

政府總部
運輸及房屋局

香港九龍何文田佛光街 33 號



Government Secretariat
Transport and Housing Bureau

33 Fat Kwong Street, Ho Man Tin, Kowloon, Hong Kong

本局檔號 Our Ref. THB POO 7-40 (1 C)
來函檔號 Your Ref.

電話：2129 3993
傳真：2129 3829

4 September 2021

Hon Frankie YICK Chi-ming, SBS, JP
Legislative Council Member
Room 717, Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Hon Yick,

**Proposed Committee Stage Amendment to the
Landlord and Tenant (Consolidation) (Amendment) Bill 2021**

We refer to your letter dated 2 September 2021 to the Bills Committee of the Landlord and Tenant (Consolidation) (Amendment) Bill 2021 (the Bill). Our response to your letter is set out in the ensuing paragraphs.

2. The proposed Committee Stage Amendment (CSA) seeks to amend Schedule 6 of Clause 8 of the Bill by adding section 2(ba) so as to exclude from the application of the proposed Part IVA “Regulated Tenancies” a tenancy of which the landlord and the tenant are residing and sharing living accommodation in the same unit of a residential building and that (i) the landlord is the legal or beneficial owner of that building unit; (ii) the tenancy is throughout its term the one and only domestic tenancy subsisting in that building unit; (iii) the tenancy covers at least one subdivided unit (which does not include any part of the rooftop or podium of that building unit); and (iv) the tenancy provides dwelling to not more than one separate household (which can consist of a single person, a couple, two or more unrelated roommates or persons who are members of the same family, as the case may be).
3. The objective of the Bill is to provide reasonable protection to

tenants living in subdivided units (SDUs). More specifically, our objective is to provide tenancy protection to those low-income families and individuals who cannot afford renting a whole residential unit and hence have to live in an SDU, as they generally have relatively low bargaining power and very often have to accept involuntarily some unfavourable tenancy terms. Therefore, we define an SDU in the Bill as “premises that form part of a unit of a building” so that we can cast a wider net to cover the aforesaid low-income families and individuals. A household (including a family) renting an SDU as their dwelling under a tenancy whilst residing and sharing living accommodation with the landlord in the same unit is no different in nature from families or individuals living in other SDUs. They are also families or individuals who cannot afford renting a whole residential unit and similarly may have no alternative but to accept some unfavourable tenancy arrangements such as being over-charged by their landlord on water and electricity tariffs, etc. That the proposed CSA excludes these families or individuals from the scope of protection afforded by the Bill would result in differential treatment to these families or individuals and is against our policy objective.

4. As we have pointed out in our letter dated 13 August 2021 to the Clerk to Bills Committee and explained at the meetings of the Bills Committee held on 16 and 24 August 2021, according to the survey commissioned by the Task Force for the Study on Tenancy Control of Subdivided Units in 2020, it is estimated that there are about 110 000 SDUs in Hong Kong, including certain types of inadequate housing which were not defined as SDUs in the “2016 Population By-census Thematic Report: Persons Living in Subdivided Units” of the Census and Statistics Department (C&SD), i.e. cubicles, loft spaces, space capsules, bedspaces and rooftop houses. Amongst these 110 000 SDUs, there were 3 415 cubicles, which already included “multi-households within a unit of quarters” as generally understood by the public as well as cases where the landlord has only rented out a single room in the unit which, according to the institution conducting the survey, are not common.

5. Furthermore, in making the housing demand projection for the next ten years, the Long Term Housing Strategy takes into account those inadequately housed households. The relevant inadequate housing includes: (a) housing units which are made up of temporary structures (e.g. huts, squatters and roof-top structures); (b) units located in non-residential buildings (e.g. commercial and industrial buildings); (c) units shared with other households (e.g. those living in rooms, cubicles, bedspaces and cocklofts in private permanent buildings); and (d) SDUs. It is worth noting that rooms are amongst the types of inadequate housing defined in

the Long Term Housing Strategy, and the Bill will include tenants living in this type of inadequate housing in its scope of protection.

6. According to the proposed CSA, where the landlord resides in the unit and only rents out a room or some of the remaining rooms in the unit (hence the tenancy covers an SDU in the unit) whilst the tenancy is throughout its term the only domestic tenancy subsisting in the unit and provides dwelling to not more than one separate household, the tenancy (referred to as "Tenancy A") would be excluded. However, if the landlord during the term of Tenancy A rents out another room in the unit to another household as their dwelling (referred to as "Tenancy B"), there will be more than one subsisting domestic tenancies in the unit. In such case, according to the proposed CSA, Tenancy A would no longer be an excluded tenancy because it would no longer fulfill all the conditions set out in the proposed new section 2(ba), thereby creating much confusion in actual operation. In addition, we are not sure whether according to the proposed CSA, if Tenancy A is terminated, i.e. there will be only one domestic tenancy subsisting in the unit (i.e. Tenancy B), whether Tenancy B would at that time be regarded as fulfilling the proposed new section 2(ba) and hence be excluded. If yes, it would mean that even though the tenant of Tenancy B is a low-income family or individual who cannot afford renting a whole residential unit and hence has to live in an SDU, he/she will become unable to enjoy any protection. Apart from the fact that it is against our policy objective and the actual situation would be very chaotic, we must consider whether there are sufficient and reasonable justifications for this. The proposed CSA is also completely different from our current design whereby we can already determine whether a tenancy belongs to one specified in Schedule 6 when it is established and the relevant status will generally remain unchanged over the term of the tenancy.

7. Furthermore, it is noted that one of the conditions of exclusion under the proposed CSA is that the tenant of the relevant tenancy lives in a unit of a "residential building". In other words, where a tenancy involves a unit in a commercial/composite/industrial building, even if the tenancy fulfils all the other conditions in the proposed new section 2(ba), it would not be an excluded tenancy (in other words, the tenant of the tenancy concerned will be able to enjoy the protection under the Bill). If this is the case, it is for consideration whether a tenant living in a unit of a "residential building" whose tenancy is excluded by virtue of the proposed new section 2(ba) would feel even more aggrieved, whether there are sufficient and reasonable justifications for the differential treatment, and whether the proposed exclusion would unintentionally encourage low-

income families or individuals to choose to live in SDUs in “non-residential buildings” in order to benefit from the tenancy protection under the Bill.

8. In addition, assuming the landlord retains a room in the unit as his residence and intends to put up all of the remaining rooms in the unit for rental. Under the current Bill, no matter whether the landlord rents out the rooms individually or collectively, the relevant tenancies will be “regulated tenancies” if they fulfill all the conditions provided under section 120AAB(1) and are not excluded tenancies under the current Schedule 6. However, according to the proposed CSA, if the landlord rents out all of the remaining rooms under a single domestic tenancy to one separate household as their dwelling, the tenancy would not be subject to regulation. The landlord may therefore, in an attempt to circumvent the regulation of the new regime, have the incentive to rent out the rooms collectively to those groups who require more living space, for example families with relatively more family members (which may very likely be families of ethnic minorities). In fact, the population ratio of ethnic minorities in SDUs is higher than the territory-wide level¹. Many concern groups have expressed concern about whether ethnic minorities can really benefit from the proposed tenancy control measures under the Bill. We must therefore prudently consider whether the proposed exclusion would unintentionally exclude families with relatively more family members, such as those of ethnic minorities, from the scope of protection.

9. Lastly, we would like to reiterate that the Bill does not affect the right of landlords, including elderly landlords, to rent out vacant rooms in their own units with a view to earning additional rental income. Also, our proposed tenancy control measures would not disproportionately infringe on the property rights of landlords, including that the landlord may fix the rent of the first term tenancy at the start of every regulated cycle and may earn a return which is generally in line with the prevailing yield of the private residential rental market upon tenancy renewal.



(Miss Kathy CHAN)
for Secretary for Transport and Housing

¹ According to the findings of the survey in the “2016 Population By-census Thematic Report: Persons Living in Subdivided Units” of C&SD, amongst those who lived in SDUs, non-Chinese accounted for 12.9%, which was way above the ratio of 3.8% for Hong Kong.

cc

Ms. Rayne CHAI, Deputy Law Draftsman II (Acting), Department of Justice

Ms. Lonnie NG, Senior Government Counsel, Department of Justice

Ms. Sandy JIM, Assistant Commissioner of Rating and Valuation (Special Duties)

Ms. Vanessa CHENG, Assistant Legal Adviser, Legal Service Division, LegCo Secretariat

Clerk to Bills Committee, LegCo Secretariat