

Landlord and Tenant (Consolidation) (Amendment) Bill 2021 (“The Bill”)

The Administration’s Consolidated Responses in relation to the written submissions received on 8 September 2021

(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 podium¹ 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 Houses², 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) 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

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.

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. In the absence of comprehensive rental information of SDUs at this stage, 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.

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.

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

The Bill proposes 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 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 concerns of the Bills Committee Members 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 from 15% to 10%.

(4) 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.

(5) 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.

(6) 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.

(7) 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 Ordinance³.

(8) 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.

(9) 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

³ Except those periodic tenancies of SDUs made before the Amendment Ordinance comes into effect.

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.

(10) 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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