



處理出租「規管租賃」的新指引 New guidelines on handling the letting of “regulated tenancies”

就公眾關注有關保障基層租客的利益，政府推出《業主與租客（綜合）條例》（《條例》）第IVA部下對分間單位（俗稱「劏房」）的新租務管制制度，並已於2022年1月22日起生效。

由於地產代理有可能處理受《條例》第IVA部所規管的分間單位租賃（即「規管租賃」），監管局發出新的執業通告22-01（CR）（「執業通告」）以制定指引讓持牌人遵從，並與《條例》第IVA部同日生效。今期《專業天地》將會為持牌人講述新指引的重點。

In response to public concern on protecting the interest of grass-root tenants, the government implemented a new tenancy control regime on subdivided units (“SDUs”) under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (“Ordinance”) which came into effect on 22 January 2022.

Since estate agents may handle tenancies relating to SDUs which are subject to Part IVA of the Ordinance (i.e. “regulated tenancies”), the Estate Agents Authority (“EAA”) issued a Practice Circular (No. 22-01 (CR)) (“Circular”) setting out the relevant guidelines for licensees to follow, which also came into effect on the same date as Part IVA of the Ordinance. In this issue of Horizons, we will introduce the gist of the new guidelines to licensees.

規管範圍

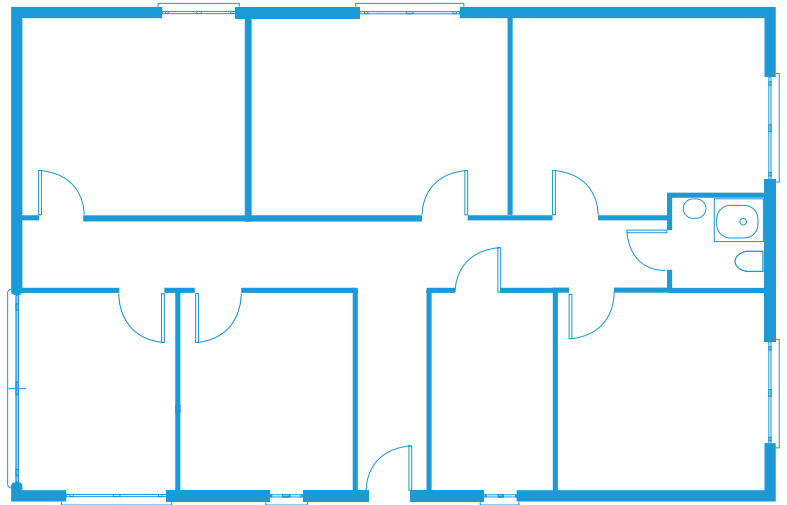
簡單而言，《條例》第IVA部涵蓋在住宅/綜合用途樓宇內及工/商業大廈內的分間單位。然而，由於「寮屋」以及新界豁免管制屋宇並不是根據建築圖則所建造或經改動以供使用，故不受《條例》第IVA部所涵蓋。

指引重點

在處理分間單位的「規管租賃」時，持牌人須向準租客披露他們在交易中的行事身份。他們須向準租客披露其所屬的地產代理公司是只代表業主行事；只代表租客行事；抑或同時代表業主及租客雙方行事。

此外，持牌人在安排立約方訂立租賃協議前，必須向客戶解釋《條例》第IVA部的主要規定，包括有關租住權保障和租金規管及每項「規管租賃」隱含的強制性條款的規定。持牌人亦須向其客戶提供強制性條款摘要之副本。

儘管《條例》第IVA部規定「租賃」是指以口頭或書面達成的租賃，持牌人應建議客戶以書面達成「規管租賃」，以便清楚反映雙方



Scope of the regulation

Generally speaking, Part IVA of the Ordinance covers SDUs of domestic/composite buildings, or industrial/commercial buildings. However, “squatters” and New Territories Exempted Houses are not covered under Part IVA of the Ordinance as they are not buildings or structures constructed or adapted for use in accordance with a building plan.

Gist of the Guidelines

When handling “regulated tenancies” of SDUs, licensees must inform prospective tenants of their capacity in the transaction. They must disclose to the prospective tenants whether their estate agency company acts only for the landlord; only for the tenant; or for both the landlord and the tenant.

In addition, licensees are required to explain the key requirements under Part IVA of the Ordinance, including those relating to the security of tenure and rent regulation, and the mandatory terms to be implied for every “regulated tenancy” to the clients before arranging for them to enter into the tenancy agreement. Licensees are also required to provide a copy of the summary mandatory terms to the clients.

Although part IVA of the Ordinance provides that “tenancy” means a lease entered into orally or in writing, licensees should advise



協議的內容，並須告知他們有關租賃協議不應載有與租住權保障和租金規管規定及每項「規管租賃」隱含的強制性條款不一致的條文。

違反《條例》第IVA部的規定有可能觸犯法例。因此，持牌人必須提醒客戶相關的罪行和罰則。為便利業主遵守相關法定要求，在分間單位的「規管租賃」中代表業主行事的持牌人，應（除非業主客戶以書面方式表示他將直接處理該事宜）於簽訂租賃協議後安排將租賃協議加蓋印花，並安排向差餉物業估價署（「差估署」）署長提交租賃通知書（表格AR2），通知他有關租賃的詳情。

為使持牌人更熟悉新指引，監管局已舉辦相關的持續進修專業進修講座，稍後會將相關錄影上載至監管局網站供大家重溫。同時，局方已在監管局網站刊登相關的「問與答」供持牌人參考。至於有關《條例》第IVA部新租務管制制度的詳情及相關表格，持牌人應瀏覽差估署的網頁。



為避免引起任何爭拗，監管局建議持牌人向客戶取得書面確認，說明持牌人已告知客戶有關執業通告中提及的相關事項及已提供每項「規管租賃」隱含的強制性條款摘要副本。倘若客戶對《條例》第IVA部有任何疑問，持牌人應建議他們向差估署查詢及/或考慮尋求法律意見。

their clients to enter into a “regulated tenancy” in writing to clearly reflect the contents of the parties’ agreement. Moreover, they must advise clients that the tenancy agreement should not contain provisions which are inconsistent with the security of tenure and rent control requirements under the Ordinance and the mandatory terms implied for every “regulated tenancy”.

Non-compliance with the requirements under Part IVA of the Ordinance may constitute an offence. Therefore, licensees are required to draw their clients’ attention to the relevant offences and penalties. To facilitate the landlord’s compliance with the relevant statutory requirements, licensees who act for the landlord in a “regulated tenancy” of an SDU should (unless the landlord client has otherwise indicated in writing that he/she would handle the matter directly) arrange for the stamping of the tenancy agreement after it has been entered into and the submission of the relevant Form AR2 to notify the Commissioner of Rating and Valuation of the particulars of the tenancy.

In order to familiarise licensees with the new guidelines, the EAA has organised relevant continuing professional development seminars already and related video recordings will be uploaded to the EAA website later. The EAA has also published a set of “Questions and Answers” on the EAA website for licensees’ reference. For details of the new tenancy control under Part IVA of the Ordinance and related Forms, licensees should refer to the webpage of the Rating and Valuation Department (“RVD”).



In order to avoid any disputes, licensees are advised to obtain written acknowledgement from their clients stating that the licensee has informed them of the relevant matters set out in the Circular and the licensee has provided them with a copy of the summary mandatory terms implied for every “regulated tenancy”. If clients are in doubt of matters related to Part IVA of the Ordinance, licensees should advise them to make enquiry with the RVD and/or consider seeking legal advice.

