU rental market would be covered under the proposed tenancy control, including SDUs that met the definition in the Report (i.e. externally accessible), cubicles, loft spaces, space capsules, bedspaces and rooftop houses.</p>	
005613 – 010222	Chairman Mr KWOK Wai-keung Administration	<p>Mr KWOK Wai-keung expressed the following views –</p> <p>(a) to avoid massive rent hikes by SDU landlords after the passage of the Bill, the Administration should set the maximum initial rent that could be charged by SDU landlords; and</p> <p>(b) the Administration's proposed capping of the maximum rate of rent increase between the first term and second term tenancies at 15% would exceed SDU tenants' ability to afford.</p> <p>The Administration responded that –</p> <p>(a) under the proposed tenancy control, the rate of rent increase between the first term and second term tenancies must not be more than the percentage change of the rental index in respect of all classes of private domestic properties ("the Index") compiled and published by Rating and Valuation Department ("RVD") in the relevant period, and capped at the level of 15%. If the</p>	

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		<p>relevant change of the Index was negative, the rent of the second term tenancy must be reduced by at least the same percentage;</p> <p>(b) whilst the Index fluctuated over the years, it recorded remarkable biennial increases exceeding 15% in seven of the past 23 years. The imposition of the 15% cap as the maximum permissible rate of rent increase could provide an additional and effective safeguard against any extreme rent hike for SDU tenants, without unduly compromising the interest of SDU landlords; and</p> <p>(c) imposing a rent cap of a relatively low level, such as 10%, might disproportionately infringe the private property rights of SDU landlords. These landlords might bring the case to the court for judicial review, or even quit the SDU rental market for good.</p>	
010223 – 010853	Chairman Mr Tony TSE Administration	<p>Mr Tony TSE raised the following views/enquires –</p> <p>(a) the proposed tenancy control should be able to provide extensive protection to grass-roots SDU tenants, including tenants who were living in SDUs that involved illegal land use and unauthorized building works;</p> <p>(b) whether the Administration would continue its enforcement actions against SDUs which involved illegal land use and unauthorized building works, such as displacement of SDUs in industrial and commercial buildings, after the passage of the Bill; and</p> <p>(c) whether the Administration would undertake to provide regular reports to LegCo on the enforcement action taken by the Buildings Department and other relevant departments/bureaux against illegal SDUs after the passage of the Bill.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that –</p> <ul style="list-style-type: none"> (a) the objective of the proposed tenancy control was to provide protection to grass-roots SDU tenants, and was not meant to legalize SDUs in industrial/commercial buildings or temporary structures; and (b) the proposed tenancy control would not prejudice law enforcement actions taken by relevant authorities against illegal SDUs under existing legislation, particularly in respect of building and fire safety. 	<p>The Administration to take action as per paragraph 4(a) of the minutes</p>
<p>010854 – 011659</p>	<p>Chairman Ms Alice MAK Administration</p>	<p>Ms Alice MAK expressed the following views –</p> <ul style="list-style-type: none"> (a) the rate of rent increase between the first term and second term tenancies should be capped at 10% instead of 15%; (b) to circumvent the new regulations, SDU landlords might request the tenants to sign a new tenancy agreement of which the rent level stated was higher than the actual level. By doing so, SDU landlords could enjoy the flexibility in increasing the actual rent level by more than the 15% cap upon completion of the tenancy agreement; and (c) SDU tenants should be provided with security of tenure for six years as the average waiting time for public rental housing was now over five years. <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) it was expected that some SDU landlords might try to circumvent the regulation by different means upon the implementation of the proposed tenancy control. To protect their own interests, tenants were advised not to sign a tenancy agreement if the rent level stated in the agreement was different 	

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		<p>from the rent level that the landlord was actually charging;</p> <p>(b) according to the survey commissioned by the Task Force, around 56% of SDU households had lived in the current SDU for more than two years. Given that the average waiting time for general applicants for public rental housing was 5.8 years as at end-March 2021, a four-year security of tenure would strike a reasonable balance between the inroads into SDU owners' private property rights and the societal benefits that can be brought to SDU tenants; and</p> <p>(c) many SDU landlords had raised concerns that if the length of security of tenure was too long, they would be bound to tolerate bad tenants, making them more selective about their tenants and thereby limiting access to housing by those with unstable financial means.</p>	
011700 – 012402	Chairman Administration	<p>The Chairman disagreed with the Administration's view that SDU landlords would quit the SDU rental market if the rate of rent increase was capped at 10% based on the following observations –</p> <p>(a) most of the SDU landlords had made considerable investment by modifying their premises into SDUs for rent; and</p> <p>(b) the profit margin enjoyed by SDU landlords would be greatly reduced if they reverted their SDUs to normal domestic units for rent.</p> <p>He also enquired whether the Administration would impose any counter-measures to dispel the concerns raised by SDU tenants that the SDU rent level might be increased significantly before the tenancy control measures came into force.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration responded that –</p> <p>(a) there were around 110 000 SDUs currently available in the SDU rental market. Should a small percentage, say 5%, of SDU landlords, consider that the proposed tenancy control not palatable and decide to quit the market for good, the number of SDUs available in the market would be instantly reduced by around 6 000 units. As the current provision of public or transitional housing was unable to fully meet public demand, the 6 000 households affected would encounter difficulty in finding a new and affordable place to live. To avoid a sharp decrease in the number of SDUs available in the rental market, the cap of rent increase should be set at a level that would not unduly compromise the interest of SDU landlords;</p> <p>(b) because of a lack of data on the existing SDU market rentals, the Administration considered it infeasible to devise an objective and administratively easy mechanism for the purpose of fairly determining the maximum initial rent the landlord might charge in respect of each of the 110 000 SDUs, which should take into account the individual characteristics of each SDU; and</p> <p>(c) under the proposed tenancy control, SDU landlords must submit tenancy information to the RVD. This would enable the Administration to collect and analyze relevant data on the existing SDU rental market, such as rent level and distribution of SDUs. With the availability of these data, the Administration would be in a better position to consider whether further measures should be implemented so as to better protect the interest of grass-roots SDU tenants.</p>	

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012403 – 013231	Chairman Ir Dr LO Wai-kwok Administration	<p>Ir Dr LO Wai-kwok noted with concern that under the proposed tenancy control, the tenancy of one room in domestic premises not involving any subdivision or alteration would fall under the scope of "regulated tenancy". As such, there would be an effect of broadening the scope of regulation to cover more domestic tenancies than originally intended. He considered that the information about number of SDUs in Hong Kong provided in the LegCo Brief was misleading, and requested the Administration to provide the number of targeted premises to be regulated by the Bill.</p> <p>The Administration clarified that –</p> <p>(a) according to the findings of the survey commissioned by the Task Force, there were some 110 000 SDUs currently available in the SDU rental market. Such number had already included rooms in domestic premises, irrespective of whether any subdivision or alteration was involved; and</p> <p>(b) landlords of domestic premises which did not involve any subdivision or alteration were still allowed to rent out rooms to tenants to make a profit albeit being subject to the proposed tenancy control.</p>	
013232 – 014019	Chairman Mr Tommy CHEUNG Administration	<p>Mr Tommy CHEUNG emphasized that safeguarding the interests of grass-roots tenants of SDUs should be the core objective of the proposed tenancy control. As such, the Administration should not broaden the scope of regulation to cover tenancies of one room in domestic premises not involving any subdivision or alteration.</p> <p>The Administration responded that –</p> <p>(a) it would be difficult for the Administration to determine whether an SDU involved alteration by the landlord</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>when taking the enforcement action under the proposed tenancy control; and</p> <p>(b) as advised by the Department of Justice, it would be legally sound to define SDU as "premises that form part of a unit of a building" under the proposed tenancy control.</p>	
014020 – 014444	Chairman Mrs Regina IP Administration	<p>Mrs Regina IP raised the following views/enquiries –</p> <p>(a) the Index on which the rate of rent increase would be based reflected the movement of rent level of all classes of private domestic properties, but not that of SDUs; and</p> <p>(b) considering that the proposed tenancy control would take effect three months after the passage of the Bill, whether the Administration would impose any counter-measures to prevent immediate rent increase and eviction of tenants by landlords during the three-month period.</p> <p>The Administration advised that –</p> <p>(a) the proposed tenancy control measures might lead to an array of unintended consequences, some of which might be unfavourable to the tenants originally intended for protection, such as immediate rent increase and eviction of tenants by landlords before the tenancy control measures came into force. However, there was no available legal tool to introduce counter-measures, such as imposition of a temporary rent freeze, to forestall such pitfalls before the enactment of the relevant legislation; and</p> <p>(b) the Administration targeted to provide 15 000 transitional housing units in the coming two years which could pose competition to the SDU rental market.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>With more housing options for grass-roots tenants in the coming years, this would help restrain the latitude of SDU landlords in considering increasing the rent level of their SDUs.</p>	
014445 – 014843	Chairman Mr KWOK Wai-keung Administration	<p>Mr KWOK Wai-keung noted that under the proposed tenancy control, when the landlords of SDUs sought reimbursement of utility charges from the tenants, the total of the apportioned sums must not exceed the amount charged in the subject utility bill. He welcomed such measure as it could protect the interest of SDU tenants.</p> <p>He also asked whether the proposed tenancy control could prevent SDU landlords from evicting the tenants by refusing to properly maintain their units.</p> <p>The Administration advised that–</p> <p>(a) under the proposed section 120AAZN of the Bill, it would be an offence for a landlord who did any act calculated to interfere with the peace or comfort of the SDU tenant or members of the tenant's household, or persistently withdrew or withheld services reasonably required for occupation of the SDU as a dwelling (e.g. maintenance and keeping in repair of drains, pipes); and</p> <p>(b) sanctions of the offence included fine and imprisonment which could provide sufficient deterrent effect to SDU landlords.</p>	
014844 – 015354	Chairman Mr Tony TSE Administration	<p>Mr Tony TSE raised the following suggestions/enquires –</p> <p>(a) the Administration should make it clear that the objective of the proposed tenancy control was to provide SDU tenants the much needed security of tenure and prevention of unwarranted rent hike upon renewal of tenancy,</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>rather than implementation of rent control; and</p> <p>(b) details of the extra resources, including resources in manpower, that would be allocated to RVD in administering the new provisions in the Bill.</p> <p>The Administration advised that extra resourced would be allocated to RVD to administer the new provisions in the Bill, including promoting public awareness of the new regulatory regime; handling enquiries; providing advisory and mediatory services on tenancy matters; publishing summary information about SDU rents reported after implementation of the new law; and taking enforcement action as appropriate.</p>	<p>The Administration to take action as per paragraph 4(b) of the minutes</p>
<p>015355 – 015740</p>	<p>Chairman Ms Alice MAK Administration</p>	<p>Ms Alice MAK pointed out that, as the Administration had no intention to propose any amendments to the Bill, she and some other members would propose amendments regarding the length of security of tenure, the cap on the level of rent increase, and the types of SDUs to be covered by the proposed tenancy control.</p> <p>She also suggested that the Administration should enhance its publicity work so as to help SDU tenants better understand their own right under the proposed tenancy control, and enquired how RVD would take enforcement action against landlords who violated the new regulations.</p> <p>The Administration advised that RVD would take up the role in administering the new provisions in the Bill, including promoting public awareness of the new regulatory regime, handling enquiries, and providing advisory and mediatory services on tenancy matters.</p>	

Time Marker	Speaker	Subject(s)	Action Required
015741 – 015850	Chairman Ir Dr LO Wai-kwok Administration	Ir Dr LO Wai-kwok requested the Administration to provide further information regarding the number of domestic premises that would be regulated by the Bill.	The Administration to take action as per paragraph 4(c) of the minutes
015851 – 020116	Chairman Administration	<p>The Chairman considered that the Administration should make a clear indication on whether it would propose any amendments to the Bill. He also raised the following suggestions/enquires –</p> <p>(a) the Administration should provide a clearer definition of SDUs under the proposed tenancy control regime; and</p> <p>(b) whether tenancy of open space capsules in premises would be covered by the proposed tenancy control.</p> <p>The Administration advised that space capsules in general would be classified as SDUs and thus covered by the proposed tenancy control. However, there were some space capsules with altered design available in the market that might not be covered by the new regime.</p>	
Agenda item II — Any other business			
020117 – 020138	Chairman Administration	Concluding remarks	