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**Paper for the House Committee meeting on 24 September 2021**

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

**Purpose**

This paper reports the deliberations of the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2021 ("the Bills Committee").

**Background**

2. All along there have been suggestions from members of the public urging the Government to re-introduce tenancy control, such as control measures on rents and tenure of subdivided units ("SDUs"), with a view to safeguarding the interest of grass-roots tenants.<sup>1</sup> On 14 January 2020, the Chief Executive announced the setting up of a task force to study feasible options on the tenancy control of SDUs on the ground that without proper rental regulations, rental subsidies or electricity and water charges reductions provided by the Government would hardly benefit the large number of families living in SDUs who have been bearing heavy rents and unfavourable rental arrangements for a long time. On 16 April 2020, the Transport and Housing Bureau ("THB") announced the appointment of the Task Force for the Study on Tenancy Control of Subdivided Units ("the Task Force") to study and report to the Government the situation of SDUs in Hong Kong and advise the Government on whether tenancy control of SDUs should be implemented and the possible options.

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<sup>1</sup> As mentioned in LC Paper No. [IN16/16-17](#), tenancy control in Hong Kong started with the enactment of the Rents Ordinance in 1921 to protect the tenants from unreasonable rent increases and arbitrary evictions. Since then, the two forms of tenancy control – rent control and security of tenure – had been implemented through the amendment and/or enactment of various relevant ordinances. In December 1998, rent control was abolished, and in July 2004, the security of tenure was removed.

3. The Task Force has recommended that the Government should implement suitable tenancy control on SDUs to safeguard the interests of grass-roots 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 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.

### **The Landlord and Tenant (Consolidation) (Amendment) Bill 2021**

4. The Landlord and Tenant (Consolidation) (Amendment) Bill 2021 ("the Bill") was gazetted on 9 July 2021 and received its First Reading at the Legislative Council ("LegCo") meeting of 14 July 2021. The Bill seeks to amend the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) ("the Ordinance") to regulate tenancies of SDUs of buildings, and to provide for related matters. According to the Administration, the proposals in the Bill as detailed in paragraphs 9 to 29 of the LegCo Brief issued by THB on 6 July 2021 have been formulated along the recommendations of the Task Force.

5. The key provisions of the Bill contain the following:

- (a) Clause 4 in Part 2 of the Bill seeks to add a new Part IVA (containing the proposed new sections 120AA to 120AAZZG) to the Ordinance to provide for the regulation of domestic tenancies in respect of SDUs. A tenancy would be subject to the proposed tenancy control regime under the new 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; (e) the purpose of the tenancy is for the tenant's own dwelling; and (f) is not a tenancy specified in the proposed Schedule 6 to the Ordinance (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));

- (b) 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);
- (c) 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);
- (d) 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 RVD 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 of the second term tenancy is to be reduced by at least the same percentage;
- (e) certain mandatory terms (set out in the proposed Schedule 7 to the Ordinance) providing for the respective obligations of the landlord and the tenant would be impliedly incorporated into every regulated tenancy and would bind the parties;
- (f) the new sections 120AAZK to 120AAZN set out the provisions relating to offences and penalties under the new Part IVA. A landlord may commit an offence if he requires the tenant to pay, or otherwise receives 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);
- (g) the new sections 120AAZP to 120AAZZ set out the powers and obligations of the Commissioner of Rating and Valuation under the new Part IVA; and

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

6. Details of the major provisions of the Bill are set out in paragraph 30 of the LegCo Brief and paragraphs 4 to 13 of the Legal Service Division Report on the Bill (LC Paper No. LS91/20-21). The Bill, if passed, would come into operation on the expiry of three months beginning on the day on which the enacted Ordinance is published in the Gazette.

### **The Bills Committee**

7. At the House Committee meeting held on 16 July 2021, Members agreed to form a Bills Committee to scrutinize the Bill. Hon Vincent CHENG Wing-shun, was elected Chairman of the Bills Committee. The membership list of the Bills Committee is in **Appendix I**.

8. The Bills Committee has held six meetings with the Administration and invited written submissions from the public and relevant organizations. The Bills Committee has received 18 submissions. A list of the organizations/individuals which/who have provided written submissions to the Bills Committee is in **Appendix II**. The Administration has provided written responses<sup>2</sup> on the issues raised in the deputations' submissions.

### **Deliberations of the Bills Committee**

9. Members of the Bills Committee in general support the introduction of tenancy control on SDUs to provide protection to SDU tenants who are generally low-income individuals and families with weak bargaining power in the residential rental market. The Bills Committee's deliberations are set out in the ensuing paragraphs, as follows:

- (a) definition of SDU (paragraphs 10 to 14);
- (b) ways and rationale for defining SDU (paragraphs 15 to 18);

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<sup>2</sup> LC Paper Nos. CB(1)1241/20-21(01) and CB(1)1332/20-21(01).

- (c) renting out spare rooms in domestic premises (paragraphs 19 to 25);
- (d) tenancies of SDUs in industrial buildings (paragraphs 26 and 27);
- (e) cap on the rate of rent increase upon tenancy renewal (paragraphs 28 to 32);
- (f) setting an initial rent for tenancies of SDUs (paragraphs 33 to 37);
- (g) regulated cycle of tenancies and security of tenure (paragraphs 38 and 39);
- (h) security of tenure of SDUs in buildings on a lot for redevelopment (paragraphs 40 to 43);
- (i) termination of a regulated tenancy which is a sub-tenancy (paragraphs 44 to 46);
- (j) definition of "family member" (paragraphs 47 to 50);
- (k) repair obligations of a landlord of SDU (paragraphs 51 and 52);
- (l) implementation issues (paragraphs 53 and 54);
- (m) consistency with protection of private property rights under the Basic Law (paragraphs 55 to 59);
- (n) equality before the law under the Basic Law (paragraphs 60 to 62); and
- (o) application of Part IV and the proposed Part IVA of the Ordinance (paragraph 63).

#### Definition of subdivided unit

10. Members have examined in detail the definition of SDU, on which the scope of regulation of the proposed tenancy control regime is hinged. Some members have enquired whether rooms in premises which are not further subdivided or altered by landlords as being different from the building plans would fall within the definition of "unit" or that of SDU under the Bill. The Legal Adviser to the Bills Committee ("Legal Adviser") and members have

enquired whether the individual rooms (which do not involve any structural or non-structural alteration) within a flat of a building which comprises bedroom(s), a kitchen, a bathroom and a living room will be considered as SDUs and thus the tenancy in relation to such rooms (e.g. a bedroom) may be a regulated tenancy under the proposed Part IVA if other conditions as provided for in the proposed section 120AAB(1) have been fulfilled.

11. The Administration has explained that "SDU" is defined in the Bill as premises that form part of a unit of a building, whereas "unit", 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 ("DMC") 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. For the description set out in (a) of the definition of "unit", it relates to the concept of whether certain premises of a building are a separate unit as opposed to another premises of the building, whilst the description set out in (b) of the definition of "unit" concerns the concept of whether the owner of certain premises of a building is entitled to the exclusive possession of those premises as opposed to the owners or occupiers of other parts of the building. Under normal situations, taking a domestic building as an example, Flat A of the building is premises that are demarcated or shown as a separate unit in the building plan of the building, or premises that are referred to in the DMC of the building as a unit the owner of which is entitled to its exclusive possession as opposed to the owners or occupiers of other parts of the building (such as Flat B). In the example above, if Flat A fulfills the definition of "unit" in the Bill, each of the bedrooms is premises that form part of a unit of a building and hence meets the definition of "SDU" in the Bill. Notwithstanding this, tenancies of SDUs would only be regulated if they meet all the conditions set out in section 120AAB(1) of the proposed Part IVA of Clause 4 of the Bill and are not tenancies specified in Schedule 6.

12. As to the definition of SDU, the Legal Adviser has advised that upon construction of the definition of SDU as drafted in the Bill, it is plain that any premises (whether or not such premises are shown as separate rooms in building plans) which form part of a unit of a building would be considered as an SDU and there is no requirement that there should be any subdivision of such premises. So long as the tenancy is in relation to the premises which form part of a unit of the building and satisfies the conditions as set out in the proposed section 120AAB, the tenancy would fall within the scope of the proposed tenancy control irrespective of whether any subdivision is involved.

13. Noting that the proposed definition of SDU, as drafted, does not discern an SDU from non-SDU since both types of premises are premises forming part of a unit of the building, the Legal Adviser has enquired about the distinctive features or elements of those premises that would be considered as SDUs for the purposes of the proposed Part IVA and whether the Administration would consider amending the definition of SDU by setting out the distinctive elements or features of the premises that would be considered as SDUs for the sake of clarity.

14. The Administration has replied that it does not consider it appropriate to add elements or features, e.g. the presence of ablution facilities, of a premises to the definition of SDU as this would unnecessarily restrict the regulatory scope and create loopholes for easy circumvention. The Administration has responded that it has defined an SDU in the Bill as "premises that form part of a unit of a building" so that it can cast a wider net to cover the low-income families and individuals. Further, the Administration has stressed that in drafting the Bill, it has considered carefully the definitions of "unit" and "SDU" in conjunction with the Department of Justice, and considers that the definitions concerned can meet its policy objective whilst being legally sound.

#### Ways and rationale for defining subdivided unit

15. The Legal Adviser has noted and some members have expressed concern that the definition of SDU in the Bill differs from the definition of SDUs adopted by the Census and Statistics Department ("C&SD") in the Hong Kong 2016 Population By-census – Thematic Report: Persons Living in Subdivided Units published by C&SD in January 2018 ("the 2016 Thematic Report") (which was also referred to in the Report of the Task Force for the Study on Tenancy Control of Subdivided Units presented in March 2021). In the 2016 Thematic Report, SDUs referred to those "formed by splitting a unit of quarters into two or more "internally connected" and "externally accessible" units commonly for rental purposes. Very often, the non-structural partition walls in the original quarters may be removed while new ones are erected to form the SDUs. In some SDUs, internal drains may be added or altered for installing independent toilets and/or kitchens." Accordingly, some members have queried that the Bill proposes to adopt a definition of SDU which would have an effect of broadening the scope of regulation to cover more domestic tenancies than originally intended. The Legal Adviser and members have sought clarification on the rationale for not adopting the definition of SDU as provided in the 2016 Thematic Report, in particular, what inadequacies of such a definition have been identified by the Administration as not being able to achieve the policy objective of the Bill.

16. In response to the Legal Adviser and members' queries, the Administration has advised that all along, there is no official or uniform definition of an SDU. Notwithstanding its definition of SDU mentioned above, C&SD had adopted a different definition in the earlier thematic household surveys on housing conditions of SDUs conducted in 2014 and 2015 where "SDUs" were divided into two types, namely "SDUs with observable physical partitions" and "SDUs without observable physical partitions". For instance, cubicles and bedspaces were classified as "SDUs without observable physical partitions" in the thematic household surveys conducted in 2014 and 2015, while they were classified in the 2016 Thematic Report as "multi-households within a unit of quarters" instead of "SDUs".

17. The Administration has not adopted C&SD's definition of "SDU" in the 2016 Thematic Report in the Bill as it would not be able to achieve its policy objective, which is widely supported by the Task Force, concern groups and many LegCo Members from various major political parties, of including as many SDUs as possible under the proposed tenancy control regime. The definition adopted in the 2016 Thematic Report, if taken on board, would have essentially excluded "quarters where two or more households share facilities in a common area (e.g. a living room), except toilets and kitchens, such that the common area is not primarily for access purpose" (which were instead categorized in the 2016 Thematic Report as "multi-households within a unit of quarters"). Such "multi-households within a unit of quarters" are not "SDUs" as defined in the 2016 Thematic Report because the household members have to pass through other households' living area to gain access to the street, public corridor or landing, thus not meeting the "externally accessible" criterion. These "multi-households within a unit of quarters" would potentially include cubicles, bedspaces, cocklofts and capsules, the tenants of which should also be the target beneficiaries of the proposed tenancy control regime, same as those who live in the so-called "externally accessible" SDUs. Furthermore, by including "externally accessible" SDUs on one hand and excluding "multi-households within a unit of quarters" on the other, it may create loopholes for unscrupulous operators to easily circumvent the regulatory regime.

18. Moreover, the Administration considers that "splitting" was not clearly defined for the purposes of the definition of "SDU" in the 2016 Thematic Report. For example, it is subject to argument and disputes as to what constitutes "splitting", e.g. whether "splitting" must involve installation of some physical partitions, whether there are any requirements as to the size and materials used for such partitions, and whether bedspaces or other similar sleeping accommodation which do not necessitate such partitions would be



considered as involving such "splitting". "Externally accessible" in respect of a unit within a quarters was not clearly defined in the 2016 Thematic Report either. The Administration therefore considers it not suitable to adopt C&SD's definition of "SDU" in the 2016 Thematic Report, which was devised for the purpose of conducting a statistical survey, in the Bill which must be able to clearly delineate what premises would be subject to the proposed tenancy control measures on one hand, and to reflect the policy intention on the other.

#### Renting out spare rooms in domestic premises

19. Some members have expressed grave concern that with SDU as currently defined in the Bill, the proposed scope of regulation is so wide that it will capture those landlords who merely rent out their spare rooms in their residential flats. Some of the landlords may be retirees who rent out spare rooms in their flats for rental income to supplement post-retirement living. Members consider that tenancies of such premises, which can be located in a luxury residential district, should not be regulated and should be differentiated from tenancies of those SDUs which are commonly considered as inadequate housing where the residents are the grass-roots with weak bargaining power facing unfavourable tenancy arrangements such as being over-charged by their landlord on water and electricity tariffs, etc. Members consider that the proposed scope of regulation is unnecessarily wide deviating from the policy intent of regulating tenancies of SDUs purported by the Administration and almost amounts to revival of tenancy control on residential premises.

20. The Administration reiterates that the Bill does not affect the right of landlords, including elderly landlords, to rent out vacant rooms in their own units with a view to earning additional rental income. Also, the proposed tenancy control measures would not disproportionately infringe on the property rights of landlords, including that the landlord may fix the rent of the first term tenancy at the start of every regulated cycle and may earn a return which is generally in line with the prevailing yield of the private residential rental market upon tenancy renewal.

21. Members remain unconvinced of the Administration's response. The Chairman and Hon Frankie YICK have each proposed an amendment to the Bill, the main idea of which is that where the landlord resides in a unit and only rents out a room or some of the remaining rooms in the unit (hence the tenancy covers an SDU in the unit) whilst the tenancy, providing dwelling to the tenant, is the only domestic tenancy subsisting in the unit, this tenancy should be excluded from the application of the proposed Part IVA of the Ordinance.

22. Regarding the members' proposed amendments, the Administration has pointed out that if the landlord during the term of the tenancy (referred to as "Tenancy A") rents out another room in the unit to another household as their dwelling (referred to as "Tenancy B"), there will be more than one subsisting domestic tenancies in the unit. In such case, according to the proposed amendments, Tenancy A would no longer be an excluded tenancy because it would no longer fulfill all the conditions set out in the proposed amendments, thereby creating much confusion in actual operation. In addition, it is not sure whether according to the proposed amendments, if Tenancy A is terminated, i.e. there will be only one domestic tenancy subsisting in the unit (i.e. Tenancy B), whether Tenancy B would at that time be regarded as fulfilling the conditions under the proposed amendments and hence be excluded. If yes, it would mean that even though the tenant of Tenancy B is a low-income family or individual who cannot afford renting a whole residential unit and hence has to live in an SDU, he/she will become unable to enjoy any protection. Apart from the fact that it is against the policy objective of the Bill and the actual situation would be very chaotic, it is for consideration whether there are sufficient and reasonable justifications for this. The proposed amendments are also completely different from the current design in the Bill whereby it can already be determined whether a tenancy belongs to one specified in Schedule 6 when it is established and the relevant status will generally remain unchanged over the term of the tenancy.

23. The Administration has further pointed out that under the current Bill, no matter whether the landlord rents out the rooms individually or collectively, the relevant tenancies will be "regulated tenancies" if they fulfill all the conditions provided under section 120AAB(1) and are not excluded tenancies under the current Schedule 6. However, according to the proposed amendments, if the landlord retains a room in the unit as his residence and rents out all of the remaining rooms under a single domestic tenancy to one separate household as their dwelling, the tenancy would not be subject to regulation. The landlord may therefore, in an attempt to circumvent the regulation of the new regime, have the incentive to rent out the rooms collectively to those groups who require more living space, for example families with relatively more family members (which may very likely be families of ethnic minorities).

24. Despite pointing out the problems of members' proposed amendments as mentioned above, the Administration has indicated that it appreciates members' concern. In this regard, the Administration proposes in LC Paper No. CB(1)1348/20-21(01) that the following types of tenancies are to be excluded from the application of the proposed Part IVA:

- (a) a tenancy –
  - (i) that is not a sub-tenancy;
  - (ii) the subject premises of which are a bedroom in a unit; and
  - (iii) the landlord of which is a natural person and residing in the unit at the commencement of the tenancy; and
- (b) a tenancy of premises under the Hong Kong Housing Society's Letting Scheme for Subsidised Sale Developments with Premium Unpaid, under which eligible owners of designated subsidised sale flats of the Hong Kong Housing Authority and Hong Kong Housing Society with premium unpaid may let out their entire flats or individual bedroom(s) therein to eligible public rental housing ("PRH") applicants.

25. As to the proposed amendment mentioned in paragraph 24(a) above, the Legal Adviser has sought clarification from the Administration on the rationale for requiring the landlord to reside in the unit at the commencement of the tenancy only rather than throughout the term of the tenancy. The Administration has explained that the current design of the Bill is that the landlord and tenant should be able to determine at the commencement of a tenancy whether their tenancy is one specified in the proposed Schedule 6 and the relevant status will generally remain unchanged over the term of the tenancy. In line with this design, the Administration considers it appropriate that to fall within the class of tenancy to be added to the proposed Schedule 6 by the proposed amendment, it is a requirement that the landlord of the tenancy is residing in the unit at the commencement of the tenancy so that the landlord and tenant would be able to determine whether or not such requirement is met at the commencement of the tenancy and act accordingly. If such requirement is revised to require the landlord to reside in the unit throughout the term of the tenancy, arguably whether the aforesaid requirement has been complied with (and hence whether the tenancy is a tenancy specified in Schedule 6 to which the proposed Part IVA does not apply) could only be determined after the end

of the tenancy, which would in turn impose difficulties on the implementation and enforcement of the proposed tenancy control regime and create uncertainties to both the landlord and the tenant.

#### Tenancies of subdivided units in industrial buildings

26. The scope of regulation proposed in the Bill would cover SDUs not only in domestic/composite buildings but also in industrial/commercial buildings. Members have enquired whether the tenants living in the premises in industrial buildings will be able to enjoy the protection under the new tenancy control regime if the landlords of the premises concerned have no intention to let the premises for domestic purposes; and if so, how the interests of landlords are protected.

27. The Administration has advised that as provided by the Bill, a basket of factors would be taken into account to determine whether a tenancy was indeed a domestic tenancy. A person having an interest in any premises, including a tenant of the premises, may apply to the Lands Tribunal to determine whether or not a tenancy for the premises is a regulated tenancy, including whether it is a domestic tenancy for the purposes of the proposed section 120AAB(1)(b) in case of dispute. Under the proposed section 120AAI, if the purpose referred to in a tenancy for any premises is other than as a dwelling but 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 or acquiesced in by the landlord. In order to enjoy the protection under the new tenancy control regime, the tenants of premises in industrial buildings who use the premises for dwellings in breach of the tenancy would be required to establish landlords' agreement, whether expressly or by implication, to the change of user of the premises. Such requirement can protect the interests of landlords who do not have the intention to let the premises for domestic purpose or may not have sufficient knowledge or control over the conduct of their tenants within the premises during the term of the tenancy.

#### Cap on the rate of rent increase upon tenancy renewal

28. The Bill proposes that when a regulated tenancy is renewed within a regulated cycle, the rate of rent increase shall not be more than the percentage change of the territory-wide rental index for all classes of private domestic properties compiled and published by RVD during the relevant period. If the percentage change of the rental index is more than 15%, the landlords cannot increase the rent by more than 15% upon tenancy renewal.

29. Members consider it crucial to regulate the rent increase and set a cap on the rate of rent increase on tenancy renewal in order to protect SDU tenants from arbitrary rent increases by the landlord and to lower their rental burden. However, the cap at 15% offers little help to lower the rental burden of SDU tenants as it is way beyond SDU tenants' ability to afford. In view of the trend of rising SDU rentals in recent years and tenants' weak bargaining power in the SDU rental market, members consider with great certainty that SDU landlords would invariably increase the rent upon tenancy renewal according to the maximum rate of increase that would be allowed under the law. They have therefore strongly called on the Administration to reduce the cap to 10% on the ground that the maximum rate of rent adjustment of PRH is 10%.

30. The Administration's initial stance on the issue was that it considered SDUs a form of private housing, the nature of which is different from that of PRH and thus a direct comparison could not be drawn between them. Moreover, with reference to the biennial change in the aforesaid rental index of RVD since 1998, there were 10 years where the relevant changes in the index were over 10%. Imposing a 10% cap as the maximum rate of rent increase on tenancy renewal would likely suppress the rent of SDUs to levels which were substantially below their market levels. Further tightening of the rent increase cap to 10% might be considered to be disproportionately infringing upon the private property rights of SDU landlords and increase the risk of legal challenge. This might also substantially reduce the incentive and willingness of landlords to lease out their premises, resulting in a drastic reduction in the supply of SDUs which would in turn drive up rentals and displace the most vulnerable tenants to even poorer living conditions.

31. Members do not subscribe to the Administration's view that imposing a 10% cap will have a significant impact on the supply of SDUs because the current landlords will not lightly withdraw from the SDU rental market after having invested capital by converting their units into SDUs and with a maximum of 10% increase upon tenancy renewal in a regulated cycle, letting SDUs is still a lucrative business to many landlords. The Chairman and four other members (Hon Starry LEE, Hon CHAN Han-pan, Hon Wilson OR and Hon KWOK Wai-keung) have proposed amendments to lower the cap on rent increase upon renewal of a regulated tenancy provided in section 120AAZE(2)(b) of the proposed Part IVA under Clause 4 of the Bill from 15% to 10%.

32. Taking into account members' grave concern on the issue and with a view to providing more protection to SDU tenants many of whom are low-income families and individuals, after careful consideration, the Administration has taken on board members' proposal and will propose an amendment to revise the cap on rent increase upon tenancy renewal in section 120AAZE(2)(b) from 15% to 10%.

#### Setting an initial rent for tenancies of subdivided units

33. Members consider that the Administration should regulate the "initial rent" in SDU tenancies in order to prevent SDU landlords from massively increasing the rent in an attempt to counteract any proposed restrictions on future rent increase upon tenancy renewal. Some members have suggested that the Administration should consider imposing a cap on the level of rent per square foot for SDU tenancies under the proposed tenancy control.

34. The Administration considers it infeasible to formulate an objective and administratively easy mechanism for the purpose of fairly determining the maximum initial rent SDU landlords may charge in respect of each of the some 110 000 SDUs estimated to exist in Hong Kong, while the individual characteristics of each SDU should be taken into account when deciding the initial rent. The rent of an individual SDU is affected by many factors, and even for SDUs in the same unit, their rental levels would vary according to a whole basket of factors, including its size, orientation, lighting, ventilation, noise level, whether there is an independent kitchen/toilet, the equipment provided by the landlord in the SDU, the sanitary and repair conditions of each SDU, etc. Using administrative means to reset the initial rent of each and every SDU in Hong Kong would also inevitably create numerous disputes between the landlords and the tenants.

35. The Administration has further pointed out that imposing a cap on the rent level of SDU tenancies at a much lower level might disproportionately infringe the private property rights of SDU landlords, which are protected by the Basic Law. Some SDU landlords may decide to quit the market for good if relatively strict forms of tenancy control are implemented. In such case, thousands of affected households may encounter difficulty in finding a new and affordable place to live.

36. Members consider that issues concerning SDUs have been one of the main social problems in Hong Kong over the years and is attributable to the Administration's failure to address and solve the issues all along, leading to the rampant growth of the SDU rental market as well as the disproportionately high rent levels of SDUs. They consider that given that the current SDU rent level has exceeded tenants' ability to afford, the Administration should intervene in the SDU rental market by regulating the initial rent and such measures should not be regarded as an infringement of the landlord's property rights.

37. The Administration disagrees with members' views and has reiterated that its objective is to first require, through the Bill, landlords of tenancies regulated under the Bill to submit information about the tenancy to RVD within 60 days after the term of the tenancy commences so that RVD can collect timely information about SDU rentals in the market and other information about SDUs. This will facilitate the Administration's assessment and review of the effectiveness of the tenancy control measures and enable the Administration to consider at an opportune time the case for regulating the initial rent of SDUs.

#### Regulated cycle of tenancies and security of tenure

38. The Bill provides that a tenant of a first term tenancy for an SDU is entitled to a second term tenancy of the regulated cycle for the SDU, thus enjoying a total of four years of security of tenure. Members have queried the rationale for limiting the security of tenure to four years. Pointing out that many of the SDU residents are PRH applicants and the average waiting time for general applicants for PRH is 5.8 years as at end-June 2021, members consider that the four-year protection is inadequate and have urged the Administration to consider extending the security of tenure to six years.

39. The Administration has explained that the four-year security of tenure for SDU tenants is recommended taking into consideration the need to refrain from imposing an unduly stringent restriction on the SDU landlords, and the findings of the survey commissioned by the Task Force that around 56% of SDU households have lived in the current SDUs for more than two years and the average waiting time for general applicants for PRH was 5.8 years as at end-June 2021. The Administration agrees with the Task Force's recommendation that a four-year security of tenure would strike a reasonable balance between the inroads into SDU landlords' private property rights and the security that can be brought to SDU tenants. An extension of the security of tenure from four to six years may disproportionately infringe on the private property rights of SDU landlords. More importantly, the above proposal implies that SDU landlords may have to live with certain undesirable tenants

for as long as six years, and it would significantly lower the incentive of SDU landlords to rent out their premises, thereby causing a reduction in the supply of SDUs or making the landlords more selective about their tenants. This will make it even more difficult for the most vulnerable group (such as individuals or households with unstable income) to find an accommodation.

#### Security of tenure of subdivided units in buildings on a lot for redevelopment

40. Hon Abraham SHEK points out that the protection given under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) ("LCSRO") to purchaser of a lot intended for redevelopment by ensuring vacant possession of units and clearance of site of the lot being the subject of an order for sale granted by the Lands Tribunal does not apply in circumstances where a settlement has been reached between the majority owner and the minority owners outside the court in respect of a redevelopment project or where a person who becomes the owner of a lot without making an application for an order to sell under LCSRO has obtained the Building Authority's approval of plans for demolition works of a building. Mr SHEK is concerned that in the absence of an order for sale granted by the Lands Tribunal under LCSRO or in the event that no application for an order to sell is made under the LCSRO (as the case may be), the SDU tenants' right to renew their tenancy once during a regulated cycle, thus enjoying a total period of tenancy of four years, will discourage settlement out of court and discourage redevelopment. He has therefore proposed an amendment to exempt tenancies of SDUs in the buildings of a lot intended for redevelopment from the security of tenure for such cases.

41. Sharing Mr SHEK's views that the pace of urban redevelopment should not be adversely affected as a result of the Bill, the Administration has assured members that the Bill would not override or interfere with LCSRO. In other words, a majority owner's right to make an application to the Lands Tribunal for an order for compulsory sale and the protection of purchaser of the lot under LCSRO would not be affected. For situation where the sole owner (or joint owners) of a lot would like to redevelop a building, the Bill does not prohibit the landlord and tenants from entering into negotiations on early surrendering of the tenancy and the related compensation arrangements. Presumably, a person who intends to acquire shares of a lot for redevelopment would take into account pre-existing contractual and/or other obligations associated with the purchase.



42. The Administration also notes that Mr SHEK's proposed amendment has raised a host of highly complicated and controversial issues concerning whether statutory termination of tenancies should be introduced in respect of the buildings of a lot intended for redevelopment after a person becomes the owner of the lot before the Lands Tribunal makes an order for sale under LCSRO or a person who becomes the owner of the lot without applying for an order for sale under LCSRO has obtained approval of the plans for the demolition works of the building(s) within the lot from the Building Authority. These include, inter alia, whether the proposed statutory termination of tenancies should apply to both regulated and non-regulated tenancies on the same lot; in what capacity the tenant may stay in the unit after the expiry of the term of his tenancy until the expiration of six months immediately following the day on which a person becomes the owner of a lot before the Lands Tribunal makes an order for sale under LCSRO or a person who becomes the owner of a lot without applying for an order for sale under LCSRO has obtained approval of the plans for the demolition works of the building(s) within the lot from the Building Authority; whether the tenant may be liable to pay any compensation (and if so, in what amount) for staying in the unit for such period; and whether any safeguards should be introduced to ensure that the redevelopment would actually be implemented according to the proposed schedule, etc.

43. While many of the issues highlighted above cannot be dealt with in the context of the current bill and take time, the Administration has undertaken to continue to follow up with the relevant bureaux to monitor the situation and, should there be a need in future, review the case for introducing suitable measures to facilitate redevelopment.

#### Termination of a regulated tenancy which is a sub-tenancy

44. The proposed section 120AAZJ provides that if a regulated tenancy for an SDU is a sub-tenancy created out of another tenancy and a superior landlord applies to the court for possession of the SDU, before enforcing the order for possession of the SDU, the superior landlord must notify the tenant of the regulated tenancy (i.e. the sub-tenant) in writing by posting a notice on the main door or entrance to the SDU on three successive days. 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, unless the sub-tenant has delivered up vacant possession of the SDU before the leave is granted.

45. As pointed out by the Chairman, so long as a sub-tenant retains occupation after his sub-tenancy is terminated following the termination of a superior tenancy, the sub-tenant may incur liability towards the superior landlord due to his holding over. The sub-tenant may be liable to pay "mesne profits" and other losses suffered by the superior landlord and his own landlord due to the sub-tenant's failure to deliver up vacant possession of the SDU upon termination of the sub-tenancy following the termination of the superior tenancy, costs of and incidental to the relevant legal proceedings, as well as interest. These potential costs which the sub-tenant may incur may far exceed the rent payable by the sub-tenant under the terminated regulated tenancy and cause substantial financial burden to the sub-tenant.

46. In light of this, the Administration will propose to amend the Bill with a view to confining the financial compensation that such a sub-tenant is liable to pay to (a) the superior landlord seeking possession of the SDU upon the termination of the regulated tenancy; and (b) the landlord of the sub-tenant due to the sub-tenant's failure to deliver up vacant possession of the SDU after his sub-tenancy is terminated following the termination of a superior tenancy. In this regard, the Administration proposes that the superior landlord may recover from the sub-tenant compensation of an amount to be calculated based on the monthly rent payable by the sub-tenant immediately before the termination of the regulated tenancy and the period commencing on the date immediately after the termination date of the regulated tenancy and ending on the date on which the sub-tenant delivers up vacant possession of the SDU ("holding-over period"), and only if the superior landlord waives the right to recover the compensation in writing may the landlord of the regulated tenancy (i.e. sub-landlord) recover the same from the sub-tenant. Any right of the superior landlord or sub-landlord under common law rules or equitable principles to make further claims against (i) the sub-tenant; or (ii) a surety or guarantor for the sub-tenant's liabilities under the regulated tenancy for the sub-tenant's failure to deliver up vacant possession of the SDU on the termination of the regulated tenancy and trespass to land in respect of the SDU during the holding-over period is abrogated. The right of the superior landlord or sub-landlord against other occupiers of the SDU who are residing with the sub-tenant in the SDU during the holding-over period for their failure to vacate from the SDU upon the termination of the sub-tenant's regulated tenancy and trespass to land in respect of the SDU during the holding-over period is also abrogated. Members raise no objection to the Administration's moving such amendment.

Definition of "family member"

47. The proposed section 120AAZB in respect of passing a tenant's interest to his family member on his death applies if (a) a tenant of a regulated tenancy for an SDU dies during the term of the tenancy; and (b) a family member of the tenant is residing with the tenant in the SDU at the time of the tenant's death (proposed section 120AAZB(1)). Under the proposed section 120AAZB(2), the subsisting benefits and protection under the regulated tenancy to which the tenant is entitled under Part IVA during the tenant's life time are, after the tenant's death, available to the family member. "Family member", in relation to a person, is proposed to mean (a) the person's spouse; (b) the person's parent; or (c) the person's adult child (proposed section 120AA(1)).

48. The Legal Adviser has sought clarification on whether an adult child includes an illegitimate child, an adopted child and a step child of a person. The Legal Adviser has also sought clarification on why a brother or sister, grandparent and grandchild, minor child of the deceased tenant, whether whole blood or half-blood, are excluded from the definition of "family member". Some members consider such definition of "family member" too narrow as it fails to cover an array of possible relationships between the tenant and other occupiers of the same SDU, for example, minor child, grandparent, grandchild, etc. In light of this, Hon YUNG Hoi-yan has proposed to amend the definition of "family member" as "persons living together forming a household".

49. The Administration has explained that the scope of family members eligible for the subsisting benefits and protection under a regulated tenancy to which the tenant is entitled under the proposed Part IVA of the Ordinance during the tenant's life time after the tenant's death (i.e. a spouse, parent or adult child of the deceased tenant) is the same as the scope of family members (i.e. "the widow, widower, mother, father or any daughter or son over the age of 18 years" of the deceased tenant) to whom the benefits and protection afforded by the existing Part IV of the Ordinance in a domestic tenancy are available after the tenant's death (see section 116(5) of Part IV of the Ordinance). Regarding the enquiry by the Legal Adviser, the Administration has advised that section 3(1) of the Parent and Child Ordinance (Cap. 429) provides, amongst others, that in any Ordinance, "*references (whether express or implied) to any relationship between 2 persons shall, unless the contrary intention appears, be construed without regard to whether or not either of them ... is or was at any time an illegitimate person*". There is no contrary intention in the proposed Part IVA and "adult child" in the definition of "family member" in the proposed section 120AA(1) should be construed accordingly to include an adult child who is an illegitimate person. Same as section 116(5)(a) of Part IV of the

Ordinance, it is the Administration's policy intention for "adult child" in the definition of "family member" in the proposed section 120AA(1) of the proposed Part IVA to include "adopted adult child" and "step adult child". The Administration would make an amendment to the Bill to clearly spell out this policy intention.

50. As regards Ms YUNG's proposed amendment, the Administration has expressed reservation about introducing any changes that would substantially expand the scope to cover "persons living together forming a household", which would fundamentally deviate from the coverage of a deceased tenant's family members under the existing Part IV of the Ordinance. That said, after listening to the views of members and balancing various factors, including the real life situation, the Administration proposes to expand the definition of "family member" in the proposed section 120AA(1) to include a person's "grandparent" and "adult grandchild".

#### Repair obligations of a landlord of subdivided unit

51. Under Schedule 7 of the Bill on mandatory terms implied for every regulated tenancy, it is stipulated in Part 3 that the landlord must maintain and keep in repair the drains, pipes and electrical wiring serving the premises exclusively and windows of the premises. The landlord must also keep in repair and proper working order the fixtures and fittings (such as air-conditioners and water heaters) provided by the landlord in the premises. The tenant may choose to terminate the tenancy if the landlord fails to fulfill the maintenance and repair obligations under the mandatory terms to be impliedly incorporated into every regulated tenancy by the Bill. Members have enquired about the alternatives available to the tenant apart from termination of the tenancy. Members are concerned that some SDU landlords may deliberately fail to fulfill the obligation and leave their premises to deteriorate thereby in effect forcing SDU tenants to move out of the SDU. Members cast doubt on whether the provisions regarding the repair obligations of SDU landlord are adequate to deter such behaviour of landlords and call on the Administration to legally impose a mandatory requirement for landlords to complete the repairs within a specified period of time.

52. The Administration has advised that under the implied terms of a regulated tenancy, upon receiving a notice from the tenant for repair of the relevant items, the landlord must carry out the repair as soon as practicable. If the landlord fails to fulfill the above obligation, the tenant may, by giving the landlord not less than 30 days' prior notice in writing, terminate the tenancy. Alternatively, the tenant may, if practicable, carry out the repair and then seek

reimbursement from the landlord. If necessary, the tenant may resort to legal action (such as filing a claim in the Small Claims Tribunal if the amount involved is no more than \$75,000). The Administration considers that the above mandatory terms should help ensure that landlords will meet their obligations relating to repairs and maintenance. Given the fact that the time required for and the circumstances involved in repairing the equipment or fittings are not the same in each case, the Administration considers it not appropriate to legally impose a mandatory requirement for landlords to complete the repairs within a specified period of time.

### Implementation issues

53. Considering that both the landlords and tenants of regulated tenancies will be unfamiliar with their respective rights and obligations under the new tenancy control regime, members have enquired about the details of assistance that the Administration will provide to them and the extra resources, including manpower resources, that RVD will put in place in anticipation of the considerable amount of work involved in administering the new provisions in the Bill.

54. The Administration has advised that RVD is setting up a new team of about 50 staff to administer 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; endorsing notices of tenancy; publishing summary information about SDU rents reported; and taking enforcement action, etc. RVD will keep in view the situation upon the implementation of the new law and augment the manpower resources as appropriate. In order to enhance the effectiveness of administering the new law, the Administration will entrust non-governmental organizations ("NGOs") to provide the necessary support to SDU landlords and tenants at the district level to assist them in understanding their respective rights and obligations under the new law, facilitating the dissemination of gist of SDU rental information, and providing other information about SDU tenancy matters. It will also invite the Estate Agents Authority to issue guidelines setting out the good practices for estate agents to follow regarding the letting of SDUs under the new regulatory regime. To allow RVD to better prepare for the implementation of tenancy control on SDUs and promote the details of the new law to the public, and also allow the Administration to invite tenders for entrusting NGOs to provide the necessary support to SDU landlords and tenants at district level, the Administration proposes that the Amendment Ordinance will come into operation on the expiry of three months beginning on the day on which it is published in the Gazette.

### Consistency with protection of private property rights under the Basic Law

55. The Bills Committee notes that the right of private ownership of property is guaranteed by Articles 6 and 105 of the Basic Law. Article 105 of the Basic Law provides that the Hong Kong Special Administrative Region shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. Noting that the proposed tenancy control regime restricts SDU owners' right to the use and disposal of property, the Legal Adviser has sought clarification as to whether the proposed tenancy control regime could satisfy the four-step proportionality test ("proportionality test") laid down in *Hysan Development & Others v Town Planning Board* [2016] 6 HKC 58 and thus be consistent with Articles 6 and 105 of the Basic Law.

56. The Administration considers that the proposed tenancy control on SDUs under the Bill could satisfy the proportionality test mentioned above with reasons as follows. Firstly, the plight of SDU tenants, who are generally low-income individuals and families with weak bargaining power in the residential rental market, has been a major community concern. The rent levels of SDUs are disproportionately high, and the living conditions sub-standard. There have been strong calls from different quarters in the community for the Government to introduce suitable tenancy control on SDUs to address the matter. The proposed tenancy control on SDUs pursues a legitimate aim of providing reasonable tenancy protection for SDU tenants through impliedly incorporating mandatory tenancy terms which set out clearly the respective rights and obligations of the landlord and tenant into every regulated tenancy, regulating the rate of rent increase upon tenancy renewal, providing SDU tenants with a certain degree of security of tenure, and prohibiting landlords from overcharging SDU tenants utility fees.

57. Secondly, the Administration considers that the proposed tenancy control measures are rationally connected to the afore-mentioned aim of providing reasonable tenancy protection for SDU tenants. Specifically, the Administration is of the view that the measures, if implemented, could achieve the policy objective of providing reasonable protection for SDU tenants, particularly in respect of the provision of the much needed security of tenure to SDU tenants, prevention of unwarranted rent hikes upon tenancy renewal, and prohibition of over-charging of specified utilities and services fees by SDU landlords.

58. Thirdly, the Administration considers that the proposed tenancy control measures on SDUs (e.g. the proposed capping of the rate of rent increase upon tenancy renewal and security of tenure for four years) are no more than necessary to accomplish the aim to provide reasonable protection for SDU tenants. The proposed tenancy control on SDUs should be able to minimize any unintended consequences such as a drastic reduction in the supply of SDUs, jetting up of SDU rentals or displacement of the most vulnerable SDU tenants to even worse living conditions.

59. Fourthly, the Administration considers that the proposed tenancy control on SDUs would not cause an unacceptable burden on SDU landlords whilst bringing societal benefits to SDU tenants. While the rent of the first term tenancy cannot be increased during the term, SDU landlords may in general increase the rent of the second term tenancy in a regulated cycle in tandem with the overall movement of the rental index compiled by RVD for all classes of private domestic properties, thereby allowing them to earn a return on their properties which is in line with the prevailing yield of the private domestic rental market. Furthermore, the security of tenure is only limited to four years for every regulated cycle (instead of an unlimited security of tenure), and an SDU landlord may reset the asking rent every four years after completion of a regulated cycle of tenancies. If an SDU tenant fails to fulfill his obligations under the implied terms set out in Part 4 of the proposed Schedule 7, e.g. failure to pay the rent within 15 days after the due date or using the premises for any immoral or illegal purpose, the SDU landlord may enforce a right of re-entry or forfeiture to recover possession of the premises. Meanwhile, the obligations imposed on SDU landlords in terms of maintaining and keeping in repair certain items in the SDU or requiring the landlords to solely bear the stamp duty of the tenancy agreement are unlikely to impose an unacceptably harsh burden on them. The Administration considers that a reasonable balance has been struck between the societal benefits arising from the proposed restrictions and the interference with the constitutionally protected rights of an individual, in particular pursuit of the societal interest does not result in an unacceptably harsh burden on the individual concerned.

#### Equality before the law under the Basic Law

60. The Legal Adviser has noted that the proposed tenancy control regime on SDUs including rent control, security of tenure, other statutory requirements and creation of offences for regulated tenancies under the proposed new Part IVA would only be applicable to tenancies of SDUs but not other types of premises. As such, there is differential treatment between landlords of SDUs and landlords of other types of premises which are not subject to the proposed

tenancy control regime. The Legal Adviser has sought clarification from the Administration on whether such differential treatment would impinge upon the equality before the law enshrined under Article 25 of the Basic Law and Article 22 of the Hong Kong Bill of Rights and satisfy the proportionality test. The Administration has responded that the right to equality before the law enshrined under Article 25 of the Basic Law and Article 22 of the Hong Kong Bill of Rights requires that like cases should be treated alike and different cases should be treated differently. The fundamental question in the present context in determining the equality issue is whether there is enough of a difference between SDU landlords and landlords of other types of premises who are not subject to the proposed tenancy control regime (non-SDU landlords) to justify the differential treatment accorded to them.

61. According to the Administration, SDU landlords and non-SDU landlords are not in a comparable or analogous position insofar as the proposed tenancy control regime on SDUs is concerned. Specifically, many of those who live in SDUs are low-income individuals or families who have poor bargaining power and are hence being subject to or susceptible to various types of unfavourable treatment while the living conditions of SDUs are generally poorer than those of non-SDUs. Most, if not all, SDU tenants represent a vulnerable group and hence require tenancy protection. On the basis that SDU landlords and non-SDU landlords are not like cases, the right to equality before the law does not require them to be treated alike.

62. The Administration has explained that even if SDU landlords and non-SDU landlords are in a comparable or analogous position insofar as the proposed tenancy control regime on SDUs is concerned, it considers that the differential treatment (if any) between SDU landlords and non-SDU landlords can be justified under the proportionality test. Thus, the Administration considers that the proposed tenancy control regime on SDUs would not impinge upon the right to equality before the law enshrined under Article 25 of the Basic Law and Article 22 of the Hong Kong Bill of Rights.

#### Application of Part IV and the proposed Part IVA of the Ordinance

63. Part IV of the Ordinance applies to private domestic tenancies and it does not control rent increases nor afford security of tenure. The proposed tenancy control regime under the proposed Part IVA of the Ordinance will apply to a tenancy that is a domestic tenancy and the subject premises of which are an SDU. Under Clause 3 of the Bill, Part IV of the Ordinance will not apply to a tenancy to which the proposed Part IVA applies. Noting that both Part IV and the proposed Part IVA of the Ordinance are applicable to private domestic



tenancies, the Legal Adviser has sought clarification from the Administration on how to determine whether a domestic tenancy will be subject to the regulation under Part IV or the proposed Part IVA. The Administration has responded that a tenancy will be subject to the regulation of the proposed Part IVA if it meets all the five criteria in the proposed section 120AAB(1). A domestic tenancy to which the proposed Part IVA of the Ordinance applies would be excluded from the application of Part IV of the Ordinance by virtue of section 116(2)(a) of the Ordinance as proposed to be amended by Clause 3 of the Bill. On the other hand, a tenancy which is a domestic tenancy but does not meet any of the four other criteria in the proposed section 120AAB(1) will be subject to Part IV of the Ordinance, unless it is excluded from the application of that Part under section 116(2) of the Ordinance.

### **Amendments proposed to the Bill**

64. The Administration will propose amendments to the Bill as mentioned in paragraphs 24, 32, 46, 49 and 50 above. The Bills Committee has taken note of the proposed amendments of the Administration set out in **Appendix III**. The Bills Committee will not propose any amendments to the Bill.

### **Resumption of Second Reading debate on the Bill**

65. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 13 October 2021.

### **Advice sought**

66. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 1  
Legislative Council Secretariat  
23 September 2021

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

**Membership List \***

<b>Chairman</b>	Hon Vincent CHENG Wing-shun, MH, JP
<b>Deputy Chairman</b>	Hon YUNG Hoi-yan, JP
<b>Members</b>	Hon Abraham SHEK Lai-him, GBS, JP Hon Tommy CHEUNG Yu-yan, GBS, JP Hon Starry LEE Wai-king, SBS, JP Hon Mrs Regina IP LAU Suk-yeet, GBM, GBS, JP Hon Frankie YICK Chi-ming Hon CHAN Han-pan, BBS, JP Hon Alice MAK Mei-kuen, BBS, JP Hon KWOK Wai-keung, JP Ir Dr Hon LO Wai-kiwok, GBS, MH, JP Hon Wilson OR Chong-shing, MH Hon CHAN Chun-ying, JP Hon Tony TSE Wai-chuen, BBS, JP
	(Total : 14 members)
<b>Clerk</b>	Mr Derek LO
<b>Legal Adviser</b>	Ms Vanessa CHENG

\* Changes in membership are shown in **Annex to Appendix I**.

## Annex to Appendix I

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

#### **Changes in membership**

<b>Member</b>	<b>Relevant date</b>
Dr Hon CHENG Chung-tai	Up to 25 August 2021
Hon Frankie YICK Chi-ming	Since 6 September 2021

[According to the announcement made by the Hong Kong Special Administrative Region Government on 26 August 2021 pursuant to the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region, CHENG Chung-tai was disqualified from being a member of LegCo on 26 August 2021.]

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

**List of organizations/individuals which/who have submitted views to  
the Bills Committee**

1. A member of the public
2. A member of the public
3. Anon
4. Hong Kong Subdivided Flats Concerning Platform
5. Justice Centre Hong Kong
6. Liberal Party
7. Mr NG Tsz-lun
8. New People's Party
9. St. James' Settlement Community Development Services
10. The Hong Kong Council of Social Service
11. The Hong Kong Institute of Surveyors
12. Tsuen Wan Old District Tenants Action
13. 土瓜灣劏房戶租務管制關注組
14. 民間監察政府推行租管陣線
15. 葵涌劏房居民大聯盟
16. 觀塘劏房居民關注組

## Landlord and Tenant (Consolidation) (Amendment) Bill 2021

## Committee Stage

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

<u>Clause</u>	<u>Amendment Proposed</u>
4	In the proposed section 120AA(1), in the definition of <i>family member</i> , in paragraph (b), by deleting “or”.
4	In the proposed section 120AA(1), in the definition of <i>family member</i> , by adding— <ul style="list-style-type: none"> <li>“(d) the person’s grandparent; or</li> <li>(e) the person’s adult grandchild;”.</li> </ul>
4	In the proposed section 120AA(1), by adding in alphabetical order— <p style="padding-left: 40px;">“<i>child</i> (子女) includes an illegitimate child, a stepchild and a child adopted in a way recognized by law, and <i>parent</i> (父母) is to be construed accordingly;”.</p>
4	In the proposed section 120AAZE(2)(b), by deleting “15%” and substituting “10%”.
4	In the proposed Part IVA, in Division 6, by adding— <p style="text-align: center;"><b>“120AAZJA. Limited liabilities of sub-tenant on termination of superior tenancy</b></p> <p style="padding-left: 40px;">(1) This section applies if—</p> <ul style="list-style-type: none"> <li>(a) a regulated tenancy for a subdivided unit is a sub-tenancy created out of another tenancy;</li> <li>(b) the regulated tenancy is terminated because of the termination of a tenancy superior to the regulated tenancy (<i>superior tenancy</i>); and</li> <li>(c) the tenant of the regulated tenancy (<i>sub-tenant</i>) fails to deliver up vacant possession of</li> </ul>

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

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

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

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

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

$$A = B \times C$$

where—

A means the compensation;

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

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

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

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

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

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

(11) In this section—

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

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

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

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

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

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

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

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

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



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

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

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

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

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

“(ba) a tenancy—

- (i) that is not a sub-tenancy;
- (ii) the subject premises of which are a bedroom in a unit; and
- (iii) the landlord of which is—
  - (A) a natural person; and
  - (B) residing in the unit at the commencement of the tenancy;”.

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

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

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

9 By adding—

“(1) Section 8(8)(c)—

**Repeal**

“and”.

(2) Section 8(8)(d)—

**Repeal the full stop**

**Substitute**

“; and”.

(3) After section 8(8)(d)—

**Add**

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