Landlord and Tenant (Consolidation) (Amendment) Bill 2021 ("The Bill")

Written Submissions and the Administration's Consolidated Responses

(1) Scope of Regulation

The Bill defines a subdivided unit (SDU) as premises that form part of a unit of a building. A building would mean a building or structure constructed or adapted for use in accordance with a building plan. A unit would mean premises of a building falling within either or both of the following descriptions: (i) premises that are demarcated or shown as a separate unit (however described) in the building plan of the building, including a roof or a podium[1] of the building; (ii) 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. With this definition, the scope of regulation would cover SDUs not only in domestic/composite buildings but also in industrial/commercial buildings. However, it would not cover such illegal structures or unauthorised building works (irrespective of whether they are tolerated or not) as unauthorised building works on private lanes or yards, squatter structures or unauthorised structures erected on private land or government land, as well as New Territories Exempted Houses[2], as these structures/building works would not be covered by approved building plans. In the absence of such plans, it would be impossible to delineate the boundary of a "unit" and hence determine whether the premises of the subject tenancy are an SDU.

(2) Definition of an SDU

All along, there is no official or uniform definition of an SDU. An SDU was defined by the Census & Statistics Department (C&SD), for the purpose

[1] If the SDU is a roof or podium, or part of a roof or podium, the reference to an SDU includes any structure erected on it.

[2] New Territories Exempted Houses generally refer to those village houses situated in the New Territories which by virtue of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) are exempted from certain provisions of the Buildings Ordinance (Cap. 123) and its subsidiary legislation, including the need for obtaining prior approval and consent to the commencement of works from the Building Authority. They include the village houses built by indigenous villagers under the Small House Policy, commonly known as "small houses". Submission of building plans for these New Territories Exempted Houses is not required.

of conducting a statistical survey for the "Thematic Report: Persons Living in Subdivided Units" (2016 Thematic Report) under the 2016 Population By-census, to be 'formed by splitting a unit of quarters into two or more "internally connected" and "externally accessible" units commonly for rental purposes'. It should, however, be noted that the C&SD had adopted a different definition in the earlier thematic household surveys on housing conditions of SDUs conducted in 2014 and 2015[3] where SDUs were divided into two types, namely "SDUs with observable physical partitions" and "SDUs without observable physical partitions". For instance, cubicles and bedspaces were classified as "SDUs without observable physical partitions" in the thematic household surveys conducted in 2014 and 2015, while they were classified in the 2016 Thematic Report as "multi-households within a unit of quarters" instead of "SDUs".

Tossing aside the potential ambiguity and disputes that may arise in defining SDUs in the Bill along the notion of "splitting" a unit of quarters into two or more "internally connected" and "externally accessible" units, we do not adopt the above definition of SDU in the Bill as it would not be able to achieve our policy objective of including as many SDUs as possible under the proposed tenancy control regime, which is widely supported by the Task Force for the Study on Tenancy Control of Subdivided Units (the Task Force), concern groups and many Legislative Council Members from different major political parties. The definition adopted in the 2016 Thematic Report, if taken on board, would exclude "quarters where two or more households share facilities in a common area (e.g. a living room), except toilets and kitchens, such that the common area is not primarily for access purpose" (which were instead categorised in the 2016 Thematic Report as "multi-households within a unit of quarters"). Such "multi-households within a unit of quarters" are not "SDUs" as defined in the 2016 Thematic Report because the household members have to pass through other households' living area to gain access to the street, public corridor or landing, thus not meeting the "externally accessible" criterion. These "multi-households within a unit of quarters" would potentially include cubicles, bedspaces, cocklofts and capsules, the tenants of which should also be our target beneficiaries of the proposed tenancy control regime, same as those who live in the so-called "externally accessible" SDUs. Furthermore, by including "externally accessible" SDUs on the one hand and excluding "multi-households within a unit

[3] "SDU" was defined in the thematic household surveys conducted in 2014 and 2015 as being "formed by the sub-division of individual quarters into two or more units for rental purposes to more than one household".

of quarters" from the proposed regime on the other, it may likely create loopholes for unscrupulous operators to easily circumvent the regulatory regime.

We consider that "splitting" was not clearly defined for the purposes of the definition of SDU in the 2016 Thematic Report. For example, it is subject to arguments and disputes as to what constitutes "splitting", e.g. whether "splitting" must involve installation of some physical partitions, whether there are requirements as to the size and materials used for such partitions, and whether bedspaces or other similar sleeping accommodation which do not necessitate such partitions would be considered as involving such "splitting". The term "externally accessible" in respect of a unit within quarters was not clearly defined in the 2016 Thematic Report either. We therefore consider it not suitable to adopt the C&SD's definition of SDU in the 2016 Thematic Report, which was devised for the purpose of conducting a statistical survey, in the Bill which must be able to clearly delineate what premises would be subject to the proposed tenancy control measures on the one hand, and to reflect our policy intention on the other.

(3) Setting an initial rent for tenancies of SDUs

We understand that there are views in the society that the Government should regulate the "initial rent" in SDU tenancies in order to prevent SDU landlords from massively increasing the rent in an attempt to counteract any proposed restrictions on future rent increase upon tenancy renewal. The Task Force has looked into the matter carefully. We agree with the Task Force that it is infeasible to formulate an objective and easy-to-administer mechanism for the purpose of fairly determining the maximum initial rent the SDU landlords may charge in respect of each of the some 100 000 SDUs estimated to exist in Hong Kong, and that the individual characteristics of each SDU should be taken into account when deciding the initial rent. The rent of an individual SDU is affected by many factors, and even for SDUs in the same unit, their rental levels would vary according to a whole basket of factors, including its size, orientation, lighting, ventilation, noise level, whether there is an independent kitchen/toilet, the equipment provided by the landlord in the SDU, the sanitary and repair conditions of each SDU, etc. Using administrative means to reset the initial rent of each and every SDU in Hong Kong would also inevitably create numerous disputes between the landlords and the tenants.

The Government's objective is to first require, through the Bill, landlords of SDU tenancies ("regulated tenancy") under the Bill to submit information about the tenancy to the Rating and Valuation Department (RVD) within 60 days after the term of the tenancy commences so that the RVD can collect timely information about SDU rentals in the market and their actual conditions. This will facilitate the Government's assessment and review of the effectiveness of the tenancy control measures and enable the Government to consider at an opportune time the case for prescribing the initial rent of SDUs.

(4) Regulation of the rate of rent increase

The Bill proposes that a 15% cap should be imposed as the maximum rate of rent increase upon tenancy renewal. When the "regulated tenancy" is renewed, the rate of rent increase shall not be more than the percentage change of the rental index of the Private Domestic Rental Index (all classes) published by the RVD in the relevant period. If the relevant change of the above RVD rental index is more than 15%, this will impose a restriction on the rate of rent increase by the landlords at 15% at most upon tenancy renewal; if the relevant change is negative, the rent of the renewed tenancy must be reduced by at least the same percentage.

There are suggestions that an affordability indicator of SDU households should be introduced and reference should be made to the rent adjustment rate of public rental housing (PRH) (i.e. 10%). We consider that SDU is a form of private housing. Its nature is different from that of PRH and thus a direct comparison could not be drawn between them. Moreover, with reference to the biennial change in the RVD's Private Domestic Rental Index (all classes) since 1998, there were ten years where the relevant changes in the index were over 10%. Imposing a 10% cap as the maximum rate of rent increase on tenancy renewal will likely suppress the rent of SDUs to levels which are substantially below their market levels. Further tightening of the rent increase cap to 10% may be considered to be disproportionately infringing upon the private property rights of SDU landlords and increase the risk of legal challenge. This may also substantially reduce the incentive and willingness of landlords to lease out their premises, resulting in a drastic reduction in the supply of SDUs which would in turn drive up rentals and displace the most vulnerable tenants to even poorer living conditions.

(5) Security of tenure

The Bill has incorporated the Task Force's recommendation that the tenant of a two-year fixed-term "regulated tenancy" has the right to renew the tenancy once, thus enjoying a total of four years of security of tenure. A four-year security of tenure for SDU tenants is recommended taking into consideration the need to refrain from imposing an unduly heavy burden on the SDU landlords, and the findings of the survey commissioned by the Task Force that around 56% of SDU households have lived in the current SDUs for more than two years and the average waiting time for general applicants for PRH was 5.8 years as at end-June 2021. We agree with the Task Force's recommendation that a four-year security of tenure would strike a reasonable balance between the inroads into SDU landlords' private property rights and the security that can be brought to SDU tenants. An extension of the security of tenure from four to six years may disproportionately infringe on the private property rights of SDU landlords. More importantly, the above proposal implies that SDU landlords may have to live with certain undesirable tenants for as long as six years, it would significantly lower the incentive of SDU landlords to rent out their premises, thereby causing a reduction in the supply of SDUs or making the landlords more selective about their tenants. This will make it ever more difficult for the most vulnerable group (such as individuals or households with unstable income) to find an accommodation.

There is suggestion that an SDU tenant be allowed to quit a tenancy at any time during the tenancy period once he is allocated PRH. Whilst we recognise that this would offer the tenant the maximum flexibility, this might disproportionately harm the interests of the landlord as the landlord could not have the certainty of being able to earn rental income for a minimum period under the tenancy agreement. On the other hand, the proposal to allow an SDU tenant to quit after the first year into the tenancy is in line with the prevailing general market practice for the landlord and the tenant's entering into "one-year-fixed" and "one-year-open" tenancy agreements, and would not affect the liberty of the landlord and the tenant to terminate the tenancy agreement at any time during the tenancy period subject to mutual agreement. Alternatively, subject to the mutual consent of both parties, the tenancy agreement may stipulate that the landlord would allow the tenant to terminate the tenancy, by notice from the tenant (not the landlord), after a period of less than 12 months. Therefore, we

believe that the current legislative proposal could provide appropriate security of tenure for tenants without disproportionately harming the interests of landlords.

(6) Implementation of tenancy control on SDUs

The RVD will be responsible for administering the new provisions of the Bill, including promoting public awareness of the new regulatory regime; handling enquiries; providing advisory and mediatory services on tenancy matters; collecting, collating, analysing and regularly publishing summary information about SDU rents after the implementation of the new law; and taking enforcement actions as appropriate. According to the Bill, landlord of "regulated tenancy" must submit information about the tenancy to the RVD within 60 days after the term of the tenancy commences. Such information shall include details of the SDU (e.g. address, size and equipment), date of tenancy agreement and period of tenancy, names and correspondence addresses of the landlord and tenant, etc. A landlord who fails to do so without a reasonable excuse commits an offence. We hope to ensure, by means of this provision, that the RVD can collect timely information about SDU rents and tenancies in the market. Such information, which will be published after analysis and consolidation, will enhance market transparency and also facilitate the Government's timely assessment and review of the effectiveness of the tenancy control measures.

In order to enhance the effectiveness of administering the new law, as recommended by the Task Force, we will entrust non-governmental organisations (NGOs) to provide the necessary support to SDU landlords and tenants at the district level to assist them in understanding their respective rights and obligations under the new law, facilitating the dissemination of gist of SDU rental information, and providing other information about SDU tenancy matters. We will also invite the Estate Agents Authority to issue guidelines setting out the good practices for estate agents to follow regarding the letting of SDUs under the new regulatory regime.

(7) Repair obligations of SDU landlord

Under Schedule 7 of the Bill on mandatory terms implied for every "regulated tenancy", it is stipulated in Part 3 that the landlord must maintain and keep in repair the drains, pipes and electrical wiring serving the premises

exclusively and windows of the premises. The landlord must also keep in repair and proper working order the fixtures and fittings (such as air-conditioners and water heaters) provided by the landlord in the premises. On receiving a notice from the tenant for repair of the relevant items, the landlord must carry out the repair as soon as practicable. If the landlord fails to fulfil the above obligations, the tenant may, by giving the landlord not less than 30 days' prior notice in writing, terminate the tenancy. Alternatively, the tenant may, if practicable, carry out the repair and then seek reimbursement from the landlord. If necessary, the tenant may resort to legal action (such as filing a claim in the Small Claims Tribunal if the amount involved is less than $75,000). We believe that the above mandatory terms should help ensure that landlords will meet their obligations relating to repairs and maintenance. Given the fact that the time required for and the circumstances involved in repairing the equipment or fittings are not the same for each SDU, we consider it inappropriate to legally impose a mandatory requirement for landlords to complete the repairs within a specified period of time.

(8) Recommendation on the disclosure of the legal name and address of the SDU landlord

Under the Bill, the term "landlord" means any person (other than the Government) who is, from time to time, entitled to receive rent in respect of any premises and, in relation to a particular tenant, means the person entitled to receive rent from that tenant. Once a person falls within the definition of "landlord" under the Bill, irrespective of whether he/she has disclosed his/her name and address to the tenants, he/she must comply with the statutory requirements imposed on the "landlord" of the "regulated tenancy", including the mandatory terms implied for "regulated tenancy" under Schedule 7 of the Bill.

Moreover, section 120AAZS(2) of the Bill provides that the landlord must, within 60 days after the term of "regulated tenancy" commences or is taken to commence under section 120AAQ(3)(a) or (5)(a), submit a notice of tenancy in the specified form to the Commissioner of Rating and Valuation (Commissioner) to notify the Commissioner of the particulars of the tenancy. The information contained in the notice of tenancy in the specified form will include the name, correspondence address, contact phone number, etc. of the landlord. The RVD will keep the original copy of the notice and send the duplicate copy of the endorsed notice to both parties involved in the tenancy.

According to section 120AAZS(3), if the landlord, without reasonable excuse, refuses or neglects to comply with section 120AAZS(2), the landlord commits an offence.

It is also stipulated in section 120AAZM of the Bill that a landlord must give a receipt to the tenant for the amount of rent paid by the tenant to the landlord within seven days after receiving the amount. The landlord must also specify in the receipt (i) the name and address of the landlord; (ii) the period for which the rent is paid; and (iii) the date of payment. If the landlord fails to comply with the requirements, the landlord commits an offence.

In view of this, we do not consider it necessary to add a mandatory term in Schedule 7 of the Bill to require landlord to disclose their legal name and address to the tenant.

(9) Offences and Penalties

As a deterrent, we propose to specify new offences in the Bill to cover, inter alia, the following: (i) the landlord of a "regulated tenancy" requiring the tenant to make, or receiving from the tenant, payments other than for the rent, deposit (if any), reimbursement of charges for water, electricity, gas, communication services[4] as apportioned by the landlord (if any), and damages due to the tenant's breach of the tenancy agreement (if any) – the landlord is liable on a first conviction to a fine at level 3 (i.e. currently $10,000) and on a second or subsequent conviction to a fine at level 4 (i.e. currently $25,000); (ii) the landlord requiring or receiving reimbursement of charges for the above utilities and services from the tenant where the total of apportioned sums for the persons sharing the utilities and services exceeds the amount charged in the bill concerned – the landlord is liable on a first conviction to a fine at level 3 and on a second or subsequent conviction to a fine at level 4; and (iii) the landlord, without reasonable excuse, refusing or neglecting to submit a notice of tenancy to the Commissioner of Rating and Valuation within 60 days after the term of the tenancy commences – the landlord is liable on conviction to a fine at level 3, and in the case of a continuing offence, to a further fine of $200 for each day during which the offence continues. In the course of setting the penalties, we have

[4] Communication services means services enabling a telephone other than a mobile telephone, the Internet, a cable television and a satellite television to be used.

consulted the Department of Justice and the level of penalties is considered appropriate.

(10) Effective date

To allow RVD to better prepare for the implementation of tenancy control on SDUs and promote the details of the new law to the public, and also allow the Government to invite tenders for entrusting NGOs to provide the necessary support to SDU landlords and tenants at district level, we propose that, subject to passage of the Bill by the Legislative Council in the current legislative session, the Amendment Ordinance will come into operation on the expiry of three months beginning on the day on which it is published in the Gazette (expected to be around late 2021 or early 2022 at the earliest). The existing tenancy agreements for SDUs entered into before the Amendment Ordinance takes effect will not be regulated by the new Ordinance[5].

(11) "Regulated tenancy" affected by redevelopments

Under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545), where the lot the subject of an order for sale is sold, notwithstanding the terms of any lease or the provisions of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (including the provisions in the new Part IVA), immediately upon the day on which the purchaser of the lot becomes the owner of the lot, it shall be deemed that there has on that day been terminated the tenancy of any tenant of any property on the lot who is such a tenant of any lease (including the "regulated tenancy") entered into at any time before the purchaser became such owner. The purchaser of the lot shall notify the tenant within 14 days and immediately upon the expiration of six months immediately following that day, the tenant is required to deliver up the property. Where the Lands Tribunal makes an order for sale, it may order that compensation be paid to the affected tenant. The compensation may be determined based on the provisions under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (including the provisions in the new Part IVA) and taking into account any representations of the tenant. Tenancies of SDUs involved in those redevelopments falling outside the ambit of the Land (Compulsory Sale for Redevelopment) Ordinance will be regulated by the new Ordinance.

[5] Except those periodic tenancies of SDUs made before the Amendment Ordinance comes into effect.

(12) Sanitation and safety of SDUs

We share the Task Force's view that it is not an immediate option to adopt a licensing system of SDUs and displace those which cannot fully meet the regulatory requirements. We also agree with the Task Force's recommendation that the Government should take steps to improve the living conditions of SDUs, e.g. by compiling and promulgating guidelines for the sub-division of units in order to educate landlords on the various regulatory requirements relating to building and fire safety, etc. and how to provide better quality SDUs, with a view to enhancing the degree of regulatory compliance of SDUs and providing better living conditions for SDU tenants. We are following up with the relevant departments.

(13) Support services for ethnic minorities

To promote public awareness of the new Ordinance, the RVD will launch a publicity exercise to explain the new law through videos, leaflets and its website. Members of the public (including ethnic minorities) may contact the RVD direct if they have enquiries and complaints or need mediation service relating to tenancy control on SDUs. To help ethnic minorities understand the details of tenancy control on SDUs, the RVD plans to provide leaflets in eight ethnic minority languages (Bahasa Indonesia, Nepali, Urdu, Punjabi, Tagalog, Thai, Hindi and Vietnamese) to explain the new law. The Government will also entrust NGOs to provide the necessary support to SDU landlords and tenants (including ethnic minorities) at the district level to help them understand their rights and obligations under the new Ordinance.

(14) Review of the effectiveness of tenancy control measures on SDUs

The Government will monitor the implementation of tenancy control measures on SDUs and review their effectiveness. We share the view of the Task Force that in the longer term, if the SDU problem persists or even gets worse, or the tenancy control measures are not effective in protecting the interests of SDU tenants, and there is a consensus in the community that the Government should implement more stringent measures to regulate the SDU market, the Government should carefully study the feasibility and possible options of further intervention, e.g. by putting in place a registration and licensing system of SDUs, and/or establishing a dedicated body for this purpose, whilst being mindful of the

possible consequences such as a substantial reduction in the supply of SDUs and an increase in rentals due to the landlord's transfer of the relevant compliance costs to tenants who have weak bargaining power. Without adequate public and transitional housing at this stage to meet the housing needs of low income families, we consider that it would be more prudent for the Government to first assess the effectiveness of the proposed tenancy control measures after their implementation for a period of time, and revisit other possible options if needed.

(15) Continued increase of the supply of land and housing

We agree that the fundamental way to solve the issue of SDUs is to continuously increase land and housing supply. As mentioned in the 2020 Policy Address and the Long Term Housing Strategy Annual Progress Report 2020, the Government has identified 330 hectares of land for providing 316 000 public housing units to meet the demand for about 301 000 public housing units in the coming ten years (i.e. 2021-22 to 2030-31). We are also committed to promoting the development of transitional housing and have identified sufficient land to provide over 15 000 transitional housing units. In addition, we will implement a pilot scheme to subsidise the provision of transitional housing for needy families through NGOs using suitable rooms in hotels and guesthouses with relatively low occupancy rates.

Transport and Housing Bureau
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