

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

Government's Proposed Committee Stage Amendments

Purpose

This paper sets out the Government's proposed Committee Stage Amendments ("CSAs") (at Annex) to the Landlord and Tenant (Consolidation) (Amendment) Bill 2021 ("the Bill").

CSAs

2. As mentioned in our response to the issues raised by Members at the Bills Committee meeting held on 6 September 2021 (LC Paper No. CB(1)1319/20-21(02)), we propose to make the CSAs as set out in the ensuing paragraphs to the Bill.

(a) Expanding the definition of "family member"

3. The proposed section 120AAZB of the proposed Part IVA of Clause 4 of the Bill provides that a family member of a deceased tenant of a regulated tenancy for a subdivided unit (SDU) who is residing with the tenant in the SDU at the time of the tenant's death is entitled to, after the tenant's death, the subsisting benefits and protection under the regulated tenancy to which the tenant is entitled under the proposed Part IVA during the tenant's life time ("specified interest"). "Family member" is defined in the proposed section 120AA(1) to mean a person's spouse, parent or adult child, such that the scope of family members eligible for the specified interest under the proposed Part IVA is the same as the scope of family members to whom the benefits and protection afforded by the existing Part IV of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) in a domestic tenancy are available after the tenant's death¹.

4. In response to Members' suggestion and balancing various factors, including the real life situation, we propose to make a CSA to expand the definition of "family member" in the proposed section 120AA(1) to include a person's "grandparent" and "adult grandchild". Also, as mentioned in our letter dated 13 August 2021 to the Assistant Legal

¹ Section 116(5) of Part IV of Cap. 7

Adviser of the Legislative Council and at the meeting of the Bills Committee on 30 August 2021, we propose to make a CSA to define “child” in the aforesaid definition of “family member” to include an illegitimate child, a stepchild and a child adopted in a way recognized by law so as to clearly reflect our legislative intent.

(b) Lowering the rent increase cap on tenancy renewal

5. To protect SDU tenants from unwarranted rent hikes upon tenancy renewal, the proposed section 120AAZE(2) of Clause 4 of the Bill provides that the maximum percentage for an increase of rent for a second term tenancy in a regulated cycle is to be the lower of (a) the control percentage, i.e. 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; and (b) 15%.

6. 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 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 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, we propose to make a CSA to revise the cap on rent increase for a second term tenancy provided in the proposed section 120AAZE(2)(b) from 15% to 10%.

(c) Enhancing the protection for SDU sub-tenants

7. Subletting of SDUs is believed to be prevalent in the market. To safeguard the interests of sub-tenants of SDUs, the proposed section 120AAZJ of Clause 4 of the Bill provides for an “automatic stay period” for 60 days so that tenants whose regulated tenancies are sub-tenancies would have sufficient time to look for alternative accommodation in the event that superior landlords seek to enforce court orders for possession of the SDUs.

8. To enhance the protection for sub-tenants of SDUs, we proposed in the paper for discussion at the Bills Committee on 6 September 2021 (LC Paper No. CB(1)1287/20-21(02)) that if (i) a regulated tenancy for an SDU is a sub-tenancy created out of another tenancy; (ii) the regulated tenancy is terminated by reason of the termination of that other tenancy;

and (iii) the tenant of the regulated tenancy (i.e. the sub-tenant) fails to deliver up vacant possession of the SDU on the date of the termination of the regulated tenancy –

- (a) the superior landlord as defined in the proposed section 120AAZJ(7)² may recover from the sub-tenant compensation of an amount to be calculated based on the monthly rent payable by the sub-tenant immediately before the termination of the regulated tenancy and the period commencing on the date immediately after the termination date of the regulated tenancy and ending on the date on which the sub-tenant delivers up vacant possession of the SDU (“holding-over period”), and only if the superior landlord waives the right to recover the compensation in writing may the landlord of the regulated tenancy (“sub-landlord”) recover the same from the sub-tenant;
- (b) any right of the superior landlord or sub-landlord under common law rules or equitable principles to make further claims against (i) the sub-tenant; or (ii) a surety or guarantor for the sub-tenant’s liabilities under the regulated tenancy for the sub-tenant’s failure to deliver up vacant possession of the SDU on the termination of the regulated tenancy and trespass to land in respect of the SDU during the holding-over period is abrogated;
- (c) any right of the superior landlord or sub-landlord to make claims against any other occupiers who are residing with the sub-tenant in the SDU during the holding-over period for their failure to vacate the SDU on the termination of the regulated tenancy and trespass to land in respect of the SDU during the holding-over period is also abrogated;
- (d) notwithstanding the relevant provisions of the High Court Ordinance (Cap. 4), the District Court Ordinance (Cap. 336) and the Lands Tribunal Ordinance (Cap. 17), no order as to costs may be made in favour of the superior landlord or sub-landlord against the sub-tenant in proceedings commenced by the superior landlord to recover possession of the SDU or proceedings commenced by the superior landlord or sub-

² Superior landlord is defined in the proposed section 120AAZJ(7) to mean, in relation to an SDU (or any premises of which the SDU forms part), a person (other than the landlord of the regulated tenancy) entitled to the immediate reversion of the SDU (or the premises).

landlord to claim the compensation under paragraph 8(a) from the sub-tenant (“specified proceedings”). This, however, does not apply if the sub-tenant has conducted his case in the specified proceedings in a frivolous or vexatious manner, or in respect of the costs of any counterclaim made by the sub-tenant in the specified proceedings; and

- (e) notwithstanding the relevant provisions of Cap. 4, Cap. 336 and Cap. 17, no interest on all or any part of the compensation referred to in paragraph 8(a) may be included in the sum for which judgment is given in favour of the superior landlord or sub-landlord against the sub-tenant in the specified proceedings.

9. Members supported the above proposal at the Bills Committee meeting on 6 September 2021. We propose to make a CSA to give effect to the proposal by adding the new section 120AAZJA to the proposed Part IVA of Clause 4 of the Bill.

(d) Amending the proposed section 120AAZZE

10. The proposed section 120AAZZE(3) of Clause 4 of the Bill provides that if the Commissioner of Rating and Valuation requires a person to provide any particulars required by a requisition under the proposed section 120AAZU(2) and the conditions specified in the proposed section 120AAZZE(4) are satisfied, the Commissioner’s requirement and the person’s response are not admissible in evidence against the person in criminal proceedings. However, the proposed section 120AAZZE(6) provides that the proposed section 120AAZZE(3) does not apply to any criminal proceedings in which the person is charged with an offence in respect of the person’s response (a) under section 120AAZU or 120AAZZD; (b) under Part V of the Crimes Ordinance (Cap. 200); or (c) for perjury.

11. After consultations with the Department of Justice, it is confirmed that the offence of perjury belongs to one of the offences under Part V of the Crimes Ordinance (Cap. 200). In other words, the scope of the proposed section 120AAZZE(6)(b) already covers the proposed section 120AAZZE(6)(c), making the latter redundant. We therefore propose to make a CSA to delete the proposed section 120AAZZE(6)(c).

- (e) Amending Schedule 6 to be added to Cap. 7 to specify additional types of excluded tenancies

12. The proposed section 120AAB(2) of Clause 4 of the Bill provides that the proposed Part IVA does not apply to the tenancies specified in Schedule 6. In view of Members' concerns that the Bill may catch tenancies where the landlord resides in a unit and only lets a room or some of the remaining rooms in the unit as a dwelling, we propose to make a CSA to add to Schedule 6 a tenancy –

- (a) that is not a sub-tenancy;
- (b) the subject premises of which are a bedroom³ in a unit; and
- (c) the landlord of which is –
 - (i) a natural person; and
 - (ii) residing in the unit at the commencement of the tenancy,

so that a tenancy fulfilling all the above criteria would be excluded from the application of the proposed Part IVA.

13. In line with the spirit of the above proposed CSA, we propose to also exclude tenancies made under the “Letting Scheme for Subsidised Sale Developments with Premium Unpaid” (Letting Scheme) administered by the Hong Kong Housing Society (HKHS). The aim of the Letting Scheme is to facilitate the efficient use of public housing resources through allowing eligible subsidised sale flat (SSF) owners to make better use of their flats and helping families in need of affordable rental housing. Under the Letting Scheme, eligible SSF owners under the Hong Kong Housing Authority (HA) and HKHS with premium unpaid may lease their entire flats or individual bedroom(s) therein to eligible public rental housing (PRH) applicants, or lease their entire flats to specified non-government organisations⁴, which in turn may permit eligible PRH applicants to use and occupy such flats or certain bedroom(s) therein by way of licence agreements. HKHS has put in place measures that can protect the interest of tenants under the Letting Scheme. For instance, for

³ “Bedroom” means premises in a unit of a building that are demarcated as a bedroom in the building plan of the building that is the latest one approved by the Building Authority under the Buildings Ordinance (Cap. 123) as at the date on which the occupation permit (not a temporary occupation permit) in relation to the building is issued under Cap. 123.

⁴ Hong Kong Council of Social Service at the moment.

SSFs with no or only one bedroom, owners can only let the entire flat under one tenancy, and for flats with two bedrooms or more, while owners may choose to let individual bedroom(s), there can only be **at most two tenancies** in the flat; and if the tenant is allocated with a PRH unit during his/her tenancy with the SSF owner, the tenant is allowed to terminate the tenancy, etc. HKHS would continue to regulate the Letting Scheme to ensure that the interests of the owners and tenants are properly protected. Accordingly, we propose to make a CSA to add to Schedule 6 a tenancy of premises under the Hong Kong Housing Society's Letting Scheme for Subsidised Sale Developments with Premium Unpaid so that it would be excluded from the application of the proposed Part IVA.

(f) Expanding the jurisdiction of the Lands Tribunal

14. As a related amendment under Division 1 of Part 3 of the Bill, we propose to make a CSA to expand the jurisdiction of the Lands Tribunal by amending section 8(8) of the Lands Tribunal Ordinance (Cap. 17) such that the Tribunal shall have jurisdiction in any application for possession or for ejectment under Cap. 7 or otherwise, whether or not it grants any such application, to make an order for the payment of any compensation referred to in the proposed section 120AAZJA of Cap. 7 as mentioned in paragraph 8(a) above.

Way Forward

15. Members are invited to note the Government's proposed CSAs as set out at the Annex, which will be moved by the Secretary for Transport and Housing upon resumption of Second Reading debate of the Bill.

**Transport and Housing Bureau
September 2021**

Landlord and Tenant (Consolidation) (Amendment) Bill 2021

Committee Stage

Draft Amendments to be moved by the Secretary for Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
4	In the proposed section 120AA(1), in the definition of <i>family member</i> , in paragraph (b), by deleting “or”.
4	In the proposed section 120AA(1), in the definition of <i>family member</i> , by adding— “(d) the person’s grandparent; or (e) the person’s adult grandchild;”.
4	In the proposed section 120AA(1), by adding in alphabetical order— “ <i>child</i> (子女) includes an illegitimate child, a stepchild and a child adopted in a way recognized by law, and <i>parent</i> (父母) is to be construed accordingly;”.
4	In the proposed section 120AAZE(2)(b), by deleting “15%” and substituting “10%”.
4	In the proposed Part IVA, in Division 6, by adding— “ 120AAZJA. Limited liabilities of sub-tenant on termination of superior tenancy (1) This section applies if— (a) a regulated tenancy for a subdivided unit is a sub-tenancy created out of another tenancy; (b) the regulated tenancy is terminated because of the termination of a tenancy superior to the regulated tenancy (<i>superior tenancy</i>); and (c) the tenant of the regulated tenancy (<i>sub-tenant</i>) fails to deliver up vacant possession of

the subdivided unit on the date on which the regulated tenancy is terminated (*termination date*).

(2) Only the following person may recover as a civil debt from the sub-tenant the compensation determined under subsection (3) (*compensation*) for the sub-tenant's failure to deliver up vacant possession of the subdivided unit on the termination date—

(a) the superior landlord who terminates the superior tenancy; or

(b) if the superior landlord in writing waives the right to recover the compensation—the landlord of the regulated tenancy (*sub-landlord*).

(3) The compensation is determined in accordance with the following formula—

$$A = B \times C$$

where—

A means the compensation;

B means the monthly rent payable by the sub-tenant under the regulated tenancy for the subdivided unit immediately before the termination date;

C means the number of months covering the period commencing on the date immediately after the termination date and ending on the date on which the sub-tenant delivers up vacant possession of the subdivided unit (*holding-over period*).

(4) If the number of months in a holding-over period is not an integer, it is to be rounded down to the nearest integer.

(5) The compensation recoverable by the superior landlord or sub-landlord must be paid by the sub-tenant within 15 days after the date on which the sub-tenant delivers up vacant possession of the subdivided unit.

- (6) The right (if any) of the superior landlord or sub-landlord under common law rules or equitable principles to make further claims against—
- (a) the sub-tenant; or
 - (b) a surety or guarantor for the sub-tenant's liabilities under the regulated tenancy,
- for the sub-tenant's failure to deliver up vacant possession of the subdivided unit on the termination of the regulated tenancy and trespass to land in respect of the subdivided unit during the holding-over period is abrogated.
- (7) Also, the right (if any) of the superior landlord or sub-landlord to make claims against any other occupiers (who are residing with the sub-tenant in the subdivided unit during the holding-over period) for—
- (a) their failure to vacate the subdivided unit on the termination of the regulated tenancy; and
 - (b) trespass to land in respect of the subdivided unit during the holding-over period,
- is abrogated.
- (8) Subject to subsection (9), despite section 52A of the High Court Ordinance, section 53 of the District Court Ordinance and section 12 of the Lands Tribunal Ordinance, no order as to costs may be made in favour of the superior landlord or sub-landlord (whichever is applicable) against the sub-tenant in the following proceedings (*specified proceedings*)—
- (a) proceedings commenced by the superior landlord to recover possession of the subdivided unit;
 - (b) proceedings commenced by the superior landlord or sub-landlord to claim the compensation from the sub-tenant.
- (9) Subsection (8) does not apply—

- (a) if the sub-tenant has conducted the sub-tenant's case in the specified proceedings in a frivolous or vexatious manner; or
 - (b) in respect of the costs of any counterclaim made by the sub-tenant in the specified proceedings.
- (10) Also, despite section 48 of the High Court Ordinance, section 49 of the District Court Ordinance and section 12B of the Lands Tribunal Ordinance, no interest on all or any part of the compensation may be included in the sum for which judgment is given in favour of the superior landlord or sub-landlord (whichever is applicable) against the sub-tenant in the specified proceedings.

(11) In this section—

District Court Ordinance (《區域法院條例》) means the District Court Ordinance (Cap. 336);

High Court Ordinance (《高等法院條例》) means the High Court Ordinance (Cap. 4);

Lands Tribunal Ordinance (《土地審裁處條例》) means the Lands Tribunal Ordinance (Cap. 17);

superior landlord (上級業主) has the meaning given by section 120AAZJ(7).”.

4 In the proposed section 120AAZZE(6)(a), by adding “or” after the semicolon.

4 In the proposed section 120AAZZE(6)(b), by deleting “; or” and substituting a full stop.

4 By deleting the proposed section 120AAZZE(6)(c).

5 In the English text, in the proposed definition of ***landlord***, by deleting “giving” and substituting “given”.

8 In the proposed Schedule 6, in the Chinese text, in section 1, in the definition of **社會服務機構**, by deleting “構。” and substituting “構；”.

8 In the proposed Schedule 6, in section 1, by adding in alphabetical order—

“*bedroom* (睡房), in relation to a building, means premises in a unit of the building that are demarcated as a bedroom in the latest building plan of the building;

latest building plan (最近期建築圖則), in relation to a building, means a building plan of the building that is the latest one approved by the Building Authority under the Buildings Ordinance as at the date on which the occupation permit in relation to the building is issued;

occupation permit (佔用許可證) means an occupation permit (but not a temporary occupation permit) issued under the Buildings Ordinance;”.

8 In the proposed Schedule 6, in section 2, by adding—

“(ba) a tenancy—

(i) that is not a sub-tenancy;

(ii) the subject premises of which are a bedroom in a unit; and

(iii) the landlord of which is—

(A) a natural person; and

(B) residing in the unit at the commencement of the tenancy;”.

8 In the proposed Schedule 6, in section 2, by adding—

“(ca) a tenancy of premises under the Hong Kong Housing Society’s Letting Scheme for Subsidised Sale Developments with Premium Unpaid;”.

9 By renumbering the clause as clause 9(4).

9 By adding—

“(1) Section 8(8)(c)—

Repeal

“and”.

(2) Section 8(8)(d)—

Repeal the full stop

Substitute

“; and”.

(3) After section 8(8)(d)—

Add

“(e) an order for the payment of any compensation within the meaning of section 120AAZJA of that Ordinance.”.”.