

II. REPORT

The date of First Reading of the Bill is 14 July 2021. Members may refer to the Legislative Council ("LegCo") Brief (without file reference) issued by the Transport and Housing Bureau on 6 July 2021 for further details.

Object of the Bill

2. The Bill seeks to amend the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) to:

- (a) regulate tenancies of subdivided units ("SDUs") of buildings; and
- (b) provide for related matters.

Background

3. At present, rent and security of tenure of domestic tenancies are not subject to control under Cap. 7. According to paragraph 5 of the LegCo Brief, in response to strong public demand for introducing tenancy control on SDUs, the Chief Executive announced in 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 for the Study on Tenancy Control of Subdivided Units ("Task Force") submitted the final report to the Government in March 2021 after completion of the study and recommends that the Government should implement suitable tenancy control on SDUs to safeguard the interests of grass-root tenants of SDUs. Having considered the recommendations put forward by the Task Force, the Administration has introduced the Bill to implement the proposed tenancy control measures on SDUs.

Provisions of the Bill

4. The key provisions of the Bill are summarized in the ensuing paragraphs.

Proposed scope of tenancy control of SDUs

5. Clause 4 in Part 2 of the Bill seeks to add a new Part IVA (containing the proposed new sections 120AA to 120AAZZG) to Cap. 7 to provide for the regulation of domestic tenancies in respect of SDUs. A tenancy would be subject to the proposed tenancy control regime under Part IVA ("regulated tenancy") if (a) it commences on or after the commencement date of the Bill enacted as an Ordinance; (b) it is a domestic tenancy; (c) the subject premises of the tenancy are an SDU; (d) the tenant is a natural person; and (e) the purpose of the tenancy is for

the tenant's own dwelling (proposed new section 120AAB). An SDU is proposed to be defined as premises that form part of a unit of a building (i.e. a building or structure constructed or adapted for use in accordance with a building plan) (proposed new section 120AA(1)).

6. Certain tenancies specified in the proposed Schedule 6 to Cap. 7 would be excluded from the application of the new Part IVA. The excluded tenancies would include a tenancy held from the Government and a tenancy held from a social services organization of a housing unit provided by the organization. The Secretary for Transport and Housing ("STH") may by notice published in the Gazette amend Schedule 6 to exclude any other class of tenancies from the application of the new Part IVA of Cap. 7.

Security of tenure and rent control

7. The Bill proposes to introduce security of tenure and rent control in relation to regulated tenancies as follows:

- (a) a regulated cycle of tenancies for an SDU would comprise two consecutive regulated tenancies for the SDU, each for a term of two years. A tenant of a first term tenancy would be entitled to a second term tenancy of the same regulated cycle, thus enjoying a total of four years of security of tenure (proposed new sections 120AAO and 120AAR);
- (b) subject to the right of early termination by the landlord under certain circumstances as mentioned in (d) below, the landlord must grant the tenant the second term tenancy for the SDU if the tenant accepts the second term offer (proposed new section 120AAR);
- (c) a tenant of a regulated tenancy may terminate the tenancy after 12 months of the term by giving to the landlord not less than 30 days' notice in writing (proposed new section 120AAZH);
- (d) a landlord may not terminate the tenancy before the expiry of the term except for certain circumstances including enforcing a right of re-entry or forfeiture where the tenant is in breach of his obligations during the term of the tenancy (e.g. failing to pay rent within 15 days after the due date; using the premises for an immoral or illegal purpose, etc.) (proposed new section 120AAZI);
- (e) the amount of rent payable by the tenant may not be increased during the term of tenancy but can be reduced by the landlord (proposed new section 120AAZD); and

- (f) there would be a cap on the rate of rent increase for the second term tenancy. The rate of rent increase for the second term tenancy must not exceed (a) the percentage change of the territory-wide rental index for all classes of private domestic properties compiled and published by the Rating and Valuation Department in the relevant period ("control percentage"); or (b) 15%, whichever is the lower (proposed new section 120AAZE). If the control percentage ascertained is a negative figure, the rent for the second term tenancy is to be reduced by at least the same percentage.

Other requirements and implied mandatory terms for regulated tenancies

8. Other proposed requirements and implied mandatory terms for regulated tenancies are summarized below:

- (a) a tenant under an oral tenancy (for a first term tenancy) is entitled 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 (proposed section 120AAZ);
- (b) the landlord must submit a notice to the Commissioner of Rating and Valuation ("Commissioner") to notify him of the particulars of the regulated tenancy within 60 days after the term of the tenancy commences (proposed new section 120AAZS); and
- (c) certain mandatory terms (set out in the proposed Schedule 7 to Cap. 7) providing for the respective obligations of the landlord and the tenant would be impliedly incorporated into every regulated tenancy and would be binding the parties. Landlord's obligations would include maintenance and repair of drains, pipes and electrical wiring serving the premises and causing the tenancy agreement to be stamped under the Stamp Duty Ordinance (Cap. 117), etc. Tenant's obligations would include not using the premises for an immoral or illegal purpose, not making structural alteration to the premises and not assigning or underletting the premises, etc. STH may by notice published in the Gazette amend Schedule 7 (proposed new section 120AAZG) and such notice would be subsidiary legislation subject to negative vetting by LegCo.

Offences and penalties

9. For enforcement purposes, various offences relating to regulated tenancies are proposed under the Bill. These offences include:

- (a) a landlord requiring the tenant to pay, or receiving from the tenant, any money other than the rent, deposit (which must not be more than two months' rent), reimbursement of charges for any of the specified utilities and services (i.e. water, electricity, gas, communication services) payable by the tenant under the tenancy, and damages for the tenant's breach of the tenancy (proposed new section 120AAZK);
- (b) a landlord requiring or receiving reimbursement of the charges for any of the specified utilities and services from the tenant (a) without producing copies of the bill and providing an account showing a breakdown of the apportionment amongst the SDU and other parts in the same unit in which the aggregate of the apportioned amounts does not exceed the billed amounts; or (b) at a sum exceeding the apportioned amount for the SDU as shown in the account provided by the landlord (proposed new section 120AAZL); and
- (c) a person unlawfully depriving a tenant of occupation of the SDU (proposed new section 120AAZN).

10. A person who commits an offence under the proposed new sections 120AAZK and 120AAZL would be liable on a first conviction to a fine at level 3 (i.e. \$10,000), and on a second or subsequent conviction to a fine at level 4 (i.e. \$25,000). A person who commits an offence under the proposed new section 120AAZN is liable on conviction on indictment (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 three years.

Powers of the Commissioner of Rating and Valuation

11. The proposed new sections 120AAZP to 120AAZZ seek to provide for the powers of the Commissioner in relation to regulated tenancies under the new Part IVA of Cap. 7. Such powers would include the power to issue a primary user certificate if he is satisfied on the evidence available as to the primary user of the premises concerned. For the purposes of ascertaining the primary user of the premises and ascertaining whether an offence under the new Part IVA is committed, the Commissioner may, with a warrant issued by a magistrate, enter the premises to inspect the premises, to take any measurements and other particulars of the premises, to take any photograph and video recording inside the premises.

Miscellaneous provisions and related amendments

12. The proposed new sections 120AAZZA to 120AAZZG under Part 2 of the Bill provide for miscellaneous matters including the specification of forms to be used, service of documents, and creating an offence relating to the provision of false or misleading particulars under the new Part IVA.

13. Part 3 of the Bill (clauses 9 to 17) seeks to make related amendments to various enactments including the Lands Tribunal Ordinance (Cap. 17), Land Registration Ordinance (Cap. 128), Government Rent (Assessment and Collection) Ordinance (Cap. 515), etc. in connection with the implementation of the regulated tenancies under the new Part IVA.

Commencement

14. The Bill, if passed, would come into operation on the expiry of three months beginning on the day on which it is published in the Gazette.

Public Consultation

15. According to paragraph 33 of the LegCo Brief, the legislative proposals have been formulated based on the recommendations of the Task Force. The Task Force has organized 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.

Consultation with LegCo Panel

16. As advised by the Clerk to the Panel on Housing and the Subcommittee on Issues Relating to Transitional Housing and Subdivided Units, the Administration briefed the Panel and the Subcommittee on the work of the Task Force at their respective meetings on 1 and 25 February 2021. The Subcommittee discussed the Task Force's recommendations on 26 April 2021. Panel and Subcommittee members in general supported tenancy control of SDUs and expressed views on relevant issues including the coverage of tenancy control, security of tenure, cap on the rate of rent increase, enforcement of tenancy control measures, etc.

Conclusion

17. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a tenancy control regime concerning SDUs, Members may consider forming a Bills Committee to study the Bill in detail.

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