

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

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

1 September 2021

Hon Tommy CHEUNG Yu-yan, GBS, JP
Legislative Council Member
Room 818, Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Hon Cheung,

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

We refer to your letter dated 26 August 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 subsection 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 building and that (i) the landlord is the legal or beneficial owner of that building unit; (ii) the tenancy is the one and only domestic tenancy subsisting in that building unit; (iii) the tenancy covers at least one subdivided unit in that building unit; and (iv) the tenancy provides dwelling to not more than one family.

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 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 living in other SDUs. They are also families 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 from the scope of protection afforded by the Bill would result in differential treatment to these families 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, the criteria of the proposed excluded tenancy include that the landlord and the tenant are residing and sharing living accommodation in the same unit of a building and that the tenancy covers at least one SDU in that building unit. A top floor residential flat with the roof or a low-level residential flat with the podium may form premises that are referred to in the deed of mutual covenant of the building as a unit, and thus falling within paragraph (b) of the definition of "unit" in section 120AA(1) of Clause 4 of the Bill. Assuming that the landlord lives in the flat and rents out the roof or podium as well as any structure erected thereon (i.e. "rooftop house" or "podium house"). Since the roof or podium is an SDU and it includes any structure erected thereon pursuant to section 120AA(2), according to the current Bill, if the subject tenancy of "rooftop house" or "podium house" fulfils all the conditions provided under section 120AAB(1) and is not a tenancy excluded under the current Schedule 6, it will be a "regulated tenancy". However, according to the proposed CSA, if the tenancy is the only domestic tenancy subsisting in the unit and provides dwelling to not more than one family, the tenancy of "rooftop house" or "podium house" will fall outside the scope of regulation such that the tenants of the "rooftop house" or "podium house" would not enjoy any protection. This is not in line with the intent of the Bill to include "rooftop houses" and "podium houses" in the scope of regulation.

7. In terms of actual operation, according to the proposed CSA, where the landlord resides in the unit and only rents out a room in the unit (hence the tenancy covers an SDU in the unit) whilst the tenancy is the only domestic tenancy subsisting in the unit and provides dwelling to not more than one family, the tenancy (referred to as "Tenancy A") would be excluded. However, if the landlord subsequently rents out another room in the unit to another family 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, if Tenancy A and Tenancy B are not excluded tenancies under the current Schedule 6 and fulfil all the conditions provided under section 120AAB(1) of Clause 4 of the Bill, they will become "regulated tenancies" at the same time, since Tenancy A no longer meets all the criteria set out in the proposed section 2(ba) to qualify for exclusion. That said, the nature of Tenancy A and Tenancy B is in fact the same, the tenants of both of which are low-income families and individuals who cannot afford renting a whole residential unit. We must consider why the tenant of Tenancy A cannot enjoy protection from the commencement of their tenancy, and whether he/she may enjoy protection is subject to whether there will be another domestic tenancy in the same unit. Moreover, if Tenancy B is subsequently terminated early due to

certain reasons, according to the proposed CSA, Tenancy A will immediately become an excluded tenancy again by reason of fulfilling all the criteria set out in the proposed section 2(ba). In this regard, we have to consider whether there are sufficient and reasonable justifications for the change. The issues mentioned above are very complicated and the actual situation will be very chaotic, and the proposal will create many uncertainties to both the landlord and the tenants, rendering it practically difficult to operate. The proposed CSA is also completely different from our current design whereby we can already determine whether a tenancy is a tenancy specified in Schedule 6 when it is established and the relevant status will generally remain unchanged over the term of the tenancy.

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 fulfil 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 family as their dwelling, the tenancy would not be subject to regulation. The landlord may therefore have the incentive to rent out the rooms collectively to those families who have relatively more family members and hence require more living space in an attempt to circumvent the regulation of the new regime. It is very likely that some of these families are those of ethnic minorities with relatively more family members. In fact, the population ratio of ethnic minorities in SDUs is higher than the territory-wide level. 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. 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

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