

**For discussion  
on 26 April 2021**

**Legislative Council Panel on Housing  
Subcommittee on Issues Relating to Transitional Housing  
and Subdivided Units**

**Tenancy Control of Subdivided Units**

**Purpose**

This paper outlines the major content of the report of the Task Force for the Study on Tenancy Control of Subdivided Units and the initial response of the Government to the recommendations put forward in the report.

**Background**

2. 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 due to their weak bargaining power, the tenancy agreement may include terms that are unfavourable to the tenant or may not specify any tenancy renewal arrangement. 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 (THB) 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.

3. The original target of the Task Force was to complete the study within the first half of this year. In view of the public's concerns, the Task Force has expedited its work, and advanced the completion of the study by three months and submitted its report to the Government on 31 March 2021. A copy of the report is at **Annex**.

**Report of the Task Force**

(A) Work carried out by the Task Force

4. 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 met with an international organisation to have exchanges on grass-root housing problems faced by 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 respectively<sup>1</sup>.

5. 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 THB, 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<sup>2</sup>. THB further briefed the Subcommittee on Issues Relating to Transitional Housing and Subdivided Units of the Legislative Council Panel on Housing on 25 February 2021<sup>3</sup>.

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

6. 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<sup>4</sup>. 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.

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<sup>1</sup> 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; Professor 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. The three researches have reviewed the background and past measures of tenancy control in Hong Kong, evaluated the experience of enforcing tenancy control in overseas jurisdictions including the United Kingdom, the United States, Australia and Europe, highlighted issues that have to be considered if tenancy control on SDUs is to be introduced in Hong Kong, analysed the feasibility and possible implications of different policy options, and put forward recommendations for consideration by the Task Force.

<sup>2</sup> LC Paper No. [CB\(1\)504/20-21\(06\)](#)

<sup>3</sup> LC Paper No. [CB\(1\)601/20-21\(02\)](#)

<sup>4</sup> Excluding buildings three storeys high or below which are mainly village-type housing and villas.

7. The major findings and observations are set out as follows –

- (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, kitchen<sup>5</sup> (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 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 2020<sup>6</sup>. The monthly rent accounted for around one third of the monthly household income of SDU households.

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<sup>5</sup> 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.

<sup>6</sup> The average monthly rent of a domestic flat under 40 sq. m. on Hong Kong Island was \$431 per sq. m. in November 2020.

- (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%.

8. The independent 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.

(C) Past Tenancy Control in Hong Kong

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

10. 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.

11. 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, amongst others, 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. 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.

(D) 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, or through restricting the rate of rent increase, as in the cases of Germany, the Netherlands, New York City 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.

(E) 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 higher 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.

(F) 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 commissioned by the Task Force 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 seek 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 tenancy agreement, 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 are, 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 a 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 a universal 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 therefore 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<sup>7</sup>.

(G) 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 –

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<sup>7</sup> The tenant may consider obtaining rental information of similar properties from the Rating and Valuation Department or engaging a professional to do a valuation on the rental value of the property concerned at his own cost for reference by the Lands Tribunal.



- (a) 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 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 THB 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 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. Any future tenancy control measure should minimise the unintended consequences as far as possible.
- (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. The 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.

(H) 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 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 at two years. The rent cannot be increased during the tenancy period, but can be adjusted downwards subject to mutual agreement between the landlord and 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 requires 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 requires the tenant to reimburse utility charges 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 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, such as if the tenant does not pay the rent, uses the property for an 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 on tenancy renewal. 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 the percentage change of the private domestic rental index (all classes) of the RVD in the relevant period. If the relevant percentage change is more than 15%, the rate of rent increase would be capped at 15%; if the relevant percentage change is negative, the rent of the renewed regulated tenancy shall be reduced by at least the same percentage.

27. 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 the proposed restriction 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 would also inevitably create numerous disputes between the landlord and tenant.

## ***Subletting***

28. 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***

29. 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.

30. 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 on the letting of SDUs after implementation of the new law.

## ***Longer term options***

31. 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 tenants by increasing the rent, operate illegally, leave their

SDUs vacant, or even 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.

32. In the longer term, if the SDU problem persists or even gets worse, or the proposed 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***

33. 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 subdivision 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.

### **Initial Response of THB**

34. THB has carefully considered the report of the Task Force. We are of the view that the Task Force has conducted a comprehensive, objective and professional study, and agree in principle with the various legislative proposals to introduce tenancy control on SDUs as put forward by the Task Force in its report. We believe that the proposed tenancy control measures could achieve our policy

objective of providing a reasonable degree of protection for SDU tenants, particularly in respect of the provision of the much needed security of tenure and prevention of unwarranted rent hike, without unduly compromising the interests of the landlords and their property rights. In this regard, we have been working in full steam with the Department of Justice on the drafting of the enabling legislation, and aim to introduce the relevant bill into the Legislative Council as soon as possible within the current legislative session.

35. On law enforcement and complementary administrative measures, RVD and the Judiciary will have to acquire additional resources to handle the additional workload and tenancy disputes arising from the implementation of tenancy controls on SDUs. We would also consider entrusting NGOs to provide the necessary support for SDU landlords and tenants at the district level, assist them in understanding their respective rights and obligations under the proposed tenancy control regime, facilitate the dissemination of SDU rental information and, where appropriate, provide matching services for landlords and tenants. We will 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. On the sanitation and safety of SDUs, the relevant departments will continue to take enforcement actions as appropriate, look for areas for improvement and update the existing guidelines on the sub-division of flats where necessary.

### **Advice Sought**

36. Members are invited to provide views on the content of this paper.

**Transport and Housing Bureau  
April 2021**



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

**Secretariat for the Task Force for the Study  
on Tenancy Control of Subdivided Units  
Transport and Housing Bureau**

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## **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, kitchen<sup>1</sup> (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

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<sup>1</sup> 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 2020<sup>2</sup>. 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

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<sup>2</sup> 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.

## Chapter 1 Background for the Establishment of the Task Force

The Government published the Long Term Housing Strategy Annual Progress Report 2020 in December 2020. Based on the trend data from the results of the 2016 By-census and past thematic household surveys on subdivided units (SDUs), as well as relevant information on the construction and demolition of buildings, the number of households living in SDUs is estimated to be 99 400<sup>3</sup>. 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.

2. 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 (THB) 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. The Task Force is chaired by Prof. William Leung and the full membership list is at [Annex A](#).

3. The terms of reference of the Task Force are as follows –
- (a) to examine the current situation of SDUs in Hong Kong;
  - (b) to enhance the understanding of tenancy control on SDUs and related issues;
  - (c) to review measures relating to tenancy control on SDUs and take into account relevant experiences both in and outside Hong Kong in reviewing and evaluating such measures;
  - (d) to study the feasibility of and options relating to the introduction of tenancy control on SDUs, as well as other relevant issues;
  - (e) to engage the public in informed discussions on issues relating to tenancy control on SDUs; and

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<sup>3</sup> [https://www.thb.gov.hk/eng/policy/housing/policy/lths/LTHS\\_Annual\\_Progress\\_Report\\_2020.pdf](https://www.thb.gov.hk/eng/policy/housing/policy/lths/LTHS_Annual_Progress_Report_2020.pdf)

(f) to gauge the views of different groups of stakeholders.

4. The Task Force originally planned to complete the study and submit a report to the Government by mid-2021. However, noting the community's general wish that the Task Force should expedite the study and that the Government should introduce suitable tenancy control measures to address the plight of the low-income individuals or families living in SDUs as soon as possible, the Task Force has decided to advance the submission of the report to the Government before end of March 2021.

## **Chapter 2 Work carried out by the Task Force**

5. Since its establishment in April 2020, the Task Force has held eight meetings. The Task Force has invited representatives of relevant government departments to brief the Task Force on their work relating to SDUs. For example, the Water Supplies Department introduced to members their policies and challenges relating to the installation of separate water meters for SDUs, and how they handled complaints about “over-charging” of water charges. The Buildings Department (BD) briefed members on their procedures in handling unauthorised works found in SDUs and the challenges they faced in taking enforcement action. The Fire Services Department, together with BD, also briefed members on the regulatory requirements on building and fire safety as well as their enforcement actions. Meanwhile, the Rating and Valuation Department (RVD) briefed members on how rates of properties are assessed and the filing of tenancy information with the RVD. In addition, the Task Force has invited representatives of the two power companies to explain their respective measures to support the installation of individual electricity meters in SDUs, and the various challenges they faced in carrying out rewiring works, such as lack of public space, technical constraints, and objections from owners’ corporations or building management offices. The Task Force has also observed the installation of separate electricity meters in SDUs. Apart from the above, an international organisation (Habitat for Humanity Hong Kong) has been invited to share the experience and options of implementing tenancy control on grass-root housing in overseas jurisdictions. The meeting summaries of the meetings of the Task Force have been uploaded onto the following website ([https://www.thb.gov.hk/eng/contact/housing/matter\\_tc.htm](https://www.thb.gov.hk/eng/contact/housing/matter_tc.htm)) for public information, and set out at Annex B.

6. Despite the COVID-19 pandemic, the Task Force has been pressing ahead with its work to appraise the actual situation of SDUs and to gauge the views of different stakeholders. Between June and November 2020, the Task Force paid visits to tenants of different types of SDUs in various districts, including Kwun Tong, Kwai Chung, Tsuen Wan, Jordan, Tuen Mun, Sham Shui Po, Cheung Sha Wan, Mong Kok and Prince Edward, and had exchanges with the tenants to learn more about their difficulties. The information gathered is set out at Annex C. In August 2020, the Task Force held a number of online meetings with a total of 36 concern groups (at Annex D) to gather their views on issues relating to SDUs. Furthermore, on 3 October and 1 November 2020, the Task Force organised an online public forum and a physical public forum respectively. Around 120 persons, including SDU landlords and tenants, concern group

representatives, Legislative Council and District Council members, etc., participated in the two forums, which were live-streamed at THBHK, the Facebook page of THB. The summaries of views collected at the online meetings with the concern groups and the two public forums have been uploaded onto the same website mentioned in paragraph 5 above, and set out at Annex E and Annex F respectively. The Task Force also received views from different stakeholder groups (a list of these groups at Annex G) and members of the public from time to time.

7. Overall speaking, the views collected generally considered that the Government should implement suitable tenancy control on SDUs. Amongst them, quite a number suggested that the coverage of tenancy control on SDUs should be relatively broad; the Government should devise and mandatorily require the SDU landlord and tenant to sign a standard tenancy agreement, which should set out a reasonable notice period for moving out, provide an option for the tenant to renew the tenancy, as well as stipulate the responsibility of repair/maintenance of the SDU; the Government should restrict the rate of rent increase, enhance regulation of the issue of “over-charging” of water and electricity bills, and establish an SDU rental information platform to make market information more accessible to the general public. Many were also concerned about the living environment and structural safety of SDUs.

8. The Task Force has set up three dedicated Working Groups in July 2020 to hold in-depth discussions on the social, economic and legal issues relating to tenancy control on SDUs. The Working Groups have held a total of 14 meetings. Each of them has also appointed an independent scholar or institution to conduct a thematic research on the related field, namely, Policy 21 to carry out a survey on the situation of SDUs and the socio-economic characteristics of SDU tenants, and to study the tenancy control on SDUs from the social angle; Professor Terence Chong from the Department of Economics of the Chinese University of Hong Kong (CUHK) to study the relevant issues from the economic perspective; and a team from the Faculty of Law of the University of Hong Kong (HKU), comprising Adjunct Professor Malcolm Merry, Adjunct Associate Professor Adrian But and Mr Alwin Chan, to study the legal issues involved. The three researches have reviewed the background and past measures of tenancy control in Hong Kong, evaluated the experience of enforcing tenancy control in overseas jurisdictions including the United Kingdom (UK), the United States (USA), Australia and Europe, highlighted issues that have to be considered if tenancy control on SDUs is to be introduced in Hong Kong, analysed the feasibility and possible consequences of different policy options, and put forward

recommendations for consideration by the Task Force. A comprehensive survey on the situation of SDUs and the socio-economic characteristics of SDU tenants has also been conducted.

9. On 1 February 2021, Dr. William Leung, Chairman of the Task Force, together with the THB, 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. The Task Force noted that in general, Members supported the introduction of tenancy control on SDUs in Hong Kong as early as possible in order to protect the interests of grass-root tenants living in SDUs, whilst recognising the need to carefully balance the interests of SDU landlords and tenants in the process. In this regard, Members considered that -

- (a) it is necessary to mandate a standard tenancy agreement for SDU tenancies, which should, amongst others, prohibit overcharging of utility bills, and set out when the deposit would be returned by the landlord to the tenant upon the latter's vacation of the premises;
- (b) the Government should provide SDU tenants with security of tenure whilst allowing flexibility for SDU tenants to quit a tenancy if needed, and regulate the level of rent increase in between tenancies;
- (c) the Government should take into account the prevalence of SDUs being subletted when designing the tenancy control measures so that they would be effective in providing the intended protection to SDU tenants;
- (d) the scope of regulation should be wide enough to cover SDUs in industrial buildings so that the tenants living therein, who may be even more vulnerable than those living in SDUs in normal domestic buildings, may be offered the necessary protection;
- (e) resources for the Lands Tribunal and the RVD should be increased to enable effective enforcement of the new legislation; and
- (f) the Government should endeavor to introduce the enabling bill into the Legislative Council for scrutiny as early as possible within the current legislative session.

10. The Task Force has made reference to the three thematic researches and taken into consideration the views and suggestions tendered by Task Force members as well as various other stakeholders including SDU landlords and tenants, Legislative Council and District Council Members, non-governmental organisations (NGOs), concern groups, academia, etc. in formulating the recommendations in this Report to the Government.



### **Chapter 3 Latest Situation of SDUs and Characteristics of SDU Tenants in Hong Kong**

11. The last comprehensive survey on the persons living in SDUs was conducted by the Census and Statistics Department (C&SD) in 2016<sup>4</sup>, which was preceded by two thematic household surveys on the housing conditions of SDUs in Hong Kong conducted in 2014<sup>5</sup> and 2015<sup>6</sup> respectively. According to the *Hong Kong 2016 Population By-census - Thematic Report: Persons Living in Subdivided Units*, there were around 27 100 quarters with SDUs in Hong Kong in 2016. The average number of SDUs per unit of quarters with SDUs was 3.42. The number of SDUs totaled about 92 700, accommodating about 209 700 persons.

12. C&SD adopted a new definition of SDUs in the 2016 Thematic Report, where SDUs refer to those formed by splitting a unit of quarters into two or more “internally connected” and “externally accessible” units commonly for rental purposes<sup>7</sup>. Cubicles and bedspaces, which were classified as SDUs without observable physical partitions in the 2014 and 2015 thematic household surveys, are classified in the 2016 Thematic Report as multi-households within a unit of quarters, as the household members have to pass through other households’ living area to gain access to the street, public corridor or landing, thus failing to meet the “externally accessible” criterion.

#### **A. Survey of SDUs in private domestic/composite buildings**

13. To gather the latest information about the number of SDUs and the socio-economic characteristics of SDU tenants in Hong Kong, the Task Force has commissioned Policy 21 to conduct a comprehensive survey in late 2020/early 2021. The survey covers all private domestic/composite buildings aged 15 years or above.<sup>8</sup> Using a disproportionate stratified random sampling design<sup>9</sup>, Policy 21 sampled 2 076 private

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<sup>4</sup> Census and Statistics Department. January 2018. *Hong Kong 2016 Population By-census - Thematic Report: Persons Living in Subdivided Units*. (<https://www.statistics.gov.hk/pub/B11201022016XXXXB0100.pdf>)

<sup>5</sup> Census and Statistics Department. July 2015. *Thematic Household Survey Report No. 57 – Housing conditions of sub-divided units in Hong Kong in 2014*. (<https://www.statistics.gov.hk/pub/B11302572015XXXXB0100.pdf>)

<sup>6</sup> Census and Statistics Department. March 2016. *Thematic Household Survey Report No. 60 – Housing conditions of sub-divided units in Hong Kong in 2015*. (<https://www.statistics.gov.hk/pub/B11302602016XXXXB0100.pdf>)

<sup>7</sup> The 2014 and 2015 thematic household surveys define SDUs as those formed by the subdivision of individual quarters into two or more units for rental purposes to more than one household.

<sup>8</sup> Excluding buildings three storeys high or below which are mainly village-type housing and villas

<sup>9</sup> To increase the likelihood of identifying more SDUs, those areas with more SDUs found in the 2016 Population By-census, older buildings and buildings with no owners’ organisation and no property

domestic/composite buildings, and visited all these buildings involving a total of 40 034 quarters. Amongst the quarters visited, 3 307 were found to have SDUs and 28 648 were found to have no SDUs. Contacts were unable to be made with 5 744 quarters after repeated visits. 2 335 quarters were found to be non-domestic with no SDU or vacant. Excluding quarters that are non-domestic with no SDU or vacant, the response rate is about 84.8%<sup>10</sup>.

14. For the 3 307 quarters in private domestic/composite buildings with SDUs, a total of 11 765 SDUs were found. For these 11 765 SDUs, 6 304 interviews were conducted, including 3 607 fully enumerated interviews with the households residing in the SDUs using the survey questionnaire at Annex H, and 2 697 partially enumerated interviews.

## **B. Survey of SDUs in industrial and commercial buildings**

15. Apart from private domestic/composite buildings, Policy 21 has also taken a random sample of 342 industrial and commercial buildings from the database on industrial and commercial buildings in Hong Kong maintained by the Buildings Department in an attempt to estimate the number of SDUs in industrial and commercial buildings. A total of 11 647 quarters were visited. Among the quarters visited, 71 were found to have SDUs and 10 635 were found to have no SDU. Contacts were unable to be made with 860 quarters after repeated visits. 81 quarters were found to be vacant. Excluding quarters that are vacant, the response rate is about 92.6%.

16. In the 71 quarters in industrial and commercial buildings with SDUs, a total of 419 SDUs were found. For these 419 SDUs, 303 interviews were conducted, including 50 fully enumerated interviews with the households residing in the SDUs using the same survey questionnaire at Annex H, and 253 partially enumerated interviews. The number of fully enumerated interviews is relatively low as compared to the case of private domestic/composite buildings because many respondents contacted were reluctant to participate in the survey, probably because they realised that the use of quarters in industrial or commercial buildings for domestic purpose is not legal. Based on the 303 interviews completed, it is estimated that there were 6 927 SDUs occupied for domestic purposes in industrial and commercial buildings in 2020, as compared to the estimate of 5 600 households living in non-residential buildings in the Long Term

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management company were accorded a higher probability of selection.

<sup>10</sup> The response rate is equal to the number of quarters successfully enumerated divided by the total number of quarters, excluding those that are non-domestic or vacant.

Housing Strategy Annual Progress Report 2020<sup>11</sup>.

17. In view of the small number of fully enumerated cases in industrial and commercial buildings, the findings presented in this report are based on information gathered from the 6 304 interviews and 11 765 SDUs identified in private domestic/composite buildings.

**C. Key findings and observations arising from the survey on SDUs in private domestic/composite buildings**

18. While relevant figures in the 2016 Thematic Report are included as appropriate to facilitate observation of a general trend between 2016 and 2020, caution must be exercised as the two sets of figures are not directly comparable because (a) the 2020 survey conducted by Policy 21 does not cover private domestic/composite buildings aged below 15 years and buildings three storeys high or below, while the 2016 Thematic Report covers SDUs in all private housing (including private residential flats, village houses, commercial buildings and temporary quarters) regardless of building age; and (b) the definitions of SDU are slightly different, with the 2020 survey conducted by Policy 21 also covering cubicles, loft spaces, space capsules, bedspaces and rooftop houses.

***Number of SDUs***

19. It is estimated that there were 29 897 quarters with SDUs that were externally accessible and occupied for domestic purposes in 2020, representing an increase of 10.27% over the estimated number in 2016 (at 27 112). In these 29 897 quarters, there were 100 943 SDUs, representing an increase of 8.94% over the estimated number in 2016 (at 92 656). On average, there were 3.38 SDUs per quarters, slightly lower than the average of 3.42 in 2016.

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<sup>11</sup> [https://www.thb.gov.hk/eng/policy/housing/policy/lths/LTHS\\_Annual\\_Progress\\_Report\\_2020.pdf](https://www.thb.gov.hk/eng/policy/housing/policy/lths/LTHS_Annual_Progress_Report_2020.pdf)

	<b>2016 Thematic Report</b>	<b>2020 Survey</b>
<b>Number of quarters with SDUs</b>	27 112	29 897
<b>Average number of SDUs per unit of quarters with SDUs</b>	3.42	3.38
<b>Number of SDUs</b>	92 656	100 943 (110 008) <sup>12</sup>
<b>Number of households living in SDUs</b>	91 787 (100%)	110 008 (100%)
Hong Kong Island	18 030 (19.6%)	15 382 (14.0%)
Kowloon	52 081 (56.7%)	68 383 (62.2%)
New Territories	21 676 (23.6%)	26 244 (23.9%)
<b>Number of persons living in SDUs</b>	209 740 <sup>13</sup>	226 340

20. The 2020 survey defined SDUs to cover certain other types of inadequate housing which were not defined as SDUs in the 2016 Thematic Report, i.e. cubicles, loft spaces, space capsules, bedspaces and rooftop houses. The breakdown is as follows –

<b>Type of SDUs in the 2020 Survey</b>	<b>Number</b>
SDUs that meet the SDU definition in the 2016 Thematic Report (i.e. externally accessible)	100 943
Cubicles	3 415
Loft spaces	258
Space capsules	1 165
Bedspaces	160
Rooftop houses	4 067
<b>Total</b>	<b>110 008</b>

21. 60.4% of quarters with SDUs were sub-divided into 2 or 3 SDUs. A further 35.6% were sub-divided into 4 to 6 SDUs. The majority (81.9%) of SDUs are located in buildings that are 50 years old or above. About 18% are located in buildings aged 25-49 years, whilst only 0.1% are located in buildings aged 15-24 years. SDUs are also most likely to be found in buildings without property management company: 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, and 16.8% in buildings with PMC with or without OO.

<sup>12</sup> Including cubicles, loft spaces, space capsules, bedspaces and rooftop houses

<sup>13</sup> Including some 2 500 foreign domestic helpers

## *Persons living in SDUs*

### (a) Demographic characteristics

22. Those living in SDUs are in general younger than the Hong Kong population. 16.0% are under 15, as compared to 11.6% for Hong Kong as a whole in end 2020<sup>14</sup>, while 6.7% (18.3%) are elderly aged 65 or above. Meanwhile, 34.6% were not born in Hong Kong and had lived in Hong Kong for less than 7 years, which is far higher than the corresponding figure for Hong Kong of 7.7% in 2016<sup>15</sup>.

	Percentage of persons
<b>Gender</b>	
Male	51%
Female	49%
<b>Total</b>	<b>100%</b>

	Percentage of persons
<b>Age</b>	
Under 15	16.0%
15 – 24	11.1%
25 – 44	33.2%
45 – 64	31.8%
65 or above	6.7%
No information provided	1.2%
<b>Total</b>	<b>100%</b>

	Percentage of persons
<b>Years residing in Hong Kong</b>	
Since birth	24.1%
Below 7 years	34.6%
7 years or more	38.4%
No information provided	2.9%
<b>Total</b>	<b>100%</b>

23. As for education attainment, those aged 15 or above living in SDUs are in general less educated than the population as a whole. 68% only have secondary education, as compared to the corresponding figure for Hong Kong of 48.1% in 2019<sup>16</sup>. A much lower proportion (4.4%)

<sup>14</sup> Census & Statistics Department (2021), Hong Kong Monthly Digest of Statistics, February 2021.

<sup>15</sup> Census & Statistics Department (2017), 2016 Population By-census: Summary Results.

<sup>16</sup> Census & Statistics Department (February 2021), Hong Kong Annual Digest of Statistics 2019 Edition.

have degree education or above, as compared with the corresponding figure for Hong Kong of 25.3% in 2019<sup>17</sup>.

(b) Economic characteristics

24. 52.9% of those living in SDUs aged 15 or above were employed. As high as 42.9% of them worked in the personal services sector.

(c) Household characteristics

25. Households tend to be smaller in SDUs. A greater proportion of households living in SDUs are one-person households (38.7%) as compared to the corresponding figure for Hong Kong of 20.6% in the fourth quarter of 2020<sup>18</sup>. Only about 10.9% of households living in SDUs have 4 household members or more living in the same SDU (as compared to the corresponding figure for Hong Kong of 27.8% in the fourth quarter of 2020<sup>19</sup>). The average household size is 2.0, as compared to 2.7 for Hong Kong in the fourth quarter of 2020<sup>20</sup>.

	Percentage of SDU households	Percentage of all domestic households
<b>Number of household members</b>		
1	38.7%	20.6%
2	33.2%	28.0%
3	17.2%	23.5%
4 or more	10.9%	27.8%
<b>Total</b>	<b>100%</b>	<b>100%</b>

26. While the proportion of households living in SDUs who earned less than \$6,000 a month in 2020 (11.1%) is slightly lower than the corresponding figure for Hong Kong in the fourth quarter of 2020 (11.6%<sup>21</sup>), 37.6% of households living in SDUs earned \$20,000 or more a month in 2020, much lower than the corresponding figure for Hong Kong of 60.3%<sup>22</sup> in the fourth quarter of 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

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<sup>17</sup> Ibid

<sup>18</sup> Census & Statistics Department (February 2021), Quarterly Report on General Household Survey, October to December 2020.

<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Ibid

2020<sup>23</sup>.

	Percentage of SDU households	Percentage of all domestic households
<b>Monthly household income</b>		
Below \$6,000	11.1%	11.6%
\$6,000 - \$7,999	5.6%	5.0%
\$8,000 - \$9,999	6.4%	4.4%
\$10,000 - \$14,999	16.3%	9.2%
\$15,000 - \$19,999	23.0%	9.5%
\$20,000 or above	37.6%	60.3%
<b>Total</b>	<b>100%</b>	<b>100%</b>
	<b>SDU households</b>	<b>All domestic households</b>
<b>Median monthly household income</b>	\$15,000	\$33,000

### *Living conditions of SDUs*

#### (a) Space and facilities

27. Around 63% of SDU households live in an SDU below 13 sq. m.

	2016 Thematic Report	2020 Survey
<b>Floor area of accommodation</b>		
- Below 7 sq. m.	12.0%	21.3%
- 7 to below 13 sq. m.	66.9%	41.7%
- 13 to below 20 sq. m.	16.8%	19.5%
- 20 sq. m. or above	4.3%	12.2%
- No information provided	-	5.3%
<b>Total</b>	<b>100%</b>	<b>100%</b>

28. About half of the SDU households are living in SDUs with a floor area of only 11.5 sq. m. or below.

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<sup>23</sup> Ibid

	2016 Thematic Report	2020 Survey
<b>Median floor area of accommodation<sup>24</sup></b>	10.0 sq. m.	11.5 sq. m.
<b>Median per capita floor area of accommodation<sup>25</sup></b>	5.3 sq. m.	6.6 sq. m.
<b>Average per capita floor area of accommodation</b>		
<i>Household size</i>		
- 1	8.7 sq. m.	10.7 sq. m.
- 2	6.0 sq. m.	5.6 sq. m.
- 3	3.8 sq. m.	4.5 sq. m.
- 4 or more	3.1 sq. m.	3.8 sq. m.

29. Almost all SDUs have toilet (99.3%), whether shared or independent, kitchen<sup>26</sup> (92.7%), whether shared or independent, and window (95.9%).

	Percentage of SDUs
<b>Facilities available</b>	
Toilet	<b>99.3%</b>
Shared	18.1%
Independent	81.2%
Kitchen	<b>92.7%</b>
Combined with Toilet	12.5%
Separate, but shared with other households	17.3%
Separate, not shared	62.9%
Window	<b>95.9%</b>
Cannot be opened	1.7%
Can be opened	94.2%
None of the above	<b>0.0%</b>
Window that can be opened, with either toilet or kitchen	<b>94.1%</b>
Window that can be opened, with both toilet and kitchen	<b>87.3%</b>

30. A great majority of SDUs have independent electricity meter (86.8%), and independent water meter (83.2%). Up to around 97% have air-conditioner.

<sup>24</sup> The median floor area of accommodation of all domestic households in 2016 was 40.0 sq. m.

<sup>25</sup> The median per capita floor area of accommodation of all domestic households in 2016 was 15.0 sq. m.

<sup>26</sup> 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.



	Percentage of SDUs
<b>Other facilities/services provided</b>	
Air conditioning	<b>96.8%</b>
Water heater	91.9%
Door/gate at main exit	91.4%
<b>Independent electricity meter</b>	<b>86.8%</b>
<b>Independent water meter</b>	<b>83.2%</b>
Ventilation fan	79.7%
LAN/WiFi Internet	25.1%
Independent SDU doorbell	20.9%
Independent gas meter	12.4%

(b) Repair and maintenance

31. As regards the repair condition of SDUs, 9.3% of households considered the problem of water seepage serious or very serious, followed by the spalling of concrete and exposed steel.

Issue	Percentage of SDUs					Total
	No problem	Slight problem *	Fair	Serious problem **	No opinion/ not applicable	
Water seepage	66.6%	16.7%	7.2%	9.3%	0.2%	<b>100 %</b>
Spalling of concrete	74.9%	12.6%	6.7%	5.7%	0.1%	<b>100 %</b>
Exposed steel	85.2%	6.7%	4.8%	3.2%	0.1%	<b>100 %</b>
Unorganised or exposed electric wiring	86.3%	7.2%	5.2%	1.2%	0.1%	<b>100 %</b>
Electric leakage or power outage	88.5%	5.9%	4.7%	0.7%	0.2%	<b>100 %</b>
Loose window or defective glass	86.0%	8.2%	3.6%	0.9%	1.3%	<b>100 %</b>

\* Including slight and very slight problem

\*\* Including serious and very serious problem

32. No repair or maintenance works have been undertaken on slightly more than half of the SDUs. For those SDUs with repair or maintenance works undertaken, the landlord of 85.4% of these SDUs paid for the expenses of repair or maintenance works while the tenants of only 8.3% of these SDUs had to pay for the relevant fees.

	Percentage of SDUs
<b>Party(ies) responsible for the repair and maintenance fee</b>	
Landlord	85.4%
Tenant	8.3%
Both landlord and tenant	4.6%
Information not available	1.7%
<b>Total</b>	<b>100%</b>

(c) Hygienic conditions of the SDU

33. Around half of the SDU households are not satisfied with the hygienic conditions of the SDU in general.

	Percentage of households
<b>Not satisfied or very unsatisfied with</b>	
Cleanliness of drinking water	66.0%
Cleanliness of flushing water	60.4%
Natural lighting	60.9%
Hygienic conditions in general	50.7%
Air circulation	49.5%

(d) Conditions of the building in which the SDU is situated

34. Electricity supply, law and order and fire escape route are the top three building conditions with which SDU households are not satisfied or not satisfied at all.

	Percentage of households
<b>Not satisfied or very unsatisfied with</b>	
Electricity supply	45.1%
Law and order	40.9%
Fire escape route	39.1%
Access hallway	38.6%
Water seepage	35.8%
External wall of building	32.6%
Building structure	32.6%
Hygiene	29.4%
Fire safety installation <sup>27</sup>	28.9%

<sup>27</sup> 70.8% of quarters with SDUs do not have portable fire extinguisher, 76.7% do not have emergency lighting, 89.8% do not have exit sign in the quarters or the building. 21.8% have fire hydrant in stairway and 15.1% have fire hose reel in the building, while 5.3% have smoke detector in the quarters.

## ***Housing arrangements***

### **(a) Current Residence**

35. About 56% of households have been residing in the current SDU for more than 2 years. 61.8% of households resided in another SDU before moving to their current SDU.

	<b>Percentage of households</b>
<b>Duration of residence in current SDU</b>	
Within 1 month	1.8%
1 to 6 months	14.2%
> 6 months to 1 year	10.6%
> 1-2 years	17.0%
> 2-3 years	5.8%
More than 3 years	50.1%
Information not available	0.5%
<b>Total</b>	<b>100%</b>

### **(b) Future housing plans**

36. 48.4% of SDU households have applied for public rental housing, while 48.6% have not. For those who have not applied for public rental housing, the main reasons were “not permanent Hong Kong residents” (34.9%), “exceeding income or asset limit” (25.8%) and “long waiting time or complex application procedure” (18.1%).

37. More than 30% of households have considered moving out of their current accommodation, mainly because they would like to move to better accommodation, rental or rent increase is not affordable, sanitation is poor in the current accommodation and the landlord would like to repossess the unit. Transportation and location are the two most important factors when they choose accommodation.

	<b>Percentage of households</b>
<b>Factor(s) considered important in choosing accommodation</b>	
Transportation	66.9%
Location	65.0%
Area, layout and orientation	42.4%
Building hygiene	30.7%
District facilities	15.2%
Law and order	14.1%
Building management	10.6%
Building age	4.7%

## ***Tenancy Arrangements***

### **(a) Tenancy Agreement**

38. More than 85% of SDU households have a written tenancy agreement. However, the agreement may not be “complete”, for example, only 40.2% have specified the means for contacting the landlord, 33.9% the notice period for termination of the tenancy, 25.4% the parties responsible for repair and maintenance, 18.2% the extent of rental increase, and 16.2% the tenancy renewal arrangement. Only 4.8% have specified the refund arrangement for the rental deposit after termination of the tenancy.

	<b>Percentage of households</b>
<b>Type of tenancy agreement</b>	
Written agreement	85.2%
With stamp duty	46.4%
No stamp duty	23.0%
Not sure	15.8%
Verbal agreement	4.9%
No tenancy agreement	6.3%
No information provided	3.6%
<b>Total</b>	<b>100%</b>

	<b>Percentage of households</b>
<b>Content of tenancy agreement</b>	
Tenancy period	50.9%
Whether rent includes charges such as electricity and water	41.5%
Arrangement for contacting the landlord	40.2%
Notice period for termination of tenancy	33.9%
Parties responsible for repair and maintenance	25.4%
Conditions for deduction of rental deposit	22.9%
Rental increase magnitude	18.2%
Arrangement for renewal of tenancy	16.2%
Arrangement for refund of rental deposit after termination of tenancy	4.8%
No information provided	20.3%

39. 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.

	Percentage of households
<b>Period of tenancy agreement</b>	
6 months or below	2.0%
> 6 months to 1 year	20.4%
>1 to 2 years	59.2%
More than 2 years	10.4%
No information provided	8.1%
<b>Total</b>	<b>100%</b>

(b) Rent and other charges

40. The monthly rent of SDUs varies considerably. The median monthly rental of SDUs is \$4,800, with distribution as follows -.

	Percentage of SDUs
<b>Monthly rent</b>	
Below \$2,000	2.8%
\$2,000 to \$2,999	6.9%
\$3,000 to \$3,999	17.7%
\$4,000 to \$4,999	22.5%
\$5,000 to \$5,999	21.8%
\$6,000 to \$6,999	13.7%
\$7,000 to \$7,999	5.6%
\$8,000 or above	5.7%
No information provided	3.3%
<b>Total</b>	<b>100%</b>
<b>Median monthly household rent</b>	<b>\$4,800</b>

41. 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 2020<sup>28</sup>. The median monthly rent per sq. m. is much higher in a smaller SDU as follows -

Floor area of accommodation	Monthly rent (\$)		Monthly rent (\$) per sq. m.	
	Median	Mean	Median	Mean
Below 7 sq. m.	3,500	3,873	500	561
7 – below 13 sq. m.	4,500	4,708	471	475
13 – below 20 sq. m.	5,500	5,470	345	352
20 sq. m. or above	6,600	7,624	268	278
<b>Overall</b>	<b>4,800<sup>29</sup></b>	<b>5,035</b>	<b>417</b>	<b>445</b>

<sup>28</sup> [https://www.rvd.gov.hk/en/property\\_market\\_statistics/index.html](https://www.rvd.gov.hk/en/property_market_statistics/index.html). The average monthly rent of a domestic flat under 40 sq. m. on Hong Kong Island was \$431 per sq. m. in November 2020.

<sup>29</sup> The median monthly domestic household rent of households living in SDUs was \$4,500 in 2016.

42. The monthly rent accounted for around one third of the monthly household income of the SDU households.

Floor area of accommodation	Monthly rent/income ratio			
	Household size			
	1	2	3	4 or above
Below 7 sq. m.	33.3%	36.4%	45.0%	27.1%
7 – below 13 sq. m.	30.5%	34.6%	33.3%	32.4%
13 – below 20 sq. m.	35.0%	32.4%	35.0%	35.0%
20 sq. m. or above	55.0%	35.0%	38.2%	35.0%
<b>Overall</b>	<b>32.3%</b>	<b>35.0%</b>	<b>35.0%</b>	<b>35.0%</b>

43. For only a small proportion of households, the monthly rent included charges for water (4.1%) and electricity (2.6%). For the majority of households, the charges for water and electricity used by the tenant had to be paid separately on top of the monthly rent. For the majority of these households, the charge is based on usage. In this regard, the median rate charged is \$13 per unit of water and \$1.5 per unit for electricity.

(c) Rent adjustment

44. For more than one-third of households (37.1%), their rental had not been adjusted. The rental of 9.9% of households was adjusted more than 2 years ago, 17.2% one to two years ago, and 8.6% less than one year ago. 27.2% did not provide information.

45. 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%. The median rate of rent increase was higher for households living in smaller SDUs.

***Views of SDU households on tenancy control on SDUs***

46. 83.8% of households agree or fully agree that there should be control on rent increase. 55.3% of households consider that the rate of rent increase should be less than 5%, while another 23.9% consider that the rate of rent increase should not be higher than inflation.

47. 68.8% of households agree or fully agree that there should be control over the security of tenure. On the notification period for tenancy termination by the landlord, 65.1% of households consider that less than

one month is sufficient, whilst 22.9% consider that the period should be 1-4 months. As for the notification period for tenancy termination by the tenant, 75.2% of households consider that the period should be less than one month, whilst 12.7% consider that the period should be 1-4 months.

48. 75.2% of households agree or fully agree that there should be control over the content of the rental agreement. The top items which the households consider should require to be included are “name of landlord and contact method” (56.5%), “rental period” (55.0%), “deduction of rental deposit” (52.8%), “party responsible for repair” (52.6%), “notification period for termination of rental” (47.5%), and “arrangement for renewal of tenancy” (41.5%).

49. 76.1% of households agree or fully agree that there should be a government department responsible for dealing with rental disputes between SDU landlords and tenants.

#### **D. Key results from in-depth interviews and focus group discussions**

50. In addition to the survey, Policy 21 has conducted 32 in-depth interviews and focus group discussions with NGOs, concern groups, academics, and SDU owner and tenants, to collect their views about tenancy control on SDUs. 91 people participated. Their views are summarised below.

##### *Socio-economic background*

- (a) Most SDU tenants are grass-roots in the society and some of them are new immigrants, foreign workers and ethnic minorities. Some tenants, however, have higher earning power, and choose to live in SDUs because they want to have their own private space.

##### *Tenancy agreement*

- (b) SDU tenants may only have oral agreements, “rudimentary” written agreements or even no tenancy agreement. The written agreements are often not standardised, using forms available in the market. Many items including the arrangements for rent adjustment, tenancy renewal, rental deposit and the charging of utilities as well as the party responsible for repair and maintenance are not clearly spelt

out in the agreement, making the tenants vulnerable to arbitrary rent increases and eviction by the landlord at short notice.

### *Tenancy arrangements*

- (c) The usual tenancy period is two years, with the first year being “fixed” and the second being “open”. The landlord may terminate the tenancy after the first year, and evict the tenant if he does not agree to a rent increase. The rate of rent increase is often higher than the rate of inflation.
- (d) For those tenants who have to relocate, they will have to incur additional costs of relocation, including commission to the real estate agent for finding and renting new premises as well as rental deposit to the new landlord.
- (e) Utility charges imposed by the landlord are often set unilaterally by the landlord, and at a rate higher than that charged by the power company or the Water Supplies Department.
- (f) Tenants may find little avenue to lodge their complaints against any unfair treatment by the landlord or the real estate agent acting on behalf of the landlord.

### *Management of SDU tenancies*

- (g) Real estate agents may be involved in helping landlords manage their SDUs. In some cases, they may have even helped landlords convert their quarters into SDUs in the first place. The real estate agent is normally responsible for finding the tenant, drawing up the rental agreement, collecting rent on behalf of the landlord, and acting as the contact point of the tenant on matters relating to the tenancy. These real estate agents collect a commission from the landlord for managing the SDU and the tenancy, and a commission from the tenant in arranging the tenancy. To maximise income, some of these real estate agents may try various means to evict the tenant and increase the rent for the incoming one.



### *Living environment of SDUs*

- (h) The living environment varies greatly amongst SDUs. For those living in SDUs in squatters, water often leaks from the roof during heavy rainfall, and the roof risks being blown off under strong wind. The living environment of SDUs in industrial buildings is also poor, whilst those living in rooftop houses have to suffer high temperature and flooding during summer and frequent incidents of power outage. That said, the living conditions of some SDUs are better, with air conditioning and independent toilet.
- (i) The participants generally share concerns about the fire and building safety of SDUs. Whilst the living conditions of quite a number of SDUs are not satisfactory, many agree that SDUs do offer a short-term solution to meet the housing needs of low-income groups given the present shortage of public housing.

### *Views on tenancy control on SDUs*

- (j) Most participants consider that there should be a standard tenancy agreement, with all essential items included. They also consider that the tenancy agreement should be stamped, with the relevant stamp duties to be borne by the landlord.
- (k) Most support that SDU tenants be afforded with security of tenure. The landlord may only evict a tenant only if certain conditions are met, such as repossession of the premises by the landlord for self-use. In such cases, there should be a sufficiently long notice period from the landlord, e.g. three months, in order to facilitate the tenant to find new accommodation.
- (l) Several participants, however, object to the notion of security of tenure, on the grounds that this would restrict the freedom of the landlord in the disposal of essentially a private property, and make it difficult for the landlord to evict “bad tenants”. This may also discourage landlords from renting out their properties, thereby causing a possible reduction in the supply of SDUs. The landlord may also be more selective in the choice of tenants, to the disadvantage of those with unstable income, e.g. new immigrants.

- (m) Most participants support controlling the level of rent and the rate of rent increase. A few suggest that the rate of rent adjustment be linked to inflation, whilst several others suggest that the level of rent and the rate of rent increase be set with reference to the tenant's ability to pay, e.g. the maximum rent should not exceed 30% of the tenant's household income. That said, a few participants do not support rent control, considering that this would interfere with property owners' right to set the rent of their own properties, which may discourage them from renting out their properties and in turn lead to a reduction in the supply of SDUs.

*Other opinions*

- (n) Several participants suggest that a dedicated body be set up to enforce tenancy control on SDUs, help mediate between the landlord and tenant on disputes, ensure that the operation of SDUs comply with relevant regulatory requirements, arrange public education, and make rental information of SDUs more accessible to those in need. NGOs may be invited to provide the necessary assistance.
- (o) Many urge that more public and transitional housing be provided to solve the SDU problem.

51. The results of the survey and in-depth interviews / focus group discussions could provide useful reference to the formulation of any tenancy control measures on SDUs.

## Chapter 4 Regulation of SDUs in Overseas Jurisdictions

52. There is housing similar to sub-divided units in Hong Kong in overseas countries, for example –

- (a) Houses in multiple occupation (HMOs) in the UK - HMOs are defined by various tests<sup>30</sup> and the common grounds of such tests can be summarised as follows: (i) there exists one or more “*units of living accommodation*” and each of them does not consist of a “*self-contained flat*”; (ii) the units accommodate persons who do not form a “*single household*” as their only or main residence; and (iii) the households share one or more basic amenities such as bathroom, or the unit lacks one or more of the same.
- (b) Boarding houses in New South Wales, Australia – “boarding premises” are statutorily defined<sup>31</sup> as premises which (i) are wholly or partly a boarding house, rooming or common lodging house, hostel or let-in lodgings; (ii) provide boarders or lodgers with a principal place of residence; and (iii) may have shared facilities (such as communal living room, bathroom, kitchen or laundry) or services that are provided to boarders or lodgers on behalf of the proprietor.
- (c) Rooming houses in Victoria, Australia – “rooming houses” are defined as “*a building in which there is one or more rooms available for occupancy on payment of rent in which the total number of people who may occupy those rooms is not less than 4*”<sup>32</sup>.
- (d) Boarding houses in New Zealand – a “boarding house” refers to residential premises “*containing 1 or more boarding rooms along with facilities for communal use by the tenants of the boarding house and occupied or intended by the landlord to be occupied by at least 6 tenants at any one time*”<sup>33</sup>.
- (e) Multiple dwellings in New York City – a “multiple dwelling” is defined as “*a dwelling which is either rented, leased, let or hired*

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<sup>30</sup> Sections 77, 254-259 of the Housing Act 2004

<sup>31</sup> Section 4 of the Boarding Houses Act 2012

<sup>32</sup> Section 2 of the Residential Tenancies Act 1997

<sup>33</sup> Section 66B of the Residential Tenancies Act 1986

*out, to be occupied, or is occupied as the residence or home of three or more families living independently of each other”<sup>34</sup>.*

53. The above premises are subject to various legislative controls as follows –

	<b>Relevant Legislative Controls</b>
<b>England, the UK</b>	<ul style="list-style-type: none"> <li>- HMOs are regulated under Part 2 of the Housing Act 2004.</li> <li>- HMOs with two or more separate households occupied by 5 or more people are mandatorily required to obtain a licence from the local housing authority.<sup>35</sup></li> <li>- To obtain a licence for an HMO, an applicant has to satisfy before the local housing authority the following mandatory requirements<sup>36</sup>: (a) the house is “<i>reasonably suitable</i>” for occupation by a maximum number of households; (b) the proposed “<i>licence holder</i>” and/or the “<i>manager</i>” are “fit and proper persons”; and the proposed management arrangements are satisfactory.</li> <li>- The grant of a licence for an HMO would contain mandatory conditions as prescribed by law<sup>37</sup>, i.e. each room has to comply with a minimum size in accordance with the total number and age of the occupants; the carrying out of annual inspections of gas and electrical appliances certifying their safe condition and operation; the installation of smoke alarms in each storey; and satisfactory storage and disposal of household waste.</li> <li>- Further conditions may be imposed by local councils on an HMO licence holder.</li> </ul>
<b>New South Wales, Australia</b>	<ul style="list-style-type: none"> <li>- Boarding houses are regulated under the Boarding Houses Act 2012.</li> <li>- A boarding house is obliged to comply with the following requirements: (a) keeping a register and submission of occupants’ particulars<sup>38</sup>; (b) allowing compliance inspections within 12 months and subject to powers of investigation by the</li> </ul>

<sup>34</sup> Subsection 7, Section 4 of Article 1 of The New York State Multiple Dwelling Law

<sup>35</sup> Section 55 of the Housing Act 2004 and The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

<sup>36</sup> Section 61 of the Housing Act 2004

<sup>37</sup> Section 67 and Schedule 4 of the Housing Act 2004, Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licenses) (England) Regulations 2018

<sup>38</sup> Sections 9 to 15 of the Boarding Houses Act 2012

	<b>Relevant Legislative Controls</b>
	<p>local authorities for various compliance requirements such as building and fire safety installations and specifications/standards required for “<i>places of shared accommodation</i>”<sup>39</sup>; (c) continual observation of standards for “<i>places of shared accommodation</i>”, including limits on the maximum number of boarders in the whole premises and/or each room, provision of light and ventilation, kitchen facilities as well as furniture and fittings, maintenance of general cleanliness and certain degree of privacy<sup>40</sup>.</p> <ul style="list-style-type: none"> <li>- More stringent specifications for boarding houses operating at a larger scale in relation to safety, accessibility and facilities to be provided per boarder.</li> <li>- Occupants of boarding houses are protected by having all rights and obligations set out under a written occupancy agreement in standard form. The parties are also subject to “<i>occupancy principles</i>” in providing for general rights and obligations such as amount of deposit, reasonable cleanliness/state of repair of the premises, right to quiet enjoyment, payment of utility charges, termination rights, etc.</li> </ul>
<b>Victoria, Australia</b>	<ul style="list-style-type: none"> <li>- Rooming houses are governed under Part 3 of the Residential Tenancies Act 1997.</li> <li>- There are statutory controls for rent increase and mechanism to determine excessive rent before the Tribunal.<sup>41</sup> Rights and duties of owners and residents of rooming houses are governed under the law, including observation of reasonable house rules, prohibition against illegal purposes/alterations, owners’ duty to keep the rooms in good repair, provision of access, etc.</li> <li>- Owners/operators have to comply with a set of “<i>minimum standards</i>” imposed by the regulations<sup>42</sup> concerning the privacy, safety, security and amenity for the rooms and common facilities shared between residents.<sup>43</sup></li> <li>- Owners of rooming houses are obliged to register their premises and keep a register of every resident for at least 12</li> </ul>

<sup>39</sup> Sections 16 to 26 of the Boarding Houses Act 2012, Order No.5(d) under section 124 of Local Government Act 1993

<sup>40</sup> Section 83 and Pat 1, Schedule 2 of Local Government (General Regulation) 2005

<sup>41</sup> Sections 99 to 107 of the Residential Tenancies Act 1997

<sup>42</sup> Residential Tenancies (Rooming House Standards) Regulations 2012

<sup>43</sup> Sections 142A to 142L of the Residential Tenancies Act 1997

	Relevant Legislative Controls
	<p>months.</p> <ul style="list-style-type: none"> <li>- Rooming houses are subject to rights of inspection by the regulating authorities.</li> </ul>
<b>New Zealand</b>	<ul style="list-style-type: none"> <li>- Boarding house tenancies are governed by relevant provisions under Part 2A of the Residential Tenancies Act 1986. The regime applies to tenancies which last for 28 days or more and where the tenant is “<i>granted exclusive rights to occupy particular sleeping quarters in the boarding house and has the right to the shared use of the facilities of the boarding house</i>”<sup>44</sup>.</li> <li>- A boarding house tenancy must contain express terms/contents which set out the duration of the lease, the room number, whether the room is shared by other tenants and a statement as to the services provided by the landlord.<sup>45</sup></li> <li>- It is mandatory that a landlord is responsible for all outgoings of the boarding house while the tenant is liable to pay for all outgoings which are “<i>exclusively attributable</i>” to the occupation of a room exclusively occupied by a tenant together with electricity, gas and telecom charges. A landlord is obliged to provide to the tenant each week an itemised account of the services/utility provided and the amount payable.<sup>46</sup></li> <li>- At the start of the tenancy and on an ongoing basis, landlords are required to be responsible for the general cleanliness, the reasonable state of repair of the premises, fire safety (including smoke alarms), complying with “<i>healthy home standards</i>” and all legal requirements for buildings/health/safety, locks/security, access to room and communal facilities, and the enforcement of house rules in a fair and consistent manner.<sup>47</sup></li> <li>- Rights to enter the boarding room by the landlord are limited to circumstances such as an emergency, for provision of services or other reasonable circumstances without undue interference.<sup>48</sup></li> </ul>

<sup>44</sup> Section 66B of the Residential Tenancies Act 1986.

<sup>45</sup> Section 66C of the Residential Tenancies Act 1986

<sup>46</sup> Section 66E of the Residential Tenancies Act 1986

<sup>47</sup> Sections 66G to 66J of the Residential Tenancies Act 1986

<sup>48</sup> Sections 66Q to R of the Residential Tenancies Act 1986

	<b>Relevant Legislative Controls</b>
	<ul style="list-style-type: none"> <li>- Termination rights by both landlords and tenants are also set out by statute.<sup>49</sup></li> </ul>
<b>New York City, USA</b>	<ul style="list-style-type: none"> <li>- Multiple dwellings are regulated under The New York State Multiple Dwelling Law.</li> <li>- Comprehensive codes are enacted relating to required specifications, conditions and measures to be deployed on “<i>Light and Air</i>”, “<i>Fire Protection and Safety</i>” and “<i>Sanitation and Health</i>”.<sup>50</sup></li> <li>- Builders/owners are required to obtain the relevant licences including “<i>Certificate of Occupancy</i>” and/or “<i>Certificate of No Harassment</i>”.</li> </ul>

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<sup>49</sup> Sections 66U to V of the Residential Tenancies Act 1986

<sup>50</sup> Article 3 of The New York State Multiple Dwelling Law.

## Chapter 5 Past Tenancy Control in Hong Kong

### *Tenancy Control before the Second World War*

54. In the past, Hong Kong had adopted various forms of tenancy control. Rent control was first introduced in Hong Kong in 1921. At that time, rents escalated after the First World War due to huge population expansion during the war (from around 500 000 to almost 600 000<sup>51</sup>) and an influx of people from the Mainland after the war, adding to the demand for affordable housing. Meanwhile, post-war economic expansion caused inflation whilst wages had not kept pace with the rise in prices and rents. The Government therefore imposed rent control in 1921 through the **Rents Ordinance 1921**<sup>52</sup>, which froze residential rents at their levels on 31 December 1920.

55. The form of rent control adopted the historic value method, i.e. the legislation decrees that the rental value of premises on a certain date is to be the maximum rent that the landlord may charge. Apart from rent freeze, security of tenure was provided so long as the tenant obeyed the tenancy agreement and did not cause nuisance, and the landlord did not require the property for self-use or development. The Ordinance was originally planned to expire at the end of June 1922, but was extended annually to the end of June 1926, when the economy cooled down and new tenement blocks built in New Kowloon eased the housing shortage and market conditions turned to favour tenants.

56. Tenancy control was next imposed in 1938, which was precipitated by a confluence of events that occurred in the previous year: Japan attacked eastern China in July and August 1937, which caused waves of people fleeing the war and seeking refuge in Hong Kong; there were outbreaks of cholera on the Mainland, followed by a super typhoon which struck Hong Kong on 1 September 1937, destroying huts and shacks as well as devastating houses and buildings. All these led to an unbearable strain on the housing stock. In 1938, the Government introduced the **Prevention from Eviction Ordinance**.

57. While the Prevention from Eviction Ordinance gave tenants statutory security of tenure by restricting a landlord's ability to seek possession of the rented property, its rent control provisions were more flexible than those introduced in 1921: the then Governor was empowered to establish a committee to consider the rent payable referred to it by the

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<sup>51</sup> G.R. Sayer, *Hong Kong 1862-1919, Years of Discretion* (Hong Kong University Press; 1975), p 139

<sup>52</sup> No. 13 of 1921



landlord or the tenant for determination, though the regime was never developed at that time.

58. As before, the restrictions were intended to be temporary, i.e. to lapse after one year. However, the Ordinance was extended in each of the following three years, as the population continued to swell, and was continued until the end of 1941. During the subsequent years of Japanese occupation, the population of Hong Kong shrank sharply from 1 640 000 to 600 000, whilst there was substantial destruction of residential accommodation.

### *Tenancy Control after the Second World War until the 1960s*

59. After the Second World War, pre-war residents returned and the economy rebounded, but the housing stock could not be swiftly restored. In September 1945, the then British Military Administration issued a **proclamation** restricting the level of rent payable for both commercial and residential lettings in the urban areas to that payable on 25 December 1941 (i.e. historic value method), the date of surrender to the Japanese. This became known as the “**standard rent**”<sup>53</sup>. The new law also disallowed eviction of tenants save in certain circumstances such as non-payment of rent. Tenancy tribunals were established with the power to fix and vary rentals as well as to make eviction orders.

60. The rent freeze was renewed by a **replacement proclamation** in March 1946<sup>54</sup>, which introduced provision for the landlord to recover the premises for use by himself or his family. The Government set up a commission in May 1946 to study the desirability of the continuation of rent control. Subsequently, the Government introduced the **Landlord and Tenant Ordinance**<sup>55</sup>, which came into force on 23 May 1947, which applied to premises built prior to 15 August 1945, which became known as “**pre-war premises**”.

61. Under the Ordinance, the “pre-war premises” continued to have their rent held at the amount payable on 25 December 1941. That said, the new Ordinance was more flexible than the proclamations as it allowed the landlord to increase the rent by a certain percentage of any amount expended on refurbishment. Whilst giving security of tenure, it permitted the landlord to seek possession on a wider number of grounds: self-use,

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<sup>53</sup> British Military Administration Proclamation No. 15. If the premises had been vacant on 25.12.1941, the “standard rent” was that assessed as at 1.12.1941.

<sup>54</sup> British Military Administration Proclamation No. 25

<sup>55</sup> Landlord and Tenant Ordinance 1947, No. 25 of 1947; Cap 225 LHK (1964 ed)

redevelopment, surrender, non-payment of rent and other breaches by the tenant of the tenancy agreement. It expanded the functions of the tenancy tribunals, and empowered the then Governor to exclude premises and classes of premises from the tenancy control on the recommendation of a tenancy tribunal.

62. At that time, it was common for an owner to let a whole floor in a mixed-use walk-up tenement building to one tenant, known as the “principal tenant”, who might live in part of the floor and let the other parts to sub-tenant occupiers. The subject of subletting was usually a partitioned area, i.e. sub-dividing units to meet housing needs is far from new. To protect sub-tenants from exploitation, the Ordinance placed a limit on the amount that a “principal tenant” could charge, i.e. 20% above the “standard rent”, which was later raised to 30%.

63. The Landlord and Tenant Ordinance 1947 was renewed annually and regularly amended. In the early 1950s, housing shortage continued, exacerbated by a high birth rate. Rents of uncontrolled premises soared. The Government appointed a committee, chaired by Mr John McNeill, to examine rent control. The committee recommend loosening of control over lettings of “pre-war premises”, which resulted in two increases in the “standard rent” of such premises during the 1950s. The committee also called for protection for tenants of properties built after the Second World War, which led to the enactment of the **Tenancy (Prolonged Duration) Ordinance 1952**. The Ordinance stipulated that there was to be no eviction of tenants of “**post-war residential premises**” who had paid key money for three years from their taking up residence. So, weekly or monthly lettings became in effect 3-year fixed terms. Still, there were no limits placed upon the amount of rent for such premises, which remained to be a matter of mutual agreement, but the landlord was required to serve a three-month notice of any increase in rent. In 1963, the period of secured tenure was extended to five years.

64. Although there was a marked increase in the supply of public rental housing during the 1950s, shortage of residential accommodation persisted, with immigrants continuing to come from the Mainland and the birth rate remaining high. By the early 1960s, the number of rented units in “post-war premises” already far out-numbered those in “pre-war premises”.

65. In 1962, the **Tenancy (Notice of Termination) Ordinance**<sup>56</sup> was enacted, which applied to tenancies of all “post-war premises”, including residential and non-residential premises, where notice of termination of such tenancies should be of at least six months. In March 1963, the **Rent Increases (Domestic Premises) Control Ordinance**<sup>57</sup> was enacted. While the initial rent of “post-war residential premises” was a matter of agreement between the landlord and tenant, the rate of rent increase was limited by legislation by way of a **simple percentage**: 10% of the current rental in a two-year period. This was accompanied by security of tenure of two years from 1 July 1963, whilst allowing the landlord to apply for repossession of the premises on the grounds of redevelopment or housing his close relatives. The control was due to lapse on 30 June 1965, but was extended for a further year<sup>58</sup>.

### *Tenancy Control in the 1970s*

66. In the late 1960s, rents were rising sharply again. To combat the surge in rental levels, there was a temporary rent freeze in 1970<sup>59</sup>, followed later in the same year by the enactment of the **Rent Increases (Domestic Premises) Ordinance 1970**<sup>60</sup>. The latter was similar to the Rent Increases (Domestic Premises) Control Ordinance 1963 in that it employed rent increase control through a percentage-increase method. Specifically, it allowed a maximum rent increase of 15% every two years on leases of “post-war residential premises”. Future tenancies, tenancies in newly-completed buildings and tenancies of luxury accommodation (with a rateable value of \$15,000 or more) were excluded. Again, the control was intended to be temporary, i.e. two years, but was extended for two years, and in **December 1973** with a widened scope became **Part II of the Landlord and Tenant (Consolidation) Ordinance**<sup>61</sup>.

67. As the rents have fallen far behind the market, to speed their return to market levels, Part II of the Landlord and Tenant (Consolidation) Ordinance introduced a factor rent system, with the rent increase “**factor**” initially set at “5” for all existing tenancies in respect of “post-war residential premises”, to the effect that the maximum rent increase was set at one-fifth of the difference between the controlled rent and the “fair market rent” as estimated by the RVD. For tenancies concerning “post-

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<sup>56</sup> No. 14 of 1962; Cap 335 LHK (1964 ed)

<sup>57</sup> No. 7 of 1963

<sup>58</sup> The Rent Increases (Domestic Premises) Control Ordinance was finally repealed in 1969.

<sup>59</sup> By the Security of Tenure (Domestic Premises) Ordinance, No. 8 of 1970

<sup>60</sup> No. 56 of 1970; Cap 338 LHK (1970 ed)

<sup>61</sup> Landlord and Tenant (Consolidation) (Amendment) (No.2) Ordinance 1973; No. 78 of 1973; Part I of the Landlord and Tenant (Consolidation) Ordinance regulates tenancies in respect of “pre-war premises”.

war residential premises” with a rateable value of not more than \$30,000, the rate of rent increase was capped at 21% every two years. Fresh lettings in existing buildings should not exceed the “fair market rent” as determined by the RVD, whilst tenancies of new buildings would be freed from rent control for three years in order not to discourage new developments. Security of tenure was provided for the tenant while allowing the landlord to apply for repossession of the premises under certain circumstances such as rent in arrears or for self-occupation.

68. The Landlord and Tenant (Consolidation) Ordinance was subsequently amended in 1975 and 1976 to, amongst others, (a) extend the expiry of Part II from 30 November 1976 to 14 December 1979; (b) decrease the rent increase “factor” from “5” to “4” with a view to accelerating the increase in controlled rents; (c) remove rent control for certain tenancies of “post-war residential premises”<sup>62</sup> whilst maintaining the six-month notice requirement for tenancy termination; and (d) allow landlords to increase rent to compensate his expenses on repairing the premises concerned<sup>63</sup>. In 1977, the rent increase “factor” was reduced from “4” to “3”. The exemption of new buildings was also extended to cover those to be completed by the end of 1978 for a period of five years. The entire tenancy control regime was further reviewed in 1978, and the Government decided, amongst others, that the control for “post-war residential premises” should be extended for two more years, and the rent increase “factor” should be reduced from “3” to “2”. The enabling legislation was passed on 6 June 1979.

### ***Tenancy Control in the 1980s to the early 1990s***

69. Despite the controls in place, rent levels continued to rise sharply due to the accelerated speed in household formation and increased speculation in the property market, etc. The Landlord and Tenant (Consolidation) Ordinance was thus amended again in 1980 to, amongst others, (a) extend the factor rent system and security of tenure under Part II to cover tenancies of “post-war residential premises” certified for occupation after 1973; (b) extend the 21% biennial cap to cover the tenancies of all “post-war residential premises” irrespective of their rateable value; (c) extend the six-month notice requirement applicable to all residential and non-residential premises to 12 months; and (d) extend the amended control regime for “post-war residential premises” to 18

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<sup>62</sup> New tenancies of three years or longer entered into after 31 December 1975 and tenancies held in the name of a corporation / a government.

<sup>63</sup> Such expenses should be more than \$5,000 and the maximum rent increase should be capped at 20% of the relevant expenditure.

December 1981 .

70. In March 1980, the Government announced a comprehensive review of the tenancy control legislation through a twelve-member committee. According to the report of the committee, in 1980, rents for controlled post-war lettings were on average about 40% of the market level, and in 95% of cases, current rents were less than half the market level.<sup>64</sup> The committee considered that efforts should be made to accelerate the phasing out of rent control. Specifically, the committee recommended that tenancies concerning new buildings and luxury premises should be outside rent control. The rent increase factor should be removed in the long run, and the biennial rent increase cap should be increased gradually. For premises with rents substantially lower than the market rent, a “rent floor” should be imposed and such floor should be raised gradually. The Government should consider removing rent control if the controlled rents had reached about 85% of the “fair market rent”. That said, the committee considered that security of tenure should be provided for tenants, under which tenants should be given a right to a new tenancy provided that he was willing to pay the prevailing market rent, the amount of which should be assessed by the Lands Tribunal in the event of disputes. Similar to previous forms of security of tenure, the committee recommended that the future regime should also allow the landlord to apply for repossession of the premises under certain conditions, such as (a) the landlord wished to redevelop the premises; (b) the landlord wished to repossess the premises for self-occupation or for occupation by his immediate family; (c) the tenant failed to pay rent or breached the conditions of the tenancy agreement; (d) the tenant caused continued nuisance to the landlord; (e) the tenant used the premises for an illegal or immoral purpose; or (f) the tenant sublet the whole or any part of the premises without the landlord’s consent. The committee further recommended that a tenant displaced by redevelopment should be entitled to statutory compensation from the landlord, and the maximum period of stay of execution of an order for possession should be extended from three to six months. Most of the proposals were adopted: the regime for security of tenure without rent control became the new **Part IV of the Landlord and Tenant (Consolidation) Ordinance** in 1981.

71. As regards “pre-war premises”, the maximum rents for “pre-war residential premises” and “pre-war non-residential premises” were increased to 155% and 350% of the “standard rent” respectively in two stages by 1 January 1977. In 1978, when reviewing the Landlord and

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<sup>64</sup> *Report, Committee of Review, Landlord and Tenant (Consolidation) Ordinance* (D.P.H. Liao, chairman), March 1981, p 54. Hereinafter *Report, Committee of Review*.

Tenant (Consolidation) Ordinance, the Government also decided to phase out rent control for “pre-war non-residential premises” completely by 1 July 1984, and to accelerate rent increases by allowing rents to be capped by a certain multiplier (instead of a percentage) of the “standard rent” (known as the “standard rent multiplier”). The enabling legislation was passed in June 1979. The Ordinance was further amended in 1980 to increase the maximum rents for “pre-war residential premises” and “pre-war non-residential premises” to six and 12 times of the “standard rent” respectively. Yet, by 1980, rents of “pre-war premises” were only 20% of market levels<sup>65</sup>, and the premises were usually in a dilapidated state of repair, which illustrated the deleterious effects of prolonged and excessive rent control. Taking on the recommendation of the committee, the “standard rent multiplier” was periodically increased: from 21 in early 1985, to 43 in 1989, then to 55 in 1993 when a requirement was added that the resultant rent reached 60% of the prevailing market rent. The multiplier and the requirement eventually became 75 and 80% respectively in 1995.<sup>66</sup>

### ***End of Rent Control in 1998***

72. When the Landlord and Tenant (Consolidation) (Amendment) Bill 1992 was introduced into the Legislative Council in 1992, the Government originally proposed that rent control upon both pre-war and post-war domestic lettings would expire on 31 December 1994. However, some Members of the Legislative Council considered the date too soon and substituted 31 December 1996. With the upward momentum in property prices and rents during the mid-1990s, the Legislative Council further postponed in 1996 the expiry of rent control for a further two years. Rent control formally ended at the end of 1998, a year when Hong Kong was hard hit by the Asian Financial Crisis, and the precipitous fall in the stock market took property prices and rents with it, thereby providing a good timing for relaxation of rent control as tenants could negotiate with the landlord a new tenancy or seek a new tenancy elsewhere at favourable rates. With the expiry of Parts I and II of the Landlord and Tenant (Consolidation) Ordinance after 31 December 1998, the security of tenure provisions under Part IV of the Ordinance became applicable to all decontrolled tenancies.

### ***End of Security of Tenure in 2004***

73. The Government announced in November 2002 to conduct a

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<sup>65</sup> Report, Committee of Review, p 59.

<sup>66</sup> Landlord and Tenant (Consolidation) Ordinance, section 10(1); Merry, *Hong Kong Tenancy Law*, Butterworths, 3<sup>rd</sup> ed, 1997, p 257

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. Taking into account the views of the public, the Government introduced the Landlord and Tenant (Consolidation) (Amendment) Bill 2003 into the Legislative Council in June 2003, which was subsequently passed in June 2004. The security of tenure under Part IV formally ended after 8 July 2004.

74. After the abolishment of rent control and security of tenure in 1998 and 2004 respectively, the rights and obligations between the landlord and the tenant are now governed by the terms of the tenancy agreement agreed between the parties according to the freedom of contract. Part IV of the Landlord and Tenant (Consolidation) Ordinance does not control the rate of rent increase of domestic tenancies, nor does it afford tenants the right to renew a tenancy.

75. For most of the first decade of the 21<sup>st</sup> century, the residential rental market favoured tenants. That said, restrictions upon new construction announced by the Government in 2004 started to take effect. At the same time, immigration from the Mainland increased, more households were formed, and the overall population continued to increase. “Quantitative easing” and minimal interest rate after the 2008 global financial crisis had pushed up asset prices. As a result, rents began to rocket again, leading to calls for the revival of rent control, with the focus now on SDUs, housing the most vulnerable groups in the society.

## **Chapter 6 Tenancy Control and Tenant Protection Measures in Overseas Jurisdictions**

76. Different overseas jurisdictions have implemented different forms of tenancy control. Generally, those implemented around the time of the two World Wars in the 20<sup>th</sup> century are categorised as “first-generation” tenancy control, which consists of rent freezes and intermittent upward adjustments. Over time, stringent rent control was gradually removed entirely or partially in many, if not most, countries. “Second-generation” tenancy control has been referred to as a reaction to inflation after the 1973 energy crisis in Europe and North America. Typical “second-generation” tenancy control involves control of rent increases within and between tenancies, and allows landlords to amortise the costs of substantial improvements to the dwelling. “Third-generation” tenancy control would just be for the control of rent increases within tenancies.<sup>67</sup> Both “second-generation” and “third-generation” tenancy controls are milder versions of tenancy control.

77. A review of overseas literature on tenancy control indicated that there is general consensus that “first-generation” rent control failed and harmed the economy. In particular, Coleman (1988)<sup>68</sup> documented that long-term rent control had caused the shrinkage of the rental housing market in the UK. However, views are mixed as to the effectiveness of “second-generation” tenancy control. Meanwhile, while there is extensive literature against indiscriminate and stringent rent control, there is support for tenancy control where there is “market failure”<sup>69</sup> and/or tenancy control targeted specifically on lower-income housing. Where there is “imperfect market information”, a mild form of tenancy control may improve efficiency<sup>70</sup>. Notwithstanding this, economists have also pointed out that there is a high risk of unintended consequences, such as more poorly maintained supply of rental units under tenancy control, and failure to target the benefit of tenancy control onto the desired segment of the population (the lower-income households)<sup>71</sup>, which would be elaborated in Chapter 7 of this Report.

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<sup>67</sup> See Arnott (2003), “Tenancy Rent Control”, Swedish Economic Policy Review 10 (2003) 89-121; Turner, B. and Malpezzi, S. (2003), “Rent control: A world view”, Swedish Economic Policy Review 10 (2003) 89-121

<sup>68</sup> Coleman, D. 1988. Rent Control: The British Experience and Policy Response. *Journal of Real Estate Finance and Economics* 1(3): 233-255.

<sup>69</sup> Brennan, T. J. (1988). Rights, Market Failure, and Rent Control: A Comment on Radin. *Philosophy & Public Affairs*, 17(1), 66-79.

<sup>70</sup> Arnott and Igarashi (2000). “Rent Control, Mismatch Costs and Search Efficiency”. *Regional Science and Urban Economics* 30 (200) 249-288

<sup>71</sup> Sturtevant, E (2018). “The Impacts of Rent Control: A Research Review and Synthesis”, National Multi Housing Council Research Foundation.



78. Tenancy control in overseas economies often aims to address the imbalance of information and bargaining power between landlords and tenants, to preserve the social linkages among tenants by reducing eviction, to stabilise the property market and relieve the inflationary pressure, and to ensure the provision of affordable housing. We set out below the tenancy control and tenant protection measures in major overseas jurisdictions. Apart from the three thematic researches commissioned by the Task Force, reference has been made to the *Information Note on Tenancy Control in Selected Places* prepared by the Research Office of the Legislative Council Secretariat dated 7 July 2017<sup>72</sup>.

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<sup>72</sup> <https://www.legco.gov.hk/research-publications/english/1617in16-tenancy-control-in-selected-places-20170707-e.pdf>

	<b>Tenancy Control and Tenant Protection Measures</b>
<b>England, the UK</b>	<ul style="list-style-type: none"> <li>- Tenancy control was first introduced in 1915, in the form of standard/maximum rent and security of tenure.</li> <li>- In 1989, tenancy control was abolished for new tenancies by the Housing Act 1988. Very few tenancies now remain subject to rent regulation under historic legislation.</li> <li>- The Landlord and Tenant Act 1985 sets out the rights and responsibilities of the landlord and tenant, including – <ul style="list-style-type: none"> <li>■ there is an implied contract term that the property will be “fit for human habitation”. Since 2019, the Homes (Fitness for Habitation) Act 2018 has imposed this obligation to be continuing throughout the lease;</li> <li>■ it places mandatory duties on landlords to repair properties in leases shorter than 7 years that are dwelling houses. Such repair obligation includes “the structure and exterior of the dwelling-house (including drains, gutters and external pipes)”, installations for “water, gas and electricity and for sanitation” (including basins, sinks, baths and sanitary conveniences) and for “space heating and heating water”;</li> <li>■ it limits “service charges” that a landlord can charge a tenant, and stipulates that any such charges must be strictly related to cost; and</li> <li>■ landlords are required to provide their legal name and address to the tenant, failing which they would commit an offence.</li> </ul> </li> <li>- Under the Tenant Fees Act 2019, for all tenancies after 1 June 2020, payments from the tenant to the landlord other than rent and deposits (with prescribed limits) are prohibited<sup>73</sup>. Charging illegal fees would amount to a fine.</li> </ul>
<b>Ireland</b>	<ul style="list-style-type: none"> <li>- Under the Residential Tenancies Act 2004<sup>74</sup>, rent can only be increased once every 24 months, and rent cannot be in excess of market rent.</li> <li>- The Planning and Development (Housing) and Residential Tenancies Act 2016 limits rent increases to 4% per year in Rent Pressure Zones. Landlords may, however, increase rent further if renovations have been undertaken to meet energy</li> </ul>

<sup>73</sup> With the exception of reasonable amounts (with receipts) for lost keys, late rent fees, and for changes in a tenancy (up to 50 GBP).

<sup>74</sup> Later amended by the Residential Tenancies (Amendment) Act 2015 and 2019.

	<b>Tenancy Control and Tenant Protection Measures</b>
	<p>efficiency standards.</p> <ul style="list-style-type: none"> <li>- Residential tenancies are required to be registered, and failure to register amounts to a criminal offence. Data collected enables the publication of a rent index.</li> <li>- The Residential Tenancies Board (RTB) in Ireland provides, <i>inter alia</i>, adjudication and mediation services for tenancy disputes. For landlords who do not register their tenancies, the services of RTB would not be available to them, and RTB may impose an order against the landlord for RTB's legal costs for adjudicating any dispute between the landlord and the tenant.</li> </ul>
<b>Australia</b>	<ul style="list-style-type: none"> <li>- Australia has no national rent control. In most states, there are no limitations on how much rent the landlord can ask for. Rent increases are subject to review by a tribunal upon the tenant's application.</li> <li>- In New South Wales (NSW), only a small number of rent-controlled tenancies remain, whilst the Residential Tenancies Act 2010 and Residential Tenancies Regulation 2019 cover most residential leases. Residential tenancies are subject to a set of "<i>mandatory terms</i>" provided under a "<i>standard form of tenancy agreement</i>"<sup>75</sup> to be executed between the parties.</li> <li>- Landlords may only increase rent after stipulated periods of time, and the tenant may take the landlord to the NSW Civil and Administrative Tribunal for an order that the new rent is excessive. Tenancies can be terminated without reasons but with at least 30-day notice, unless the tenant has been in continuous possession for 20 years, and in such cases, the landlord must apply to a tribunal for a termination order.</li> <li>- Tenancy disputes are resolved through the NSW Civil and Administrative Tribunal.</li> <li>- The laws are similar in other states except that the notice period for landlords to evict tenants may be longer (e.g. 2 months in Queensland).</li> </ul>

<sup>75</sup> See:

[https://www.fairtrading.nsw.gov.au/\\_data/assets/pdf\\_file/0004/369985/Residential\\_tenancy\\_agreement\\_30\\_October\\_2016.pdf](https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0004/369985/Residential_tenancy_agreement_30_October_2016.pdf)

	<b>Tenancy Control and Tenant Protection Measures</b>
<b>Germany</b>	<ul style="list-style-type: none"> <li>- Germany has a relatively low home ownership rate as compared to other developed countries. Most households rent privately, with only a modest social housing sector. It has a long history of being pro-tenant.</li> </ul> <p><i>Term of tenancy and tenancy agreement</i></p> <ul style="list-style-type: none"> <li>- The law only allows landlords to enter into time-limited leases under certain circumstances, e.g. the owner wishes to repossess the unit for self-occupation or for family residence; the owner wishes to carry out large-scale repairs to the unit; or the owner wishes to lease the unit to its employees. Tenancy agreements are therefore generally entered into for an indefinite period of time.</li> <li>- Any contract that lasts more than a year must be in writing. All oral leases with a term longer than one year are deemed as permanent leases.</li> </ul> <p><i>Security of tenure</i></p> <ul style="list-style-type: none"> <li>- The landlord's right to evict a tenant is restricted. The owner must provide a "just cause" to terminate the lease, for example, the tenant has seriously violated his contractual obligations, such as having at least three months' worth of arrears of rent or causing a nuisance; the landlord needs to reclaim the property for himself or for his family to live in; or if the lease continues, the owner will suffer huge losses.</li> <li>- Since 2001, the notice period for landlords to terminate a tenancy is linked to the time the tenancy has been in place, from three months to a maximum of 9 months, whilst the notice period for tenants is three months.</li> </ul> <p><i>Rent control</i></p> <ul style="list-style-type: none"> <li>- The initial rent of a new tenancy can be freely negotiated between landlords and tenants, but it cannot exceed the "local reference rent" by more than 20%. The "local reference rent" is set with reference to the rents of newly agreed and existing contracts for comparable dwellings in the same area in the past 4 years.</li> <li>- The "local reference rent" is presented by each municipality in an instrument known as <i>Mietspiegel</i>, and a cap of 15% to 20% (depending on locality) increase over 3 years is set regardless of the "local reference rent".</li> </ul>

	<b>Tenancy Control and Tenant Protection Measures</b>
	<ul style="list-style-type: none"> <li>- In 2015, the Tenancy Law Amendment Act came into effect. The law authorises the states to formulate regulations to designate markets with tight housing supply, and introduce “<i>Mietpreisbremse</i>” or “rental price brake” to limit new rents in these markets to no more than 110% of the “local reference rent”.</li> <li>- If the landlord modernises the premises, as an alternative to the “local reference rent” increase, a landlord may get a charge of not more than 11% of the cost of modernisation works to be added to the annual rent.</li> <li>- Landlords are restricted to maintaining rents at a given level for at least 12 months. Tenants also have a month to decide whether or not to accept the rent increase and, in the case of rejecting the proposed increase, two further months' notice period before moving out. Tenants can therefore be guaranteed 15 months of renting at a set rental amount.</li> <li>- The state governments may also set a rent ceiling for tight housing markets for the next five years. The regulations on rent control have been extended to 2025.</li> <li>- In this regard, the Parliament of the Federal State of Berlin passed a law to freeze rents in Berlin, which came into force in February 2020. Landlords of residential space completed before 1 January 2014 are prohibited from charging rent in excess of the rent effectively agreed by 18 June 2019 (rent freeze).</li> <li>- Further, from 23 November 2020, any rents that exceeded the acceptable rent caps by more than 20% – calculated according to the location of the residence and the fittings that it comes with – have to be reduced. Landlords that do not comply with the new law face heavy fines (EUR500,000).<sup>76</sup> From 2022, landlords will be allowed to increase rent along with inflation at 1.3%.<sup>77</sup></li> </ul> <p><i>Impact</i></p> <ul style="list-style-type: none"> <li>- Economists generally do not support the “rental price brake”. Landlords may defer renovations of dilapidated properties or defer construction altogether. A black market is likely to spring up, in which property agents pass bribes to landlords from potential tenants willing to pay more than the brake</li> </ul>

<sup>76</sup> <https://www.theguardian.com/commentisfree/2020/nov/25/berlin-rent-cap-britains-housing-crisis-home>

<sup>77</sup> <https://www.dw.com/en/berlins-new-rent-freeze-how-it-compares-globally/a-50937652>

	<b>Tenancy Control and Tenant Protection Measures</b>
	<p>permits. Alternatively, landlords may stay within the prescribed cap on rent increase, while asking for an inflated payment for the use of kitchen equipment which is typically paid for separately in German lettings.<sup>78</sup></p> <ul style="list-style-type: none"> <li>- Research findings also show that there is a very real danger of diminishing rental housing supply. More landlords are selling their properties instead of renting out. Furthermore, the landlords use modernisation as an investment strategy to bypass rent control.<sup>79</sup></li> <li>- Whilst the law is designed to prevent the rental costs from rising too quickly, it has not solved the problem. According to ImmoScout24, Germany's dominant online real estate platform, the total supply of rental apartments in Berlin had gone down by 41.5% in September 2020 from a year earlier, amongst which the supply of those affected by the new legislation, i.e. those built before 2014, had dropped by 59.1%.<sup>80</sup> While some people are paying less, it is harder for new comers to find a rental space. The calculation of the rent cap is also complicated, creating uncertainties for both parties and administrative burden on landlords.</li> <li>- A constitutional court decision is outstanding, and it remains an open question whether the Berlin government has the right to impose a blanket rent cap since February 2020. As a result, many landlords are now including "shadow rents" in their ads for new apartments, warning that they will demand the extra back-rents if the constitutional court decides in their favor.<sup>81</sup></li> </ul>
<b>The Netherlands</b>	<ul style="list-style-type: none"> <li>- The Netherlands has put in place a comprehensive tenancy control regime regulating the absolute levels of rent, the rates of rental increase, and security of tenure.</li> </ul> <p><i>Absolute levels of rent</i></p> <ul style="list-style-type: none"> <li>- A rent below or equivalent to the "liberalisation rent limit" is regulated. If the rent exceeds the limit, it will be deregulated and subject to the negotiations between landlords and tenants. The "liberalisation rent limit" is set and announced by the Dutch government each year.</li> </ul>

<sup>78</sup> The Economist. (2015) (Braking bad - a coming "rent brake" will sap a strengthening property market (4 April)).

<sup>79</sup> Institute for Public Policy Research. (2017). Lessons from Germany: Tenant Power in the Rental Market.

<sup>80</sup> <https://www.refire-online.com/markets/berlin-housing-prices-rise-steadily-as-rental-supply-shrivels/>

<sup>81</sup> <https://www.dw.com/en/berlin-landlords-forced-to-reduce-rents/a-55704047>

	<b>Tenancy Control and Tenant Protection Measures</b>
	<ul style="list-style-type: none"> <li>- If a private rental property is regulated, the maximum rent payable is determined by a rent points system which was introduced back in 1971. The system rates a property based on a number of features, such as surface area, housing environment, ease of access to facilities such as public transport, shops and schools.<sup>82</sup> The higher the score, the higher the maximum level of rent. If the score is above a certain level, the rent can be freely negotiated; if the score is below a certain level, only tenants at or below certain income brackets may rent those flats<sup>83</sup>.</li> </ul> <p><i>Rent increase</i></p> <ul style="list-style-type: none"> <li>- The rent of regulated tenancies may be increased once a year subject to a ceiling based on the inflation rate of the preceding year <u>plus</u> an income-related component<sup>84</sup>.</li> </ul> <p><i>Security of tenure</i></p> <ul style="list-style-type: none"> <li>- Security of tenure is provided for both rent controlled and uncontrolled tenancies. The landlord may only terminate a lease by serving a tenant no less than three months of notice subject to permissible reasons stipulated in the Dutch Civil Code, such as rent arrears, or the landlord reasonably and fairly requests the repossession of the property for self-use.</li> <li>- Only the judiciary, not the landlord, can terminate the lease. A three to six months' notice is required.<sup>85</sup></li> </ul> <p><i>Others</i></p> <ul style="list-style-type: none"> <li>- Tenancy agreements should clearly state the basic rent and the service charges for such items as utilities and cleaning costs which tenants are required to pay.</li> <li>- Tenancy agreement must also state whether the tenancy is for a fixed or an indefinite period. If the agreement belongs to the former, a final date must be included. Written and oral tenancy agreements are accepted, and a witness is preferred</li> </ul>

<sup>82</sup> Haffner, M., Elsinga, M., Hoekstra, J. (2008). Rent Regulation: The Balance between Private Landlords and Tenants in Six European Countries. International Journal of Housing Policy.

<sup>83</sup> <https://www.dutchnews.nl/news/2019/08/new-rent-rules-in-the-hague-may-squeeze-landlords-and-expats/>

<sup>84</sup> The income-related component is the permissible incremental percentage increase in rent after adjusting for inflation in the preceding year. It varies with a tenant's annual household income. The inclusion of the component is to encourage the higher income households to move up the housing ladder and vacate their rent-controlled flats to less well-off tenants.

<sup>85</sup> <https://www.globalpropertyguide.com/Europe/Netherlands/Landlord-and-Tenant>

	<b>Tenancy Control and Tenant Protection Measures</b>
	<p>when concluding an oral agreement.<sup>86</sup></p> <ul style="list-style-type: none"> <li>- Disputes about rent levels, maintenance and service charges can be submitted to the Rent Tribunal (“<i>Huurcommissie</i>”), which is a national, independent agency that mediates and adjudicates such disputes between landlords and tenants.<sup>87</sup></li> </ul> <p><i>Impact</i></p> <ul style="list-style-type: none"> <li>- It has been argued that the Dutch market is distorted by the fact that almost all rents (93%) are regulated with negative effects on the functioning of the housing market. The strict rent regulation in the Netherlands puts a cap on the yields and reduces supply. Sitting tenants in regulated housing are protected strongly and incentivised not to move.<sup>88</sup></li> </ul>
<b>Canada</b>	<ul style="list-style-type: none"> <li>- In <b>British Columbia</b>, landlords may increase rent once in a 12-month period by the percentage permitted by law, or an additional amount approved in advance by an arbitrator. The maximum level of increase is based on the percentage change in the Consumer Price Index. Written notice must be delivered to the tenant 3 months before the intended increase in rent.</li> <li>- No security of tenure is provided if it is stipulated in the tenancy agreement that the tenant will need to vacate thereafter.</li> <li>- In <b>Ontario</b>, rent control has applied to all private rental flats since 2017. Apart from restrictions on rent increase, tenants have security of tenure, i.e. the landlord may not repossess the premises save for using a unit for own/family’s use or where it will be under major renovations<sup>89</sup>.</li> <li>- Since 2018, save for excepted residential units such as care homes, subsidised and public housing, residential tenancies must be by way of the standard lease. If the landlord fails to provide a written standard lease to the tenant within 21 days after the tenant has requested one, the tenant may withhold one month’s rent.</li> </ul>

<sup>86</sup> <https://www.government.nl/topics/housing/rented-housing>

<sup>87</sup> *ibid*

<sup>88</sup> Boer, R., Bitetti, R. (2014, October 28). A Revival of the Private Rental Sector of the Housing Market? Lessons from Germany, Finland, the Czech Republic and the Netherlands. OECDiLibrary ([https://www.oecd-ilibrary.org/economics/a-revival-of-the-private-rental-sector-of-the-housing-market\\_5jxv9f32j0zp-en;jsessionid=-XxuXnXdrNw8Wns9rnwjgHK0.ip-10-240-5-158](https://www.oecd-ilibrary.org/economics/a-revival-of-the-private-rental-sector-of-the-housing-market_5jxv9f32j0zp-en;jsessionid=-XxuXnXdrNw8Wns9rnwjgHK0.ip-10-240-5-158)).

<sup>89</sup> After the renovation, the landlord must give an option to the tenant to return to the flat.



	<b>Tenancy Control and Tenant Protection Measures</b>
	<ul style="list-style-type: none"> <li>- Tenancy disputes are handled by the Landlord and Tenant Board, which has jurisdiction over the enforcement of rights and responsibilities of landlords and tenants arising from the Residential Tenancies Act 2006.</li> </ul>
<b>New York City, USA</b>	<ul style="list-style-type: none"> <li>- There are two main regimes of rent regulation in New York City: rent control and rent stabilisation.</li> </ul> <p><i>Rent control</i></p> <ul style="list-style-type: none"> <li>- Rent control applies to residential buildings constructed before 1 February 1947, where the tenants must have lived in the flat continuously since 1 July 1971.</li> <li>- Rent control limits the rent an owner may charge for an apartment and restricts the right of any owner to evict tenants. It operates under the Maximum Base Rent (MBR) system. A maximum base rent is established by the Division of Housing and Community Renewal for each apartment and adjusted every two years to reflect changes in operating costs. Owners are entitled to raise rents the lesser of either the average of the five most recent New York City Rent Guidelines Board annual rent increases for one-year renewal leases or 7.5% each year until the rents reach the MBR. Tenants may challenge adjustments to the MBR on that the building has violations or that the owner's expenses do not warrant an increase.<sup>90</sup></li> </ul> <p><i>Rent stabilisation</i></p> <ul style="list-style-type: none"> <li>- Rent stabilisation applies to buildings of six or more units built between 1 February 1947 and 31 December 1973. Tenants in buildings built before 1 February 1947 who moved in after 30 June 1971 are also covered by rent stabilisation.<sup>91</sup></li> <li>- Landlords would not be able to increase rent over the guideline rates set annually by the New York City Rent Guidelines Board.<sup>92</sup> A flat might be deregulated from the rent stabilisation programme if the tenant's annual household income is more than a certain amount or the monthly rent payable exceeds a certain threshold, in order to curb possible abuses of the system by well-off tenants.</li> </ul>

<sup>90</sup> <https://hcr.ny.gov/system/files/documents/2020/11/fact-sheet-01-09-2020.pdf>

<sup>91</sup> <https://hcr.ny.gov/rent-stabilization-and-emergency-tenant-protection-act>

<sup>92</sup> <https://hcr.ny.gov/system/files/documents/2020/11/fact-sheet-01-09-2020.pdf>

	<b>Tenancy Control and Tenant Protection Measures</b>
	<p data-bbox="499 235 730 271"><i>Security of tenure</i></p> <ul data-bbox="499 309 1355 779" style="list-style-type: none"> <li data-bbox="499 309 1355 521">- Tenants of the rent-controlled and rent-stabilised flats in New York City are conferred with unlimited security of tenure, and tenants may not be evicted except on grounds allowed by law, such as self-occupation by the landlord, non-payment of rent, tenant's breach of lease conditions, and tenant's creation of nuisance.</li> <li data-bbox="499 566 1355 779">- If the landlord would like to terminate the lease early or evict the tenant before the end of the lease, the landlord will need to have a cause. The tenant may be evicted early for a couple of different reasons, including not paying rent or violating the rental agreement. To begin the eviction process, the landlord must give the tenant written notice.<sup>93</sup></li> </ul> <p data-bbox="499 824 592 860"><i>Impact</i></p> <ul data-bbox="499 898 1355 1659" style="list-style-type: none"> <li data-bbox="499 898 1355 1032">- According to the 2018 Housing Supply Report published by the New York City Rent Guidelines Board, only 1% of the rental housing stock was rent-controlled and 44.2% was rent-stabilised.<sup>94</sup></li> <li data-bbox="499 1077 1355 1301">- A substantial number of empirical studies concluded that the rent control and stabilisation laws have been inefficient in targeting the benefits to lower-income families.<sup>95</sup> More affluent renters remain in their units for a long time while poorer families do not have access to flats under tenancy control.</li> <li data-bbox="499 1346 1355 1413">- It was found that rent control significantly reduced rents of the rent-controlled units.<sup>96</sup></li> <li data-bbox="499 1458 1355 1659">- Some also argued that tenancy control in New York is incredibly expensive and unfair, and that the system discriminates against new immigrants, who are forced to occupy the least desirable apartments.<sup>97</sup> Landlords would become more selective about their tenants, and those with unstable income such as new immigrants would find it hard to</li> </ul>

<sup>93</sup> <https://www.nolo.com/legal-encyclopedia/the-eviction-process-new-york-rules-landlords-property-managers.html#:~:text=In%20New%20York%2C%20a%20landlord,by%20state%20or%20city%20law>

<sup>94</sup> <https://rentguidelinesboard.cityofnewyork.us/wp-content/uploads/2019/08/18HSR.pdf>

<sup>95</sup> See Olsen, Edgar O. 1972. An Econometric Analysis of Rent Control. *Journal of Political Economy* 80(6): 1081-1100; Ault, Richard, and Richard Saba. 1990. The Economics Effects of Long-Term Rent Control: The Case of New York. *Journal of Real Estate Finance and Economics* 3(1): 25-41; Linneman, Peter. 1987. The Effect of Rent Control on the Distribution of Income among New York City Renters. *Journal of Urban Economics* 22(1): 14-34.

<sup>96</sup> Gyourko, Joseph, and Peter Linneman. 1989. Equity and Efficiency Aspects of Rent Control: An Empirical Study of New York City. *Journal of Urban Economics* 26(1): 54-74.

<sup>97</sup> Davidson, A. (2013, July 23). The Perverse Effects of Rent Regulation. *New York Times*.

	<b>Tenancy Control and Tenant Protection Measures</b>
	<p>secure rented accommodation.</p> <p><i>The Housing Stability and Tenant Protection Act of 2019 of New York</i></p> <ul style="list-style-type: none"> <li>- The Housing Stability and Tenant Protection Act was further introduced in 2019, which Governor Cuomo referred to the changes as “<i>the strongest tenant protections in history</i>”<sup>98</sup>.</li> <li>- Before 2019, landlords were allowed to raise rent every year if they had refurbished or made improvements to the apartment, thus providing an incentive for landlords to maintain their properties. After 2019, such rent increases are limited.</li> <li>- Before 2019, landlords were entitled to “de-controls” if the tenant’s household income is above a certain threshold or the monthly rent exceeds a certain amount. After 2019, such “de-controls” have been abolished.</li> <li>- Meanwhile, after 2019, upon eviction, landlords are no longer able to recover charges such as late fees, utility fees and other similar charges from the tenant, with the view to reducing the incentive for landlords to evict tenants.</li> <li>- The Act is currently under a constitutional challenge.<sup>99</sup></li> </ul>
<b>San Francisco, USA</b>	<p><i>Rent control</i></p> <ul style="list-style-type: none"> <li>● Under the San Francisco Rent Control Ordinance, landlords can only increase rent by a set amount each year as tied to inflation based on the Bay Area Consumer Price Index. Landlords can also petition for other increases. Notably, capital improvements can be passed through to the tenant for a maximum increase of 10% or increased operating and maintenance costs for a maximum increase of 7%, but these rent increases must be documented and approved by the Rent Board before they can be imposed. State law requires a 90-day written notice for any rent increases which, alone or cumulatively, raise a tenant’s rent by more than 10% within a 12-month period, while rent increases for 10% or less require a 30-day notice.<sup>100</sup></li> </ul>

<sup>98</sup> <https://www.amny.com/news/rent-laws-nyc-1-32294666/>

<sup>99</sup> Ferre-Sadurni, L. (2019, July 16), “Landlords Strike Back, Suing to Dismantle Rent Regulation System”, New York Times, and Epstein, R. “Rent Control Laws are Unconstitutional”, Hoover Institution, Stanford University (<https://www.hoover.org/research/rent-control-laws-are-unconstitutional>)

<sup>100</sup> <https://sftu.org/rent-control/>

	<b>Tenancy Control and Tenant Protection Measures</b>
	<ul style="list-style-type: none"> <li>● Effective from 1 January 2020, the California Tenant Protections and Relief Act (September 2019) provides for state rent control, which covers many residential units not covered by the San Francisco Rent Control Ordinance. For all multi-unit residential buildings built more than 15 years ago, annual rent increases are capped at 5% <u>plus</u> the cost of living increase or 10%, whichever is lower, for tenants who have occupied the unit for 12 months or more.<sup>101</sup></li> </ul> <p><i>Security of tenure</i></p> <ul style="list-style-type: none"> <li>● For residential units covered under the San Francisco Rent Control Ordinance, the landlord must have honest intent, without ulterior motive (e.g., a motive of raising the rent), to evict the tenant with “<i>just cause</i>.” The “<i>just causes</i>” for eviction include non-payment of rent, violation of a term of the rental agreement that has not been corrected after written notice from the landlord, nuisance or substantial damage to the unit, illegal use of the unit, self-use by the landlord, demolition of the unit, etc.<sup>102</sup></li> <li>● Effective from 1 January 2020, the California Tenant Protections and Relief Act (September 2019) provides that “<i>just causes</i>” are required for eviction of tenants, which covers many residential units not covered by the San Francisco Rent Control Ordinance.</li> </ul> <p><i>Impact</i></p> <ul style="list-style-type: none"> <li>● Researchers found that rent control limits renters’ mobility by 20% and that landlords reduce rental housing supplies by 15% in San Francisco. While the tenants in rent-controlled units received benefits, the rent control was effectively a trade-off between benefits accruing to current residents and costs accruing to future ones. Landlords have also responded to rent control by redeveloping their properties into condos, leading to a reduction in housing in the rent-controlled sector.<sup>103</sup></li> </ul>

<sup>101</sup> *ibid*

<sup>102</sup> <https://sftu.org/justcauses/>

<sup>103</sup> Diamond, R., McQuade T., Qian, F. (2018), “The Effects of Rent Control Expansion on Tenants, Landlords and Inequality: Evidence from San Francisco” Cambridge, MA: National Bureau of Economic Research; Diamond, R., McQuade, T., & Qian, F. (2019). The effects of rent control expansion on tenants, landlords, and inequality: Evidence from San Francisco. *American Economic Review*, 109(9), 3365-94.

79. From the overseas economies reviewed above, some countries such as 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. That said, in Germany, if the landlord modernises the premises, he may get a charge of the cost of modernisation works to be added to the annual rent.

80. 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, such as the landlord's repossessing the premises for his own use, the tenant's breaching the rental agreement, failing to pay rent, causing nuisance or substantial damage to the unit, or using the property for illegal purposes. 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.

81. When the demand for housing far exceeds the supply, the balance of bargaining power in the private rental market would naturally shift in favour of the landlord. This may justify the introduction of tenancy control in order to balance the interests of the landlord and the tenant. It means that if the situation of excess demand improves, the case for tenancy control would be weakened. A case in point is Finland, whose private rental market has been deregulated since 1991 with the abolition of the rent control system as there is a large, non-means-tested social housing sector which can cater for 70% of the population.<sup>104</sup>

82. While the experiences of overseas jurisdictions can provide some reference for consideration of whether and how tenancy control on SDUs may be introduced in Hong Kong, we should be mindful that overseas experiences may not be fully applicable to Hong Kong given the different circumstances.

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<sup>104</sup> Finland imposed a rent control system in 1975 for the government to set the reasonable rents and rental increases for all private housing.

## **Chapter 7 Evaluation of the Case for Introducing Tenancy Control on SDUs in Hong Kong and Relevant Issues**

83. There have been substantial discussions in the past on whether tenancy control should be re-introduced in Hong Kong after the rent control and security of tenure have been abolished in 1998 and 2004 respectively.

### ***Long Term Housing Strategy***

84. The Long Term Housing Strategy published by the Transport and Housing Bureau in December 2014<sup>105</sup> studied the issue of re-introducing tenancy control by way of legislation in Hong Kong with the objective to safeguard the interests of grass-root tenants, such as those living in SDUs. It recognised that it is a highly controversial subject and there was yet no consensus in the community over the issue. Drawing reference from the history of tenancy control in Hong Kong and studying the overseas experience, the Government at that time noted that despite the good intention, 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. Such unintended consequences included reducing the supply of rented accommodation as an artificially suppressed rent may lower the incentive and willingness of landlords to lease out their premises; limiting access to adequate housing by the socially disadvantaged as some landlords may become more selective about their tenants when it would be more difficult to terminate a tenancy; encouraging certain behavior from landlords to offset the impact of tenancy control measures, such as charging a higher initial rent, asking for more deposit money, demanding different kinds of side payments, overcharging tenants on certain payments directly associated with the lease, and altering the tenancy terms to the effect that the premises concerned would not be subject to any form of tenancy control; and discouraging proper maintenance of the rented accommodation and leading to a drop in the overall housing quality.

85. In view of the above, the Government at that time considered that it would not be in the interest of inadequately housed households and the general public to introduce any tenancy control measures in Hong Kong, given the lack of public consensus and the possible adverse consequences which might render such measures counter-productive. The Government believed that a continued increase in housing supply should be the fundamental solution to the problem of surging rent caused by insufficient supply.

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<sup>105</sup> <https://www.thb.gov.hk/eng/policy/housing/policy/lths/LTHS201412.pdf>

### *Economic arguments for and against tenancy control on SDUs*

86. 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, including the impact on the availability of housing, whether tenancy control can really benefit SDU tenants, result in any misallocation of housing resources, or lead to a decline in SDU maintenance and the housing quality, and the fiscal impact on the Government. The results of the review and the assessment made by the economic consultant are summarised in the ensuing paragraphs.

87. First, on housing availability, basic economic theory and empirical evidence suggest that tenancy control would reduce the availability of controlled housing. Mengle (1985)<sup>106</sup> argued that landlords would sell or even abandon controlled flats because of the lower returns in comparison with others, while Navarro (1985)<sup>107</sup> showed that in Cambridge of Massachusetts, around 10% of controlled flats were converted to non-rental housing in ten years after the tenancy control policy had been enforced. In this light, the economic consultant anticipates that the number of SDUs in Hong Kong might drop if tenancy control on SDUs is to be introduced.

88. Second, the benefits of tenancy control are doubted by some economists. Navarro (1985), Linneman (1987)<sup>108</sup>, Gyourko and Linneman (1989)<sup>109</sup>, Malpezzi (1993)<sup>110</sup> and Sims (2007)<sup>111</sup> found that only part of the benefits would go to the intended individuals. According to Sims (2007), 30% of controlled apartments in Boston were occupied by people from the top half of the income distribution while only 26% were occupied by those in the bottom quartile. Landlords also preferred to rent their apartments to “better” tenants instead of those who are in need

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<sup>106</sup> Mengle, David L. 1985. The Effect of Second Generation Rent Controls on the Quality of Rental housing. Federal Reserve Bank of Richmond, Working Paper No. 85-5.

<sup>107</sup> Navarro, Peter. 1985. Rent Control in Cambridge, Massachusetts. Public Interest 78(4): 83-100.

<sup>108</sup> Linneman, Peter. 1987. The Effect of Rent Control on the Distribution of Income among New York City Renters. Journal of Urban Economics 22(1): 14-34.

<sup>109</sup> Gyourko, Joseph, and Peter Linneman. 1989. Equity and Efficiency Aspects of Rent Control: An Empirical Study of New York City. Journal of Urban Economics 26(1): 54-74.

<sup>110</sup> Malpezzi, Stephen. 1993. Can New York and Los Angeles Learn from Kumasi and Bangalore? Costs and Benefits of Rent Controls in Developing Countries. Housing Policy Debate 4(4): 589-626.

<sup>111</sup> Sims, David P. 2007. Out of Control: What Can We Learn from the End of Massachusetts Rent Control? Journal of Urban Economics 61(1): 129-151.

(Navarro, 1985; Glaeser, 2002<sup>112</sup>). Arnott (1995)<sup>113</sup> considered that the redistribution effect of tenancy control was poor. The economic consultant expects that if tenancy control on SDUs is to be introduced in Hong Kong, it might attract some people who are more financially capable to live in good quality SDUs to enjoy the benefits of tenancy control, thereby crowding out a portion of existing SDU tenants. In addition, although tenancy control is anticipated to rein in the increase of rent of SDUs, landlords may impose other charges to recoup their losses.

89. Third, economists generally consider that a possible adverse consequence of tenancy control is the misallocation of housing units. Due to lower future rents as a result of tenancy control, tenants tend to stay in the same apartment (Navarro, 1985; Glaeser and Luttmer, 2003<sup>114</sup>; Sims, 2007). Nagy (1997)<sup>115</sup> showed that tenants in the controlled market were less mobile. As a result, tenants tended to stay too long in controlled units (Sims 2007). Glaeser and Luttmer (2003) showed that 11% of renters and 15.9% of owners were misallocated. The economic consultant anticipates that SDUs in prime locations will be less available if tenancy control on SDUs is to be implemented in Hong Kong.

90. Fourth, some economists argue that under tenancy control, landlords would reduce maintenance (Navarro, 1985; Albon and Stafford, 1990<sup>116</sup>; Ault and Saba, 1990<sup>117</sup>; Ho, 1992<sup>118</sup>; Glaeser, 2002; Turner and Malpezzi, 2003<sup>119</sup>), amongst which, Navarro (1985) found that rent reduction from tenancy control had been offset by deterioration, leading to a net rent reduction of 1.3% only to tenants. That said, Kutty (1996)<sup>120</sup> argued that the hypothesis of negative maintenance held only in the case of the more stringent “first-generation” rent control, whilst the impact on housing maintenance was not that clear in other cases. Moon and Stotsky

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<sup>112</sup> Glaeser, Edward L. 2002. Does Rent Control Reduce Segregation? Harvard Institute of Economic Research Discussion Paper No. 1985.

<sup>113</sup> Arnott, Richard. 1995. Time for Revisionism on Rent Control? *Journal of Economic Perspectives* 9(1): 99-120.

<sup>114</sup> Glaeser, Edward L., and Erzo F.P. Luttmer. 2003. The Misallocation of housing under Rent Control. *American Economic Review* 93(4): 1027-1046.

<sup>115</sup> Nagy, John. 1997. Do Vacancy Decontrol Provisions Undo Rent Control? *Journal of Urban Economics* 42(1): 64-78.

<sup>116</sup> Albon, Robert P., and David C. Stafford. 1990. Rent Control and Housing Maintenance. *Urban Studies* 27(3): 233-240.

<sup>117</sup> Ault, Richard, and Richard Saba. 1990. The Economics Effects of Long-Term Rent Control: The Case of New York. *Journal of Real Estate Finance and Economics* 3(1): 25-41.

<sup>118</sup> Ho, Lok Sang. 1992. Rent Control: Its Rationale and Effects. *Urban Studies* 29(7): 1183-1190.

<sup>119</sup> Turner, Bengt, and Stephen Malpezzi. 2003. A Review of Empirical Evidence on the Costs and Benefits of Rent Control. *Swedish Economic Policy Review* 10(1): 11-56.

<sup>120</sup> Kutty, Nandinee K. 1996. The Impact of Rent Control on housing Maintenance: A Dynamic Analysis Incorporating European and North American Rent Regulations. *Housing Studies* 11(1): 69-89.



(1993)<sup>121</sup> also considered that the relationship between tenancy control and maintenance was ambiguous. The economic consultant expects that in the case of Hong Kong, since tenancy control would reduce the growth of rental income of SDU landlords, the maintenance of SDUs is likely to deteriorate.

91. Lastly, on the impact on the fiscal position of the Government, Navarro (1985) considered that tenancy control would shrink the tax payable by owners as they received fewer rents, while the tax burden would be shifted to those in the uncontrolled market. The economic consultant argues that whilst in theory, tenancy control on SDUs in Hong Kong would reduce the rental income of SDU landlords and subsequently the tax revenue of the Government, it should be noted that many SDU landlords currently do not have the rental agreements stamped<sup>122</sup>. If in future, a mandatory registration system of SDUs is to be implemented, this would enable the Government to collect taxes which are now illegally evaded and net Government revenue may increase as a result of tenancy control on the contrary.

92. Overall, the economic study 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. The study reckons that any form of rent control will cause side effects, such as possible reduction in the supply of SDUs, screening of tenants, reducing repairs and maintenance, and passing costs to tenants. However, if the SDU rental market has been “unjust” and “unfair” at the outset, the Government should intervene.

93. The economic study 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 study 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<sup>123</sup>, most SDU landlords should be able to accept some extent of tenancy control before they cease operation of their SDUs and convert them back to single unit households. It is after all a

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<sup>121</sup> Moon, Choon-Geol, and Janet G. Stotsky. 1993. The Effect of Rent Control on housing Quality Change: A Longitudinal Analysis. *Journal of Political Economy* 101(6): 1114-1148.

<sup>122</sup> It has been estimated by various studies that less than 30% of SDU rental contracts have been stamped.

<sup>123</sup> A project conducted in 2015 on SDUs as supported by the Knowledge Transfer Fund of CUHK found that owners of flats would earn a yield increased by 2.1 times if they sub-divide their flats.  
[http://hksdu.grm.cuhk.edu.hk/rent\\_publish.html](http://hksdu.grm.cuhk.edu.hk/rent_publish.html)

question of cost and benefit.

94. The economic study further considers that many side effects of tenancy control can be ameliorated through careful design of the tenancy control scheme. For example, on maintenance, the study suggests that the Government may allow the cost of repairs and maintenance to be tax deductible or give SDU owners a subsidy for the purpose. To prevent SDU landlords from passing the relevant costs to tenants, the Government may consider requiring all expenses apart from the rent be included in the tenancy agreement and limit such expenses to a percentage of the rent. Furthermore, the study considers that rent control could tackle the issue of information inadequacy in the SDU rental market and lower the rental costs of SDU tenants.

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

95. 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 has set out issues that have to be considered in deploying legislative controls to protect the interests of SDU tenants in Hong Kong.

(a) “Legalisation” of SDUs

96. The operation of many SDUs may not fully comply with the law in one aspect or another: it may involve breach of the Government lease, erection of unauthorised building works, contravention of relevant regulations concerning fire and building safety or hygiene, etc. That said, the legal team recognises that strict enforcement of existing laws to outlaw SDUs which do not fully comply with the law may lead to a reduction in the supply of SDUs, not only jetting up rentals but also displacing the most vulnerable SDU tenants to other forms of housing in even worse conditions. It would also increase the compliance costs of landlords and affect their profit margin, which may lower their incentives to let out their SDUs. They may just leave their units vacant or convert them back to ordinary domestic units. Those who remain in the market would make every attempt to transfer the compliance costs onto the tenants. On the other hand, wholesale “legalisation” of SDUs is not an option either as this would jeopardise the entire legal framework of land administration.

97. If outlawing SDUs is not feasible, at least in the short term, 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

98. As mentioned in paragraphs 84 and 85 above, the Long Term Housing Strategy published by the Transport and Housing Bureau in December 2014 has studied the issue of re-introducing tenancy control in Hong Kong, and pointed out that 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.

99. A common issue with tenancy control is that those intended for protection, i.e. the poorest households, may not be able to benefit from the measures. With security of tenure, the landlord will pick and choose his tenants, and those with better financial means and a smaller household would naturally be his priority, thus making it difficult for those with unstable income to find a place to live. The landlords may also be inclined to select tenants who need shorter-term accommodation, such as those who have waited for public rental housing for many years, so that the contracts may end sooner and they can enter into new contracts and raise the rent. Those who need longer-term accommodation, such as new immigrants, may suffer.

100. Under unlimited security of tenure, the tenant can stay in the dwelling indefinitely, which would lead to a reduction in the supply of rental accommodation, particularly for those in need. As the Diamond, McQuade and Qian (2018) study on San Francisco’s rent control laws (discussed above) found, the rent control was effectively a trade-off between benefits accruing to current residents and costs accruing to future ones. They provided savings to existing tenants who stayed put, whilst creating almost equally big losses in the form of higher rents for tenants who came later, as they might need to resort to dwellings outside tenancy control which were much more expensive.

101. Another common unintended consequence of tenancy control is that it would discourage landlords from maintaining the quality of their units. Rent control would weaken the landlord’s incentive to renovate or even maintain the premises properly. Although this issue might be

mitigated by measures such as rewarding landlords who invest in maintenance through additional rent increases (as in Germany and New York City), or allowing rent increases only if landlords perform quality up-keep, the administrative costs associated with such policies would be substantial<sup>124</sup>. Overseas experiences also show that there is a danger of a large number of landlords exploiting the opportunity as a means to avoid or mitigate rent control. For example, in Denmark, under section 5.2 of the Housing Regulations Act, landlords may make major renovations to rental apartments and then raise rents. In 2019-20, there has been concerns of foreign investors, such as Blackstone, purchasing property for rent and utilising the said provision to renovate and then to increase rent.<sup>125</sup> As a result, supply of units under rent control may diminish. While this problem seems to be solvable by allowing only an extra percentage of rent increase, the question would be at what level of rent increase would a landlord have the incentive to maintain the premises.

102. 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. 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, in particular the most vulnerable groups, 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.

103. Another possible unintended consequence is that tenancy control on particular segments of the market may cause disruption on rent in other segments of the market. The study of Autor, Palmer & Pathak<sup>126</sup> found that rent-controlled properties suppressed values of non-rent controlled properties in the same neighbourhood. This may be due to the poor condition of the rent-controlled units leading to a suppression of the

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<sup>124</sup> Glaeser E. (2003), “Does Rent Control Reduce Segregation?”, Swedish Economic Policy Review 10: 179-202

<sup>125</sup> <https://www.ipe.com/news/danish-pensions-lobby-warns-of-rent-control-impact-as-p-writes-down-property-values/10043580.article>, and <https://www.bloomberg.com/news/articles/2019-10-25/rent-control-under-review-to-rein-in-blackstone-in-denmark>

<sup>126</sup> Autor, D., Palmer, C., Pathak, P. (2014), “Housing Market Spillovers: Evidence from the End of Rent Control in Cambridge, MA”, Journal of Political Economy 122(3): 661-717

value of other properties in the neighbourhood generally. Any future tenancy control measures on SDUs should be carefully designed to minimise the possible unintended consequences so that they can bring real benefits to SDU tenants.

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

104. Whilst Hong Kong has implemented relatively strict forms of tenancy control in the past as set out in Chapter 5, it should be noted that the Hong Kong Bill of Rights Ordinance (Cap. 383) came into force in Hong Kong on 8 June 1991. In particular, Article 22 of The Hong Kong Bill of Rights provides that all persons are equal before the law. Since 1 July 1997, the Basic Law also offers constitutional protection to private property rights<sup>127</sup>, and guarantees the right to equality before the law under Article 25<sup>128</sup>.

105. As pointed out by the legal team, the landmark ruling of the Court of Final Appeal in *Hysan Development v Town Planning Board* (2016) 19 HKCFAR 372 at [29] to [42] held that legislative controls which restrict land use (e.g. planning controls prescribing limits on building heights) would constitute an infringement of “ownership rights” safeguarded under Article 6<sup>129</sup> and Article 105<sup>130</sup> of the Basic Law. In particular, 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.

106. Specifically, the issue is whether the tenancy control scheme pursues a legitimate aim and whether the interference with the property rights of SDU owners could be regarded as “rationally connected” to that legitimate aim and as proportionate (no more than reasonably necessary or manifestly without reasonable foundation) to achieve that aim so as to

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<sup>127</sup> See, inter alia, *Harvest Good Development Ltd v Secretary for Justice* [2007] 4 HKC 1, *Hong Kong Kam Lan Koon Ltd v Realray Investment Ltd (No. 5)* [2007] 5 HKC 122, *Weson Investment Ltd v Commissioner of Inland Revenue* [2007] 2 HKLRD 567, *Michael Reid Scott v HKSAR* (unreported) HCAL 188/2002, (7/11/2003), and *Penny's Bay Investment Company Ltd v Director of Lands* (LDMR 23/1999 & LDMR 1/2005)

<sup>128</sup> Article 25 of the Basic Law: “All Hong Kong residents shall be equal before the law.”

<sup>129</sup> Article 6 of the Basic Law: “The Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law.”

<sup>130</sup> Article 105 of the Basic Law: “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. Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay. The ownership of enterprises and the investments from outside the Region shall be protected by law.”

strike a balance between the inroads into SDU owners' property rights and the societal benefits brought to SDU tenants. There may also be unlawful discrimination in that SDU landlords receive unfavourable treatment compared to landlords of other types of residential units who would not be subject to tenancy control, unless it can be shown that SDU landlords are not in similar or comparable situations as landlords of other types of residential units, or the differential treatment can be justified using a similar "justification test"<sup>131</sup>.

### *Ireland*

107. The legal team pointed out that in the Republic of Ireland and Germany, there have been successful constitutional challenges against tenancy control. In the case of Ireland, the Supreme Court of Ireland invalidated strict tenancy control in the Rent Restrictions Act 1960. A central feature in the Act was a rent freeze to prevailing market rents in 1914, which caused a substantial reduction in the value of properties. The Supreme Court of Ireland<sup>132</sup> held that the selective rent freeze applicable to certain dwellings, instead of to all residential tenancies, for an indefinite time is arbitrary and unfair. The court also noted that the basis of subjecting some dwellings to tenancy control but not others was not related to the needs of tenants, resources of landlords or established social or economic necessity.<sup>133</sup> There was also no mechanism in the law for a review of rents or for the landlord to recover possession.

### *Berlin, Germany*

108. In Berlin, Germany, the "*Mietpreisbremse*" or "rental price brake" had been challenged in a local regional court, which held it unconstitutional. On appeal, the Federal Constitutional Court in Karlsruhe held that the said rental price brake was constitutional and ruled that "*it was in the public interest to counteract the displacement of less well-off groups of the population from urban districts in high demand*"<sup>134</sup>. More recently, the rent cap imposed by the Berlin Government, which involves freezing the rents of residential space completed before 2014 since February 2020 at the level effectively agreed by 18 June 2019 and mandating landlords to

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<sup>131</sup> *Kwok Cheuk Kin v. Director of Lands* (2019) at [21]-[24], *S for J v. Yau Yuk Lung* (2007) 10 HKCFAR 335, *Fok Chun Wa v. Hospital Authority* (2012) 15 HKCFAR 409

<sup>132</sup> *Blake v. Attorney General* [1982] 1 IR 117 and *In the matter of Article 26 of the Constitution and in the Matter of the Housing (Private Rented Dwellings) Bill 1981* [1983] 1 IR 181

<sup>133</sup> Threshold National Housing Charity (2015), "Legislative Proposals For the Introduction of Rent Certainty Measures", paras. 7-12

<sup>134</sup> <https://www.thelocal.de/20190820/germanys-constitutional-court-sides-with-tenants-in-rent-control-ruling>

reduce rents that exceed the acceptable rent caps by more than 20% since November 2020, is currently subject to a challenge in the constitutional court<sup>135</sup>.

## USA

109. In New York, the Housing Stability and Tenant Protection Act of 2019, which is referred to by Governor Cuomo as “*the strongest tenant protections in history*”<sup>136</sup>, is also currently under a constitutional challenge<sup>137</sup>. The Act abolishes many “de-controls”, and limits annual rent increases from 6% to 2% only. The challenge goes beyond that of the recent abolishment of “de-controls”, but argues that even before that rent stabilisation is unconstitutional.

110. Meanwhile, in the past, there have been constitutional challenges of tenancy control of various parts of the USA, and the Supreme Court of the USA have upheld such tenancy control. The most common justification for modern rent control laws is the existence of an “emergency”, which is the shortage of affordable rental housing.<sup>138</sup> The courts have shown little interest in determining whether there was really a shortage of affordable housing and deferred the public policy to the government.

111. In *Birkenfeld v City of Berkeley*, the California State Supreme Court accepted mitigating the shortage of affordable rental housing as a legitimate state interest (“a police power”): “*a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare ...[so long as] the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory . . .*”. Further, the court held that constitutionality rested on “*actual existence of housing shortage and its concomitant ill effects of sufficient seriousness to make rent control a rational curative measure*”.<sup>139</sup>

112. It should be noted that in *Birkenfeld*, the rent control in question was struck down by the court, which held that for *indefinite* rent control, it was necessary for there to be a mechanism to provide for adjustments on

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<sup>135</sup> <https://www.dw.com/en/berlin-landlords-forced-to-reduce-rents/a-55704047>

<sup>136</sup> <https://www.amny.com/news/rent-laws-nyc-1-32294666/>

<sup>137</sup> Ferre-Sadurni, L. (2019, July 16), “Landlords Strike Back, Suing to Dismantle Rent Regulation System”, New York Times, and Epstein, R. “Rent Control Laws are Unconstitutional”, Hoover Institution, Stanford University (<https://www.hoover.org/research/rent-control-laws-are-unconstitutional>)

<sup>138</sup> Radford, R. (1995). “Why Rent Control is a Regulatory Taking”. Fordham Environmental Law Journal, 6(3), 755-773.

<sup>139</sup> *Birkenfeld v City of Berkeley*, 550 P.2d 1001, 1024 (1976).

maximum rent without “*a substantially greater incidence and degree of delay than is practically necessary*”. The subject rent control required landlords to individually make an application to increase rent, which was held to be an “*inexcusably cumbersome rent adjustment procedure*”. Subsequently, in *Fischer v City of Berkeley*<sup>140</sup>, the California State Supreme Court upheld the new rent control measures, which included an annual adjustment mechanism based on a formula determined by a rent stabilisation board of commissioners, and an appeal mechanism for those landlords who disagreed.

113. In gist, 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

114. The legal team points out that subletting and licensing may affect the effectiveness of tenancy control on SDUs.

115. In the first place, there is usually no upper limit on the number of occupants within a private sector domestic unit stipulated by land instruments. This means that owners/landlords are at liberty to let, license or otherwise part with possession of a unit to/with as many people as he wishes unless there is a breach of any legislative control, such as that on bedspace apartments.

*Subletting*

116. From the legal perspective, even if there is a clause prohibiting subletting in the head lease, it is only a covenant with the head lessor, and does not affect the validity of the sub-lease as a contract between its two parties. Unless the head lease is terminated or expires, tenants can enter into a valid sub-lease as a landlord despite the presence of anti-subletting clauses in the head lease.

117. In reality, the operation of SDUs can be quite complicated. The leasing structure of an SDU can be constituted by several layers of subletting. The leasing structure may be intentionally created for various commercial reasons involving many stakeholders. A subletting arrangement may also be used to hide the true identity of a party, or as an

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<sup>140</sup> (1984) 37 Cal. 3d 644



attempt to evade liability or enforcement actions. By way of separate legal personalities and privity of contract, different layers of tenancy are governed by different sets of rights and obligations binding on different parties. The tenant in each lease or sub-lease is *prima facie* held accountable to his immediate landlord under the terms set out in their own lease. The presence of “leasing agents”, who may be a contracting party to the head lease, may complicate the matter further. They may make alterations to the premises and enter into leases without true authority from the owner/landlord. SDU tenants may not know who the “true” landlord is because all dealings are conducted through the agent.

118. A landlord may dictate a sub-lease through his lessee, often being a limited company or an agent under his control, so that he is at liberty to terminate the head lease (mainly through the exercise of break clause) and destroy all leasehold interests created under a sub-lease. No relief would be available to the lessee or under-lessee. Where the head lessor and head lessee belong to the same group, the terms of the head lease are often already determined heavily in favour of the head lessor, e.g. presence of break clause, when sub-leases are signed. In practice, many SDU tenants, being under-lessees, often do not have any knowledge of such terms; and even if they do, they do not have the bargaining power to vary the same or refuse to enter into the sub-leases. On the other hand, there are instances where the owner/landlord of SDUs has no or little knowledge or does not care much about whether the premises have been sublet as SDUs and how the sub-leases are being operated.

119. All told, subletting may pose serious difficulties in enforcing tenancy control. 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. Head leases are often executed to include multiple units or even an entire floor (or building) at a longer term and at a nominal rent (with profits being shared by other means such as dividend payment). In many cases, head leases (and their profit-sharing agreements) may be part of a larger commercial transaction. Contractually, the terms of head leases may not show an intention that the premises shall be used (or sublet) as SDUs *per se*. Some head leases may even contain anti-subletting clauses (at least on the face of the lease). It is only the subletting arrangement *subsequently* made by the head lessee that would render the subject premises to become subject to SDU tenancy control. It would be highly unsatisfactory if the law operates “retrospectively” to regulate head leases which were mostly executed *before* the SDU sub-leases come into

existence. It may also be unfair to mandatorily impose any obligation on the head lessor who has sought to expressly prohibit subletting and/or operation of SDUs in the first place. In reality, some owners/landlords may indeed not have sufficient knowledge or control over the conduct of their lessees within the premises.

120. Noting the above, the legal team and the Task Force have considered whether it might be feasible to take 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. After careful consideration, as we do not have a full grasp of accurate information about the number and percentage of SDUs in the market that are being sublet, the legal team and the Task Force are concerned that this would be a highly precarious move as it may possibly cause a fundamental disruption to the SDU rental market. In particular, the registered owner of the unit in which the SDU is situated may not be willing to enter into a direct lease with the SDU tenant for his own reasons, thereby potentially leading to a substantial reduction in the supply of SDUs. In addition, due to practical difficulties with enforcement, a “black market” of subletting is expected to thrive. Any future tenancy control regime concerning SDUs, if implemented, should therefore incorporate measures to address the problem caused by subletting so that the effectiveness of tenancy control would not be substantially undermined.

### *Licensing*

121. 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. For example, the SDU operator may enter into “lodging” or “boarding” agreements assigning rooms to the occupants for a period exceeding 28 days<sup>141</sup>, and the rooms are *re-assignable* at will by the operator<sup>142</sup>. Such arrangement is common in “capsule residences”. As a result, these “licences” may not be regarded as “leases” and thus fall outside the scope of tenancy control.

122. 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.

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<sup>141</sup> For the sake of evading compliance requirements under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349)

<sup>142</sup> By reason that “exclusive possession” is the defining hallmark of a lease: *Street v. Mountford* [1985] AC 809

Under common law, the three requirements for a lease are exclusive possession, rental payable and a term that is certain, and the court looks at the substance of the agreement and not its label.<sup>143</sup> Further, in *Bruton v London & Quadrant Housing Trust* [1999] UKHL 26, notwithstanding that the housing trust in question only had the authority from the local government to grant short-term licences to occupiers, the court held the housing trust to have granted exclusive possession to the occupiers and hence created a contractual tenancy. Hence, his capacity to grant a tenancy does not come into question, as whether it is a tenancy or licence would depend on the relationship between the parties. Nevertheless, it would be important that if tenancy control on SDUs is to be implemented, public education should be enhanced to help potential SDU tenants become aware of the differences between a contract of licence and a tenancy.

(e) Difficulties in imposing “habitability” and “repair” obligations

123. 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. The implied obligation to give the tenant “quite enjoyment” at *common law* does not generally impose any positive duty on the landlord to conduct repairs or ameliorate a problem which occurs during the lease. The rationale behind is -

- (a) a tenant rents a premises “as is” at the handover, and would be assumed to be content about its condition by conducting inspections before entering into a lease;
- (b) very often, any adverse conditions, such as dampness and presence of vermin, are assumed to have been reflected in the level of rent agreed;
- (c) risk passes once the tenant takes possession. After commencement of a tenancy, a landlord would no longer have much degree of supervision and control over the premises. It is also considered justifiable and convenient that the tenant shall undertake to sort out minor problems since they will be within his reach and capability; and

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<sup>143</sup> Ibid

- (d) it is often difficult to prove who is at “fault” for defects that emerge later, and whether the property damage was caused by the tenant’s negligence, misuse or “waste”.

124. Even 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. This may vary greatly amongst tenants of different sensitivity, tolerance and needs, etc. The living conditions amongst SDUs can also vary greatly. In the UK, attempts had been made to define “*fitness for human habitation*” by introducing a series of factors to be determined by local councils, and to require such to be provided by landlords on an ongoing basis.<sup>144</sup> Yet, the provision has invited more questions and there are ongoing debates over what is exactly meant by “*reasonably suitable for occupation*”. 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”

125. 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”. If the landlord and the tenant failed to reach an agreement on the rent payable, they might seek the determination of the Lands Tribunal. 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, such as its size, location (within the unit), ventilation/lighting, sanitary condition, headroom, sound-proofing and state of repair, any independent/shared bathroom, any separate kitchen, any dampness or smell, any shared amenities, etc. 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, is very costly for SDU tenants who have limited financial means, and may result in “rent-chasing” by landlords which would not bring any real benefits to the tenant.

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<sup>144</sup> Housing Act 1985 Section 606

## **Chapter 8 Guiding Principles of Tenancy Control on SDUs in Hong Kong**

126. Following the work in the past months, the Task Force has obtained a deeper understanding of the current situation of SDUs and problems being faced by SDU tenants. The Task Force visited different types of SDUs in various districts, and had direct exchanges with SDU tenants. A series of online meetings were conducted with a total of 37 concern groups, and two public forums were held in October and November 2020 to gauge the views of around 120 stakeholders and members of the public. At the same time, the Task Force has appointed Policy 21 to conduct a comprehensive survey on the SDUs in Hong Kong and obtain updated information on the number of SDUs and the socio-economic characteristics of SDU tenants following the last comprehensive survey conducted by the C&SD in 2016. The key findings and observations have been set out in Chapter 3.

127. Meanwhile, the Task Force and its three working groups have held in-depth discussions on issues relating to tenancy control on SDUs from the social, legal and economic perspectives. The Task Force has also studied the three respective thematic researches conducted by Policy 21, the legal team from the Faculty of Law of HKU and Professor Terence Chong of the Department of Economics of CUHK respectively. The findings and observations of the three researches have been incorporated in the preceding chapters of this report.

128. On the basis of previous discussions and making reference to the report of the three thematic researches, the Task Force agrees 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) As advised by the legal team and as elaborated in paragraphs 104 to 106 in Chapter 7, 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 (see paragraphs 84, 85 and 98 to 103 in Chapter 7). For example, any measure seeking to artificially suppress the rentals of SDUs to levels which are substantially below their market levels, apart from being susceptible to legal challenge, would likely reduce the incentive and willingness of landlords to lease out their premises, possibly 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.

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 there is no available legal tool to forestall such pitfalls, such as imposition of a temporary rent freeze before the enactment of the relevant legislation. And even if the legal issues could be resolved, practically given that quite a number of SDU tenancies are oral tenancies, the SDU rentals may include miscellaneous fees and charges which make it difficult to determine the actual “rent” level, and the landlords can terminate the tenancy within a short period of time in the case of monthly periodic tenancies, implementation of a temporary rent freeze is hardly feasible (see paragraph 102 in Chapter 7).

- (d) Currently, subletting in the SDU market is prevalent. The head lessor may sublet SDUs through a head lessee under his control,

and destroy all leasehold interests created under a under-lease by terminating the head lease, thereby creating difficulties in enforcing tenancy control, particularly in respect of security of tenure (see paragraphs 114 to 120 in Chapter 7).

- (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. In addition, with the Government making its best endeavours to increase the supply of public and transitional housing, including striving to achieve the target of providing 15 000 transitional housing units by 2022-23, the issue of SDUs should hopefully be gradually ameliorated in the future.

## Chapter 9 Recommendations of the Task Force

129. In the light of the discussions in the past months and having made reference to the reports of the three thematic researches, 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, whilst carefully balancing the interests between landlords and tenants.

130. Taking heed of the advice of the legal team, the Task Force 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. The recommendations of the Task Force are set out in the ensuing paragraphs.

### *Scope of regulation*

131. 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 huts, 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.

132. That said, 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 also require tenancy protection. The Task Force also notes the general views of the public, concern groups and Legislative Council Members 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.**

133. While SDUs are commonly used in the community to refer to those smaller individual units subdivided from a flat for rental purpose, the Task Force recognises the complexity and challenges in defining SDUs in legal terms. It would defer to the Government to come up with an appropriate legal definition of SDUs in the future legislation, bearing in mind the intention to cover as many SDUs as possible.

134. SDUs may be let for non-domestic purposes (such as storage). 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 and apportionment of electricity and water charges***

135. The Task Force notes that not all SDU tenants have a tenancy agreement and even if there is a tenancy agreement, it often lacks important terms thus failing to offer sufficient protection for SDU tenants. 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 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.

136. 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.

137. On the apportionment of water and electricity charges amongst SDU tenants of the same unit in the absence of individual meters installed by the two power companies or the Water Supplies Department, the Task Force has considered whether it is feasible and desirable to mandate in the law a certain apportionment method. However, the Task Force finds that it would be extremely difficult to do so because a method considered to be “fair and reasonable” in one case may not be necessarily so in another. Designating a specific method to be applied across the board will also lack flexibility for the landlord and tenant to agree on a method that can suit their circumstances. Therefore, after careful consideration, the Task Force is of the view that it would be more appropriate to defer to the SDU

landlord and tenant to discuss and agree amongst themselves on a suitable and acceptable apportionment method. Some possible ways may include, for example, apportionment based on the number of SDUs in the unit, the floor areas of the SDUs, the number of occupants of the SDUs, etc.

138. The Task Force notes that there is suggestion that an SDU tenant be allowed to quit a tenancy at any time during the tenancy period once he is allocated public rental housing. Whilst the Task Force recognises that this would offer the tenant the maximum flexibility, this might disproportionately harm the interests of the landlord as the landlord could not have the certainty of being able to earn rental income for a minimum period under the tenancy agreement. On the other hand, the proposal to allow an SDU tenant to quit after 12 months into the tenancy is in line with the prevailing general market practice for the landlord and the tenant's entering into "one-year-fixed" and "one-year-open" tenancy agreements, and would not affect the liberty of the landlord and the tenant to terminate the tenancy agreement at any time during the tenancy period subject to mutual agreement. The Task Force therefore considers that the current proposal has struck a reasonable balance between the interests of the landlord and the tenant.

### *Offences and penalties*

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

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- (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.

140. 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, e.g. if an SDU landlord fails to give a rent receipt to his tenant or if he harasses his tenant by unlawfully depriving him of occupation of the premises, doing any act calculated to interfere with the peace or comfort of his tenant, or

persistently withdrawing or withholding services reasonably required for occupation of the premises as a dwelling.

### *Security of tenure*

141. The Task Force notes that there is strong public demand and support that SDU tenants be afforded a certain degree of security of tenure to protect them from arbitrary eviction by the landlord. At the same time, the Task Force is mindful of the need to ensure that any proposal is legally sound in the sense that it would not disproportionately infringe on the SDU owner's private property rights whilst providing enhanced protection for SDU tenants.

142. Having regard to the need to balance the interests of SDU landlords and tenants, 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**. This period is recommended taking into consideration the need to refrain from imposing an unduly heavy burden on the SDU landlord on one hand, and the survey findings that around 56% of SDU households have lived in the current SDU for more than two years (see paragraph 35 in Chapter 3) and the average waiting time for general applicants for public rental housing was 5.7 years as at end-December 2020<sup>145</sup> on the other. The Task Force considers 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.

143. 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. 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 a 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.

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<sup>145</sup> <https://www.housingauthority.gov.hk/en/about-us/publications-and-statistics/prh-applications-average-waiting-time/index.html>

### ***Rent regulation on tenancy renewal***

144. The Task Force notes that there is strong demand and support that the rate of rent increase be regulated so as to protect SDU tenants from arbitrary rent increases by the landlord and to lower their rental burden. The Task Force also notes the survey findings indicating that the monthly rent per sq. m. of SDUs can be far higher than that of a domestic flat (see paragraph 41 in Chapter 3).

145. Having considered the need to balance the interests of SDU landlords and tenants, the Task Force recommends setting a cap on the rate of rent increase between the original regulated tenancy and the renewed regulated tenancy, so that an SDU landlord cannot arbitrarily increase the rent to an unreasonably high level upon tenancy renewal. 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. Consideration has also been given as to whether it is desirable to simply adopt an absolute percentage as the cap.

146. The Task Force notes that there are calls to cap the rate of rent increase by the movement in the Consumer Price Index. It does not recommend adopting this approach as it would render any long-term investment in the SDU market unattractive given that under such a stringent tenancy control regime, an SDU landlord would be unable to earn any real gain or profit from leasing out his SDU beyond the rate of inflation. This would significantly lower the incentive of SDU landlords to rent out their premises, which may cause a substantial reduction in the supply of SDUs, thus driving up rentals and making it ever more difficult for the most vulnerable tenants to find an SDU.

147. The Task Force considers that the Government may adopt a relevant private domestic rental index of the RVD, e.g. the rental index for all classes of private domestic properties, as the cap. This proposed approach would help rein in the 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 in line with the general yield expected from the prevailing private domestic rental market. In this regard, the Task Force has further looked into the past trend of the rental index for all classes of private domestic properties published by the RVD in the past 20 years as set out in the table below.

<b>RVD's Private Domestic Rental Index (All Classes)<sup>146</sup></b>		
<b>Year</b>	<b>Index</b>	<b>% change as compared to two years ago</b>
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%
<b>2008</b>	<b>115.7</b>	<b>26.3%</b>
2009	100.4	-1.4%
2010	119.7	3.5%
<b>2011</b>	<b>134.0</b>	<b>33.5%</b>
<b>2012</b>	<b>142.6</b>	<b>19.1%</b>
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 ( <i>provisional figure</i> )	180.3	-6.6%

148. It is observed that while the biennial change in the index has fluctuated over time, 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 Task Force considers that in order to offer SDU tenants more effective protection against any unduly high level of rent increase as a result of huge rental movement in the private residential market, it is necessary to further impose an absolute percentage cap at a suitable level on top on the rental index of the RVD. Taking into account the above, 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%,**

<sup>146</sup> [https://www.rvd.gov.hk/en/property\\_market\\_statistics/index.html](https://www.rvd.gov.hk/en/property_market_statistics/index.html). RVD began compilation of this index in 1981.

**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.**

149. The Task Force notes that there are suggestions for the Government to regulate the “initial rent” of tenancies or impose a rent freeze 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, such as their size, orientation, lighting, ventilation, noise level, whether there is any independent toilet/kitchen, the facilities provided by the landlord in the SDU, the sanitary and repair conditions of each SDU, etc. 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. In addition, on the imposition of a rent freeze, tossing aside whether the suggestion is legally sound and whether there are suitable legal tools available to do so, the prevalence of oral tenancy agreements in the SDU market would make it almost impossible to determine the levels at which the rents of such SDUs should be frozen.

### ***Subletting***

150. As mentioned in the preceding chapters, subletting of SDUs is believed to be prevalent. When the head lease expires or is terminated, the under-lease in respect of the SDU would end notwithstanding that the term is fixed for two years. This would pose an impediment to the enforcement of security of tenure. While 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 to the detriment of SDU tenants, the Task Force recommends that the future SDU tenancy control regime should incorporate suitable measures to address this problem so that the interests of the affected tenants could be suitably protected and the effectiveness of the proposed tenancy control would not be undermined. 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***

151. To ensure that the proposed tenancy control measures would be effectively administered and could bring real benefits to SDU tenants, the Task Force recommends that the Government should **increase resources for the RVD** to promote public awareness of the new regulatory regime and the rights and obligations of the landlord and tenant thereunder; to handle an expected large number of enquiries from SDU landlords and tenants on the new legislation; to provide advisory and mediatory services on tenancy matters, e.g. how SDU landlords and tenants may resolve tenancy disputes, and the avenues of redress in case of unresolved disputes; 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.

152. Apart from legislative controls, the Task Force suggests that certain administrative measures should also be implemented to provide further protection for the interests of SDU tenants. For example, some SDU tenants may easily fall prey to exploitation due to inadequate rental information in the market. The Task Force recommends that an NGO may be entrusted by the Government to set up and run an **SDU rental information portal** so as to enhance the accessibility of information relating to the rental market of SDUs to the general public, including the prevailing rental levels, supply of SDUs in different districts, rights and obligations of SDU landlords and tenants under the proposed tenancy control regime, etc., in order to facilitate the implementation of the proposed tenancy control measures and help grass-root SDU tenants secure a more reasonable rent level. The appointed NGO may also be engaged to arrange briefing sessions at the district level, and to provide the necessary support for SDU landlords and tenants, e.g. mediatory services and advice on the avenues of redress available in the event of disputes.

153. 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*

154. 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 adverse impact on the supply of SDUs and without having adequate public and transitional housing at this stage to accommodate people who may be displaced as a result, the Task Force considers that it would be more prudent for the Government to first assess the effectiveness of the tenancy control measures proposed above after their implementation for some period, and revisit the case for introducing a licensing system if needed.

155. The Task Force also notes that there is suggestion that making reference to the experience of some overseas countries or places, such as Germany and New York City, SDU landlords may be allowed to raise the rent further after major renovations and maintenance of their SDUs so as to motivate them to provide routine maintenance on their properties. The Task Force is concerned that this may create a loophole for landlords to circumvent rent regulation. It would also be very difficult to determine the maximum level of allowable rent increase for this purpose which would on the one hand motivate the landlord to maintain the premises and on the other hand be acceptable to the tenant, not to mention the prohibitively high administrative costs for enforcement. The Task Force is therefore more inclined to recommend the Government to look into this suggestion over the longer term, particularly in the light of how the market would react following the implementation of the proposed tenancy control measures.

156. All in all, if the Government adopts the Task Force's proposed tenancy control measures on SDUs, it should monitor their implementation and review their effectiveness. 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 and an increase in rentals due to the landlord's transfer of the relevant compliance costs to tenants who have weak bargaining power.

### ***Sanitation and safety of SDUs***

157. As mentioned in paragraph 6 in Chapter 2, Task Force members have visited SDUs in various districts to have a first-hand understanding of the actual situation of SDUs. While 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. The COVID-19 pandemic has exposed the environmental hygiene issue of those buildings in which the SDUs are situated, such as misconnection and dilapidation of the drainage pipes which pose a serious health hazard to those living in SDUs.

158. As noted in paragraph 154 above, 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 as it may jeopardise the supply of SDUs which now provide the much-needed accommodation for some low-income families and individuals. Notwithstanding this, 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.

159. Meanwhile, the Task Force is pleased to note that the Government would earmark \$1 billion to provide subsidies for owners of more than 3 000 old buildings with relatively low rateable values to carry out drainage repair or enhancement works. For buildings with owners having difficulties in organising the works by themselves, such as "three-nil" buildings, the Buildings Department will exercise its power under the Buildings Ordinance to carry out the works in default of their owners in an orderly manner based on the risk profile. As for fire safety, the

Government would also consider amending the Fire Safety (Buildings) Ordinance to empower the Fire Services Department and the Buildings Department to carry out fire safety improvement works for owners of old buildings who are incapable of complying with the requirements of the Ordinance, and to recover the costs incurred from such owners upon completion of the works. The Task Force is of the view that these measures would help improve the conditions of the buildings in which many SDUs are situated.

## **Chapter 10 Conclusion**

160. The Task Force thanks members of the community and stakeholders for providing valuable inputs and suggestions on issues related to SDUs in general and tenancy control in particular throughout the course of the study. The proposed tenancy control measures, if adopted, could offer the much needed protection to SDU tenants, not least in providing an appropriate degree of security of tenure to tenants, restraining the level of rent increase and preventing landlords from overcharging tenants utility fees.

161. The Task Force fully agrees that 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 to address the housing needs of low-income families. 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. This should help the Government achieve the target of providing 15 000 transitional housing units by 2022-23.

162. The Task Force also supports the Government to provide cash allowance on a trial basis to eligible general applicant households not living in public housing, not receiving the Comprehensive Social Security Assistance and who have waited for public rental housing for more than three years until they are offered the first allocation, so as to alleviate the difficulties on livelihood faced by grass-root families who have been waiting for public rental housing for a prolonged period of time, many of whom are living in SDUs. With the Government's objective to start receiving applications in mid-2021 and disbursing cash allowance from July 2021 onwards, the Task Force hopes that the proposed tenancy control on SDUs can be implemented as soon as possible so that SDU tenants can really benefit from the cash allowance scheme.

163. The Task Force hopes that with the vigorous efforts of the Government to increase the supply of public and transitional housing, the SDU problem would be ameliorated gradually over time. In the meantime, the proposed tenancy control on SDUs could offer suitable protection for SDU tenants. In the event that the SDU problem persists or even gets worse in the longer term, the Government should review

whether more stringent tenancy control measures on SDUs are warranted.

**Secretariat for the Task Force for the Study  
on Tenancy Control of Subdivided Units  
Transport and Housing Bureau  
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