

# 立法會 *Legislative Council*

LC Paper No. CB(1)1148/20-21(03)

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

### **Background brief**

#### **Purpose**

This paper provides background information and summarizes the discussions at meetings of the Legislative Council ("LegCo") and its committees on issues relating to tenancy control of subdivided units ("SDUs").

#### **Background**

2. All along there have been suggestions from members of the public urging the Administration to re-introduce tenancy control, such as control measures on rents and tenure of SDUs, with a view to safeguarding the interest of grass-roots tenants.<sup>1</sup> In 2014, the Administration conducted a study on Hong Kong's experience and overseas experience in implementing tenancy control and briefed the Panel on Housing ("the Panel") on the research findings and observations.<sup>2</sup> The Administration elaborated its views on tenancy control in the Long Term Housing Strategy promulgated in end-2014.

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<sup>1</sup> As mentioned in LC Paper No. [IN16/16-17](#), 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 December 1998, rent control was abolished, and in July 2004, the security of tenure was removed.

<sup>2</sup> The Panel discussed the Administration's research findings and observations on the issue of tenancy control at the meeting on [7 July 2014](#) and received public views on the subject at the meeting on [24 July 2014](#).

3. The Government has since reiterated on various occasions that tenancy control is a highly controversial issue and needs to be handled in a cautious manner.<sup>3</sup>

4. On 14 January 2020, the Chief Executive ("CE") announced the setting up of a task force to study feasible options on the tenancy control of SDUs on the ground that without proper rental regulations, rental subsidies or electricity and water charges reductions provided by the Government would hardly benefit the large number of families<sup>4</sup> living in SDUs who have been bearing heavy rents and unfavourable rental arrangements for a long time. On 16 April 2020, THB announced the appointment of the Task Force for Study on Tenancy Control of Subdivided Units ("the Task Force") to study and report to the Government the situation of SDUs in Hong Kong and advise the Government on whether tenancy control of SDUs should be implemented and the possible options.

5. It recommends that the Government should implement suitable tenancy control on SDUs to safeguard the interests of grass-roots tenants of SDUs, and puts forth a regulatory framework and host of measures for effecting the proposed tenancy control on SDUs, including mandating the signing of a written tenancy agreement by SDU landlords and tenants stipulating the rights and obligations of both parties, providing a four-year security of tenure to tenants, restricting the level of rent increase with reference to the movement of the relevant rental index of private domestic properties compiled and published by the Rating and Valuation Department ("RVD") and subject to a cap of 15%, and prohibiting landlords from overcharging tenants utility fees, etc.

6. The Government has indicated that it accepts in principle the recommendations of the report of the Task Force and considers that the proposed tenancy control framework as recommended by the Task Force, if implemented, could achieve its policy objective of providing a reasonable degree of protection to SDU tenants without unduly compromising the interests of the landlords and their property rights.

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<sup>3</sup> The Administration considered that public views on the subject of tenancy control were diverse and there was no consensus in the community over the issue yet. Weighing the pros and cons, and considering the potential adverse consequences associated with tenancy control measures which rendered them counter-productive, the Administration was of the view that it would not be in the interest of inadequately-housed households or the general public to introduce any tenancy control measures in Hong Kong (see paragraphs 6.15 to 6.18 in LC Paper No. [CB\(1\)352/14-15\(01\)](#)).

<sup>4</sup> According to the Long Term Housing Strategy Annual Progress Report 2019, it was estimated that there were 96 400 households living in SDUs.

## **Landlord and Tenant (Consolidation) (Amendment) Bill 2021**

7. The Landlord and Tenant (Consolidation) (Amendment) Bill 2021 ("the Bill") was gazetted on 9 July 2021 and received its First Reading at the LegCo meeting of 14 July 2021. The Bill seeks to amend the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) ("the Ordinance") to regulate tenancies of SDUs of buildings, and to provide for related matters. According to the Administration, the proposals in the Bill as detailed in paragraphs 9 to 29 of the LegCo Brief issued by the Transport and Housing Bureau ("THB") on 6 July 2021 have been formulated along the recommendations of the Task Force.

8. The key provisions of the Bill contain the following:

- (a) Clause 4 in Part 2 of the Bill seeks to add a new Part IVA (containing the proposed new sections 120AA to 120AAZZG) to the Ordinance to provide for the regulation of domestic tenancies in respect of SDUs. An SDU is proposed to be defined as premises that form part of a unit of a building (i.e. a building or structure constructed or adapted for use in accordance with a building plan) (proposed new section 120AA(1));
- (b) a regulated cycle of tenancies for an SDU would comprise two consecutive regulated tenancies for the SDU, each for a term of two years. A tenant of a first term tenancy would be entitled to a second term tenancy of the same regulated cycle, thus enjoying a total of four years of security of tenure (proposed new sections 120AAO and 120AAR);
- (c) the amount of rent payable by the tenant may not be increased during the term of tenancy but can be reduced by the landlord (proposed new section 120AAZD);
- (d) there would be a cap on the rate of rent increase for the second term tenancy. The rate of rent increase for the second term tenancy must not exceed (a) the percentage change of the territory-wide rental index for all classes of private domestic properties compiled and published by RVD in the relevant period ("control percentage"); or (b) 15%, whichever is the lower (proposed new section 120AAZE);

- (e) certain mandatory terms (set out in the proposed Schedule 7 to Cap. 7) providing for the respective obligations of the landlord and the tenant would be impliedly incorporated into every regulated tenancy and would be binding the parties;
- (f) the new sections 120AAZK to 120AAZN set out the provisions relating to offences and penalties under the new Part IVA. A landlord may commit an offence if he requires the tenant to pay, or receiving from the tenant, any money other than the rent, deposit (which must not be more than two months' rent), reimbursement of charges for any of the specified utilities and services (i.e. water, electricity, gas, communication services) payable by the tenant under the tenancy, and damages for the tenant's breach of the tenancy (proposed new section 120AAZK);
- (g) the new sections 120AAZP to 120AAZZ set out the powers and obligations of Commissioner of Rating and Valuation under the new Part IVA; and
- (h) Part 3 of the Bill (Clauses 9 to 17) seeks to make related amendments to various enactments including the Lands Tribunal Ordinance (Cap. 17), Land Registration Ordinance (Cap. 128), Government Rent (Assessment and Collection) Ordinance (Cap. 515), etc. in connection with the implementation of the regulated tenancies under the new Part IVA.

9. Details of the major provisions of the Bill are set out in paragraphs 30 of the LegCo Brief and paragraphs 4 to 13 of the Legal Service Division Report on the Bill (LC Paper No. LS91/20-21). The Bill, if passed, would come into operation on the expiry of three months beginning on the day on which the enacted Ordinance is published in the Gazette.

### **Discussions on issues relating to tenancy control of subdivided units**

10. Members have expressed views on matters relating to tenancy control of SDUs at meetings of LegCo and its committees. The Panel and the Subcommittee on Issues Relating to Transitional Housing and Subdivided Units ("the Subcommittee") under the Panel received briefings on the work of the Task Force on 1 February and 25 February 2021, respectively. The

Subcommittee discussed the Task Force's recommendations on 26 April 2021. The major views and concerns of Members are summarized in the ensuing paragraphs.

### Rent control measures and cash allowance

11. Members expressed grave concern about the impact of high flat rentals on low-income tenants, and enquired whether the Administration would consider afresh implementing rent control or work out new measures to effectively help members of the public to rent private housing at reasonable rents.

12. The Administration advised that tenancy control measures might lead to an array of unintended counter-productive consequences, including reducing supply of rented accommodation; encouraging landlords to be more selective about their tenants, thereby limiting access to adequate housing by those with unstable financial means (e.g. daily-waged workers), ethnic minorities, persons with disabilities, and other socially disadvantaged groups; encouraging certain behaviour from landlords to offset the impact of the tenancy control measures (including increasing initial rent and requiring the tenants to pay excessive miscellaneous charges, etc.); and discouraging proper maintenance of rented accommodation by landlords.

13. In view of the Government's plan announced in the 2019 Policy Address to study whether to implement a scheme to provide cash allowance to low-income households on a regular basis, Members urged the Administration to explore in parallel the feasibility of introducing tenancy control on SDUs and implementing measures on rent control accordingly. When discussing the proposal on the Cash Allowance Trial Scheme ("the Scheme") on 14 January 2021, the Panel passed two motions calling on the Administration to implement the Scheme and tenancy control of SDUs in parallel in order that the cash allowance received by low-income families would not be "gnawed away" by rent increases.

14. The Administration advised that with the cash allowance under the Scheme would be provided to eligible General Applicant households (i.e. Families with two or more persons and elderly single-person applicants) not living in public housing, not receiving the CSSA and who had waited for public rental housing ("PRH") for more than three years, until they were offered the first PRH allocation. The Administration stressed that with the objective to alleviate the difficulties faced by grass-roots households, the proposed cash allowance was not a "rental subsidy", and its rate was not linked to the rental level of private housing.

### Tenancy control on residential properties below a certain rateable value

15. Some Members urged the Administration to consider implementing "partial tenancy control" as a short-term measure, which would target at SDUs and cubicle apartments and would limit the rate of rent increase on the basis of the percentage of increase, the rate of inflation or the market rent of similar flats in the nearby areas.

16. The Administration advised that as seen from the tenancy control experience of some overseas economies, if tenancy control was imposed only on a particular market sector (often on lower-end residential properties), some tenants who were unable to rent flats in the controlled sector might be forced to seek accommodation in the uncontrolled sector, hence pushing up the rental level of the latter.

### Tenancy arrangements

17. When discussing the work progress of the Task Force at the Panel meeting on 1 February 2021, Members expressed concern about SDU tenants' lack of bargaining power and inability to protect their basic rights. Members urged that the Government should devise and mandatorily require the landlord and the tenant to sign a standard tenancy agreement, which should set out a reasonable notice period for moving out, provide an option for the tenant to renew the tenancy, as well as stipulate the responsibility of repair/maintenance of the SDU; and that the Government should restrict the rate of rent increase, enhance regulation of the issue of "over-charging" of water and electricity bills.

18. The Administration advised that the Task Force had a relatively clear consensus that a standard tenancy agreement for SDUs should be devised, which should, inter alia, set out the rights and obligations of both the landlord and the tenant, the term and period of tenancy, rent, notice period for early termination of tenancy, the arrangements concerning electricity and water charges and other miscellaneous charges. As regards the tenants' right to renew the tenancy, the Task Force had to further discuss and deliberate on whether a certain degree of security of tenure should be offered to SDU tenants and whether some form of regulation should be enforced on the rate of rent increase upon tenancy renewal, etc, as well as the possible options. Furthermore, the Task Force would continue to explore ways to enhance information available relating to rental of SDUs, so as to help grass-roots tenants acquire a better knowledge of the respective rights and obligations of the landlord and the tenant, and secure a more reasonable rent level.

### Coverage of tenancy control of subdivided units

19. Members asked whether tenancy control of SDUs and related measures if implemented would apply to inadequately-housed households ("IHHs") other than SDUs, including bedspaces in private housing or cage homes. They opined that as those grass-roots households who were living in illegal SDUs, such as those in industrial buildings, might be even more vulnerable than those living in SDUs in domestic buildings, the Administration should also apply tenancy control to those units.

20. The Administration advised that that the Task Force considered that tenancy control should also apply to bedspaces in private housing. Members of the public generally supported the introduction of tenancy control on SDUs in Hong Kong as early as possible, and the Administration had noted Members' views at the meeting that the measure should also target at other IHHs, including bedspaces in private housing. As regards whether the coverage of the measure should be extended to those non-domestic premises which were being used for domestic purpose such as SDUs in industrial buildings and on agricultural land, illegal squatters, etc., the Administration would consider the issue carefully taking into account the housing need of the families residing in such premises, the relevant government policy and Members' views.

### Rent and rate of rent increase

21. Members opined that tenancy control of SDUs should include restrictions on the rate of rent increases of SDUs and enquired whether the Administration would make reference to the rate of rent increases of PRH when setting caps on the rate of SDU rent increases. Noting that the Task Force might propose setting the maximum rate of rent increase at 15% upon renewal of SDU tenancy, Members expressed concern that such a cap was too high to be affordable to SDU tenants and should be set at 10% at most, i.e. the rent increase ceiling of PRH units under the management of the Hong Kong Housing Authority ("HA").

22. The Administration advised that the 15% rent increase between the original regulated tenancy and the renewed regulated tenancy proposed by the Task Force was only a maximum level rather than the prescribed level which had to be followed regardless of other factors. More importantly, the rate of increase should not be more than the percentage change compared to two years ago of the private domestic rental index (all classes) of RVD in the relevant period, which recorded a negative value in 9 out of the past 23 years.

Under the future legislation, if the relevant change of the above RVD rental index was negative, the rent of the renewed regulated tenancy had to be decreased by at least the same percentage. There was a need to balance the interests of both tenants and owners in determining the optimum rate. New tenancy restrictions imposed after acquisition by an owner might constitute an infringement of or a derogation from an owner's property rights and be held by the court as contravention of the Basic Law, unless such measures would not disproportionately infringe on the private property rights of landowners whilst protecting the interests of SDU tenants. Noting Members' concern about the proposed maximum rate of rent increase of 15%, the Administration pointed out that while HA as a public body had the social responsibility to provide public housing to needy Hong Kong residents at an affordable rent level, SDU owners were operating a business on market principles. Direct comparison between the two was inappropriate.

#### Initial rent of a new tenancy

23. Some Members asked whether the Administration would make reference to the experience of enforcing rent control in overseas jurisdictions, such as Germany, and control not only the rate of rent increases of SDUs, but also prevent the landlords' charging of a high initial rent of a new tenancy for making up for the decreased rental income in future.

24. The Administration replied that if tenancy control of SDUs was to be enforced, the Government should consider adopting measures which were more legally sound and relatively easier to administer, could be implemented speedily, whilst bringing real protection for SDU tenants. In considering whether tenancy control of SDUs should also control the initial rent of new tenancies, the Government needed to take into account the Hong Kong Bill of Rights Ordinance (Cap. 383) which had come into force in Hong Kong on 8 June 1991 and the Basic Law which had offered clear protection of private property rights. It was important to ensure that the measure should not disproportionately infringe on the private property rights of landowners whilst protecting the interests of tenants.

#### Sub-letting

25. Members enquired how the Administration would prevent loopholes in the tenancy control of SDUs sub-let by the SDU landlord through a head lessee under his control. The Administration advised that legislating against sub-letting, which was common in the SDU market, was not a viable option as it would drastically reduce the supply of SDUs in the market. Notwithstanding, the Administration would continue to look at ways to



protect the tenants' interests while allowing sub-letting to continue to operate in the market.

#### Implementation and enforcement issues

26. Some Members considered that anti-circumvention and "immediate effect" provisions should be introduced in the enabling legislation to prevent SDU owners from initiating pre-emptive rent increase and eviction of tenants prior to the implementation of tenancy control measures, and charging tenants miscellaneous fees and charges which would make it difficult to determine the actual rent level.

27. The Administration advised that the proposed tenancy control measures could balance law and reason, and achieve the policy objective of providing a reasonable degree of protection for SDU tenants, particularly in respect of the provision of the much needed security of tenure and prevention of unwarranted rent hike, without unduly compromising the interests of the landlords and their property rights. So far, no massive pre-emptive rent hikes had been noticed in the SDU market.

28. Members enquired whether disputes between SDU landlords and tenants would be arbitrated through RVD and the Lands Tribunal after the implementation of tenancy control of SDUs; whether the Administration would put in place a mediation mechanism to resolve the disputes; and whether THB, instead of the Lands Tribunal, would be responsible for dealing with the disputes that could not be resolved by mediation.

29. The Administration replied that if the law required the landlord and the tenant to sign a standard tenancy agreement in future, relevant government departments would enforce the requirement on the landlord and the tenant who had not signed a tenancy agreement or had entered into an agreement containing terms and conditions which were inconsistent with the standard tenancy agreement. RVD and the Lands Tribunal, etc. might need to take part in the enforcement works relating to tenancy control of SDUs, and the Administration would continue to communicate with enforcement bodies on the resources required for the enforcement of the measure.

30. Regarding Members' enquiries about the resources needed for implementing tenancy control measures, the Administration replied that it anticipated that substantial resources would be required in enforcement against contraventions and handling related disputes given the large number of SDU households in Hong Kong. RVD and the Lands Tribunal would

face extra workload and would bid for additional resources if the situation warranted.

31. Some Members suggested the setting up of complaint or assistance hotlines on overcharging of miscellaneous expenses by SDU owners, similar to the hotline undertaken to be set up by the Water Supplies Department to handle complaints about overcharging of water charges upon the passage of the Waterworks (Waterworks Regulations)(Amendment) Bill 2021.

32. The Administration advised that under the proposed arrangement governing SDU utility charges, the total of the apportioned sums for all tenants should not exceed the amount charged in the subject utility bill. RVD now operated a general hotline to handle enquiries, and would consider the setting up of a dedicated hotline to handle SDU-related complaints.

### Rental information platform

33. Some Members opined that IHHs and political parties were well aware of the situation of SDUs such as their rentals, and it was not necessary for the Administration to rely on NGOs to develop an information platform for providing SDU rental information to needy households and the general public. The Home Affairs Department ("HAD") also had the responsibilities and resources to collect and provide information about SDUs through its district network.

34. The Administration replied that THB would discuss with HAD in light of the above views. As there were about 120 000 IHHs at different districts over the territory, the Administration would welcome NGOs and other community organizations to assist such households and provide useful information to them.

### **Council motions and questions**

35. The Council passed a motion on "Studying the enactment of an ordinance on regulating subdivided units" at its meeting of 5 December 2018. The wording of the motion is at **Appendix I**.

36. Questions on various issues related to water and electricity charges of tenants in inadequate housing, and problems of and support for tenants in inadequate housing were raised at the Council meetings on 11 January 2017, 21 November 2018 and 9 December 2020. The Council questions and the Administration's replies are hyperlinked in **Appendix II**.

**Relevant papers**

37. A list of relevant papers is set out in **Appendix II**.

Council Business Division 1  
Legislative Council Secretariat  
28 July 2021

**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;
- (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;
- (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.

## Appendix II

### List of relevant papers

Council/ Committee	Date of meeting	Papers
Panel on Housing	8 November 2019	Administration's paper (LC Paper No. <a href="#">CB(1)32/19-20(01)</a> )  Minutes of meeting (LC Paper No. <a href="#">CB(1)492/19-20</a> )  Administration's supplementary paper (LC Paper No. <a href="#">CB(1)373/19-20(01)</a> )
Panel on Housing	14 January 2021	Administration's paper (LC Paper No. <a href="#">CB(1)293/20-21(03)</a> )
Panel on Housing	1 February 2021	Administration's paper (LC Paper No. <a href="#">CB(1)504/20-21(06)</a> )
Subcommittee on Issues Relating to Transitional Housing and Subdivided Units	25 February 2021	Administration's paper (LC Paper No. <a href="#">CB(1)601/20-21(02)</a> )
Subcommittee on Issues Relating to Transitional Housing and Subdivided Units	26 April 2021	Administration's paper (LC Paper No. <a href="#">CB(1)820/20-21(01)</a> )

**Hyperlinks to relevant Council Questions and Motions:**

<b>Date</b>	<b>Council Question/Motion</b>
11 January 2017	<a href="#">Council question</a> on collection of electricity and water charges by landlords from tenants of inadequate housing
21 November 2018	<a href="#">Council question</a> on support for tenants in inadequate housing
9 December 2020	<a href="#">Council question</a> on housing problems of the grass-roots families
28 November 2018 and 5 December 2018	<a href="#">Motion</a> debate on "Studying the enactment of an ordinance on regulating subdivided units"

Council Business Division 1  
Legislative Council Secretariat  
28 July 2021