

立法會
Legislative Council

LC Paper No. CB(1)1487/20-21
(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 fourth meeting on
Tuesday, 24 August 2021, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon Vincent CHENG Wing-shun, MH, JP (Chairman)
Hon YUNG Hoi-yan, JP (Deputy Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
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
Hon Tony TSE Wai-chuen, BBS, JP

Members absent : Hon CHAN Han-pan, BBS, JP
Dr Hon CHENG Chung-tai

**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 Michelle NIEN
Legislative 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)1241/20-21(01) — Administration's consolidated
responses to issues raised in the
submissions received by the
Bills Committee
- LC Paper No. CB(1)1241/20-21(02) — Administration's response to
the letter dated 11 August 2021
from Hon Vincent CHENG
Wing-shun)

Discussion

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

II. Any other business

2. The Chairman reminded that members who intended to propose any amendments to the Bill and wished their amendments to be discussed during the upcoming meetings of the Bills Committee should submit the wording of their proposed amendments to the Secretariat as soon as practicable.

(Post-meeting note: Members were informed vide LC Paper No. CB(1)1245/20-21 on 24 August 2021 that the next meeting would be held on 30 August 2021 at 2:30 pm.)

Action

3. There being no other business, the meeting ended at 12:39 pm.

Council Business Division 1
Legislative Council Secretariat
22 November 2021

**Proceedings of the fourth meeting of the
Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2021
on Tuesday, 24 August 2021, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

| Time Marker | Speaker | Subject(s) | Action Required |
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| Agenda item I — Meeting with the Administration | | | |
| 000500 – 000648 | Chairman Administration | Opening remarks | |
| <p>Clause-by-clause examination of the Bill [The Bill (LC Paper No. CB(3)771/20-21)] [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)1148/20-21(01))]</p> | | | |
| 000649 – 001258 | Chairman Mr Tony Tse Administration | <p>Part 2: Amendments to Landlord and Tenant (Consolidation) Ordinance (Cap.7)</p> <p><u>Clause 4 – Part IVA added</u></p> <p>Part IVA: Regulated Tenancies</p> <p><i>Division 1 – Interpretation and Application</i></p> <p><i>Section 120AA. Interpretation</i></p> <p><i>Subsection (1)</i></p> <p>In response to My Tony TSE's enquiry about the definition of "subdivided unit", the Administration advised that under the Bill, "subdivided unit" meant "premises that form part of a unit of a building", irrespective of whether such premises involved illegal subdivision or alteration.</p> | |
| 001259 – 001957 | Chairman Mr KWOK Wai-keung Deputy Chairman Mr Tony TSE Assistant Legal Adviser 5 ("ALA5") Administration | <p><i>120AA. Interpretation</i></p> <p><i>Subsection (2)</i></p> <p><i>Subsection (3)</i></p> <p>Mr KWOK Wai-keung enquired whether subdivided units ("SDU") involving unauthorized building works on the roof or podium of a building would be considered as "subdivided unit" under the Bill. The</p> | |

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| | | <p>Deputy Chairman enquired whether modular housing units and container housing units that were installed on the roof-top or podium of domestic premises would be considered as "subdivided unit" as well under the Bill.</p> <p>The Administration advised that some SDUs existed in temporary structures such as "rooftop houses" and "podium houses" which might involve unauthorized building works. The proposed tenancy control would cover tenancies existing in these structures as long as they could fulfill the conditions specified in the Bill and were not excluded tenancies in Schedule 6 so that a wide range of grass-roots tenants could be afforded protection by the Bill.</p> <p>In response to Mr Tony TSE's enquiry, the Administration advised that as buildings in the Bill were not restricted to "domestic buildings", SDUs could exist in commercial buildings, and the relevant tenancies in those buildings might also be subject to tenancy control provided that they met all the conditions set out in the Bill and were not excluded tenancies in Schedule 6.</p> <p>ALA5 pointed out that a domestic unit could be formed by removing the partition wall between two units. She asked whether such kind of domestic unit would be regarded as a "unit" under the Bill.</p> <p>The Administration responded that premises that were demarcated or shown as a separate unit in the building plan of the building would fall under description (a) of the definition of "unit" under the Bill.</p> | |
| 001958 – 002340 | Chairman Mr Tony TSE Administration | <p><i>120AA. Interpretation</i></p> <p><i>Subsection (4)</i></p> <p>Mr Tony TSE asked whether the interest of a tenant could only be passed to one family member on death.</p> | |

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| | | <p>The Administration advised that, as provided under the proposed section 120AAZB of the Bill, only one family member of a deceased tenant was entitled to the subsisting benefits and protection under the regulated tenancy at one time. If two or more family members were residing with the deceased tenant at the relevant time, they should reach an agreement among themselves as to who should be entitled to the specified interest. If the family members were unable to reach an agreement, such matter must be referred to the Lands Tribunal for a determination.</p> <p>In response to Mr TSE's further enquiries, the Administration advised that the Bill did not impose any restriction on any change in the number of occupiers in an SDU after the death of a tenant.</p> | |
| 002341 – 002426 | Chairman Administration | <p><i>120AA. Interpretation</i></p> <p><i>Subsection (5)</i></p> <p>Members raised no questions.</p> | |
| 002427 – 002700 | Chairman Mr Tony TSE Administration | <p><i>120AAB. Application of this Part</i></p> <p><i>Subsection (1)</i></p> <p>In response to Mr Tony TSE's enquiries, the Administration advised that the proposed Part IVA of Cap. 7 in Clause 4 of the Bill applied to a tenancy only if all the conditions set out in subsections (1)(a) to (1)(e) were satisfied and the tenancy was not one specified in Schedule 6, such that tenancies of SDUs held from companies would not be regulated under the Bill.</p> | |
| 002701 – 004110 | Chairman Mr Tony TSE Mr Wilson OR Administration | <p><i>120AAB. Application of this Part</i></p> <p><i>Subsection (2)</i></p> <p>Mr Tony TSE enquired whether tenancies under the following scenarios would be regarded as a regulated tenancy –</p> | |

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| | | <p>(a) an SDU tenancy in industrial buildings of which the tenancy agreement signed between the tenant and landlord did not indicate that the tenancy was for domestic purposes; and</p> <p>(b) tenancy of premises in industrial buildings of which the tenants lived in the premises without seeking the permission from the landlord.</p> <p>The Administration advised that –</p> <p>(a) as provided by the Bill, a basket of factors should be taken into account to determine whether a tenancy was indeed a domestic tenancy. A person having an interest in any premises, including a tenant of the premises, might apply to the Lands Tribunal to determine whether or not a tenancy for the premises was a regulated tenancy, including whether it was a domestic tenancy for the purposes of the proposed section 120AAB(1)(b) in case of dispute; and</p> <p>(b) under the proposed section 120AAH of the Bill, if there was not sufficient evidence showing that any premises were let for a particular purpose, the purpose of the tenancy of the premises was to be determined by the primary user of the premises. That said, the proposed section 120AAI provided that if the premises were being used as a dwelling in breach of the tenancy, the onus was on the tenant to establish that the change of user had been agreed to by the landlord. In order to enjoy the protection under the new tenancy control regime, the tenants of premises in industrial buildings who used the premises for dwellings in breach of the tenancy would be required to establish landlords' agreement, whether expressly or by implication, to the change of user</p> | |

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| | | <p>of the premises. Such requirement could protect the interests of landlords who did not have the intention to let the premises for domestic purpose or might not have sufficient knowledge or control over the conduct of their lessees within the premises during the term of the tenancy.</p> <p>The Chairman, Mr Tony TSE and Mr Wilson OR suggested that the Administration should provide adequate protection to tenants who lived in SDUs in industrial buildings, in particular those who were forced to move out of their SDUs due to the enforcement actions against illegal domestic use in industrial premises taken by the relevant departments.</p> | |
| 004111 – 004230 | Chairman Administration | <p><i>120AAB. Application of this Part</i></p> <p><i>Subsection (3)</i></p> <p>Members raised no questions.</p> | |
| 004231 – 004629 | Chairman ALA5 Administration | <p><i>120AAC. Amendment of Schedule 6</i></p> <p><u>Clause 8 – Schedules 6 and 7 added</u></p> <p>Schedule 6</p> <p><i>Tenancies Excluded from Application of Part IVA</i></p> <p>ALA5 asked whether a sub-tenancy created out of a tenancy held from one of the five parties listed in the proposed section 2(c) of Schedule 6 would be an excluded tenancy.</p> <p>The Administration answered in the negative and advised that only tenancies held from the five parties listed in section 2(c) of Schedule 6 would be regarded as excluded tenancies.</p> <p>The Chairman pointed out that it was common for the Urban Renewal Authority to sublet transition housing units to tenants</p> | |

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| | | <p>via non-governmental organizations. He asked whether such kind of tenancy would be excluded under the Bill.</p> <p>The Administration advised that under the proposed section 2(e) of Schedule 6, a tenancy held from a social services organization of a housing unit provided by the organization would be regarded as an excluded tenancy.</p> | |
| 004630 – 004708 | Chairman Administration | <p><i>Division 2 – Determination relating to Regulated Tenancy</i></p> <p><i>Subdivision 1 – General Provisions</i></p> <p><i>120AAD. Interpretation</i></p> <p><i>120AAE. Application to Tribunal</i></p> <p>Members raised no questions.</p> | |
| 004709 – 004905 | Chairman ALA5 Administration | <p><i>120AAF. Determination by Tribunal</i></p> <p>ALA5 asked whether a determination made by the Tribunal under the proposed section 120AAF(1) of the Bill was final or could be subject to appeal; and if it was the latter case, the grounds of appeal and whether it was appropriate to provide for the same in the Bill.</p> <p>The Administration advised that while there was no express provision providing for the right to appeal against a determination made by the Lands Tribunal under the proposed section 120AAF(1) of the Bill, a party to the relevant proceedings might, pursuant to section 11(2) of the Lands Tribunal Ordinance (Cap.17), appeal to the Court of Appeal against such determination on the ground that it was erroneous in point of law, provided that leave to appeal had been granted by the Lands Tribunal or the Court of Appeal under section 11AA of the Lands Tribunal Ordinance.</p> | |

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| 004906 – 005135 | Chairman Administration | <p><i>Subdivision 2 — Domestic Tenancy</i></p> <p><i>120AAG. Purpose specified in tenancy</i></p> <p><i>120AAH. Purpose for which premises are actually used</i></p> <p><i>120AAI. Tenant to establish landlord's agreement to change of user as dwelling</i></p> <p><i>120AAJ. Purpose of sub-tenancy subject to superior tenancy</i></p> <p>Members raised no questions.</p> | |
| 005136– 005420 | Chairman Mr KWOK Wai-keung Administration | <p><i>120AAK. Use of premises other than as dwelling</i></p> <p><i>120AAL. Other matters to be taken into account</i></p> <p>Mr KWOK Wai-keung pointed out that some unlicensed guesthouses were offering accommodation on a monthly basis. He asked whether the tenancy arising from renting a room of unlicensed guesthouse on a monthly basis would be regarded as a regulated tenancy under the Bill.</p> <p>The Administration advised that –</p> <p>(a) under the proposed section 120AAK, the use of any premises as a boarding or lodging house would be regarded as a use other than as a dwelling. If any premises were to be used for the purpose of a boarding or lodging house, the premises were not used as a dwelling; and</p> <p>(b) whether renting a room in a guesthouse, whether licensed or not, constituted a domestic tenancy or a regulated tenancy for the purposes of the proposed Part IVA would depend on the facts and circumstances of each case.</p> | |

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| 005421 – 005727 | Chairman Mr Tony TSE Administration | <p><i>Subdivision 3 — Tenant's Own Dwelling</i></p> <p><i>120AAM. Tenant's own dwelling presumed</i></p> <p><i>120AAN. Specified purpose may be disregarded</i></p> <p>Mr Tony TSE noted that, as provided by the proposed section 120AAN of the Bill, the Lands Tribunal might determine the premises were indeed let for the tenant's own dwelling despite the tenancy specified in writing that the premises were not let for the tenant's own dwelling. He further pointed out that some tenants might live in premises in industrial buildings whilst the landlords of the premises concerned had no intention to let the premises for domestic purposes. To avoid the tenancy being determined as a domestic tenancy by the Lands Tribunal, he suggested that landlords of premises in industrial buildings should be aware of the conduct of their tenants within the premises.</p> | |
| 005728 – 010626 | Chairman Mr Tony TSE Mr Wilson OR Administration | <p><i>Division 3 — Regulated Cycle</i></p> <p><i>Subdivision 1 — General Provisions</i></p> <p><i>120AAO. Regulated cycle of tenancies</i></p> <p>The Chairman enquired about the considerations for the Administration to provide a security of tenure for four years, instead of six years as suggested by several Members of the Bills Committee, under the Bill.</p> <p>The Administration advised that, according to the survey commissioned by the Task Force for the Study on Tenancy Control of Subdivided Units ("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-</p> | |

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| | | <p>year security of tenure would strike a reasonable balance between the inroads into SDU owners' private property rights and the societal benefits that could be brought to SDU tenants</p> <p>Mr Tony TSE raised the following enquiries –</p> <ul style="list-style-type: none"> (a) whether the term of a regulated tenancy was fixed at two years; and (b) whether tenancy agreements commencing before the commencement date of the Bill would be turned into regulated tenancies with a two-year fixed term automatically after the passage of the Bill. <p>The Administration advised that –</p> <ul style="list-style-type: none"> (a) under the proposed tenancy control, a person have an interest in any premises, including the tenant or landlord of the premises, could bring the case to the Lands Tribunal to determine whether a tenancy was a regulated tenancy in case of disputes; (b) the term of a regulated tenancy would be fixed at two years; and (c) the terms as well as rights and obligations of the landlord and the tenant under fixed-term tenancies which commenced before the commencement date of the Bill would not be affected by the proposed tenancy control. The Bill would only apply to fixed-term tenancies which commenced on or after the commencement date of the Bill, and periodic tenancies with a period commencing on or straddling the commencement date of the Bill. <p>In response to Mr Wilson OR's enquiries, the Administration advised that, if agreed by both parties, the landlord and tenant were</p> | |

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| | | free to start a new cycle of regulated tenancies upon the completion of a regulated cycle. | |
| 010627 – 010947 | Chairman Mr Tony TSE Administration | <p><i>120AAP. First term tenancy</i></p> <p>Mr Tony TSE considered that, without the imposition of initial rent, the rental level of SDU would be largely decided by the landlords, meaning that the level would still be kept at a high level after the passage of the Bill. The proposed tenancy control could only offer little help to SDU tenants as they would not enjoy instant reduction of rent.</p> <p>The Chairman asked whether the Administration would work out a timetable for regulating the initial rent of SDUs in the future.</p> <p>The Administration advised that –</p> <p>(a) because of a lack of data on the existing SDU market rentals, it was infeasible to devise an objective and administratively easy mechanism for the purpose of fairly determining the maximum initial rent the landlord might charge;</p> <p>(b) SDU rental information would be collected after the implementation of the new law. The Administration would analyze the data collected to decide whether further measures should be implemented to better protect the interests of SDU tenants; and</p> <p>(c) the Administration would also make reference to the views and suggestions raised by Members during the meetings of the Bills Committee in the process.</p> | |
| 010948 – 011500 | Chairman Mr Tommy CHEUNG | <p>Mr Tommy CHEUNG raised the following views –</p> <p>(a) the intention of the implementation of the proposed tenancy control should be</p> | |

| Time Marker | Speaker | Subject(s) | Action Required |
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| | | <p>safeguarding the interests of grass-roots tenants of SDUs. As such, tenancy of one room rented out in a domestic flat which was occupied by the landlord and did not involve any subdivision or alteration should not be included in the scope of regulation. In regulating such type of tenancy, the Bill would have an effect of broadening the scope of regulation to cover more domestic tenancies than originally intended; and</p> <p>(b) he would propose an amendment to the Bill regarding tenancy of one room rented out in a domestic flat. Under the proposed amendment, tenancy of one room in domestic premises would be an excluded tenancy" if both the landlord and tenant resided in the same premises and there were no more than two households in total living in the premises concerned.</p> | |
| 011501 – 012328 | Chairman Mrs Regina IP Administration | <p>Mrs Regina IP raised the following views/enquiries –</p> <p>(a) the definition of "unit" and "subdivided unit" under the Bill;</p> <p>(b) whether rooms in premises which were not further subdivided or altered by landlords as being different from the building plans would be defined as a "unit" or a "subdivided unit" under the Bill;</p> <p>(c) the Administration should be able to distinguish whether rooms in a premises were resulted from subdivision or alteration by landlords by referring to the building plans of the premises, making it viable to exclude tenancy of rooms in a domestic premises which were not resulted from any subdivision or alteration from the scope of regulation, and</p> | |

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| | | <p>(d) whether the requirements under the proposed tenancy control would be inconsistent with the requirements set out in the Bedspace Apartments Ordinance (Cap. 447) ("BAO").</p> <p>The Administration advised that –</p> <p>(a) under the proposed section 120AA of the Bill, "unit", in relation to a building, meant premises that were demarcated or shown as a separate unit in the building plan of the building, or premises that are referred to in the deed of mutual covenant of the building as a unit the owner of which was entitled to its exclusive possession as opposed to the owners or occupiers of other parts of the building, and "subdivided unit" was defined as "premises that form part of a unit of a building";</p> <p>(b) It was common that the internal partitioning of premises in some old buildings were not shown in the building plans, where the landlords could "subdivide" the premises into a number of rooms as they wished;</p> <p>(c) by defining SDU as "premises that form part of a unit of a building", the proposed tenancy control could achieve its policy objective of covering as many SDUs as possible, such as bedspaces and space capsules which might not involve installation of physical partitions; and</p> <p>(d) the scope of regulation of the Bill and BAO were different in nature. The Bill regulated the tenancy arrangements between SDU landlords and tenants, particularly in respect of the provision of the security of tenure, regulation of the rate of rent increase upon tenancy renewal, and prohibition of over-charging of specified utilities and services fees by landlords, whereas</p> | |

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| | | <p>BAO provided that any flat in which there were 12 or more bedspaces used or intended to be used as sleeping accommodation for individuals under rental agreements must obtain a licence or a certificate of exemption before commencing operation.</p> | |
| 012329 – 013553 | <p>Chairman Ir Dr LO Wai-kwok Administration</p> | <p>Ir Dr LO Wai-kwok pointed out that, according to 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, "externally accessible" was one of the criteria when defining SDU. However, SDU was now defined as "premises that form part of a unit of a building" under the Bill, meaning that tenancy of one room in domestic premises not involving any subdivision or alteration would be regulated in the future. He was dissatisfied with the Administration's decision as the Bill would have an effect of broadening the scope of regulation to cover more domestic tenancies than originally intended.</p> <p>The Administration advised that –</p> <p>(a) in the survey commissioned by the Task Force in 2020, there were some 110 000 SDUs in Hong Kong. Such figures had already included SDUs that were defined as SDUs in the Report (i.e. SDUs which were externally accessible), as well as certain other types of inadequate housings which were not defined as SDUs in the Report, such as cubicles, loft spaces, space capsules, bedspaces and rooftop houses;</p> <p>(b) there had never been an official definition of SDU. By defining SDUs as "premises that form part of a unit of a building", the proposed tenancy control could cover different kinds of SDUs, fulfilling its policy objective in protecting a wide range of grass-roots tenants;</p> | |

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| | | <p>(c) in the survey commissioned by the Task Force in 2020, premises with one room rented out were included in the category of "cubicles", and there were 3 415 cubicles in the SDU rental market. The institution conducting the survey advised that it was not common for landlords to rent out extra rooms of their premises to tenants for domestic purpose as their field officers had encountered very few such cases; and</p> <p>(d) under the "Long Term Housing Strategy", housing units that were shared with other households were regarded as inadequate housing.</p> | |
| 013554 – 014111 | Chairman Mr Tommy CHEUNG | Mr Tommy CHEUNG reiterated his views on the definition of SDUs under the proposed tenancy control, and his intention to propose amendments to the Bill | |
| 014112 – 014202 | Chairman Mrs Regina IP Administration | Mrs Regina IP's comment and the Administration's response regarding who among the Administration's representatives should respond to views and enquires raised by Members at the meeting | |
| 014203 – 014523 | Chairman Administration | <p><i>120AAQ. Deemed first term tenancy in certain circumstances</i></p> <p>In response to the Chairman's enquiries, the Administration advised that the terms as well as rights and obligations of the landlord and the tenant under fixed-term tenancies which commenced before the commencement date of the Bill would not be affected. The Bill would only apply to fixed-term tenancies that commenced on or after the commencement date of the Bill and periodic tenancies with a period commencing on or straddling the commencement date of the Bill.</p> | |

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| 014524 – 014621 | Chairman Administration | <p><i>120AAR. Tenant is entitled to second term tenancy</i></p> <p>Members raised no questions.</p> | |
| 014622 – 014924 | Chairman Administration | <p><i>Subdivision 2 — Second Term Offer</i></p> <p><i>120AAS. Second term offer</i></p> <p>In response to the Chairman's enquiries, the Administration advised that –</p> <p>(a) landlords and tenants were required to make and accept a second term offer via Form AR1, a specified form to be prepared by the Rating and Valuation Department; and</p> <p>(b) under the proposed section 120AA of the Bill, "offer period", in relation to a second term offer, meant the period of the second calendar month immediately before the calendar month in which the purported second term tenancy commenced.</p> | |
| 014925 – 015737 | Chairman Administration | <p><i>120AAT. Landlord may make more than one second term offer</i></p> <p><i>120AAU. Tenant's acceptance of second term offer</i></p> <p><i>120AAV. Tenant's failure to notify acceptance of second term offer</i></p> <p><i>120AAW. Deemed second term offer by landlord</i></p> <p><i>120AAX. Second term offer pending court order</i></p> <p><i>120AAY. Lapse of second term offer in certain circumstances</i></p> <p>Members raised no questions.</p> | |

| Time Marker | Speaker | Subject(s) | Action Required |
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| Agenda item II — Any other business | | | |
| 015738 – 015844 | Chairman Administration | Meeting arrangements | |

Council Business Division 1
Legislative Council Secretariat
22 November 2021