

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

Follow-up actions arising from the meeting on 6 September 2021

This paper sets out the Administration's response to the issues raised by Members at the Bills Committee meeting held on 6 September 2021 –

(a) Proposed Committee Stage Amendments (CSAs) by Hon Frankie YICK and Hon Vincent CHENG

With reference to the proposed CSAs of Hon Frankie YICK and Hon Vincent CHENG (Chairman of the Bills Committee) set out in their letters dated 2 September 2021, their concern is about the proposed scope of the Landlord and Tenant (Consolidation) (Amendment) Bill 2021 (the Bill) which would capture those landlords who merely rent out their spare rooms in their flats. The main idea of these two CSAs, as we understand it, is that where the landlord resides in the unit and only rents out a room or some of the remaining rooms in the unit whilst the tenancy, providing dwelling to the tenant, is the only domestic tenancy subsisting in the unit, this tenancy should be excluded from the application of the proposed Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap.7). The Government appreciates Members' concern and is now actively following up on the matter. We will explore possible options and introduce a CSA to address their concern.

(b) Definition of subdivided units (SDUs)

As regards the concerns raised by Hon Regina IP in her letter of 3 September 2021 about the definition of "SDU" in the Bill, "SDU" is defined in the Bill as premises that form part of a unit of a building, whereas "unit", in relation to a building, means premises of the building falling within either or both of the following descriptions – (a) premises that are demarcated or shown as a separate unit (however described) in the building plan of the building; (b) premises that are referred to in the deed of mutual covenant (DMC) 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. For the description set out in (a) of the definition of "unit", it relates to the concept of whether a premises of a building is a separate unit as opposed to another premises of a building, whilst the description set out in (b) of the definition of "unit" concerns the

concept of whether the owner of a premises of a building is entitled to the exclusive possession of that premises as opposed to the owners or occupiers of other parts of the building. Under normal situations, taking a domestic building as an example, Flat A of the building is premises that are demarcated or shown as a separate unit in the building plan of the building, or premises that are referred to in the DMC of the building as a unit the owner of which is entitled to its exclusive possession as opposed to the owners or occupiers of other parts of the building (such as Flat B).

In the example above, if Flat A fulfils the definition of “unit” in the Bill, each of the bedrooms is premises that form part of a unit of a building and hence meets the definition of “SDU” in the Bill. Notwithstanding this, tenancies of SDUs would only be regulated if they meet all the conditions set out in section 120AAB(1) of the proposed Part IVA of Clause 4 of the Bill and are not tenancies specified in Schedule 6. In drafting the Bill, we have considered carefully the definitions of “unit” and “SDU” in conjunction with the Department of Justice, and consider that the definitions concerned can meet our policy objective whilst being legally sound. In addition, as mentioned in paragraph (a) above, in view of the concerns of Members, the Government would propose a CSA to exclude from the application of the proposed Part IVA those tenancies where the landlord residing in a unit rents out spare bedroom(s) in the unit whilst fulfilling certain other criteria.

(c) Cap on the rate of rent increase of the second term tenancy

Regarding the amendments to the Bill proposed by Chairman of the Bills Committee, Hon Starry LEE, Hon CHAN Han-pan and Hon Wilson OR in their letter dated 25 August 2021 and Hon KWOK Wai-keung in his letter dated 27 August 2021 to lower the cap on rent increase upon renewal of a regulated tenancy provided in section 120AAZE(2)(b) of the proposed Part IVA of Clause 4 of the Bill from 15% to 10%, as we have pointed out on various occasions at the meetings of the Bills Committee and in the relevant replies, our proposal is that in a regulated cycle of tenancies, the rate of rent increase between the first term and second term tenancies must not exceed the percentage change of the territory-wide rental index for all classes of private domestic properties compiled and published by the Rating and Valuation Department (RVD) during the relevant period; if the aforesaid percentage change exceeds 15%, the landlord can only increase the rent by no more than 15% on tenancy renewal. In setting

the rent increase cap, we have reviewed the biennial movement of the aforesaid rental index of RVD during the past some 20 years, and considered that setting the rent increase cap at 15% would already provide an additional and effective safeguard to protect SDU tenants against any unduly high level of rent increase as a result of huge rental fluctuation in the private residential market. That being said, taking into account Members' concerns and with a view to providing more protection to SDU tenants many of whom are low-income families and individuals, after careful consideration, the Government would propose a CSA to revise the cap on rent increase upon tenancy renewal in section 120AAZE(2)(b) from 15% to 10%.

(d) Proposed CSA by Hon Abraham SHEK

We refer to the proposed CSA of Hon Shek set out in his letter dated 2 September 2021, and the revised CSA set out in his letter dated 7 September 2021. The revised CSA of Hon Shek proposes that –

(I) Section 120AAR and Subdivision 2 of Division 3 of the proposed Part IVA of Clause 4 of the Bill do not apply to any of the tenancies under the following situations -

(a) where a person has made an application to the Lands Tribunal for an order to sell all the undivided shares in a lot for the purposes of the redevelopment of the lot pursuant to the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545), and at any time before the Lands Tribunal makes an order for sale under Cap. 545 becomes the owner of the lot; or

(b) where a person who becomes the owner of a lot without making an application for an order for sale under Cap. 545 has obtained approval of the plans for the demolition works of the building(s) within the lot from the Building Authority,

and

there exist regulated tenancies of SDUs in the building(s) on the lot.

(II) Unless otherwise agreed between the person referred to in subsection (a) or (b) (as the case may be) of subsection (I) and the tenant, under the situations specified in subsection I –

- (a) immediately upon the expiration of 6 months immediately following the day on which the person referred to in subsection (a) or (b) (as the case may be) of subsection (I) becomes the owner of the lot [*or has obtained approval of the plans for the demolition works of the building(s) within the lot from the Building Authority*]; or
- (b) immediately upon the expiry of the regulated tenancies,
- whichever is the later, the person referred to in subsection (a) or (b) (as the case may be) of subsection (I) is entitled to, and the tenants of the regulated tenancies are required to deliver up, vacant possession of the SDUs.
- (III) If a tenant has lost his entitlement to a second term tenancy for his SDU as a result, the person referred to in subsection (a) or (b) (as the case may be) of subsection (I) shall, upon delivery of vacant possession of the SDU by the tenant, pay to the tenant a sum equivalent to 12 months' rent (calculated based on the rent subsisting immediately before the day of delivery of vacant possession of the SDU to the person referred to in subsection (a) or (b) (as the case may be) of subsection (I)) as compensation for damage, loss or inconvenience suffered by the tenant.

We fully share Hon Shek's views that the pace of urban redevelopment should not be adversely affected as a result of the Bill. As a matter of fact, the Bill would not override or interfere with the provisions of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545). In other words, a majority owner's right to make an application to the Lands Tribunal for an order for compulsory sale and the protection of purchaser of the lot under Cap. 545 would not be affected. For situation where the sole owner (or joint owners) of a lot would like to redevelop a building, the Bill does not prohibit the landlord and tenants from entering into negotiations on early surrendering of the tenancy and the related compensation arrangements. Presumably, a person who intends to acquire shares of a lot for redevelopment would take into account pre-existing contractual and/or other obligations associated with the purchase.

We also note that Hon Shek's proposed CSA has raised a host of highly complicated and controversial issues concerning whether statutory termination of tenancies should be introduced in respect of the buildings of a lot intended for redevelopment after a person becomes

the owner of the lot before the Lands Tribunal makes an order for sale under Cap. 545 or a person who becomes the owner of the lot without applying for an order for sale under Cap. 545 has obtained approval of the plans for the demolition works of the building(s) within the lot from the Building Authority. These include, inter alia, whether the proposed statutory termination of tenancies should apply to both regulated and non-regulated tenancies on the same lot; in what capacity the tenant may stay in the unit after the expiry of the term of his tenancy until the expiration of six months immediately following the day on which a person becomes the owner of a lot before the Lands Tribunal makes an order for sale under Cap. 545 or a person who becomes the owner of a lot without applying for an order for sale under Cap. 545 has obtained approval of the plans for the demolition works of the building(s) within the lot from the Building Authority; whether the tenant may be liable to pay any compensation (and if so, in what amount) for staying in the unit for such period; and whether any safeguards should be introduced to ensure that the redevelopment would actually be implemented according to the proposed schedule, etc.

While many of the issues highlighted above cannot be dealt with in the context of the current bill and takes time, we would continue to engage with Hon Shek. We will also follow up with the relevant bureaux to monitor the situation and, should there be a need in future, review the case for introducing suitable measures to facilitate redevelopment.

(e) Proposed CSA by Hon Eunice YUNG

With reference to the proposed CSA of Hon Eunice YUNG set out in her letter dated 1 September 2021, and the clarifications set out in her letter dated 7 September 2021, Hon YUNG proposes to expand the scope and define “family member” as “persons living together forming a household” under the Bill. As pointed out in the Administration’s reply to the Assistant Legal Advisor (ALA) of Legislative Council dated 13 August 2021, the person to whom the subsisting benefits and protection under a regulated tenancy to which the tenant is entitled under the proposed Part IVA of Cap. 7 during the tenant’s life time are available after the tenant’s death (i.e. a spouse, parent or adult child of the deceased tenant who is residing with the tenant in the SDU at the time of the tenant’s death) is the same as the person (i.e. “*the widow, widower, mother, father or any daughter or son over the age of 18 years*” of the deceased tenant) to whom the benefits and protection afforded by the existing Part IV of Cap. 7 in a domestic tenancy are

available after the tenant's death (see section 116(5) of Part IV of Cap. 7). We have reservation about introducing any changes that would substantially expand the scope to cover "persons living together forming a household", which would fundamentally deviate from the coverage of a deceased tenant's family members under the existing Part IV of Cap. 7.

Having said that, after listening to the views of the Bills Committee members and balancing various factors, including real life situation and the need for a clearer legal definition, we propose to expand the definition of "family member" in the proposed section 120AA(1) to include a person's "grandparent" and "adult grandchild". Also, as we have stated in our reply to ALA dated 13 August 2021 and mentioned at the Bills Committee meeting on 30 August 2021, it is our policy intention for "adult child" in the aforesaid definition of "family member" to include an "adopted adult child", a "step adult child" and an "illegitimate adult child". The Government will make a CSA to reflect the above proposal and policy intent.

**Transport and Housing Bureau
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