

LEGISLATIVE COUNCIL BRIEF

Landlord and Tenant (Consolidation) Ordinance (Cap. 7)

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2021

INTRODUCTION

At the meeting of the Executive Council on 6 July 2021, the Council **ADVISED** and the Chief Executive **ORDERED** that the Landlord and Tenant (Consolidation) (Amendment) Bill 2021, at **Annex A**, should be introduced into the Legislative Council (LegCo).

2. The Chief Executive (the CE) undertook at the LegCo Question and Answer Session on 4 February 2021 that the Government would introduce a bill to implement tenancy control on subdivided units (SDUs) within the current legislative session.

JUSTIFICATIONS

3. According to the findings of the survey commissioned by the Task Force for the Study on Tenancy Control of Subdivided Units (Task Force), there are some 110 000 SDUs in Hong Kong providing accommodation to over 226 000 persons. The median monthly rental of SDUs is \$4,800, and the median monthly rent per sq.m. is \$417, as opposed to the average monthly rents of \$301 and \$368 per sq.m. of a domestic flat under 40 sq.m. in the New Territories and Kowloon respectively in November 2020. The median monthly income of households living in SDUs was \$15,000 in 2020, as compared to the corresponding Hong Kong median of \$33,000 in the fourth quarter of 2020. The monthly rent accounted for around one third of the monthly household income of the SDU households. The median per capita floor area of accommodation for SDUs is 6.6 sq.m.

4. There are views that SDU households, many of whom are low-income individuals and families and are amongst the most under-privileged groups in the society, are vulnerable to arbitrary rent increases by landlords and enjoy little security of tenure as many of the SDU tenancies are oral periodic tenancies. They are also often over-charged by landlords in respect of electricity and water bills and suffer from other unfavourable tenancy

arrangements. There are also views that without proper tenancy control, any assistance provided by the Government, such as cash allowance or one-off electricity subsidies and water charge reductions, may not be able to benefit the households in SDUs.

5. In response to strong public demand for introducing tenancy control on SDUs, the CE announced on 14 January 2020 the setting up of a task force to study the subject of tenancy control on SDUs as one of the ten new livelihood initiatives to enhance the support for grassroots and underprivileged people. The Task Force, chaired by Prof. William Leung, was subsequently set up in April 2020 to study and report to the Government the situation of SDUs in Hong Kong and to advise the Government on whether tenancy control on SDUs should be implemented and the possible options.

6. The Task Force has adopted the following key guiding principles when looking into whether tenancy control on SDUs should be implemented and the possible options –

- (a) whilst Hong Kong has had relatively strict forms of tenancy control in the past, the Hong Kong Bill of Rights Ordinance (Cap. 383) came into force in Hong Kong on 8 June 1991. Since 1 July 1997, the Basic Law has also offered clear protection of private property rights. New tenancy restrictions imposed after the acquisition by an owner might be found to be an infringement of or a derogation from the owner's property rights and might be held by the court as contravention of the Basic Law, unless such restrictions would not disproportionately infringe on the private property rights of the owner whilst bringing societal benefits to the tenant;
- (b) despite the fact that the living conditions of quite a number of SDUs are less than desirable, SDUs do provide basic accommodation to some low-income individuals and families pending the availability of sufficient public and transitional housing to meet their housing needs. The objective of the study on tenancy control on SDUs is not to displace SDUs but they should be made subject to regulation under various legislation governing their building and fire safety as well as sanitation, etc.;
- (c) as highlighted in the Long Term Housing Strategy published by the Transport and Housing Bureau (THB) in December 2014

and in the three thematic research reports of the Task Force¹, tenancy control measures might lead to an array of unintended consequences, some of which might be unfavourable to the tenants originally intended for protection. In particular, the Task Force notes that SDU landlords would very likely take “pre-emptive” actions, such as immediate rent increase and eviction of tenants, before the tenancy control measures come into force. However, it appears that there is no available legal tool to introduce counter-measures, such as imposition of a temporary rent freeze, to forestall such pitfalls before the enactment of the relevant legislation;

- (d) sub-letting is believed to be prevalent in the SDU market. When a superior tenancy expires or is terminated by notice or forfeiture, the sub-tenancy in respect of the SDU would end simultaneously, thereby creating difficulties in enforcing tenancy control, particularly security of tenure. While it is almost impossible to forbid subletting which may cause a fundamental disruption to the SDU rental market, any tenancy control regime concerning SDUs should incorporate suitable measures to address the problem caused by subletting as far as possible; and
- (e) the Government should adopt measures which are legally sound, relatively easy to administer and can be implemented speedily, whilst bringing real protection to SDU tenants.

7. The Task Force has completed the study and submitted the final report to the Government on 31 March 2021, the executive summary of which is at **Annex B**. It recommends that the Government should implement suitable tenancy control on SDUs to safeguard the interests of grass-root tenants of SDUs, and puts forth a regulatory framework and host of measures for effecting the proposed tenancy control on SDUs, including mandating the signing of a written tenancy agreement by SDU landlords and tenants stipulating the rights and obligations of both parties, providing a four-year security of tenure to tenants, restricting the level of rent increase with reference to the movement of the relevant rental index of private domestic

¹ The Task Force has commissioned Policy 21 to carry out a survey on the situation of SDUs and the socio-economic characteristics of SDU tenants, and to study tenancy control on SDUs from the social angle; Prof. Terence Chong from the Department of Economics of the Chinese University of Hong Kong to study the relevant issues from the economic perspective; and a team from the Faculty of Law of the University of Hong Kong, comprising Adjunct Professor Malcolm Merry, Adjunct Associate Professor Adrian But and Mr. Alwin Chan, to study the legal issues involved.

properties compiled and published by the Rating and Valuation Department (RVD) and subject to a cap of 15%, and prohibiting landlords from overcharging tenants utility fees, etc.

8. We have carefully considered the report and the recommendations put forward by the Task Force. We are of the view that the proposed tenancy control framework as recommended by the Task Force, if implemented, could achieve our policy objective of providing a reasonable degree of protection to SDU tenants, particularly in respect of the provision of the much needed security of tenure and prevention of unwarranted rent hike upon renewal of tenancy, without unduly compromising the interests of the landlords and their property rights. We therefore accept in principle the recommendations of the report of the Task Force. The legislative proposals for introducing tenancy control on SDUs as set out in the ensuing paragraphs have been formulated along the recommendations of the Task Force. Amendments to the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (the Ordinance) are required to effect the proposed tenancy control measures.

Legislative Proposals

(a) Scope of Regulation

9. Noting that SDUs do not only exist in domestic buildings but also in industrial and commercial buildings, or in temporary structures such as squatter structures and “rooftop houses”, as well as the fact that these SDUs may involve illegal land use and/or unauthorised building works, the Task Force is mindful about sending a misleading message to the public that the Government is “legalising” these SDUs should tenancy control also cover these illegal SDUs. On the other hand, the Task Force recognises that tenants living in these SDUs may be even more vulnerable than those living in SDUs in normal domestic buildings and therefore are also in need of tenancy protection. The general views of the public, concern groups and many LegCo Members from major political parties are also that tenancy control on SDUs should cover as many SDU tenants as possible irrespective of the type of buildings in which the SDU is situated. We share the Task Force’s views that, where possible, the scope of regulation should be relatively broad to cover as many SDUs as possible such that more SDU tenants could benefit from the proposed tenancy control. Therefore, the Government will make it clear to the public that (i) the Landlord and Tenant (Consolidation) (Amendment) Bill 2021 (the Bill) is not meant to “legalise” SDUs in industrial/commercial buildings or temporary structures; (ii) the new tenancy control regime on SDUs would not prejudice law enforcement actions taken by relevant authorities under existing legislations, particularly in respect

of building and fire safety; and (iii) “regulated tenancy” would not necessarily constitute a reasonable excuse for owners not to comply with statutory orders, lease enforcement notices and other enforcement notices issued by relevant government departments in exercise of their legal authorities.

10. Taking account of the considerations in paragraph 9 above, we propose that an SDU would be defined 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 podium² 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 Houses³, 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.

11. On the proposed inclusion of SDUs in industrial buildings in the Bill, we emphasise that the Government’s position is that illegal domestic use (irrespective of whether it is in the form of SDUs) inside industrial buildings is subject to priority and vigorous enforcement action by the Buildings Department given the grave dangers caused by the incompatible users. However, as mentioned in paragraph 9 above, there is strong community support from the Task Force, concern groups and many LegCo Members from

² 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.

³ 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.

major political parties that tenancy control on SDUs should cover as many SDU tenants as possible as SDU tenants living in industrial buildings may be even more vulnerable than those living in SDUs in normal domestic buildings and are also in need of tenancy protection. We would continue to send a clear message to the public that the Government is not legalising SDUs in industrial/commercial buildings and the new tenancy control regime on SDUs would not prejudice law enforcement actions taken by relevant authorities under existing legislation.

12. A tenancy will be a “regulated tenancy” and subject to the proposed tenancy control if it fulfils the following criteria –

- (a) the tenant is a natural person;
- (b) it is a tenancy in respect of an SDU;
- (c) it is a domestic tenancy; and
- (d) the purpose of the tenancy is for the tenant’s own dwelling.

13. Since the focus of tenancy control should be on the use of SDUs for domestic purpose and it is not the policy intention to regulate those “upper layers” of tenancies in the leasing structure of SDUs which are not for the tenants’ own dwellings, only domestic tenancies of SDUs (criterion (c)) under which the purpose of the tenancy is for the tenant’s own dwelling (criterion (d)) would be regulated.

(b) Tenancies to be excluded

14. We propose to set out in a schedule to the Ordinance a list of tenancies to be excluded from the application of the proposed tenancy control regime for SDU. These include, inter alia, a tenancy of which the landlord is the employer and the tenant is the employee in possession of the premises in accordance with the terms and conditions of the tenant’s employment; a tenancy held from the Government, the Hong Kong Housing Authority, the Hong Kong Housing Society, the Hong Kong Settlers Housing Corporation Limited or the Urban Renewal Authority and its wholly owned subsidiaries; and a tenancy held from a social service organisation⁴ in respect of a housing

⁴ A social service organisation refers to a non-profit-making organisation operating on a non-profit-making basis for the purpose of providing social services. A number of social service organisations are running youth hostels the construction of which is fully funded by the Government under the Youth Hostel Scheme. Some social service organisations are providing transitional housing for needy families/individuals. Meanwhile, the Government is implementing a new pilot scheme to subsidise the provision of transitional housing for needy families by social service organisations using suitable rooms in hotels and guesthouses with relatively low occupancy rates. We do not intend to subject tenancies held from social service organisations in respect of housing units provided by them to the new regulatory regime.

unit provided by the organisation. We also propose that subject to the negative vetting mechanism, the Secretary for Transport and Housing (STH) may by notice published in the Gazette amend the schedule to exclude any other class of tenancies from the application of the new regulatory regime.

(c) *Statutory Requirements for and Mandatory Terms to be Implied into “Regulated Tenancies”*

15. We propose to standardise the tenancy agreement for “regulated tenancies” by imposing statutory requirements on and having mandatory terms impliedly incorporated into every “regulated tenancy”. The key proposals include –

- (a) the term of a “regulated tenancy” is to be of a fixed term of two years. The rent cannot be increased during the tenancy period, but can be adjusted downwards by the landlord, whether or not on the tenant’s request;
- (b) only the tenant has the right to terminate the tenancy after 12 months into the tenancy by giving to the landlord one month’s notice. On the other hand, the landlord may enforce a right of re-entry or forfeiture if the tenant is in breach of any of his/her obligations set out in (f) and (g) below;
- (c) the landlord cannot require the tenant to pay, or otherwise receive from the tenant, any money other than for the rent, deposit (which, if it is required under a tenancy, must not be more than two months’ rent), reimbursement of utility charges as apportioned by the landlord (if any), and damages for the tenant’s breach of the tenancy (if any);
- (d) where there is no separate electricity or water meter installed by the two electricity companies or the Water Supplies Department, when the landlord seeks reimbursement of utility charges from the tenant, the landlord must provide the tenant with a copy of the utility bill concerned and a breakdown of the apportionment amongst the SDU and other parts in the same unit. The total of the apportioned sums must not exceed the amount charged in the subject utility bill. This arrangement would also cover the tenant’s reimbursement of charges for gas and communication services (including services enabling the use of internet) provided by the landlord for the SDU where such charges are not independently billed;

- (e) the landlord must maintain and keep in repair, where applicable, the drains, pipes and electrical wiring serving the premises exclusively, windows of the premises, and keep in proper working order the fittings and fixtures provided by the landlord in the SDU. On receipt of notice for repairs and subject to the tenant's provision of reasonable access to the SDU for the purposes of carrying out the repairs, the landlord must execute such repairs as soon as practicable. If the landlord fails to fulfil any of the landlord's said obligations, the tenant may terminate the tenancy by giving the landlord not less than 30 days' prior notice in writing;
- (f) the tenant must pay the rent to the landlord on or before the due date;
- (g) the tenant must not (i) use the premises for an immoral or illegal purpose; (ii) do anything on the premises that would cause unnecessary annoyance, inconvenience or disturbance to the landlord or to any other person; (iii) make any structural alteration to the premises without the prior written consent of the landlord; and (iv) assign or underlet the whole SDU, or otherwise part with possession of the whole of the SDU, or underlet part of the SDU to another person without the prior written consent of the landlord;
- (h) the deposit must be returned free of interest to the tenant by the landlord (i) on the expiry of the term, or within seven days after the delivery of vacant possession of the premises to the landlord on the expiry or early termination of the tenancy, or (ii) within seven days after the settlement of the last outstanding claim by the landlord against the tenant in respect of any breach by the latter of the tenancy, whichever is later;
- (i) the landlord must submit information about the "regulated tenancy" to RVD within 60 days after the term of the tenancy commences. If the landlord fails to do so without reasonable excuse, he or she commits an offence; and
- (j) after receiving the tenancy agreement signed by the tenant, the landlord must stamp it with the Stamp Office and within 30 days, return to the tenant a counterpart of the stamped tenancy agreement signed by the parties. If the landlord fails to do so, the tenant may withhold the payment of rent until the landlord has done so. The stamp duty of the tenancy agreement and its counterpart is to be borne by the landlord only.

16. The mandatory terms implied into every “regulated tenancy” bind the landlord and the tenant and prevail over any other term in the tenancy agreement that is inconsistent with them.

17. The Government would mandate the signing of a written tenancy agreement by SDU landlords and tenants in the following manner. Specifically, if the SDU landlord and tenant have not entered into a written tenancy agreement at the outset, the tenant has a right under the Ordinance as amended by the Bill to demand a written tenancy agreement to be delivered by the landlord to the tenant within the specified period of 30 days. If the landlord fails to do so, the tenant can withhold the payment of the rent until the landlord has fulfilled this requirement, or terminate the tenancy by, within seven days after the specified period, giving the landlord prior notice in writing of not less than 30 days for the termination. On the other hand, if the landlord has provided the written tenancy agreement to the tenant for signing but the tenant fails to pay back the rent withheld to the landlord within 15 days after the tenant’s receipt of the tenancy agreement, the landlord may terminate the tenancy by giving the tenant prior notice in writing of not less than 15 days.

(d) Security of Tenure

18. We propose to accept 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 (i.e. a “2+2” regulated cycle). A four-year security of tenure is recommended taking into consideration the need to refrain from imposing an unduly heavy burden on the SDU landlord, and the findings of the survey commissioned by the Task Force that around 56% of SDU households have lived in the current SDU for more than two years and the average waiting time for general applicants for public rental housing was 5.8 years as at end-March 2021. We agree with the Task Force’s assessment that a four-year security of tenure would strike a reasonable balance between the inroads into SDU owners’ private property rights and the societal benefits that can be brought to SDU tenants.

19. The landlord must make an offer to the tenant of a second term tenancy before the expiry of the first term of a regulated cycle and within the offer period (i.e. the 2nd calendar month immediately before the calendar month in which the second term tenancy is to commence). The terms and conditions of the second term tenancy are to be the same as those of the first term tenancy of the same cycle, except that the rent of the second term tenancy may be adjusted in accordance with the rent regulation mechanism (see paragraphs 20 to 21 below). After the expiry of the second term tenancy of

a regulated cycle, the landlord and tenant would be free to negotiate and enter into a new tenancy at a mutually agreed level of rent. Another regulated cycle will start and the landlord is obliged by law to provide another four years of security of tenure to the tenant under the new regulated cycle.

(e) Rent Regulation on Tenancy Renewal

20. To protect SDU tenants from arbitrary rent increase by the landlord and to lower their rental burden, we propose to set a cap on the rate of rent increase between the first term tenancy and the second term tenancy of a regulated cycle. Specifically, the rate of rent increase between the first term tenancy and second term tenancy must not be more than (a) the percentage change of the rental index in respect of all classes of private domestic properties compiled and published by RVD in the relevant period (“control percentage”; see paragraph 21 below); or (b) 15%, whichever is the lower. If the relevant change of the above RVD rental index is negative, the rent of the second term tenancy must be reduced by at least the same percentage. This proposed approach would help rein in any rent increase of SDUs in tandem with the overall movement of the private domestic rental market while enabling SDU landlords to earn a return on their properties which is broadly in line with the prevailing yield in the private domestic rental market.

21. The following formula would be used to calculate the “control percentage” –

$$A = \frac{B - C}{C} \times 100$$

where:

- A means the control percentage
- B means the figure of the rental index of the 4th calendar month immediately before the commencement month of the purported second term tenancy⁵ that is prevailing on the first day of the offer period
- C means the figure of the rental index of the commencement month of the first term tenancy that is prevailing on the first day of the offer period

⁵ The landlord of a first term tenancy for an SDU must, within the offer period (meaning the 2nd calendar month immediately before the calendar month in which the second term tenancy is to commence), make an offer to the tenant for a second term tenancy of the regulated cycle. For example, assuming that the Bill comes into effect on 1 January 2022, if the first term tenancy is to expire on 31 December 2023 and the second term tenancy shall therefore commence on 1 January 2024, the landlord shall make an offer of a second term tenancy with the proposed rent to the tenant on any date in November 2023. In this case, “B” in the formula would be the figure of the rental index of September 2023 (as first published by RVD on the third last working day of October 2023), which is the 4th calendar month immediately before the commencement month of the second term tenancy, prevailing on 1 November 2023 (i.e. the first day of the offer period).

The table at **Annex C** gives the biennial change in RVD's Private Domestic Rental Index (all classes) in the past 20 years. The index has fluctuated over time and the rate of increase was particularly high on several occasions, e.g., 26.3% in 2008, 33.5% in 2011 and 19.1% in 2012. The imposition of the 15% cap as the maximum permissible rate of rent increase should provide an additional and effective safeguard against any extreme rent hike without unduly compromising the interest of the SDU landlords.

(f) Measure to Address the Problem Caused by Subletting

22. Subletting of SDUs is believed to be prevalent in the market. In general, when a superior tenancy expires or is terminated by notice or forfeiture, the sub-tenancy of the SDU would end simultaneously. This would create difficulties in enforcing tenancy control on SDUs, in particular security of tenure. That said, it is not our intention to subject all leases in the leasing structure to tenancy control, nor to prohibit subletting as this would be hugely disruptive to the SDU rental market and curtail the supply of SDUs for rental. To deal with the problem caused by subletting, we propose that for a "regulated tenancy" which is a sub-tenancy created out of another tenancy, if a superior landlord applies to the court for possession of the SDU and successfully obtains an order for possession, the superior landlord must notify the tenant of the "regulated tenancy" (i.e., the sub-tenant) in writing by affixing a notice on the main door or entrance of the SDU on three successive days, which is taken to be an effective notice served on the sub-tenant. Leave to issue a writ of possession to enforce the order is not to be granted by the court before the expiry of a period of 60 days beginning on the day immediately after the last day on which the notice is affixed, unless the sub-tenant has delivered up vacant possession of the SDU before the leave is granted. The aforesaid proposed "automatic stay of execution" for 60 days should provide sufficient time for the affected SDU tenants to look for alternative accommodation.

(g) Offences and Penalties

23. As a deterrent, we propose to specify new offences in the Bill to cover, inter alia, the following (i) the landlord of a "regulated tenancy" requiring the tenant to make, or receiving from the tenant, payments other than for the rent, deposit (if any), reimbursement of charges for water, electricity, gas, communication services⁶ as apportioned by the landlord (if any), and damages due to the tenant's breach of the tenancy agreement (if any) - the landlord is liable on a first conviction to a fine at level 3 (i.e. currently \$10,000)

⁶ Communication services means services enabling a telephone other than a mobile telephone, the Internet, a cable television and a satellite television to be used.

and on a second or subsequent conviction to a fine at level 4 (i.e. currently \$25,000); (ii) the landlord requiring or receiving reimbursement of charges for the above utilities and services from the tenant where the total of apportioned sums for the persons sharing the utilities and services exceeds the amount charged in the bill concerned - the landlord is liable on a first conviction to a fine at level 3 and on a second or subsequent conviction to a fine at level 4; and (iii) the landlord, without reasonable excuse, refusing or neglecting to submit a notice of tenancy to the Commissioner of Rating and Valuation within 60 days after the term of the tenancy commences - the landlord is liable on conviction to a fine at level 3, and in the case of a continuing offence, to a further fine of \$200 for each day during which the offence continues.

24. Other existing offences and penalties applicable to domestic tenancies under Part IV of the Ordinance, including those relating to the landlord's failure to provide rent receipts and harassment, will also apply to "regulated tenancies".

(h) Transitional Arrangements

25. We propose that the terms as well as rights and obligations of the landlord and the tenant under fixed-term tenancy agreements commenced before the commencement date of the Bill should not be affected.

26. In respect of periodic tenancies which fulfil the four criteria in paragraph 12, we propose that at the commencement of any new "period" on or after the commencement date of the Bill, the subject periodic tenancy will be deemed to become a first term tenancy of a regulated cycle with a mandatory fixed term of two years.

(i) Effective Date

27. Subsequent to passage of the Bill by LegCo, we propose that the Amendment Ordinance should come into operation on the expiry of three months beginning on the day on which it is published in the Gazette.

(j) Implementation Arrangements

28. RVD will be responsible for administering the new provisions in the Bill, including promoting public awareness of the new regulatory regime; handling enquiries; providing advisory and mediatory services on tenancy matters; publishing summary information about SDU rents reported after implementation of the new law; and taking enforcement action as appropriate.

29. As recommended by the Task Force, we will entrust non-governmental organisations to provide the necessary support for SDU landlords and tenants at the district level to assist them in understanding their respective rights and obligations under the new law, facilitate the dissemination of summary information about SDU rents reported and, where appropriate, assist prospective SDU tenants in finding accommodations. The Estate Agents Authority will also be invited to issue guidelines setting out the good practices for estate agents to follow regarding the letting of SDUs under the new regulatory regime.

THE BILL

30. The main provisions of the Bill are summarised below-

Part 2 – Amendments to Landlord and Tenant (Consolidation) Ordinance (Cap. 7)

- (a) **Clause 3** amends section 116(2)(a) of the Ordinance to exclude a tenancy under the new Part IVA of the Ordinance from the application of Part IV of the Ordinance.
- (b) **Clause 4** adds a new Part IVA to the Ordinance to provide for the regulation of tenancies of SDUs of buildings. The key provisions are –

Division 1 – Interpretation and Application

- i. the new section 120AAB provides for the application of the new Part IVA, and the new section 120AAC enables STH to amend Schedule 6 by notice published in the Gazette to exclude certain class of tenancies from the application of that Part;

Division 2 – Determination relating to “Regulated Tenancy”

- ii. the new section 120AAE allows a person having an interest in any premises to apply to the Lands Tribunal to determine whether or not a tenancy is a tenancy for the purpose of the new Part IVA; and the new sections 120AAG to 120AAN set out what should or may be taken into account in determining whether a tenancy is a domestic tenancy and whether a tenancy is for the tenant’s

own dwelling;

Division 3 – Regulated Cycle

- iii. the new sections 120AAO to 120AAR set out the terms of a regulated cycle of tenancies; provide that a first term tenancy may be entered into by the parties at a rent agreed by them; prescribe the circumstances under which a periodic tenancy or a tenancy for a term other than of two years is taken to be a first term tenancy; and entitle a tenant of a first term tenancy to a second term tenancy of the same regulated cycle;
- iv. the new sections 120AAS to 120AAY prescribe how a landlord of a first term tenancy may offer the tenant a second term offer and how the tenant may accept the second term offer; and provide for certain circumstances in which a second term offer lapses;
- v. the new section 120AAZ enables a tenant under an oral tenancy to demand the landlord to serve a tenancy in writing reflecting the contents of the oral tenancy for signing by the parties within 30 days. If the landlord fails to do so, the tenant may withhold the payment of rent until the landlord has done so, or terminate the tenancy by giving prior notice as provided in that section. On the other hand, if the landlord has eventually served the tenancy in writing on the tenant but the tenant fails to pay back the rent withheld to the landlord, the landlord may terminate the tenancy by giving prior notice as provided in that section.
- vi. the new section 120AAZA provides that the term of a “regulated tenancy” (which is a sub-tenancy created out of a superior tenancy) is to expire no later than the expiry of the term of the superior tenancy;

Division 4 – Rents and Deposit

- vii. the new section 120AAZC provides that the rental deposit payable by a tenant of a “regulated tenancy” may not be more than two months’ rent under the tenancy; the new section 120AAZD forbids alteration of rent during

the term of a “regulated tenancy” except that the landlord may reduce the amount of rent payable by the tenant; and the new section 120AAZE sets out the mechanism for ascertaining the rent payable by a tenant for a “regulated tenancy” of the second term;

Division 5 – Implied Terms

- viii. the new section 120AAZF provides that the provisions in Schedule 7, which set out the respective obligations of the landlord and tenant, are to be impliedly incorporated into every “regulated tenancy”;

Division 6 – Termination of Tenancy

- ix. the new sections 120AAZH and 120AAZI set out the specific conditions for termination of tenancy by a tenant and the right of re-entry by the landlord; and the new section 120AAZJ provides that leave to issue a writ of possession is not to be granted by the court before the expiry of a certain period specified in that section;

Division 7 – Offences relating to “Regulated Tenancies”

- x. the new sections 120AAZK to 120AAZN set out the provisions relating to offences and penalties under the new Part IVA.

Division 8 – Commissioner’s Powers

- xi. the new sections 120AAZP to 120AAZZ set out the powers and obligations of Commissioner of Rating and Valuation under the new Part IVA;

Division 9 – Miscellaneous Provisions

- xii. the new sections 120AAZZA to 120AAZZG deal with other miscellaneous provisions under the new Part IVA;

Part 3 – Related Amendments

- (c) **Clause 9** amends section 8 of the Lands Tribunal Ordinance (Cap. 17) to expand the jurisdiction of the Lands Tribunal to

determine, on application, whether any tenancy is a “regulated tenancy” under the new Part IVA;

- (d) **Clause 11** amends rule 68 of the Lands Tribunal Rules (Cap. 17 sub. leg. A) to prescribe the way in which proceedings are commenced under the new Part IVA;
- (e) **Clause 12** amends Form 22 in the Schedule to the Lands Tribunal Rules (Cap. 17 sub. leg. A) so that the form is applicable for certain additional applications under the new Part IVA;
- (f) **Clause 13** amends the Schedule to the Lands Tribunal (Fees) Rules (Cap. 17 sub. leg. B) to specify the fee payable for an application under the new Part IVA in proceedings before the Lands Tribunal;
- (g) **Clause 15** amends section 3 of the Land Registration Ordinance (Cap. 128) to clarify the effect of certain instruments in writing under the new Part IVA;
- (h) **Clauses 14 and 16** deal with certain consequential amendments; and
- (i) **Clause 17** amends Schedule 3 to the Electronic Transactions Ordinance (Cap. 553) to include the new section 120AAZZG(1)(a) and (b) in the Schedule for section 5A of that Ordinance to apply in relation to service of documents in certain circumstances under the new section 120AAZZG(1)(a) and (b).

LEGISLATIVE TIMETABLE

31. The legislative timetable will be –

Publication in the Gazette	9 July 2021
First Reading and commencement of Second Reading debate	14 July 2021
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

32. The economic, financial, civil service, family and sustainability implications of the proposal are set out at **Annex D**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has no productivity, environmental or gender implications. The proposed legislative amendments will not affect the current binding effect of the Ordinance.

PUBLIC CONSULTATION

33. The current proposals for tenancy control on SDUs have been formulated based on the recommendations of the Task Force. The Task Force has organised two public forums and a number of online meetings with a total of 36 concern groups to gauge the views of stakeholders and members of the public.

34. On 1 February 2021, Prof. William Leung, Chairman of the Task Force, together with representatives of THB, reported the progress of the work of the Task Force and listened to LegCo Members' views at the meeting of the LegCo Panel on Housing. THB further briefed the Subcommittee on Issues Relating to Transitional Housing and Subdivided Units under the LegCo Panel on Housing on 25 February and 26 April 2021 on the work progress and recommendations of the Task Force.

PUBLICITY

35. A press conference will be organised on 6 July 2021 to introduce the details and merits of the legislative proposals and to address queries from the media or the public. A press release will also be issued.

ENQUIRIES

36. In case of enquiries, please contact Ms Kathy CHAN, Assistant Director (Tenancy Control on Subdivided Units), at 2129 3993.

Transport and Housing Bureau
6 July 2021

Landlord and Tenant (Consolidation) (Amendment) Bill 2021

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A BILL

To

Amend the Landlord and Tenant (Consolidation) Ordinance to regulate tenancies of subdivided units of buildings; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2021.
- (2) This Ordinance comes into operation on the expiry of 3 months beginning on the day on which it is published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2**Amendments to Landlord and Tenant (Consolidation)
Ordinance (Cap. 7)****3. Section 116 amended (application of this Part)**

Section 116(2)(a)—

Repeal

“I or II”

Substitute

“I, II or IVA”.

4. Part IVA added

After Part IV—

Add**“Part IVA****Regulated Tenancies****Division 1—Interpretation and Application****120AA. Interpretation**

(1) In this Part—

building (建築物) means a building or structure constructed or adapted for use in accordance with a building plan;**building plan** (建築圖則) means a plan—

- (a) approved by the Building Authority under the Buildings Ordinance; or

- (b) prepared by the Hong Kong Housing Authority in relation to a building to which the Buildings Ordinance does not apply under section 18(2) of the Housing Ordinance (Cap. 283);

Buildings Ordinance (《建築物條例》) means the Buildings Ordinance (Cap. 123);**Commissioner** (署長) means the Commissioner of Rating and Valuation;**communication services** (通訊服務) means services enabling any of the following to be used—

- (a) a telephone other than a mobile telephone;
- (b) the Internet;
- (c) a cable television;
- (d) a satellite television;

control percentage (管制百分比)—see section 120AAZE(2)(a);**court** (法院) means the Court of First Instance, the District Court or the Tribunal;**deed of mutual covenant** (公契), in relation to a building, means a document—

- (a) that defines the rights, interests and obligations of owners of the building among themselves; and
- (b) that is registered in the Land Registry;

domestic tenancy (住宅租賃) means a tenancy of premises let as a dwelling;**family member** (家庭成員), in relation to a person, means—

- (a) the person’s spouse;
- (b) the person’s parent; or
- (c) the person’s adult child;

first term (首租期) means—

- (a) the term referred to in section 120AAO(2); or
- (b) (where appropriate) the term referred to in section 120AAQ(3)(a) or (5)(a);

first term tenancy (首期租賃) means a regulated tenancy of the first term;

Form AR1 (表格 AR1) means the specified form for making and accepting a second term offer;

landlord (業主) includes any person (other than the Government) who is, from time to time, entitled to receive rent in respect of any premises and, in relation to a particular tenant, means the person entitled to receive rent from that tenant;

material date (關鍵日期) means the commencement date of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2021 (of 2021);

offer period (要約期), in relation to a second term offer, means the period of the second calendar month immediately before the calendar month in which the purported second term tenancy commences;

regulated cycle (規管周期)—see section 120AAO;

regulated tenancy (規管租賃) means a tenancy to which this Part applies;

renewed rent (續期租金), in relation to a regulated cycle of tenancies for a subdivided unit, means the rent agreed, or taken to be agreed, by the landlord and tenant for a second term tenancy of the regulated cycle for the subdivided unit;

rental deposit (租金按金), in relation to a tenancy, means money intended to be held by the landlord as security for—

- (a) the performance of any obligations of the tenant; or
- (b) the discharge of any liability of the tenant, under the tenancy;

RVD officer (差估署人員) means a public officer employed in the Rating and Valuation Department;

second term (次租期) means the term referred to in section 120AAO(3);

second term offer (次租期要約), in relation to a regulated cycle of tenancies for a subdivided unit, means an offer of a second term tenancy of the regulated cycle for the subdivided unit;

second term tenancy (次期租賃) means a regulated tenancy of the second term;

Secretary (局長) means the Secretary for Transport and Housing;

specified form (指明表格) means a form specified by the Commissioner under section 120AAZZF;

specified utilities and services (指明公用設施及服務) means water, electricity, gas and communication services;

subdivided unit (分間單位) means premises that form part of a unit of a building;

tenancy (租賃) means a lease entered into orally or in writing and includes—

- (a) an agreement for a tenancy; and
- (b) a sub-tenancy;

- tenant* (租客) includes a sub-tenant but does not include a Government lessee;
- term* (租期), in relation to a regulated cycle of tenancies for a subdivided unit, means the first term or second term of the regulated cycle for the subdivided unit;
- Tribunal* (審裁處) means the Lands Tribunal established under the Lands Tribunal Ordinance (Cap. 17);
- unit* (單位), 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 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.
- (2) For the purposes of the definition of *subdivided unit* in subsection (1), if the subdivided unit is a roof or a podium (or part of a roof or a podium), a reference to a subdivided unit includes any structure erected on it.
 - (3) For the purposes of paragraph (a) of the definition of *unit* in subsection (1), to avoid doubt, a reference to premises includes a roof or a podium or, as appropriate, part of a roof or a podium.
 - (4) For the purposes of this Part and except in section 120AAZB, a reference to a tenant includes the tenant's family member who is entitled to the tenant's specified interest under that section.

- (5) For the purposes of the Land Registration Ordinance (Cap. 128), a notice (except Form AR1) or an application under this Part is not to be regarded—
 - (a) as an instrument in writing by which any parcel of ground, tenement or premises may be affected; or
 - (b) as creating a *lis pendens*.

120AAB. Application of this Part

- (1) Subject to subsection (2), this Part applies to a tenancy—
 - (a) that commences on or after the material date;
 - (b) that is a domestic tenancy;
 - (c) the subject premises of which are a subdivided unit;
 - (d) the tenant of which is a natural person; and
 - (e) the purpose of which is for the tenant's own dwelling,
 even though the tenancy contains any provision purporting generally or specifically to exclude the application of this Part.
- (2) This Part does not apply to the tenancies specified in Schedule 6.
- (3) For the purposes of subsection (1)(a), the reference to “commences on or after the material date” includes a reference to “is taken to be commencing on the date under section 120AAQ(5)(a)”.

120AAC. Amendment of Schedule 6

- (1) The Secretary may, by notice published in the Gazette, amend Schedule 6.
- (2) For the purposes of section 120AAB(2), a notice under subsection (1) may—

- (a) specify any class of tenancies; and
- (b) specify the circumstances in which, or the purposes for which, the class of tenancies is excluded from the application of this Part.

Division 2—Determination relating to Regulated Tenancy

Subdivision 1—General Provisions

120AAD. Interpretation

In this Division—

premises (處所) means the subject matter of a tenancy.

120AAE. Application to Tribunal

A person having an interest in any premises may apply to the Tribunal to determine whether or not a tenancy for the premises is a regulated tenancy for the purposes of this Part.

120AAF. Determination by Tribunal

- (1) The Tribunal must make a determination on receiving an application made under section 120AAE.
- (2) In making a determination, the Tribunal may take into account any matters that the Tribunal considers appropriate.
- (3) For the purposes of subsection (2), if the Tribunal is to determine whether or not a tenancy is a domestic tenancy, the Tribunal may consider the matters contained in Subdivision 2.
- (4) Also, for the purposes of subsection (2), if the Tribunal is to determine whether or not a tenancy is for the tenant's

own dwelling, the Tribunal may consider the matters contained in Subdivision 3.

Subdivision 2—Domestic Tenancy

120AAG. Purpose specified in tenancy

If a tenancy specifies in writing that any premises are to be used for a particular purpose, the premises are taken to be used for that purpose unless it is proved otherwise.

120AAH. Purpose for which premises are actually used

- (1) Subject to section 120AAI, despite any evidence showing that any premises were originally let for a particular purpose, if the premises are being used primarily for another purpose, the premises are taken to have been let for that other purpose.
- (2) Subject to section 120AAJ, if there is not sufficient evidence showing that any premises were originally let for a particular purpose, the purpose of the tenancy of the premises is to be determined by the primary user of the premises.

120AAI. Tenant to establish landlord's agreement to change of user as dwelling

If—

- (a) the purpose referred to in a tenancy for any premises is other than as a dwelling; but
- (b) the premises are being used as a dwelling in breach of the tenancy,

the onus is on the tenant to establish that the change of user has been agreed to (whether expressly or by implication), or acquiesced in, by the landlord.

120AAJ. Purpose of sub-tenancy subject to superior tenancy

- (1) This section applies if a tenancy (*subject tenancy*) is a sub-tenancy created out of another tenancy (*superior tenancy*).
- (2) If there is evidence showing that the premises of the superior tenancy—
 - (a) were let other than as a dwelling; or
 - (b) were being used other than as a dwelling,
 at the commencement of the subject tenancy, the premises of the subject tenancy (*subject premises*) are taken to be used other than as a dwelling unless the tenant of the subject premises satisfies the Tribunal to the contrary.

120AAK. Use of premises other than as dwelling

The use of any premises as a boarding or lodging house is a use other than as a dwelling.

120AAL. Other matters to be taken into account

- (1) In determining whether any premises were let, or are being used, as a dwelling, the following may be taken into account—
 - (a) the covenants, terms and conditions in the Government lease or tenancy in relation to the premises;
 - (b) any occupation permit issued in relation to the premises;
 - (c) normal additional uses of the premises that are consistent with the domestic nature of a tenancy having regard to the following—
 - (i) the floor area in occupation for the uses (whether at all times or not);

- (ii) the number of persons engaged in the uses but not dwelling on the premises;
- (iii) the furnishings, fittings and contents of the premises;
- (iv) the gross profits resulting from the uses relative to the rent.

- (2) In subsection (1)(b)—

occupation permit (佔用許可證) means an occupation permit or a temporary occupation permit issued under the Buildings Ordinance.

Subdivision 3—Tenant's Own Dwelling**120AAM. Tenant's own dwelling presumed**

For the purposes of this Part, a tenancy—

- (a) that is a domestic tenancy;
- (b) the subject premises of which are a subdivided unit; and
- (c) the tenant of which is a natural person,

is taken to be for the tenant's own dwelling unless the tenancy specifies otherwise in writing.

120AAN. Specified purpose may be disregarded

- (1) This section applies if—
 - (a) a tenancy falls within the descriptions of section 120AAM(a), (b) and (c); and
 - (b) the tenancy specifies in writing that the premises are not let for the tenant's own dwelling.
- (2) Despite subsection (1)(b), the Tribunal may still determine that the premises are indeed let for the tenant's

own dwelling if the Tribunal considers it appropriate to do so.

Division 3—Regulated Cycle

Subdivision 1—General Provisions

120AAO. Regulated cycle of tenancies

- (1) A regulated cycle of tenancies for a subdivided unit is to comprise 2 consecutive regulated tenancies for the subdivided unit, each for a term of 2 years.
- (2) The term of the first regulated tenancy is to be 2 years commencing on—
 - (a) the date of the creation of the tenancy; or
 - (b) if the parties have agreed on a later date for the commencement of the tenancy—that date.
- (3) The term of the second regulated tenancy is to be 2 years commencing on the date immediately after the expiry of the first regulated tenancy.
- (4) The landlord and tenant of a subdivided unit may enter into one or more regulated cycles of tenancies for the subdivided unit.

120AAP. First term tenancy

A landlord and a tenant may enter into a first term tenancy for a subdivided unit at a rent agreed by the parties.

120AAQ. Deemed first term tenancy in certain circumstances

- (1) This section applies if—
 - (a) a landlord and a tenant enter into a domestic tenancy for a subdivided unit;

- (b) the tenant is a natural person;
- (c) the purpose of the tenancy is for the tenant's own dwelling; and
- (d) the tenancy is other than one—
 - (i) entered into by the parties by way of a Form AR1; or
 - (ii) taken to be granted under section 120AAW(2)(b).
- (2) If the tenancy purports to be—
 - (a) a periodic tenancy; or
 - (b) a tenancy for a term other than of 2 years, commencing on or after the material date, the tenancy is taken to be a first term tenancy.
- (3) For the purposes of subsection (2)—
 - (a) the term of the tenancy is taken to be 2 years commencing on—
 - (i) the date of the creation of the tenancy; or
 - (ii) if the parties have agreed on a later date for the commencement of the tenancy—that date; and
 - (b) the rent agreed by the parties to be payable by the tenant at the commencement of the tenancy is taken to be the rent for the first term tenancy.
- (4) If—
 - (a) the tenancy is a periodic tenancy commencing before and existing on the material date; and
 - (b) a period of the tenancy (*reference period*) either—
 - (i) commences on the material date; or
 - (ii) straddles the material date,

the tenancy is taken to be a first term tenancy.

- (5) For the purposes of subsection (4)—
- (a) the term of the tenancy is taken to be 2 years commencing on—
 - (i) for paragraph (b)(i) of that subsection—the material date; or
 - (ii) for paragraph (b)(ii) of that subsection—the date immediately after the expiry of the period that straddles the material date; and
 - (b) the rent agreed by the parties to be payable by the tenant at the commencement of the reference period is taken to be the rent for the first term tenancy.

120AAR. Tenant is entitled to second term tenancy

- (1) A tenant of a first term tenancy for a subdivided unit is entitled to a second term tenancy of the regulated cycle for the subdivided unit to be granted in accordance with Subdivision 2.
- (2) Without limiting section 120AAZI, the landlord must grant the tenant the second term tenancy for the subdivided unit if the tenant accepts the second term offer in accordance with section 120AAU.
- (3) The terms and conditions of the second term tenancy offered and granted by the landlord are to be the same as those contained in the first term tenancy, except those relating to—
 - (a) the period of the tenancy; and
 - (b) (if applicable) the amount of rent.

Subdivision 2—Second Term Offer

120AAS. Second term offer

- (1) Without limiting section 120AAZI, a landlord of a first term tenancy for a subdivided unit must, within the offer period—
 - (a) make a second term offer to the tenant; and
 - (b) serve the offer on the tenant,
 for a second term tenancy of the regulated cycle for the subdivided unit.
- (2) The second term offer may only be made in Form AR1.
- (3) The landlord must—
 - (a) state the proposed amount of rent for the second term tenancy in Form AR1; and
 - (b) sign the Form.
- (4) The proposed amount of rent must not exceed the maximum amount of rent for the second term tenancy that is permitted under section 120AAZE.
- (5) The second term offer must not include any terms or conditions other than those contained in the first term tenancy.
- (6) Subject to section 120AAT, a second term offer, once made, remains open for acceptance by the tenant before the expiry of the first term tenancy, and the landlord may not withdraw the offer.
- (7) For the purposes of subsection (6), the reference to the landlord includes a person who becomes the landlord of the subdivided unit after the second term offer is made but before the expiry of the first term tenancy.

120AAT. Landlord may make more than one second term offer

- (1) The landlord may make one or more second term offers during an offer period, but a subsequent offer supersedes any earlier offer.
- (2) However, if the tenant accepts a second term offer under section 120AAU, the landlord may not make any further offer afterwards.

120AAU. Tenant's acceptance of second term offer

- (1) This section applies if a landlord of a first term tenancy for a subdivided unit serves a second term offer in Form AR1 (*served Form*) on the tenant within the offer period under section 120AAS.
- (2) The tenant may accept the second term offer any time before the expiry of the first term tenancy.
- (3) If the tenant accepts the second term offer, the tenant must notify the landlord of the tenant's acceptance in the served Form containing the offer by signing the served Form and serving it on the landlord before the expiry of the first term tenancy.
- (4) If the tenant disagrees with the landlord on the proposed amount of rent for the second term tenancy, the tenant may negotiate with the landlord for the amount before accepting the second term offer.
- (5) If, after the negotiation, the landlord agrees to revise the proposed amount of rent for the second term tenancy, the landlord must sign against the revised amount of rent as shown on the served Form.
- (6) If the tenant accepts the second term offer at the revised amount of rent, the tenant must—

- (a) sign against the revised amount of rent as shown on the served Form; and
- (b) serve the served Form on the landlord before the expiry of the first term tenancy.

120AAV. Tenant's failure to notify acceptance of second term offer

- (1) This section applies if a landlord of a first term tenancy for a subdivided unit serves a second term offer in Form AR1 on the tenant within the offer period under section 120AAS.
- (2) If the tenant fails to notify the landlord of the tenant's acceptance of the second term offer before the expiry of the first term tenancy, the tenant is taken to have rejected the second term offer.
- (3) For the purposes of subsection (2), the tenant fails to notify the landlord of the tenant's acceptance if—
 - (a) no notice of acceptance has ever been given by the tenant under section 120AAU;
 - (b) the notice of acceptance is served by the tenant on the landlord only after the expiry of the first term tenancy;
 - (c) the notice of acceptance is not given by the tenant in the same Form AR1 sent by the landlord that contains the second term offer; or
 - (d) the tenant has not signed the Form AR1 sent by the landlord when the Form is returned to the landlord.

120AAW. Deemed second term offer by landlord

- (1) This section applies if a landlord of a first term tenancy for a subdivided unit fails to serve a second term offer on the tenant under section 120AAS.

- (2) The landlord is taken to have made a second term offer to the tenant on the expiry of the offer period, and the tenant is taken—
 - (a) to have accepted the second term offer; and
 - (b) to be granted the second term tenancy on the expiry of the first term tenancy.
- (3) For the purposes of subsection (1), a landlord fails to serve a second term offer on the tenant if—
 - (a) the offer is not served on the tenant within the offer period;
 - (b) the offer is not made in Form AR1;
 - (c) the landlord has not signed the Form AR1 sent to the tenant;
 - (d) the proposed amount of rent for the second term tenancy is not stated in the offer;
 - (e) the proposed amount of rent for the second term tenancy stated in the offer is higher than the maximum amount of rent for the second term tenancy permitted under section 120AAZE; or
 - (f) any terms or conditions other than those contained in the first term tenancy are included in the offer.
- (4) Subject to subsection (5), the renewed rent for the second term tenancy is to be the amount of rent last payable by the tenant for the first term tenancy.
- (5) If the control percentage ascertained in accordance with section 120AAZE for the rent for the second term tenancy is a negative figure, the renewed rent for the second term tenancy is to be reduced by that percentage.

- (6) Despite subsection (2), if the tenant delivers vacant possession of the subdivided unit to the landlord on or before the expiry of the first term tenancy—
 - (a) the second term offer taken to be made to the tenant is taken to be rejected by the tenant; and
 - (b) no second term tenancy is taken to be granted to the tenant.

120AAX. Second term offer pending court order

- (1) This section applies if—
 - (a) a landlord of a first term tenancy for a subdivided unit is proceeding by action to enforce a right of re-entry or forfeiture under section 120AAZI(2)(b); and
 - (b) the offer period for making a second term offer to the tenant has commenced.
- (2) Despite subsection (1)(a), the landlord must comply with section 120AAS to make a second term offer to the tenant pending the making of any order of the court for possession of the subdivided unit in connection with the action mentioned in that subsection.
- (3) The landlord's making of a second term offer to the tenant does not affect the landlord's right to enforce any breach of the first term tenancy against the tenant in accordance with an order of the court.
- (4) If an order of the court allows or permits the landlord to recover possession of the subdivided unit—
 - (a) where—
 - (i) the landlord has made a second term offer under subsection (2)—

- (A) the offer is treated as never having been made by the landlord; and
- (B) any second term tenancy granted by the landlord is treated as never having been granted; or
- (ii) the landlord has not made any second term offer under that subsection—
 - (A) no second term offer is taken to have been made; and
 - (B) no second term tenancy is taken to be granted,
 - by the landlord to the tenant under section 120AAW; and
- (b) the tenant must vacate the subdivided unit at the time and in the way specified in the order.

120AAZ. Lapse of second term offer in certain circumstances

- (1) This section applies if—
 - (a) a second term offer for a subdivided unit—
 - (i) is made by the landlord to the tenant under section 120AAS; or
 - (ii) is taken to have been made by the landlord to the tenant under section 120AAW; and
 - (b) the first term tenancy of the regulated cycle for the subdivided unit has already been terminated before its expiry otherwise than by the landlord enforcing by action a right of re-entry or forfeiture under section 120AAZI(2)(b).
- (2) On the termination of the first term tenancy—

- (a) the second term offer made by the landlord under section 120AAS lapses immediately and has no effect, and (if applicable) the tenant's acceptance of the offer under section 120AAU also has no effect; and
- (b) the second term offer taken to have been made by the landlord under section 120AAW lapses immediately and has no effect, and the tenant is not to be taken as having accepted the offer under that section.

Subdivision 3—Tenancy in Writing**120AAZ. Tenancy in writing for first term tenancy**

- (1) This section applies if—
 - (a) the landlord and tenant of a subdivided unit have entered into a tenancy orally for a first term tenancy; and
 - (b) the first term tenancy has commenced.
- (2) The tenant may in writing demand the landlord to, within 30 days (*specified period*), serve on the tenant a tenancy in writing (*tenancy agreement*) reflecting the contents of the oral tenancy for signing by the parties.
- (3) If the landlord fails to serve the tenancy agreement on the tenant in accordance with subsection (2), the tenant may elect either—
 - (a) to withhold the payment of rent until the landlord has done so; or
 - (b) to terminate the tenancy by, within 7 days after the specified period, giving the landlord not less than 30

days' (*notice period*) prior notice in writing of the termination.

- (4) For the purposes of subsection (3)(b), the tenancy is terminated on the expiry of the notice period, and the tenant must, on the termination—
- (a) deliver vacant possession of the subdivided unit to the landlord; and
 - (b) settle all outstanding money payable to the landlord under the tenancy.
- (5) If—
- (a) the landlord has served the tenancy agreement on the tenant in accordance with subsection (2); or
 - (b) the tenant has made an election under subsection (3)(a) and the landlord has eventually served the tenancy agreement on the tenant,
- the tenant must do the things specified in subsection (6) within 15 days after the tenancy agreement has been served on the tenant.
- (6) The things are—
- (a) to sign and return the tenancy agreement to the landlord; and
 - (b) (if applicable) to pay back, free of interest, any rent withheld under subsection (3)(a) to the landlord.
- (7) If the tenant fails to comply with subsection (5), the landlord may, by giving the tenant not less than 15 days' prior notice in writing, terminate the tenancy.

Subdivision 4—Tenant's Interests in Certain Circumstances

120AAZA. Sub-tenancy of same or longer term of superior tenancy

- (1) This section applies if—
- (a) a regulated tenancy for a subdivided unit is (or purports to be) a sub-tenancy created out of another tenancy (*superior tenancy*) entered into by—
 - (i) the landlord of the superior tenancy as landlord (*superior landlord*); and
 - (ii) the landlord of the regulated tenancy as tenant (*sub-landlord*); and
 - (b) the term of the regulated tenancy provided under Subdivision 1 expires at the same time as, or on a day later than, the expiry of the term (being a fixed term) of the superior tenancy.
- (2) The regulated tenancy does not operate as an assignment of the superior tenancy by the sub-landlord to the tenant of the regulated tenancy (*sub-tenant*).
- (3) Despite subsection (1)(b) and without limiting subsection (5), the term of the regulated tenancy is to expire no later than the expiry of the term of the superior tenancy.
- (4) Subsection (3) does not affect any remedy that the sub-tenant may have for the revision of the term of the regulated tenancy.
- (5) If the term of the superior tenancy is extended or renewed by the superior landlord, the expiry of the term of the regulated tenancy would then be the earlier of the following—
- (a) the expiry of the term of the superior tenancy as extended or renewed;

- (b) the expiry of the term of the regulated tenancy.
- (6) The sub-landlord is treated as having a reversion expectant on the regulated tenancy even though the term of the regulated tenancy expires at the same time as the expiry of the term of the superior tenancy.

120AAZB. Tenant's interest to pass to family member on death

- (1) This section applies if—
- (a) a tenant of a regulated tenancy for a subdivided unit dies during the term of the tenancy; and
 - (b) a family member of the tenant is residing with the tenant in the subdivided unit at the time of the tenant's death (*relevant time*).
- (2) The subsisting benefits and protection under the regulated tenancy to which the tenant is entitled under this Part during the tenant's life time (*specified interest*) are, after the tenant's death, available to the family member.
- (3) Only 1 family member of the tenant is entitled to the specified interest at one time.
- (4) If—
- (a) 2 or more family members are residing with the tenant at the relevant time; and
 - (b) they are unable to reach an agreement among themselves as to who should be entitled to the specified interest,
- they must refer the matter to the Tribunal for a determination.
- (5) The Tribunal must determine the matter on any ground that appears to it to be just and equitable.

- (6) Despite any will or the law of succession on intestacy, the specified interest of the tenant is not to be available to—
- (a) a personal representative of the tenant; or
 - (b) a person other than a family member referred to in subsection (1)(b).

Division 4—Rents and Deposit**Subdivision 1—General Provisions****120AAZC. Rental deposit**

- (1) This section applies if a tenant of a regulated tenancy for a subdivided unit is required to pay to the landlord a rental deposit for the tenancy.
- (2) Despite any provision of the tenancy, the rental deposit payable by the tenant may not be more than 2 months' rent under the tenancy.
- (3) If a provision of the tenancy requires the tenant to pay a rental deposit of more than 2 months' rent, the provision is taken to be requiring the tenant to pay a rental deposit equal to 2 months' rent only.
- (4) Despite any provision of the tenancy, the rental deposit paid by the tenant is to be retained by the landlord during the term of the tenancy and is, subject to subsection (5), to be returned to the tenant free of interest no later than—
- (a) if—
 - (i) the term is a first term followed by a second term—the expiry of the term; or
 - (ii) the term is a second term, or a first term not followed by a second term—the expiry of 7 days after the tenant's delivery of vacant

possession of the subdivided unit to the landlord on—

- (A) the expiry of the term; or
- (B) an early termination of the tenancy; or
- (b) the expiry of 7 days after the settlement of any outstanding money payable by the tenant to the landlord under the tenancy,

whichever is the later.

- (5) The landlord may deduct from the rental deposit the amount of any arrears of rent, or costs, expenses, losses or damages sustained by the landlord as a result of any breach of the tenancy by the tenant.

- (6) In this section—

2 months' rent (2 個月租金), in relation to a tenancy, means 2 times the amount of the monthly rent payable at the commencement of the tenancy.

120AAZD. Alteration in rent

- (1) Subject to subsection (3), despite any provision of a regulated tenancy or any subsequent agreement between the landlord and tenant, the amount of rent payable by the tenant for the term of the tenancy—
 - (a) must remain the same; and
 - (b) may not be altered during the term.
- (2) An alteration of the amount of rent during the term is void and has no effect.
- (3) The landlord may—
 - (a) whether or not on the tenant's request; and
 - (b) at any time during the term,

reduce the amount of rent payable by the tenant for the remaining period of the term.

- (4) If the landlord decides to reduce the amount of rent, the landlord must notify the tenant in writing before the reduction.

Subdivision 2—Renewed Rent

120AAZE. Renewed rent for second term

- (1) The landlord and tenant of a first term tenancy are to agree on the amount of rent for the second term tenancy of the same regulated cycle in accordance with this section.
- (2) The maximum percentage for an increase of rent for the second term tenancy is to be the lower of the following—
 - (a) the control percentage ascertained in accordance with the following formula—

$$A = \frac{B - C}{C} \times 100$$

where—

- A means the control percentage;
 - B means the figure of the rental index of the 4th calendar month immediately before the commencement month of the purported second term tenancy that is prevailing on the first day of the offer period;
 - C means the figure of the rental index of the commencement month of the first term tenancy that is prevailing on the first day of the offer period;
- (b) 15%.

- (3) The control percentage is to be rounded down to 1 decimal place.
- (4) If the control percentage ascertained is a negative figure, the rent for the second term tenancy is to be reduced at least by that percentage.
- (5) The maximum amount of rent for the second term tenancy calculated in accordance with subsection (2) or (4) is to be rounded down to the nearest integer.
- (6) If the amount of rent payable by the tenant has been reduced one or more times during the first term tenancy, the basis for calculating the amount of rent for the second term tenancy is to be the amount of rent last reduced during the first term tenancy.
- (7) In subsection (2)(a)—

commencement month (開始月份), in relation to a first term tenancy or second term tenancy of a regulated cycle, means the calendar month in which the tenancy commences;

rental index (租金指數) means the territory-wide rental index for all classes of private domestic properties compiled and published by the Rating and Valuation Department.

Division 5—Implied Terms

120AAZF. Mandatory terms implied for every regulated tenancy

- (1) The provisions in Schedule 7 are to be impliedly incorporated into every regulated tenancy.
- (2) The provisions incorporated into a regulated tenancy (**incorporated provisions**) because of this section—
 - (a) bind the landlord and tenant of the tenancy; and

- (b) prevail over any other provision of the tenancy that is in conflict or inconsistent with the incorporated provisions to the extent of the conflict or inconsistency.

120AAZG. Amendment of Schedule 7

The Secretary may, by notice published in the Gazette, amend Schedule 7.

Division 6—Termination of Tenancy

120AAZH. Early termination by tenant

- (1) A tenant of a regulated tenancy for a subdivided unit may—
 - (a) without limiting any rights of the tenant to terminate the tenancy by notice under the tenancy; and
 - (b) by giving the landlord prior notice in writing (**termination notice**),

terminate the tenancy before the expiry of the term, and the tenancy is to be terminated on the date specified in the termination notice (**date of termination**).
- (2) A termination notice—
 - (a) may be given at any time during the term of the tenancy; but
 - (b) must not be given less than 30 days before the date of termination.
- (3) However, the date of termination must not be a date earlier than the last day of the first year of the term.
- (4) The tenant must, on or before the date of termination—
 - (a) deliver vacant possession of the subdivided unit to the landlord; and

- (b) settle all outstanding money payable to the landlord under the tenancy.

120AAZI. Landlord's right of re-entry

- (1) A landlord of a regulated tenancy for a subdivided unit may not terminate the tenancy before the expiry of the term despite any provision of the tenancy that purports to do so.
- (2) However, the landlord may—
- (a) terminate the tenancy by notice in accordance with—
- (i) section 120AAZ(7); or
- (ii) section 4(3) of Part 2 of Schedule 7 impliedly incorporated into the tenancy under section 120AAZF; or
- (b) enforce a right of re-entry or forfeiture in accordance with Part 4 of Schedule 7 impliedly incorporated into the tenancy under section 120AAZF.
- (3) Any condition for forfeiture (other than those set out in Part 4 of Schedule 7) provided in the tenancy is void and has no effect.
- (4) Despite section 58(14) of the Conveyancing and Property Ordinance (Cap. 219)—
- (a) subsection (2)(b) and sections 7 and 12(1)(a) and (2) of Part 4 of Schedule 7 have effect subject to section 58(4) and (10) of that Ordinance; and
- (b) subsection (2)(b) and sections 8, 9, 10, 11 and 12(1)(b) and (2) of Part 4 of Schedule 7 have effect subject to section 58 (except section 58(14)) of that Ordinance.

120AAZJ. Termination of regulated tenancy as sub-tenancy

- (1) This section applies if—
- (a) a regulated tenancy for a subdivided unit is a sub-tenancy created out of another tenancy; and
- (b) a superior landlord applies to the court for possession of the subdivided unit (or any premises of which the subdivided unit forms part).
- (2) Before enforcing an order of the court for possession of the subdivided unit, the superior landlord must notify the tenant of the regulated tenancy (*sub-tenant*) in writing in the way specified in subsection (3).
- (3) The superior landlord must, on 3 successive days, post the notice on the main door or entrance to the subdivided unit (or the premises of which the subdivided unit forms part).
- (4) A notice posted in accordance with subsection (3) is taken to be an effective notice served on the sub-tenant.
- (5) Leave to issue a writ of possession to enforce the order is not to be granted by the court before the expiry of a period of 60 days beginning on the day immediately after the last day on which the notice is posted under subsection (3).
- (6) Subsection (5) does not apply if the sub-tenant has delivered up vacant possession of the subdivided unit before the leave is granted.
- (7) In this section—
- superior landlord* (上級業主), in relation to a subdivided unit (or any premises of which the subdivided unit forms part), means a person (other than the landlord of the regulated tenancy) entitled to the immediate reversion of the subdivided unit (or the premises).

Division 7—Offences relating to Regulated Tenancies**120AAZK. Offence in relation to tenant's payment of money other than certain types**

- (1) A landlord of a regulated tenancy commits an offence if the landlord requires the tenant to pay, or the landlord otherwise receives from the tenant, any money in relation to the tenancy other than those falling within the following types—
 - (a) specified rents;
 - (b) specified rental deposits;
 - (c) reimbursement of charges for any of the specified utilities and services payable by the tenant under the tenancy;
 - (d) damages for the tenant's breach of the tenancy.
- (2) A person who commits an offence under subsection (1) is liable on a first conviction to a fine at level 3, and on a second or subsequent conviction to a fine at level 4.
- (3) For an offence under subsection (1), the mistaken belief of the person charged as to the money the person is entitled or permitted to receive is not a defence.
- (4) On a person's conviction of an offence under subsection (1), the magistrate may, in addition to imposing a fine, order the person to repay to the tenant any money received from the tenant other than that the person is entitled or permitted to receive under this Part.
- (5) In subsection (1)—

specified rental deposits (指明租金按金) means rental deposits payable by a tenant under a regulated tenancy as permitted under section 120AAZC;

specified rents (指明租金) means rents payable by a tenant under a regulated tenancy as permitted under this Part.

- (6) For the purposes of the definition of *specified rents* in subsection (5), if the tenancy is a second term tenancy, the reference to rents is a reference to renewed rents.

120AAZL. Offence in relation to payment of apportioned amounts

- (1) This section applies if the charges for any of the specified utilities and services for a subdivided unit incurred by a tenant of a regulated tenancy for the subdivided unit are not independently billed by the relevant authorities or service providers.
- (2) The landlord of the regulated tenancy commits an offence if the landlord requires the tenant to pay for, or the landlord otherwise receives from the tenant, the reimbursement of the charges as a separate payment from rent unless—
 - (a) the landlord is the payer named in the bills covering the charges;
 - (b) copies of the bills are produced by the landlord to the tenant when the landlord requires payment; and
 - (c) the landlord has provided an account in writing to the tenant showing—
 - (i) how the amounts under the bills (*billed amounts*) are apportioned for the different parts (of which the subdivided unit is one) forming the premises to which the bills relate; and
 - (ii) that the aggregate of the apportioned amounts does not exceed the billed amounts.

- (3) The landlord commits an offence if the landlord requires the tenant to pay for, or the landlord otherwise receives from the tenant, the reimbursement of the charges for any of the specified utilities and services for the subdivided unit at a sum exceeding the apportioned amount for the subdivided unit as shown in the account under subsection (2)(c).
- (4) A person who commits an offence under subsection (2) or (3) is liable on a first conviction to a fine at level 3, and on a second or subsequent conviction to a fine at level 4.
- (5) For an offence under subsection (2) or (3), the mistaken belief of the person charged as to the amount the person is entitled or permitted to receive is not a defence.
- (6) On a person's conviction of an offence under subsection (2) or (3), the magistrate may, in addition to imposing a fine, order the person to repay to the tenant any money received from the tenant other than, or in excess of, that the person is entitled or permitted to receive under that subsection.

120AAZM. Offence in relation to provision of rent receipts

- (1) A landlord of a regulated tenancy must give a receipt to the tenant for the amount of rent paid by the tenant to the landlord within 7 days after receiving the amount.
- (2) The landlord must specify the following in the receipt—
 - (a) the name and address of the landlord;
 - (b) the period for which the rent is paid;
 - (c) the date of payment.
- (3) If the landlord fails to comply with subsection (1) or (2), the landlord commits an offence and is liable on conviction to a fine at level 1.

120AAZN. Offence of harassment

- (1) If a person unlawfully deprives a tenant of a regulated tenancy for a subdivided unit of occupation of the subdivided unit, the person commits an offence.
- (2) A person who commits an offence under subsection (1) is liable on conviction on indictment by the court—
 - (a) on a first conviction, to a fine of \$500,000 and to imprisonment for 12 months; and
 - (b) on a second or subsequent conviction, to a fine of \$1,000,000 and to imprisonment for 3 years.
- (3) Subject to subsection (5), if a person, in relation to a subdivided unit—
 - (a) either—
 - (i) does any act calculated to interfere with the peace or comfort of the tenant or members of the tenant's household; or
 - (ii) persistently withdraws or withholds services reasonably required for occupation of the subdivided unit as a dwelling; and
 - (b) knows, or has reasonable cause to believe, that that conduct is likely to cause the tenant—
 - (i) to give up occupation of the subdivided unit; or
 - (ii) to refrain from exercising any right or pursuing any remedy in respect of the subdivided unit,
 the person commits an offence.
- (4) A person who commits an offence under subsection (3) is liable on conviction on indictment by the court—
 - (a) on a first conviction, to a fine of \$500,000 and to imprisonment for 12 months; and

- (b) on a second or subsequent conviction, to a fine of \$1,000,000 and to imprisonment for 3 years.
- (5) A person does not commit an offence under subsection (3) if the person proves that the person had reasonable grounds for doing the act, or withdrawing or withholding the services, concerned.
- (6) On a person's conviction of an offence under subsection (1) or (3), the court may, in addition to passing sentence, order the person convicted—
- (a) to pay to the tenant a sum that the court considers appropriate by way of compensation for damage, loss or inconvenience suffered by the tenant because of the conduct constituting the offence; and
- (b) to forfeit to the Government a sum not exceeding the equivalent of the difference, as at the date of the contravention, between—
- (i) the market value of the subdivided unit with vacant possession; and
- (ii) the market value of the subdivided unit with the former tenant in possession.
- (7) In this section—

court (法院) means the Court of First Instance, the District Court or a magistrate;

subdivided unit (分間單位) includes part of a subdivided unit.

Division 8—Commissioner's Powers

Subdivision 1—Interpretation

120AAZO. Interpretation

- (1) In this Division—

premises (處所) means the subject matter of a tenancy;

primary user certificate (主要用途證明書), in relation to any premises, means a certificate in the specified form as to the primary user of the premises.

- (2) For the purposes of this Division, a reference to the Commissioner includes, as the case requires, an RVD officer authorized in writing in that behalf by the Commissioner to exercise any of the powers conferred, or perform any of the duties imposed, on the Commissioner for the purposes of this Part.

Subdivision 2—Commissioner's Certificate

120AAZP. Application for primary user certificate

- (1) If—
- (a) a dispute arises as to whether a tenancy of any premises is a domestic tenancy; and
- (b) the primary user of the premises is relevant to the dispute,
- the landlord or tenant of the premises may apply to the Commissioner for the issue of a primary user certificate for the premises.
- (2) A landlord or tenant of any premises may also apply to the Commissioner for the issue of a primary user certificate for the premises, even though no dispute arises as to whether the tenancy is a domestic tenancy.
- (3) An application under this section—
- (a) must be made in an application form; and
- (b) if made under subsection (2)—

- (i) must be submitted to the Commissioner not less than 10 days before the day proposed under subsection (5); and
 - (ii) must be accompanied by an application fee.
- (4) If the application is made under subsection (1), the applicant must also state in the application form the nature of the dispute.
- (5) If the application is made under subsection (2), the applicant must also propose in the application form a day (other than a public holiday) on which the Commissioner may carry out an inspection of the premises under section 120AAZQ.
- (6) In this section—
- application fee** (申請費用) means a fee determined by the Financial Secretary by notice published in the Gazette;
- application form** (申請表格) means a specified form for an application under this section.
- (7) For the purposes of the definition of **application fee** in subsection (6), a notice published by the Financial Secretary determining the application fee is not subsidiary legislation.

120AAZQ. Commissioner's inspection

- (1) Before the Commissioner issues a primary user certificate for any premises, the Commissioner must carry out an inspection of the premises for the purpose of determining the primary user of the premises.
- (2) The Commissioner may carry out the inspection—
 - (a) for an application under section 120AAZP(1)—on a day specified by the Commissioner; and
 - (b) for an application under section 120AAZP(2)—

- (i) on the day proposed under section 120AAZP(5); or
- (ii) if the inspection cannot be carried out on that day—on another day as soon as reasonably practicable afterwards specified by the Commissioner.

120AAZR. Commissioner's issue of primary user certificate

- (1) The Commissioner must, after carrying out an inspection of any premises under section 120AAZQ—
 - (a) if satisfied on the evidence available as to the primary user of the premises—
 - (i) issue; and
 - (ii) serve on the landlord and tenant, a primary user certificate as to the primary user of the premises on the day of the inspection; or
 - (b) if not satisfied on the evidence available as to the primary user of the premises—
 - (i) issue; and
 - (ii) serve on the landlord and tenant, a notice in the specified form declining to express an opinion as to the primary user of the premises.
- (2) If the Commissioner issues a primary user certificate for any premises under this section, no further application may be made under section 120AAZP(1) or (2) for the premises before the expiry of 1 year from the day on which the primary user certificate is issued.
- (3) A primary user certificate for any premises issued by the Commissioner under this section is, for all purposes, evidence (unless proved otherwise)—

- (a) of the facts set out in the primary user certificate; and
- (b) of the primary user of the premises as at the day of the inspection.

Subdivision 3—Commissioner’s Endorsement

120AAZS. Notice of tenancy to Commissioner

- (1) This section applies if—
 - (a) a landlord and a tenant have entered into a first term tenancy for a subdivided unit; or
 - (b) a second term tenancy—
 - (i) is entered into by the parties by way of a Form AR1; or
 - (ii) is taken to be granted by the landlord to the tenant under section 120AAW(2)(b),
for the subdivided unit.
- (2) The landlord must, within 60 days after the term of the tenancy commences or is taken to commence under section 120AAQ(3)(a) or (5)(a), submit a notice in the specified form to the Commissioner to notify the Commissioner of the particulars of the tenancy.
- (3) If the landlord, without reasonable excuse, refuses or neglects to comply with subsection (2), the landlord commits an offence.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 3, and in the case of a continuing offence, to a further fine of \$200 for each day during which the offence continues.
- (5) On a person’s conviction of an offence under subsection (3), the magistrate may, in addition to any penalty that

may be imposed, order the person to, within a time specified in the order, submit the notice to the Commissioner.

120AAZT. Commissioner’s endorsement of notice of tenancy

- (1) On receiving a notice submitted under section 120AAZS, the Commissioner must—
 - (a) endorse the notice with the date of its receipt; and
 - (b) notify the landlord and tenant of the receipt of the notice.
- (2) The landlord may not maintain an action to recover any rent under the tenancy unless the notice is endorsed by the Commissioner under subsection (1).

Subdivision 4—Other Powers

120AAZU. Commissioner may serve requisition

- (1) For the purposes of this Part, the Commissioner may serve on any person a requisition in the specified form in relation to any premises.
- (2) The person must—
 - (a) within the period specified by the Commissioner; and
 - (b) in writing,
provide to the Commissioner any particulars reasonably required by the requisition.
- (3) If the person, without reasonable excuse, refuses or neglects to comply with subsection (2), the person commits an offence.

- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 3 and to imprisonment for 3 months.

120AAZV. Commissioner may require reference documents

- (1) For the purposes of this Part, the Commissioner may require the landlord or tenant of any premises (*provider*) to provide any reference document to the Commissioner.
- (2) The provider must, within the period specified by the Commissioner, provide to the Commissioner the reference document required by the Commissioner.
- (3) If the provider, without reasonable excuse, refuses or neglects to comply with subsection (2), the provider commits an offence.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 3 and to imprisonment for 3 months.
- (5) For the purposes of subsection (1), the reference to the landlord or tenant includes a former landlord or a former tenant.
- (6) In this section—
reference document (参考文件), in relation to any premises, means a document relating to—
- (a) a tenancy of the premises; or
 - (b) a user of the premises,
- and includes a tenancy in writing, a receipt for rent, a rent-book, accounts and a bill for any of the specified utilities and services.

120AAZW. Commissioner may enter premises with consent

The Commissioner may, with the occupier's consent, enter any premises at any reasonable time for the following purposes—

- (a) to carry out an inspection of the premises under section 120AAZQ;
- (b) to ascertain whether an offence under this Part is being, or has been, committed in relation to the premises.

120AAZX. Commissioner may enter premises with warrant

- (1) If the Commissioner—
- (a) fails to obtain the occupier's consent for; or
 - (b) is otherwise frustrated or obstructed in,
- entering any premises for the purposes mentioned in section 120AAZW, the Commissioner may apply to a magistrate for a warrant to enter the premises for those purposes.
- (2) The Commissioner may, with a warrant issued under subsection (3), enter (by the use of reasonable force if necessary) the premises and exercise any of the powers specified in section 120AAZY(1) and (2) (each a *specified power*).
- (3) A magistrate may issue a warrant authorizing the Commissioner to enter the premises and exercise a specified power if—
- (a) the magistrate is satisfied by information on oath that there are reasonable grounds to suspect that—
 - (i) the Commissioner's determination of the primary user of the premises after an inspection is likely to affect a person's interest in the premises;

- (ii) an offence under this Part (*contravention*) is being, or has been, committed in relation to the premises; or
 - (iii) there is on the premises anything that constitutes, or is likely to constitute, evidence that a contravention is being, or has been, committed in relation to the premises; and
- (b) the magistrate is also satisfied that—
- (i) it is not practicable to communicate with a person entitled to grant entry to the premises;
 - (ii) such a person has unreasonably refused entry to the premises by the Commissioner;
 - (iii) the Commissioner apprehends on reasonable grounds that entry to the premises is unlikely to be granted unless a warrant is issued; or
 - (iv) the purpose of entry to the premises would be frustrated unless the Commissioner arriving at the premises can secure immediate entry.
- (4) A warrant issued under subsection (3) must specify—
- (a) the premises to be entered;
 - (b) the purpose of the entry;
 - (c) the name and capacity of the person authorized to enter the premises; and
 - (d) the date of issue of the warrant.
- (5) A person entering the premises with a warrant issued under subsection (3) must, if requested, produce the warrant for inspection.
- (6) A warrant issued under subsection (3) must be executed at a reasonable hour unless the Commissioner believes

that to execute it at a reasonable hour could frustrate the purpose of the execution.

- (7) When entering any premises under this section, the Commissioner may be accompanied by any person that the Commissioner considers necessary for the purpose of entering the premises.
- (8) Unless otherwise specified by the magistrate, a warrant issued under subsection (3) continues in force until the purpose of the entry has been satisfied.

120AAZY. Powers after entry

- (1) The following are powers specified for the purposes of section 120AAZX(2) if the entry is for the purpose mentioned in section 120AAZW(a)—
 - (a) to inspect the premises;
 - (b) to take any measurements and other particulars of the premises that the Commissioner considers appropriate;
 - (c) to take any photograph and video recording inside the premises;
 - (d) to require any person present on the premises to provide any assistance or information necessary for enabling the Commissioner to perform the Commissioner's functions under section 120AAZQ.
- (2) The following are powers specified for the purposes of section 120AAZX(2) if the entry is for the purpose mentioned in section 120AAZW(b)—
 - (a) to inspect and search the premises;
 - (b) to examine any document found on the premises;

- (c) to take any measurements and other particulars of the premises that the Commissioner considers appropriate;
- (d) to take any photograph and video recording inside the premises;
- (e) to seize and detain anything that is, or that appears to be or to contain, or that is likely to be or to contain, evidence of the commission of an offence under this Part in relation to the premises, and to take the steps that appear to be necessary for preserving the thing so seized or preventing interference with it;
- (f) to do anything necessary for ascertaining whether an offence under this Part is being, or has been, committed in relation to the premises;
- (g) to require any person present on the premises to provide any assistance or information necessary for enabling the Commissioner to perform the Commissioner's functions for the purpose mentioned in section 120AAZW(b).

120AAZZ. Commissioner may disclose information

- (1) The Commissioner may disclose any information obtained under this Part to a specified person if the Commissioner considers that the disclosure will enable or assist the specified person to exercise a power (including a right) conferred, or perform a function (including a duty) imposed, on the person by—
 - (a) this Ordinance;
 - (b) the Rating Ordinance (Cap. 116); or

- (c) the Government Rent (Assessment and Collection) Ordinance (Cap. 515).
- (2) In subsection (1)—
 - specified person* (指明人士) means—
 - (a) the Court of First Instance;
 - (b) the District Court;
 - (c) the Tribunal;
 - (d) a magistrate; or
 - (e) a public officer acting in the capacity of a public officer.

Division 9—Miscellaneous Provisions**120AAZZA. Costs**

In any proceedings under this Part, the court must not make any order as to costs against a party unless that party has conducted the case in a frivolous or vexatious manner.

120AAZZB. Giving evidence in proceedings

- (1) Subject to subsection (2)—
 - (a) neither the Commissioner nor an RVD officer may be called to give evidence in proceedings before the court; and
 - (b) no subpoena may be issued against the Commissioner or an RVD officer.
- (2) The Commissioner or an RVD officer may only be called to give evidence in any proceedings before the court for determining whether or not a tenancy is a domestic tenancy for the purposes of section 120AAB(1)(b).

120AAZZC. Use of returned requisition as evidence

- (1) A returned requisition is, in any proceedings before the Tribunal, a magistrate, the District Court or the Court of Appeal, admissible as evidence of the facts stated in the returned requisition.
- (2) A document purporting to be a returned requisition is in the proceedings presumed, unless the contrary is shown—
 - (a) to be such a returned requisition;
 - (b) to have been made by the person by whom it purports to have been made; and
 - (c) if it purports to have been made by a person in a capacity specified in the returned requisition—to have been made by the person in that capacity.

- (3) In this section—

returned requisition (交回報表) means either—

- (a) a notice submitted to the Commissioner under section 120AAZS(2); or
- (b) a requisition—
 - (i) served under section 120AAZU(1) on a person;
 - (ii) served under section 5(1)(a) of the Rating Ordinance (Cap. 116) on a person who is the owner or occupier of a tenement; or
 - (iii) served under section 31(1)(a) of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) on a person who is the lessee of an applicable lease or the owner or occupier of a tenement,

and returned by the person to the Commissioner containing (or purporting to contain) all or any of the

particulars required to be given by the person to the Commissioner.

120AAZZD. Providing false or misleading particulars etc.

- (1) This section applies if a person is required to—
 - (a) provide any particulars required by a requisition, any reference document or any other information to the Commissioner under this Part; or
 - (b) submit a notice in the specified form to the Commissioner to notify the Commissioner of any particulars of a tenancy under section 120AAZS(2).
- (2) A person commits an offence if the person—
 - (a) in purported compliance with the requirement—
 - (i) provides any particulars that are false or misleading in a material particular;
 - (ii) provides any reference document that is false or misleading in a material particular; or
 - (iii) says or states anything (when providing the particulars, reference document or information) that is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether or not, the particulars, reference document or information, or the thing said or stated, is false or misleading in a material particular.
- (3) A person who commits an offence under subsection (2) is liable on conviction to a fine at level 3 and to imprisonment for 3 months.
- (4) In this section—

reference document (參考文件) has the meaning given by section 120AAZV(6).

120AAZZE. Use of incriminating evidence in proceedings

- (1) This section applies if the Commissioner requires a person to provide any particulars required by a requisition under section 120AAZU(2).
- (2) The Commissioner must ensure that the requisition served on the person contains sufficient information to inform and remind the person of the limitations imposed by subsection (3) on the admissibility in evidence of the Commissioner's requirement and the person's response.
- (3) Despite anything in this Ordinance, if the conditions specified in subsection (4) are satisfied, the Commissioner's requirement and the person's response are not admissible in evidence against the person in criminal proceedings.
- (4) The conditions are—
 - (a) that the person's response might tend to incriminate the person; and
 - (b) that the person so claims before giving the response.
- (5) However, a person is not excused from complying with a requirement imposed on the person under section 120AAZU(2) only on the ground that to do so might tend to incriminate the person.
- (6) Subsection (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.

(7) In this section—

response (回應), in relation to a person, means any particulars provided by the person as required by a requisition under section 120AAZU(2).

120AAZZF. Forms

- (1) The Commissioner may specify the forms to be used under this Part.
- (2) The Commissioner may publish in the Gazette any form specified under subsection (1).
- (3) The Commissioner may, if considered appropriate, accept any notice or application submitted to the Commissioner that is not in the specified form.

120AAZZG. Service of documents

- (1) Service of any specified document under this Part may only be effected—
 - (a) by personal service;
 - (b) by post or courier, addressed to the last known place of business or residence of the person to be served; or
 - (c) if it is to be served on a tenant—
 - (i) by leaving the specified document with an adult occupier of the premises in which the tenant resides and to which the document relates; or
 - (ii) by affixing a copy of it to a prominent part of the premises in which the tenant resides and to which it relates.
- (2) A certificate purporting to be signed by a person who states in the certificate that the person effected service

under subsection (1) is, unless proved otherwise, evidence of the facts stated in the certificate relating to the service.

- (3) Subsection (1)(c)(ii) does not apply if the specified document is a tenancy in writing or Form AR1.
- (4) In this section—

specified document (指明文件) means any notice (other than a notice under section 120AAZJ(2)), form, application, certificate or other document.”.

5. Section 128 amended (interpretation)

Section 128—

Add in alphabetical order

“*landlord* (業主) has the meaning giving by section 120AA(1);

regulated tenancy (規管租賃) has the meaning given by section 120AA(1);

subdivided unit (分間單位) has the meaning given by section 120AA(1);”.

6. Section 129 amended (summoning of tenant of premises with a rateable value not exceeding \$100,000 unlawfully holding over)

- (1) Section 129—

Renumber the section as section 129(1).

- (2) After section 129(1)—

Add

- “(2) For the purposes of subsection (1), if the premises to be recovered are a subdivided unit subject to a regulated tenancy, the owner of the premises (or the owner’s agent) must, in the relevant application, specify whether or not the regulated tenancy is created out of another tenancy.”.

7. Section 131 amended (issue of warrant for possession of premises)

- (1) Section 131—

Renumber the section as section 131(1).

- (2) After section 131(1)—

Add

- “(2) For the purposes of subsection (1), if—

- (a) the premises are a subdivided unit subject to a regulated tenancy; and
- (b) the regulated tenancy is created out of another tenancy,

the District Court must, in issuing a warrant to a bailiff of the Court of First Instance or the District Court, include a condition in the warrant that the execution of the warrant is to be stayed for 60 days.

- (3) However, subsection (2) does not apply if the person making the application under section 129(1) is the landlord of the regulated tenancy for the premises.”.

8. Schedules 6 and 7 added

After Fifth Schedule—

Add

“Schedule 6

[ss. 120AAB & 120AAC]

Tenancies Excluded from Application of Part IVA

1. Interpretation

In this Schedule—

social services organization (社會服務機構) means a non-profit-making organization operating on a non-profit-making basis for the purpose of providing social services.

2. Excluded tenancies

Part IVA does not apply to any of the following tenancies—

- (a) a tenancy to which Part I or II applies;
- (b) a tenancy of which the landlord is the employer and the tenant is the employee in possession of the premises in accordance with the terms and conditions of the tenant's employment, being terms and conditions requiring the tenant to vacate the premises on ceasing to be so employed;
- (c) a tenancy held from—
 - (i) the Government;
 - (ii) the Hong Kong Housing Authority;
 - (iii) the Hong Kong Housing Society;
 - (iv) the Hong Kong Settlers Housing Corporation Limited; or
 - (v) the Urban Renewal Authority (or any of its wholly owned subsidiaries);
- (d) a tenancy of premises that is subsisting at the time an order under section 4 is made in respect of the premises;

- (e) a tenancy held from a social services organization of a housing unit provided by the organization.

Schedule 7

[ss. 120AAZF, 120AAZG
& 120AAZI]

Mandatory Terms Implied for Every Regulated Tenancy

Part 1

Interpretation

1. Interpretation

- (1) In this Schedule—

premises (處所) means a subdivided unit that is the subject matter of a regulated tenancy;

tenancy agreement (租賃協議) means a tenancy, or an agreement for a tenancy, in writing for a regulated tenancy (including a Form AR1 signed by the landlord and tenant for a second term tenancy) and includes, where applicable, its counterpart.

- (2) The following expressions have the same meaning in this Schedule as in section 120AA—

Form AR1;

landlord;

regulated tenancy;
second term tenancy;
subdivided unit;
tenant;
term;
unit.

Part 2

Tenancy Agreement

2. Stamp duty borne by landlord

The stamp duty on the tenancy agreement for a regulated tenancy is to be borne by the landlord solely.

3. Stamping of tenancy agreement by landlord

The landlord must, after receiving the tenancy agreement for a regulated tenancy signed by the tenant—

- (a) cause the tenancy agreement to be stamped under the Stamp Duty Ordinance (Cap. 117); and
- (b) within 30 days, return to the tenant a counterpart of the stamped tenancy agreement signed by the parties.

4. Landlord's return of stamped tenancy agreement

- (1) If the landlord fails to return a counterpart of the stamped tenancy agreement under section 3(b) of this Schedule, the tenant may withhold the payment of rent until the landlord has done so.

- (2) If the landlord has eventually returned the counterpart of the stamped tenancy agreement to the tenant, the tenant must pay back, free of interest, any rent withheld under subsection (1) to the landlord within 15 days after the tenant's receipt of the counterpart.
- (3) If the tenant fails to comply with subsection (2), the landlord may, by giving the tenant not less than 15 days' prior notice in writing, terminate the tenancy.

Part 3

Landlord's Obligations during Term

5. Maintenance and repair

- (1) The landlord must maintain and keep in repair (where applicable)—
 - (a) the drains, pipes and electrical wiring serving the premises exclusively; and
 - (b) windows of the premises.
- (2) The landlord must also keep in repair and proper working order the fixtures and fittings provided by the landlord in the premises.
- (3) On receiving a notice from the tenant for repair of an item referred to in subsection (1) or (2), the landlord must carry out the repair as soon as practicable.
- (4) For the purposes of subsection (3), the landlord may, by giving not less than 2 days' prior notice to the tenant, enter the premises to—
 - (a) inspect the damage;
 - (b) assess the need for the repair; and
 - (c) (as the case requires) carry out the repair.

- (5) However, if the damage to the item is caused by the wilful or negligent act of—
- (a) the tenant;
 - (b) an occupier (other than the tenant) of the premises; or
 - (c) a person permitted by the tenant to be on the premises,
- the landlord is not responsible for the maintenance and repair of the item under subsection (1) or (2).

6. Tenant's termination of tenancy

- (1) This section applies if the landlord fails to fulfil an obligation under section 5 of this Schedule.
- (2) The tenant may, by giving the landlord not less than 30 days' prior notice in writing, terminate the tenancy.
- (3) Section 120AAZH(4) applies to a termination under this section.

Part 4

Tenant's Obligations during Term

7. Payment of rent

The tenant must pay the rent to the landlord on or before the due date.

8. No structural alteration without consent

The tenant must not make any structural alteration, or permit or suffer any structural alteration to be made, to the premises without the prior consent in writing of the landlord.

9. No immoral or illegal purpose

The tenant must not use the premises, or permit or suffer the premises to be used, for any immoral or illegal purpose.

10. Annoyance, inconvenience or disturbance

- (1) The tenant must not do anything, or permit or suffer anything to be done, on the premises that would cause any unnecessary annoyance, inconvenience or disturbance to the landlord or any other person.
- (2) For the purposes of subsection (1), if the tenant persistently fails to pay rent as and when it falls due, the tenant may be regarded as causing unnecessary inconvenience to the landlord.

11. No assignment or underletting

- (1) The tenant must not assign or underlet the whole of the premises to another person, or otherwise part with possession of the whole of the premises.
- (2) The tenant must not underlet part of the premises to another person without the prior consent in writing of the landlord.

12. Landlord's re-entry

- (1) The landlord may re-enter the premises (or any part of the premises in the name of the whole) if the tenant—
 - (a) is in breach of section 7 of this Schedule and fails to pay the rent within 15 days after the due date (except where the tenant is withholding the payment of rent under section 120AAZ(3)(a), or section 4(1) of this Schedule); or
 - (b) is in breach of section 8, 9, 10 or 11 of this Schedule.

- (2) The tenancy of the premises is terminated immediately on the landlord’s re-entry under subsection (1).”
-

Part 3

Related Amendments

Division 1—Amendment to Lands Tribunal Ordinance (Cap. 17)

9. Section 8 amended (jurisdiction of the Tribunal)

After section 8(8)—

Add

- “(8AA) The Tribunal has jurisdiction, on an application, to determine whether any tenancy is a regulated tenancy for the purposes of Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).”.

Division 2—Amendments to Lands Tribunal Rules (Cap. 17 sub. leg. A)

10. Cross-heading before rule 68 amended

Cross-heading before rule 68—

Repeal

“IV and”

Substitute

“IV, IVA and”.

11. Rule 68 amended (commencement of proceedings)

Rule 68(1)—

Repeal

“IV and”

Substitute

“IV, IVA and”.

12. Schedule amended (forms)

The Schedule, Form 22—

Repeal

“respondent.”

Substitute

“respondent.

* Application for determination of whether a tenancy is a regulated tenancy for the purposes of Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7). / *Application for determination on the entitlement of a family member of a deceased tenant to the deceased tenant’s benefits and protection under a regulated tenancy under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).”.

**Division 3—Amendment to Lands Tribunal (Fees) Rules
(Cap. 17 sub. leg. B)**

13. Schedule amended (fees)

The Schedule, item 5—

Repeal

“IV or”

Substitute

“IV, Part IVA or”.

Division 4—Amendments to Rating Ordinance (Cap. 116)

14. Section 6A amended (use of returned requisition as evidence)

(1) Section 6A(2)(b)—

Repeal

“119L(1)”

Substitute

“119L(1), a notice submitted to the Commissioner under section 120AAZS(2)”.

(2) Section 6A(2)(b)—

Repeal

“119T(1)(a)”

Substitute

“119T(1)(a) or 120AAZU(1)”.

**Division 5—Amendment to Land Registration Ordinance
(Cap. 128)**

15. Section 3 amended (priority of registered instruments; effect of non-registration)

Section 3(2), proviso—

Repeal

“years.”

Substitute

“years, or to a regulated tenancy (as defined by section 120AA(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).”.

Division 6—Amendments to Government Rent (Assessment and Collection) Ordinance (Cap. 515)

16. **Section 39 amended (use of returned requisition as evidence)**
- (1) Section 39(2)(a)—
Repeal
“119L(1)”
Substitute
“119L(1), a notice submitted to the Commissioner under section 120AAZS(2)”.
- (2) Section 39(2)(a)—
Repeal
“119T(1)(a)”
Substitute
“119T(1)(a) or 120AAZU(1)”.

Division 7—Amendment to Electronic Transactions Ordinance (Cap. 553)

17. **Schedule 3 amended (service of documents)**
- Schedule 3, item 1—
Repeal
“Section 119Y(1)(a) and (b)”
Substitute
“Sections 119Y(1)(a) and (b) and 120AAZZG(1)(a) and (b)”.
-

Explanatory Memorandum

The objects of this Bill are to amend the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (*Ordinance*) to regulate tenancies of subdivided units of buildings, and to provide for related matters.

2. The Bill is divided into 3 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement. The Bill after enactment is to come into operation on the expiry of 3 months beginning on the day on which it is published in the Gazette.

Part 2—Amendments to Ordinance

4. Clause 3 amends section 116(2)(a) of the Ordinance to exclude a tenancy under the new Part IVA of the Ordinance from the application of Part IV of the Ordinance.
5. Clause 4 adds a new Part IVA (that is, new sections 120AA to 120AAZZG) to the Ordinance. That Part provides for the regulation of tenancies of subdivided units of buildings.

Division 1 of new Part IVA—Interpretation and Application

6. The new section 120AA contains definitions that are necessary for the interpretation of the new Part IVA.
7. The new section 120AAB provides for the application of the new Part IVA. That Part applies to a tenancy (*regulated tenancy*)—
- (a) that commences on or after the commencement date of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2021;
 - (b) that is a tenancy of premises let as a dwelling (*domestic tenancy*);

- (c) the subject premises of which are a subdivided unit (which means premises that form part of a unit of a building) (*subdivided unit*);
 - (d) the tenant of which is a natural person; and
 - (e) the purpose of which is for the tenant's own dwelling.
8. The new Part IVA does not apply to the tenancies specified in the new Schedule 6 to the Ordinance (*Schedule 6*).
9. The new section 120AAC enables the Secretary for Transport and Housing (*Secretary*) to amend Schedule 6 by notice published in the Gazette.

Division 2 of new Part IVA—Determination relating to Regulated Tenancy

Subdivision 1—General Provisions

10. The new section 120AAD provides for the interpretation of Division 2.
11. The new section 120AAE allows a person having an interest in any premises to apply to the Lands Tribunal (*Tribunal*) to determine whether or not a tenancy is a regulated tenancy for the purposes of the new Part IVA.
12. The new section 120AAF provides that the Tribunal must make a determination on receiving an application made under the new section 120AAE.

Subdivision 2—Domestic Tenancy

13. The new section 120AAG provides for the effect of a particular purpose of a tenancy that is specified in the tenancy.
14. The new section 120AAH provides that the purpose of a tenancy is to be determined by the primary user of the premises.
15. The new section 120AAI requires a tenant to establish the landlord's agreement to a change of user of the premises as the tenant's

- dwelling if the premises are being used as a dwelling in breach of the tenancy.
16. The new section 120AAJ provides that if a sub-tenancy is created out of another tenancy (*superior tenancy*) and the premises of the superior tenancy were let other than as a dwelling, the premises of the sub-tenancy are taken to be used other than as a dwelling.
17. The new section 120AAK makes it clear that the use as a boarding or lodging house is a use other than as a dwelling.
18. The new section 120AAL sets out certain matters that may be taken into account in determining whether any premises were let as a dwelling.

Subdivision 3—Tenant's Own Dwelling

19. The new section 120AAM provides for the presumption of a tenancy for the tenant's own dwelling under certain circumstances.
20. The new section 120AAN enables the Tribunal to determine that any premises are let for the tenant's own dwelling despite the purpose otherwise specified in the tenancy.

Division 3 of new Part IVA—Regulated Cycle

Subdivision 1—General Provisions

21. The new section 120AAO provides that a regulated cycle of tenancies is to comprise 2 consecutive regulated tenancies each for a term of 2 years. That section also sets out how the terms of the first and second regulated tenancies commence.
22. The new section 120AAP provides that a first term tenancy for a subdivided unit may be entered into by the parties at a rent agreed by them.
23. The new section 120AAQ sets out how a periodic tenancy, or a tenancy for a term other than of 2 years, is taken to be a first term tenancy.

24. The new section 120AAR entitles a tenant of a first term tenancy to a second term tenancy of the same regulated cycle.

Subdivision 2—Second Term Offer

25. The new section 120AAS prescribes how a landlord of a first term tenancy may offer the tenant a second term tenancy. A second term offer may only be made to the tenant in Form AR1.

26. The new section 120AAT allows a landlord to make more than one second term offer before the tenant accepts an offer.

27. The new section 120AAU prescribes how a tenant may accept a second term offer. In gist, to accept the offer, the tenant must sign the same Form AR1 served by the landlord and serve the Form on the landlord before the expiry of the first term tenancy.

28. The new section 120AAV provides that a tenant failing to notify the landlord of the tenant's acceptance of the second term offer before the expiry of the first term tenancy is taken to have rejected the offer.

29. The new section 120AAW provides that a landlord who fails to make a second term offer is taken to have made the second term offer, and the tenant is taken to have accepted the offer and be granted a second term tenancy on the expiry of the first term tenancy.

30. The new section 120AAX obliges a landlord of a first term tenancy for a subdivided unit to make a second term offer to the tenant even though the landlord is proceeding by action to enforce a right of re-entry or forfeiture for possession of the subdivided unit.

31. The new section 120AAY provides for certain circumstances in which a second term offer lapses.

Subdivision 3—Tenancy in Writing

32. The new section 120AAZ enables a tenant under an oral tenancy to demand the landlord to, within 30 days of the demand, serve on the tenant a tenancy in writing that reflects the contents of the oral

tenancy for signing by the parties. That section also provides for the consequences of a landlord failing to serve on the tenant a tenancy in writing and a tenant failing to pay back the rent to the landlord if the landlord has eventually served the tenancy in writing on the tenant.

Subdivision 4—Tenant's Interests in Certain Circumstances

33. The new section 120AAZA provides that the term of a regulated tenancy (which is a sub-tenancy created out of another tenancy (*superior tenancy*)) is to expire no later than the expiry of the term of the superior tenancy.

34. The new section 120AAZB allows the benefits and protection under a regulated tenancy to which the tenant is entitled during the tenant's lifetime to be available to a tenant's family member after the tenant's death.

Division 4 of new Part IVA—Rents and Deposit

Subdivision 1—General Provisions

35. The new section 120AAZC prohibits the rental deposit payable by a tenant of a regulated tenancy to be more than 2 months' rent under the tenancy. That section also provides for how the rental deposit is to be returned to the tenant.

36. The new section 120AAZD forbids alteration of rent during the term of a regulated tenancy. However, the landlord may, at any time during the term, reduce the rent payable by the tenant for the remaining period of the term.

Subdivision 2—Renewed Rent

37. The new section 120AAZE sets out the mechanism for ascertaining the maximum rent payable by a tenant for a regulated tenancy of the second term.

Division 5 of new Part IVA—Implied Terms

38. The new section 120AAZF provides that the provisions in the new Schedule 7 to the Ordinance (*Schedule 7*) are to be impliedly incorporated into every regulated tenancy.
39. The incorporated provisions bind the parties of a regulated tenancy, and the new section 120AAZG empowers the Secretary to amend Schedule 7.

Division 6 of new Part IVA—Termination of Tenancy

40. The new section 120AAZH allows a tenant of a regulated tenancy to terminate the tenancy any time after 1 year of the term.
41. The new section 120AAZI forbids a landlord of a regulated tenancy to terminate the tenancy before the expiry of the term unless the termination is in accordance with the new section 120AAZ(7) or section 4(3) of Part 2 of Schedule 7, or is for the enforcement of the landlord's right of re-entry or forfeiture in accordance with Part 4 of Schedule 7.
42. The new section 120AAZJ deals with a situation of a regulated tenancy for a subdivided unit being a sub-tenancy created out of another tenancy. If a superior landlord enforces an order of the court for possession of the subdivided unit, leave to issue a writ of possession to enforce the order is not to be granted by the court before the expiry of the period specified in that section.

Division 7 of new Part IVA—Offences relating to Regulated Tenancies

43. The new section 120AAZK makes it an offence for a landlord of a regulated tenancy to require the tenant to pay, or receive from the tenant, any money other than the types of payments specified in that section.
44. The new section 120AAZL makes it an offence for a landlord of a regulated tenancy to require the tenant to pay charges for certain utilities and services for the tenant's subdivided unit unless certain conditions are fulfilled as specified under that section.

45. The new section 120AAZM makes it an offence for a landlord of a regulated tenancy to fail to provide rent receipts to the tenant.
46. The new section 120AAZN makes it an offence for a person to unlawfully deprive a tenant of a regulated tenancy for a subdivided unit of occupation of the subdivided unit.

Division 8 of new Part IVA—Commissioner of Rating and Valuation's Powers

Subdivision 1—Interpretation

47. The new section 120AAZO sets out the meaning of certain expressions that are used in Division 8 of the new Part IVA.

Subdivision 2—Commissioner of Rating and Valuation's Certificate

48. The new section 120AAZP provides for an application to be made to the Commissioner of Rating and Valuation (*Commissioner*) for a certificate as to the primary user of any premises (*primary user certificate*) whether or not a dispute arises as to whether a tenancy of the premises is a domestic tenancy.
49. The new section 120AAZQ obliges the Commissioner to inspect the premises concerned before a primary user certificate is issued.
50. The new section 120AAZR enables the Commissioner to issue a primary user certificate if the Commissioner is satisfied on the evidence available as to the primary user of the premises concerned.

Subdivision 3—Commissioner's Endorsement

51. The new section 120AAZS requires a landlord of a regulated tenancy to notify the Commissioner of the particulars of the tenancy in a specified form, and makes it an offence for the landlord to fail to do so.
52. The new section 120AAZT obliges the Commissioner to endorse the notice under section 120AAZS with the date of its receipt.

Subdivision 4—Other Powers

53. The new section 120AAZU enables the Commissioner to serve a requisition on any person for the purposes of the new Part IVA. That section also makes it an offence for a person to, without reasonable excuse, refuse or neglect to provide to the Commissioner any particulars reasonably required by the requisition.
54. The new section 120AAZV empowers the Commissioner to require the landlord or tenant of any premises to provide to the Commissioner any document specified in that section (*reference document*) for the purposes of the new Part IVA. That section also makes it an offence for a person to, without reasonable excuse, refuse or neglect to provide to the Commissioner any reference document required by the Commissioner.
55. The new section 120AAZW empowers the Commissioner to, with the occupier's consent, enter any premises to carry out an inspection of the premises for the purposes of the new section 120AAZQ, or to ascertain whether an offence under the new Part IVA is being, or has been, committed in relation to the premises.
56. The new section 120AAZX enables the Commissioner to, with a warrant issued by a magistrate, enter any premises to exercise the powers specified in the new section 120AAZY.
57. The new section 120AAZZ enables the Commissioner to disclose information obtained under the new Part IVA to certain persons.

Division 9 of new Part IVA—Miscellaneous Provisions

58. The new section 120AAZZA deals with costs of proceedings under the new Part IVA.
59. The new section 120AAZZB permits the Commissioner, or a public officer employed in the Rating and Valuation Department, not (except under the circumstances specified in that section) to be called

- to give evidence in proceedings before the Court of First Instance, the District Court or the Tribunal.
60. The new section 120AAZZC provides that certain notice and requisitions are admissible as evidence in certain courts.
61. The new section 120AAZZD makes it an offence for a person to provide any particulars or reference document, or say or state anything, that is false or misleading in a material particular under the new Part IVA.
62. The new section 120AAZZE deals with the use of incriminating evidence in proceedings.
63. The new section 120AAZZF enables the Commissioner to specify the forms to be used under the new Part IVA.
64. The new section 120AAZZG deals with service of documents under the new Part IVA.
65. Clauses 6 and 7 amend sections 129 and 131 of the Ordinance (which deal with small tenements recovery) respectively to, if the premises in question are a subdivided unit, adjust certain requirements in those sections for the purpose of staying the execution for possession of the premises for 60 days.
66. Clause 8 adds Schedule 6 and Schedule 7 to the Ordinance.
67. Schedule 6 sets out the tenancies that are excluded from the application of the new Part IVA.
68. Schedule 7 sets out the mandatory terms that are implied for every regulated tenancy.

Part 3—Related Amendments

Division 1—Amendment to Lands Tribunal Ordinance (Cap. 17)

69. Clause 9 amends section 8 of the Lands Tribunal Ordinance (Cap. 17) to expand the jurisdiction of the Tribunal to determine, on

application, whether any tenancy is a regulated tenancy under the new Part IVA of the Ordinance.

Division 2—Amendments to Lands Tribunal Rules (Cap. 17 sub. leg. A)
(Lands Tribunal Rules)

70. Clause 11 amends rule 68 of the Lands Tribunal Rules to prescribe the way in which proceedings are commenced under the new Part IVA of the Ordinance.
71. Clause 12 amends Form 22 in the Schedule to the Lands Tribunal Rules so that the form is applicable for certain additional applications under the new Part IVA of the Ordinance.

Division 3—Amendment to Lands Tribunal (Fees) Rules (Cap. 17 sub. leg. B)

72. Clause 13 amends the Schedule to the Lands Tribunal (Fees) Rules (Cap. 17 sub. leg. B) to specify the fee payable for an application under the new Part IVA of the Ordinance in proceedings before the Tribunal.

Division 4—Amendments to Rating Ordinance (Cap. 116)

73. Clause 14 makes certain consequential amendments to section 6A of the Rating Ordinance (Cap. 116).

Division 5—Amendment to Land Registration Ordinance (Cap. 128) (LRO)

74. Clause 15 amends section 3 of the LRO to clarify the effect of non-registration of certain instruments in writing under the new Part IVA of the Ordinance for the purposes of the LRO.

Division 6—Amendments to Government Rent (Assessment and Collection) Ordinance (Cap. 515)

75. Clause 16 makes certain consequential amendments to section 39 of the Government Rent (Assessment and Collection) Ordinance (Cap. 515).

Division 7—Amendment to Electronic Transactions Ordinance (Cap. 553)
(ETO)

76. Clause 17 amends Schedule 3 to the ETO to include the new section 120AAZZG(1)(a) and (b) of the Ordinance in that Schedule for section 5A of the ETO to apply in relation to service of documents in certain circumstances under that new section.

Report of the Task Force for the Study on Tenancy Control of Subdivided Units (March 2021)

Executive Summary

The Government has all along been concerned about the households living in the subdivided units (SDUs). Most who live in SDUs are low-income individuals or families. They have to pay heavy rents, and the living conditions of quite a number of SDUs are less than desirable. There are views in the society that the Government should implement tenancy control on SDUs so as to better protect the interests of SDU tenants. However, tenancy control is a very controversial subject which requires careful and thorough study before reaching a decision. In this regard, the Transport and Housing Bureau set up the Task Force for the Study on Tenancy Control of Subdivided Units (the Task Force) on 16 April 2020 to study and report to the Government the situation of SDUs in Hong Kong and to advise the Government on whether tenancy control on SDUs should be implemented and the possible options.

Work carried out by the Task Force

2. Since its establishment in April 2020, the Task Force has held eight meetings. The Task Force has invited representatives of relevant government departments and the two power companies to brief the Task Force on their work relating to SDUs. The Task Force has also invited an international organisation to share the experience and options of implementing tenancy control on grass-root housing in overseas jurisdictions. Meanwhile, the Task Force has appointed independent scholars/institution to conduct three thematic researches on the social, economic and legal issues relating to tenancy control on SDUs.

3. Despite the COVID-19 pandemic, Task Force members have paid visits to different types of SDUs in various districts to apprise the actual situation of SDUs and to have exchanges with the tenants. The Task Force has also held a number of online meetings with a total of 36 concern groups, and organised two public forums to gather the views of stakeholders and members of the public on introducing tenancy control on SDUs in Hong Kong. On 1 February 2021, Prof. William Leung, Chairman of the Task Force, together with the Transport and Housing Bureau, reported the progress of the work of the Task Force and listened to Members' views and proposals on tenancy control on SDUs at the meeting of the Legislative Council Panel on Housing.

Number of SDUs in Hong Kong and the Socio-economic Characteristics of SDU Tenants

4. In late 2020/early 2021, the institution commissioned by the Task Force to conduct the social thematic research carried out a comprehensive survey on the SDUs in Hong Kong. The survey covers all private domestic/composite buildings aged 15 years or above. According to the results of the survey, it is estimated that in 2020, there were 29 897 quarters with SDUs that were externally accessible and occupied for domestic purposes in private domestic/composite buildings. In these 29 897 quarters, there were 100 943 SDUs. On average, there were 3.38 SDUs per unit of quarters. The number of persons living in SDUs was estimated at 226 340.

5. Some of the major findings and observations are set out as follows

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- (a) The majority (81.9%) of SDUs are located in buildings that are 50 years old or above. About 46.5% of SDUs are located in buildings with no owners' organisation (OO) and no property management company (PMC), 36.7% in buildings with OO but without PMC.
- (b) In terms of floor area of accommodation, around 63% of SDU households live in an SDU below 13 sq. m. The median per capita floor area of accommodation is 6.6 sq. m.
- (c) In terms of facilities, almost all SDUs have toilet (99.3%), whether shared or independent, kitchen¹ (92.7%), whether shared or independent, and window (95.9%). A great majority of SDUs have independent electricity meter (86.8%), and independent water meter (83.2%).
- (d) As regards household income, the median monthly income of households living in SDUs was \$15,000 in 2020, as compared to the corresponding Hong Kong median of \$33,000 in the fourth quarter of 2020.
- (e) About 56% of households have been residing in the current SDU for more than 2 years. 48.4% of SDU households have

¹ For the purpose of the survey, kitchen refers to a facility in an SDU that has fresh water supply and a space for the placement of cooking stove. The kitchen may or may not be partitioned.

applied for public rental housing, while 48.6% have not.

- (f) On tenancy arrangements, more than 85% of SDU households have a written tenancy agreement, but the agreement may not be “complete”. Amongst those households who have a tenancy agreement, around 60% have a tenancy agreement with a term of >1 to 2 years, whilst only around 10% have a tenancy term of more than 2 years.
- (g) On the rent, the median monthly rental of SDUs is \$4,800, and the overall median monthly rent per sq. m. is \$417, as compared to the average monthly rents of \$301 and \$368 per sq. m. of a domestic flat under 40 sq. m. in the New Territories and Kowloon respectively in November 2020². The monthly rent accounted for around one third of the monthly household income of the SDU households.
- (h) On water and electricity charges, the majority of SDU households have to pay charges for water and electricity separately on top of the monthly rent. For the majority of these households, the charge is based on usage, and the median rate charged is \$13 per unit of water and \$1.5 per unit for electricity.
- (i) On rent adjustment, for those households whose rental had been adjusted, 75.6% had their rent increased at the last rent adjustment and the median rate of increase was 7%. For about 7.0% of households, their rent was decreased at the last rent adjustment and the median rate of decrease was 5%.

6. The institution has also conducted a survey on the SDUs in industrial and commercial buildings. It is estimated that there were 6 927 SDUs occupied for domestic purposes in industrial and commercial buildings in 2020.

Past Tenancy Control in Hong Kong

7. In the past, Hong Kong had adopted various forms of tenancy control. Rent control was first introduced in Hong Kong in 1921. In the following decades, the Government had implemented rent control and/or security of tenure at different times through legislation in response to the

² The average monthly rent of a domestic flat under 40 sq. m. on Hong Kong Island was \$431 per sq. m. in November 2020.

prevailing housing shortage and surge in rentals. That said, most of the control measures were temporary.

8. Until 1973, the Government consolidated a number of relevant ordinances then subsisting and introduced the Landlord and Tenant (Consolidation) Ordinance. Apart from the existing Part I which regulated the tenancies of “pre-war premises”, Part II was added to exercise rent control and security of tenure in respect of tenancies of “post-war residential premises”. The Ordinance was amended a number of times in the ensuing years.

9. In 1980, the Government announced a comprehensive review of the tenancy control legislation. The committee considered that efforts should be made to accelerate the phasing out of rent control, but security of tenure should be provided for tenants. Most of the proposals of the committee were adopted: the regime for security of tenure became the new Part IV of the Landlord and Tenant (Consolidation) Ordinance in 1981. On rent control, the rent control on “pre-war non-residential premises” was removed with effect from 1 July 1984, while rent control upon all pre-war and post-war domestic lettings expired after 31 December 1998.

10. The Government announced in November 2002 to conduct a thorough review of the Landlord and Tenant (Consolidation) Ordinance with a view to resuming free market operation of the private residential market. A public consultation exercise was carried out in 2003, and the majority of respondents supported, *inter alia*, the complete removal of security of tenure. After the Landlord and Tenant (Consolidation) (Amendment) Bill 2003 was passed in June 2004, the security of tenure under Part IV formally ended after 8 July 2004.

11. After the abolishment of rent control and security of tenure in 1998 and 2004 respectively, Part IV of the Landlord and Tenant (Consolidation) Ordinance currently does not control the rate of rent increase of domestic tenancies, nor does it afford the tenant the right to renew a tenancy.

Tenancy Control and Tenant Protection Measures in Overseas Jurisdictions

12. The Task Force has reviewed the tenancy control measures and experiences in different overseas jurisdictions. At present, the UK and Australia do not have rent control in place in general. For those countries or places which do, rent control may be exercised either by way of control on the rent level, such as through the imposition of a rent cap / a maximum rent as in the cases of Germany, the Netherlands and New York City (in

respect of rent-controlled units), or through restricting the rate of rent increase, as in the cases of Germany, the Netherlands, New York City (in respect of both rent-controlled and rent-stabilised units) and San Francisco.

13. Meanwhile, security of tenure is a key general tenant protection measure. Generally speaking, in most of the jurisdictions reviewed, landlords cannot evict tenants unless certain restrictive conditions can be met. In the Netherlands, security of tenure is provided for both rent controlled and uncontrolled tenancies. In New York City, tenants of both rent-controlled and rent-stabilised units enjoy unlimited security of tenure.

Economic arguments for and against tenancy control on SDUs

14. The economic study commissioned by the Task Force has reviewed international empirical studies on tenancy control, and assessed the possible effects of tenancy control on SDUs in Hong Kong in various aspects. Many economists have reservations about the effectiveness of tenancy control. They are concerned that tenancy control might reduce the availability of controlled housing, landlords might reduce maintenance of their units, or only part of the benefits of tenancy control would go to the intended individuals. That said, the economic consultant appointed by the Task Force considers that as housing is a necessary commodity and the under-privileged have very limited choices in the private rental housing market other than SDUs, SDUs are price inelastic. Due to the imperfection of the SDU market, implementing rent control on SDUs does not violate the principle of free market. If the SDU rental market has been “unjust” and “unfair” at the outset, the Government should intervene.

15. The economic consultant expects that unless the extent of rent control is very large, rent control will not immediately reduce the supply of SDUs because the cost of reverting SDUs to normal units is high. In this respect, the legal team appointed by the Task Force also points out that as current SDU landlords have already invested capital by converting their units into SDUs and many enjoy a relatively larger yield of return, most SDU landlords should be able to accept some extent of tenancy control. Furthermore, the economic consultant considers that although any form of rent control will cause side effects, they can be ameliorated through careful design of the tenancy control scheme.

Feasibility of introducing tenancy control on SDUs in Hong Kong and issues to be considered

16. If tenancy control on SDUs is to be introduced in Hong Kong, it

has to be enforced through legislation. Taking into account the characteristics of the SDU rental market in Hong Kong, the legal team considers that the following issues have to be considered in deploying legislative controls in Hong Kong -

(a) “Legalisation” of SDUs

The operation of many SDUs may not fully comply with the law in one aspect or another. Introducing tenancy control on SDUs, particularly on those SDUs which do not fully comply with all the statutory requirements, may send a misleading message to the public that the Government is “legalising” the SDUs. A clear message must therefore be sent to the public that any new tenancy control regime on SDUs would not prejudice regulatory actions taken by relevant authorities under existing legislation.

(b) Unintended consequences of tenancy control

Despite the good intention to protect the tenants, tenancy control measures often lead to an array of unintended consequences to the detriment of some of the tenants whom the measures sought to assist. For example, with security of tenure, the landlord will pick and choose his tenants, making it difficult for those with unstable income to find a place to live. Another common consequence of tenancy control is that it would discourage landlords from maintaining the quality of their units. Tenancy control would also encourage landlords to find ways to offset the impact of the tenancy control measures, including charging a higher initial rent, asking for more deposit money, demanding miscellaneous side payments, overcharging tenants on certain payments associated with the lease, and altering terms of the tenancy so that it would not be subject to tenancy control.

That said, on the possible spike in SDU rental in the short term as a result of rent control, the legal team advised that “rent freeze” is not a feasible counter-measure because many SDU tenants may be on monthly periodic tenancies. Upon any rumour of a rent freeze, such landlords can quickly increase the rent substantially on a month’s notice.

Moreover, the rent level that should be frozen would be very difficult to determine in the case of oral tenancies or tenancies that include other fees such as utilities and “key money” in the rent.

(c) Legal challenges: derogation of owner’s property rights

Whilst Hong Kong has implemented relatively strict forms of tenancy control in the past, the Hong Kong Bill of Rights Ordinance (Cap. 383) came into force in Hong Kong on 8 June 1991. Since 1 July 1997, the Basic Law also offers constitutional protection to private property rights.

The legal team observes that any new tenancy or land use restrictions imposed after the acquisition by an owner may be found to be an infringement of and a derogation from the owner’s property rights. Such restrictions may be held unconstitutional unless the “proportionality test” is satisfied. The legal team considers that the more stringent the measures of tenancy control, the greater the risk that they would be struck down by the court on grounds of unconstitutionality, irrationality or Wednesbury unreasonableness.

(d) Subletting and licensing

The legal team points out that subletting may affect the effectiveness of tenancy control on SDUs. When the head lease expires or is terminated, the under lease in respect of the SDU would end. In theory, only regulating the sub-leases in respect of SDUs but not the head leases could undermine the effectiveness of the tenancy control measures in offering protection to tenants. Nevertheless, the scale, commercial purpose and terms of head leases may often be totally different. Doing so would also have legal issues.

On the other hand, to evade legislative controls based on “leases”, it is highly possible that SDU operators may exploit the loophole by intentionally choosing to offer “licence agreements” for the occupation of their premises instead of entering into “leases” with the occupants.

Nevertheless, the legal team is of the view that it would not be easy for SDU operators to circumvent the law and the court's scrutiny. The court would look at the substance of the agreement and not its label when determining whether an agreement is a lease or not.

(e) Difficulties in imposing "habitability" and "repair" obligations

Save for the fulfilment of "fitness for habitation" at the commencement of the lease and unless contractually agreed, the common law does not impose upon landlords any positive obligation to repair or otherwise maintain the physical condition of the premises as an ongoing concern. If some mandatory minimum obligation is to be imposed on landlords, setting an objective standard across the board for compliance is no easy task. The meanings of "tenantable" or "habitable" conditions in a dwelling can be relative and subjective. The living conditions amongst SDUs can also vary greatly. The legal team suggests that if repair obligations are to be imposed on landlords, the law should specifically spell out the "items" to be maintained. The tenant should also be required to grant the landlord with reasonable access to the premises for the latter to carry out the repairs.

(f) Difficulties to regulate SDU rentals by way of "prevailing market rent"

Before 9 July 2004, tenants of domestic tenancies were offered security of tenure whereby the landlord had to renew the tenancy with the tenant as long as the tenant agreed to pay the "prevailing market rent". In reality, determination of the "prevailing market rent" of individual SDUs would be much more complex, as it would vary with a lot of adjustment factors. Coupled with the large number of SDUs, it would be hugely costly and inefficient for the Lands Tribunal to determine the "prevailing market rent" of SDUs in case of disputes. This approach of rent regulation is also not feasible at least in the short term because of a lack of data on the existing SDU market rentals, and very costly for SDU tenants who have limited financial means.

Guiding Principles of Tenancy Control on SDUs in Hong Kong

17. The Task Force considers that the following key guiding principles should be taken into account when looking into whether tenancy control on SDUs should be implemented in Hong Kong and in considering the possible options –

- (a) Whilst Hong Kong has had relatively strict forms of tenancy control in the past, the Hong Kong Bill of Rights Ordinance (Cap. 383) came into force in Hong Kong on 8 June 1991. Since 1 July 1997, the Basic Law has also offered clear protection of private property rights. New tenancy restrictions imposed after the acquisition by an owner might be found to be an infringement of or a derogation from the owner's property rights and might be held by the court as contravention of the Basic Law, unless such restrictions would not disproportionately infringe on the private property rights of the owner whilst bringing societal benefits to the tenant.
- (b) Despite the fact that the living conditions of quite a number of SDUs are less than desirable, SDUs do provide basic accommodation for some low-income families and individuals pending the availability of sufficient public and transitional housing to meet their housing needs. The objective of the Task Force is to study whether tenancy control on SDUs should be implemented in Hong Kong, not to displace SDUs. Having said that, SDUs should continue to be subject to regulation under various legislation governing their building and fire safety as well as sanitation, etc.
- (c) As highlighted in the Long Term Housing Strategy published by the Transport and Housing Bureau in December 2014 and in the three thematic research reports of the Task Force, tenancy control measures might lead to an array of unintended consequences, some of which might be unfavourable to the tenants originally intended for protection. In particular, the Task Force notes that SDU landlords would very likely take "pre-emptive" actions, such as immediate rent increase and eviction of tenants, before the formal implementation of tenancy control measures. Unfortunately, it appears that it is difficult, such as through

imposition of a temporary rent freeze before the enactment of the relevant legislation, to forestall such pitfalls.

- (d) Currently, subletting in the SDU market is prevalent. When the head lease expires or is terminated, the under lease in respect of the SDU would end, thereby creating difficulties in enforcing tenancy control. That said, taking the drastic measure of forbidding the subletting of SDUs altogether, i.e. compulsorily requiring all leases of SDUs to be executed between the registered owner of the unit in which the SDU is situated and the “ultimate” tenant, is not feasible. With no accurate information being available on the number and percentage of SDUs in the market that are being sublet, this would be a highly precarious move as it may possibly cause a fundamental disruption to the SDU rental market and lead to a substantial reduction in the supply of SDUs for rental. Any future tenancy control regime concerning SDUs, if implemented, should therefore incorporate measures to address the problem caused by subletting.
- (e) If tenancy control on SDUs is to be introduced, the Government should consider adopting measures which are more legally sound and relatively easier to administer, can be implemented speedily, whilst bringing real protection for SDU tenants.

Recommendations of the Task Force

18. The Task Force considers in principle that the Government should implement suitable tenancy control on SDUs in order to safeguard the interests of grass-root tenants of SDUs. The Task Force further recommends that the tenancy control measures on SDUs be effected through legislation by adding a new part to the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) specifically for this purpose.

Scope of regulation

19. The Task Force notes that SDUs do not only exist in domestic buildings but also in industrial and commercial buildings, or in temporary structures such as squatters and “rooftop houses”. These SDUs may involve illegal land use and/or unauthorised building works. Enforcing tenancy control on these SDUs may send a misleading message to the public that the Government is “legalising” these SDUs. That said, the

Task Force recognises that tenants living in these SDUs also require tenancy protection. The general views of the public, concern groups and Legislative Council Members are also that tenancy control on SDUs should cover, say, SDUs in industrial buildings. The Task Force therefore recommends that **the scope of regulation should be relatively broad to cover as many SDUs as possible such that more SDU tenants could benefit from the proposed tenancy control.**

20. Since the focus of tenancy control should be on the use of SDUs as dwellings and it is not the intention to regulate tenancies which do not involve actual occupants, the Task Force recommends that only **domestic tenancies of SDUs for self-occupation purpose** should be regulated (hereinafter referred to as “regulated tenancies”).

“Standard Tenancy Agreement” for regulated tenancies

21. The Task Force considers that a written tenancy agreement setting out clearly the rights and obligations of both the landlord and the tenant is crucial to providing better protection for SDU tenants. In this regard, the Task Force recommends that a **“Standard Tenancy Agreement”** be formulated with the following **mandatory terms** -

- (a) the term of a regulated tenancy shall be fixed for **two years**. The rent cannot be increased during the tenancy period, but can be adjusted downwards subject to mutual agreement between the landlord and the tenant;
- (b) only the tenant shall have the right to terminate the tenancy agreement after 12 months into the tenancy by giving to the landlord one month’s notice;
- (c) the tenant shall not be liable to make payment to the landlord other than the rent, deposit (which shall be fixed at an amount equal to two months of the rent), reimbursement of utility charges as apportioned by the landlord (if any), and sums due to the tenant’s breach of any clause in the tenancy agreement (if any);
- (d) where there is no separate electricity or water meter installed by the two power companies or the Water Supplies Department, when the landlord seeks reimbursement of utility charges from the tenant, he shall provide the tenant with a copy of the utility bill concerned and a breakdown of the apportionment amongst the tenants of the unit. The total of the apportioned sums for all

tenants shall not exceed the amount charged in the subject utility bill. This arrangement should also cover the tenant's reimbursement of charges of other services provided by the landlord and the use of which is shared amongst the tenants of the same unit, e.g. gas/LPG, telecommunication and WiFi services;

- (e) the landlord shall keep in repair the interior part of the property, and shall keep in proper working order the installations in the property for the supply of water and electricity, heating water, sanitation, and air-conditioning (if any);
- (f) the tenant must not sublet the property;
- (g) the deposit shall be refunded to the tenant by the landlord within a specified period, say, seven days, after the expiry or early termination of the tenancy agreement and the delivery of vacant possession of the premises to the landlord, or within a specified period, say, seven days, after the settlement of the last outstanding claim by the landlord against the tenant in respect of any breach by the latter of the tenancy agreement, whichever is later;
- (h) the landlord shall lodge information about the regulated tenancy with the Rating and Valuation Department (RVD) within one month after entering into the tenancy agreement; and
- (i) the stamp duty of the tenancy agreement and its counterpart shall be borne by the landlord only.

22. The Task Force recommends that the Government should mandate the signing of a written tenancy agreement incorporating the above mandatory terms by SDU landlords and tenants. If the SDU landlord and tenant have not entered into a written tenancy agreement at the outset, the tenant shall at any time have a right under the future legislation to **demand a written tenancy agreement**, signed by the landlord, to be delivered to the tenant within a specified period, say, 28 days. If the landlord fails to do so, the tenant can withhold the payment of the rent of one month or of a longer period until the landlord has fulfilled this requirement.

Offences and penalties

23. As a deterrent, the Task Force recommends that a landlord of a regulated tenancy will **commit an offence and be subject to penalties** if

- (a) he requests the tenant to make payments other than for the rent, deposit, reimbursement of utility charges as apportioned by the landlord (if any), and sums due to the tenant's breach of the tenancy agreement (if any); or
- (b) he requests reimbursement of utility charges from the tenant where the total of apportioned sums for all tenants of the unit exceeds the amount charged in the relevant bill.

Other existing offences and penalties applicable to domestic tenancies under Part IV of the Landlord and Tenant (Consolidation) Ordinance should also apply to regulated tenancies.

Security of tenure

24. The Task Force recommends that the tenant of a two-year fixed-term regulated tenancy should have the right, under the future legislation, to **renew the tenancy once**, thus enjoying **four years of security of tenure**. After four years, the landlord and the tenant would be free to negotiate and enter into a new tenancy at a mutually agreed level of rent. The tenancy will become a new regulated tenancy and the landlord is obliged by law to provide another four years of security of tenure to the tenant.

25. The Task Force notes that there may be concerns from some SDU landlords that they would be bound to tolerate "bad tenants". In this regard, the Task Force recommends that the future tenancy control legislation should stipulate conditions under which the landlord of a regulated tenancy may forfeit the lease and/or apply to the Lands Tribunal for an order for possession of the property, such as if the tenant does not pay the rent, uses the property for immoral or illegal purpose, causes unnecessary annoyance, inconvenience or disturbance to the landlord or to any other person, or sublets the property.

Rent regulation on tenancy renewal

26. To protect SDU tenants from arbitrary rent increases by the landlord and to lower their rental burden, the Task Force recommends setting a cap on the rate of rent increase between the original regulated tenancy and the renewed regulated tenancy.

27. On how the cap should be determined, the Task Force has looked into different possible options, including making reference to different price or rental indices. After careful consideration, the Task Force

recommends that on tenancy renewal, **the rate of rent increase between the original regulated tenancy and the renewed regulated tenancy shall not be more than (i) the percentage change of the private domestic rental index (all classes) of the RVD in the relevant period; or (ii) 15%, whichever is the lower. If the relevant change of the above RVD rental index is negative, the rent of the renewed regulated tenancy shall be decreased by at least the same percentage.**

28. The Task Force notes that there are suggestions for the Government to regulate the “initial rent” of tenancies in order to avoid SDU landlords massively increasing the rent as an attempt to counteract any proposed restrictions on the rent increase on tenancy renewal. The Task Force considers that it is infeasible to devise an objective and administratively easy mechanism for the purpose of fairly determining the maximum initial rent the landlord may charge in respect of each of the some 100 000 SDUs estimated to exist in Hong Kong, which should take into account the individual characteristics of each SDU. In this regard, the Task Force notes that 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. Using administrative means to re-set the initial rent of each and every SDU in Hong Kong is not only bound to be administratively costly and burdensome, but would also inevitably create numerous disputes between the landlord and the tenant.

Subletting

29. The Task Force agrees that it is not the intention to subject all leases in the leasing structure to tenancy control or prohibit subletting, which would be hugely disruptive to the SDU market and curtail the supply of SDUs. The Task Force recommends that the future SDU tenancy control regime should incorporate suitable measures so that the interests of the affected tenants could be suitably protected. One possible option which the Government may consider is to oblige the head lessor, when terminating the head lease and regaining possession of the premises, to provide the affected SDU tenants a sufficiently long notice period of, say, 60 days to enable them to look for alternative accommodation.

Law enforcement and complementary administrative measures

30. To ensure that the proposed tenancy control measures would be effectively administered, the Task Force recommends that the Government should **increase resources for the RVD** to promote public awareness of the new regulatory regime; to handle enquiries; to provide advisory and

mediatory services on tenancy matters; to collect, collate, analyse and regularly publish information about SDU rentals after implementation of the new law; and to take enforcement action as appropriate. At the same time, resources should also be enhanced for **the Lands Tribunal and relevant courts** to expedite the processing of relevant disputes arising from the implementation of the proposed tenancy control measures.

31. The Task Force also suggests that the Government implement certain administrative measures, such as considering to entrust a non-governmental organisation (NGO) to set up and run an **SDU rental information portal**, to arrange briefing sessions at the district level, and to provide the necessary support for SDU landlords and tenants. The Task Force further suggests that the Estate Agents Authority issue guidelines and good practices for estate agents in the letting of SDUs after implementation of the new law.

Longer term options

32. The Task Force notes that there are suggestions that the Government should set up a dedicated body to mandate the registration of SDUs and implement a licensing system with a view to displacing those SDUs which do not fully comply with the relevant regulatory requirements. While the Task Force sees the merits of the suggestion in terms of enhancing the general conditions of SDUs, the relevant compliance costs could be considerable. Some SDU operators may transfer the costs to the tenants by increasing the rent, operate illegally, leave their SDUs vacant, or convert them back to ordinary dwellings and quit the SDU market for good. Given the potential fallouts and without having adequate public and transitional housing at this stage to meet the housing needs of low income families, the Task Force considers that it would be more prudent for the Government to first assess the effectiveness of the proposed tenancy control measures after their implementation for some period, and revisit the case for introducing a licensing system if needed.

33. 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 should implement more stringent measures to regulate the SDU market, the Task Force considers that 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.

Sanitation and safety of SDUs

34. Although the main focus of the Task Force is on issues related to tenancy control, members share the concerns of the general public about the sanitary conditions as well as fire and building safety of SDUs. Although the Task Force agrees that it is not an immediate option to adopt a licensing system of SDUs and displace those which cannot fully meet the regulatory requirements, the Task Force recommends that the Government take steps to improve the living conditions of SDUs, e.g. by compiling and promulgating guidelines for the sub-division of flats 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 the view to enhancing the degree of regulatory compliance of SDUs and providing better living conditions for SDU tenants. Furthermore, the Task Force recommends that the Government consider requiring SDU landlords to provide a stand-alone type smoke detector, a small-sized portable fire extinguisher and a fire blanket for each SDU so as to enhance the fire safety level of SDUs.

Conclusion

35. The Task Force is of the view that the proposed tenancy control measures, if adopted, could offer the much needed protection to SDU tenants. That said, the fundamental way to solve the issue of SDUs is to increase continuously the supply of land and housing. In this regard, the Task Force urges the Government to continue to work closely with various stakeholders in the society to increase the land supply and expedite the construction of public housing. The Task Force also welcomes the Government's endeavours to develop transitional housing, including the 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.

36. The Task Force hopes that the proposed tenancy control on SDUs can be implemented as soon as possible so that SDU tenants who have been waiting for public rental housing for a prolonged period of time can really benefit from the pilot cash allowance scheme for which the Government aims to start receiving applications in mid-2021.

**Biennial Change in Rating and Valuation Department (RVD)'s Private
Domestic Rental Index (All Classes)
in the Past 20 years**

RVD's Private Domestic Rental Index (All Classes)		
Year	Index	% change as compared to two years ago
1998	112.6	-5.4%
1999	100.0	-25.7%
2000	98.1	-12.9%
2001	95.4	-4.6%
2002	83.4	-15.0%
2003	73.6	-22.9%
2004	77.7	-6.8%
2005	86.5	17.5%
2006	91.6	17.9%
2007	101.8	17.7%
2008	115.7	26.3%
2009	100.4	-1.4%
2010	119.7	3.5%
2011	134.0	33.5%
2012	142.6	19.1%
2013	154.5	15.3%
2014	159.5	11.9%
2015	172.8	11.8%
2016	168.2	5.5%
2017	182.6	5.7%
2018	193.0	14.7%
2019	194.4	6.5%
2020	180.3	-6.6%

Source: https://www.rvd.gov.hk/en/property_market_statistics/index.html.

Implications of the Proposal

Economic implications

The proposed tenancy control on subdivided units (SDUs) should help provide certain degree of protection to SDU tenants. As regards the common side effects of any tenancy control regime like reduced supply of premises and inadequate maintenance, the proposed arrangements allow SDU landlords to reset their asking rent every four years and should help contain such unintended consequences.

2. The Competition Commission (the Commission) has been consulted on the competition aspects of the legislative proposals of tenancy control on SDUs. The Commission notes that competition implications, particularly the possible effect of the tenancy control limiting the ability of suppliers to set prices, has been taken into account during the policy formulation and the policy has been designed to minimise potential distortions to market competition. Nevertheless, the Commission has identified two additional “unintended consequences” that may have impact on competition that may require further consideration.

3. Firstly, as acknowledged in the report of the Task Force for the Study on Tenancy Control of Subdivided Units (Task Force) (see paragraph 16(d) of the executive summary at **Annex B**), SDU landlords may intentionally choose to adopt “licence-based” arrangement instead of entering into “leases” with SDU occupants with a view to evading the legislative tenancy control that only applies to “leases”. The Commission is concerned that SDU landlords might, over time, enter into licence-based arrangements which do not grant any exclusive possession, in order to circumvent the requirement of “exclusive possession” for leases under common law. The Commission therefore considers that both lease-based and licence-based SDUs should be considered together, in particular by making the adoption of license-based arrangements relatively less attractive for SDU landlords, so as to avoid the possible consequences of such arrangements gradually replacing leases and reducing protection for SDU occupants. Secondly, the Commission also raises concern that the tenancy control proposal may unintentionally render those who need a shorter tenancy period than four years worse off, because SDU landlords may charge a higher initial rent that would help offset the restriction on rent increases during the four-year tenancy period. The Commission suggests exploring ways to address the matter.

4. While we appreciate the Commission’s views on the potential drawbacks of introducing tenancy control on SDUs from the competition angle, we believe the proposed tenancy control would achieve our policy objective of providing a reasonable degree of protection to SDU tenants in general, particularly in respect of the provision of the much needed security of tenure and prevention of

unwarranted rent hike upon renewal of tenancy. On the question of SDU operators seeking to evade the proposed tenancy control through “licence agreement”, the legal team of the Task Force has pointed out that it would not be easy for them to circumvent the law as the court would look at the substance of the agreement, not its label, to determine whether it constitutes a lease. Also, the Government would enhance public education to help potential SDU tenants become aware of the differences between a license and a tenancy. We would also keep in view whether leases would indeed be gradually replaced by licence-based arrangements in the SDU rental market.

Family implications

5. So long as the proposed tenancy control measures would not cause any major disruption to the supply of SDUs, they will bring positive impacts on vulnerable low-income families living in SDUs in terms of reducing their rental burden and providing them with a more secure housing tenure.

Financial and civil service implications

6. Following the abolishment of rent control and security of tenure in Hong Kong in 1998 and 2004 respectively, the current establishment of the Rating and Valuation Department (RVD) does not provide for any staffing resources for enforcing tenancy control. RVD requires additional resources to handle the additional workload arising from the implementation of the proposed tenancy control on SDUs, including law enforcement actions, set out in paragraph 28 of the main paper, to set up an information technology system and to meet related administrative costs. The Transport and Housing Bureau (THB) also requires additional resources to oversee and provide policy input to the implementation of the new law. Both RVD and THB are seeking the necessary additional resources in accordance with the established mechanism. The workload of the Judiciary may increase as a result of more tenancy disputes after the implementation of the new law. The Judiciary would keep the Government closely informed of any actual rise in the workload particularly for the Lands Tribunal after implementation of the legislative proposals, and sort out with the Government the necessary financial and manpower resource requirement in accordance with the established mechanism if such needs arise in future.

Sustainability implications

7. The tenancy control on SDUs aims to safeguard the interests of grass-root tenants of SDUs. This is conducive to promoting a more amenable living environment for the vulnerable group and the sustainable development of Hong Kong.