



Circular

Circular No. 22-01 (CR)

Guidelines on handling the letting of subdivided units under Part IVA of the Landlord and Tenant (Consolidation) Ordinance:

- **Inform prospective tenants of licensees' capacity in the transaction.**
- **Explain the key requirements under Part IVA of the Landlord and Tenant (Consolidation) 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.**
- **Provide clients with a copy of the summary mandatory terms implied for every "regulated tenancy".**
- **Advise clients to enter into a "regulated tenancy" in writing in order to clearly reflect the contents of the parties' agreement.**
- **Advise clients that the provisions of the tenancy agreement should not contain provisions which are inconsistent with the security of tenure and rent regulation requirements, and the mandatory terms implied for every "regulated tenancy".**
- **Invite clients to make enquiry with the Rating and Valuation Department and/or consider seeking legal advice, where necessary.**
- **Draw clients' attention to the relevant offences and penalties relating to "regulated tenancies".**

Letting of Subdivided Units under Part IVA of the Landlord and Tenant (Consolidation) Ordinance

This circular sets out guidelines regarding the handling of tenancies which are domestic tenancies in respect of subdivided units ("SDUs") that are subject to the tenancy control regime under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) ("Ordinance"). This circular is issued in light of the requirements under Part IVA of the Ordinance, and shall take effect on 22 January 2022. Circular No. 05-01 (CR) will become obsolete and will no longer be in force on the same date.

Scope of Regulation

- (2) A tenancy would be subject to the tenancy control regime under Part IVA of the Ordinance (i.e. a “regulated tenancy”) if:
- (a) it commences on or after 22 January 2022;
 - (b) it is a domestic tenancy;
 - (c) the subject premises of the tenancy are an SDU;
 - (d) the tenant is a natural person;
 - (e) the purpose of the tenancy is for the tenant’s own dwelling; and
 - (f) it is not one of the tenancies specified in Schedule 6 to the Ordinance¹.

Meaning of SDU

- (3) According to Part IVA of the Ordinance, “SDU” means premises that form **part of a unit of a building**² and “unit” in relation to a building means premises of the building falling within either or both of the following descriptions: (a) premises that are demarcated or shown as a separate unit (however described) in the building plan of the building; (b) premises that are referred to in the deed of mutual covenant³ of the building as a unit (however described) the owner of which is entitled to its exclusive possession, as opposed to the owners or occupiers of other parts of the building.
- (4) To put it in simple terms, the scope of regulation under Part IVA of the Ordinance covers SDUs in domestic/composite buildings

¹ These include a tenancy of which the landlord is the employer and the tenant is the employee in possession of the premises in accordance with the terms and conditions of the tenant’s employment, being terms and conditions requiring the tenant to vacate the premises on ceasing to be so employed; and a tenancy (i) which is not a sub-tenancy; (ii) the subject premises of which are a bedroom (as defined in Schedule 6 to the Ordinance) in a unit; and (iii) the landlord of which is a natural person and residing in the unit at the commencement of the tenancy etc.

² Under Part IVA of the Ordinance, “building” means a building or structure constructed or adapted for use in accordance with a building plan, where “building plan” means a plan (i) approved by the Building Authority under the Buildings Ordinance (Cap. 123); or (ii) prepared by the Hong Kong Housing Authority in relation to a building to which the Buildings Ordinance (Cap. 123) does not apply under section 18(2) of the Housing Ordinance (Cap. 283).

³ Under Part IVA of the Ordinance, “deed of mutual covenant”, in relation to a building, means a document that defines the rights, interests and obligations of owners of the building among themselves and that is registered in the Land Registry.

as well as industrial/commercial buildings. However, it would not cover “squatters” and New Territories Exempted Houses⁴, as they are not buildings or structures constructed or adapted for use in accordance with a building plan⁵.

- (5) In case of doubt as to whether a tenancy is a “regulated tenancy” for the purposes of Part IVA of the Ordinance, enquiries can be made via a hotline (2150 8303) set up by the Rating and Valuation Department (“RVD”)⁶.

Handling “Regulated Tenancies” of SDUs

- (6) Licensees should take note of the following paragraphs (7) to (16) below when handling “regulated tenancies” of SDUs.

Capacity to Act

- (7) Licensees must, at the first opportunity after they have successfully established contact with a prospective tenant⁷, disclose to the prospective tenant whether their estate agency company⁸ acts: (a) only for the landlord⁹; or (b) only for the tenant¹⁰; or (c) for both the landlord and the tenant.
- (8) In the case of dual agency, licensees shall as soon as is practicable disclose to the tenant and the landlord the respective amount or rate of commission or remuneration to be received from the relevant landlord and tenant separately (as the case may

⁴ Commonly known as “village houses”.

⁵ In the absence of a building plan, it would be impossible to delineate the boundary of a “unit” and hence determine whether the premises of the subject tenancy are an SDU.

⁶ Licensees should read the information provided by the RVD on its website with respect to “regulated tenancies” of SDUs and relevant frequently asked questions. See also paragraph (17) below.

⁷ A prospective tenant includes a flat viewer of an SDU for the purpose of this circular.

⁸ The term “estate agency company” refers to the firm or company which is a licensed estate agent under the Estate Agents Ordinance.

⁹ Under Part IVA of the Ordinance, “landlord” includes any person (other than the Government) who is, from time to time, entitled to receive rent in respect of any premises and, in relation to a particular tenant, means the person entitled to receive rent from that tenant.

¹⁰ Under Part IVA of the Ordinance, “tenant” includes a sub-tenant but does not include a Government lessee.

be).

- (9) If the licensee (i) holds himself out as an estate agent¹¹; and (ii) is also the landlord or the appointed attorney/representative of the landlord in respect of the prospective “regulated tenancy”, he must inform the prospective tenant of such fact.
- (10) Licensees must inform the prospective tenant of the matters mentioned in paragraphs (7), (8) and (9) above (where applicable) in writing and obtain their written acknowledgement that they are aware of such arrangements.

Tenancy Agreement

- (11) Although Part IVA of the Ordinance provides that “tenancy” means a lease entered into orally or in writing, licensees:
- (a) should advise clients to enter into a “regulated tenancy” in writing in order to clearly reflect the contents of the parties’ agreement; and
 - (b) must advise clients that the tenancy agreement should not contain provisions which are inconsistent with the security of tenure and rent regulation requirements under the Ordinance as mentioned in paragraph (12) below and the mandatory terms implied for every “regulated tenancy” as mentioned in paragraph (13) below.

Security of Tenure and Rent Regulation under Part IVA of the Ordinance

- (12) Before arranging for the parties to enter into a “regulated tenancy” in respect of an SDU, licensees¹² are required to explain to the clients the following key requirements under Part IVA of the Ordinance:
- (a) a regulated cycle of tenancies for an SDU is to comprise

¹¹ Irrespective of whether he is a holder of a salesperson's licence or an estate agent's licence.

¹² Whether acting for both the landlord and the tenant; or only the landlord or the tenant singly.

two consecutive “regulated tenancies” for the SDU (i.e. the first term tenancy and second term tenancy), each for a term of two years. A tenant of a first term tenancy for an SDU is entitled to be granted a second term tenancy of the regulated cycle for the SDU, thus enjoying a total of four years of security of tenure;

- (b) a tenant of a “regulated tenancy” (be it a first term tenancy or a second term tenancy) may, by giving the landlord not less than 30 days’ prior notice in writing, terminate the tenancy. However, the date of termination must not be a date earlier than the last day of the first year of the term. This does not limit any rights of the tenant to terminate the tenancy by notice under the tenancy;
- (c) a landlord of a “regulated tenancy” (be it a first term tenancy or a second term tenancy) may not terminate the tenancy before the expiry of the term despite any provision of the tenancy that purports to do so¹³; and
- (d) the amount of rent payable by a tenant of a “regulated tenancy” may not be increased during the term of the tenancy but can be reduced by the landlord during the term of the tenancy. Any adjustment in the amount of rent for the second term tenancy must be in accordance with the rent regulation mechanism under the Ordinance¹⁴.

Mandatory Terms Implied for Every “Regulated Tenancy”

- (13) As certain mandatory terms (as set out in Schedule 7 to the Ordinance) are to be impliedly incorporated into every “regulated tenancy” and would bind the parties, licensees are

¹³ However, the landlord may terminate the tenancy by notice or enforce a right of re-entry or forfeiture under the circumstances specified in section 120AAZI(2) of the Ordinance (e.g. the landlord may enforce a right of re-entry if the tenant fails to comply with any of the tenant’s obligations under the implied terms of the tenancy).

¹⁴ Specifically, the rate of rent increase for the second term tenancy **must not be more than** (i) the percentage change in the territory-wide rental index for all classes of private domestic properties compiled and published by the RVD during the relevant period as ascertained in accordance with the formula provided in section 120AAZE(2) of the Ordinance; or (ii) 10%, whichever is the lower. Also, if the relevant percentage change is a negative figure, the rent for the second term tenancy must be reduced at least by that percentage.

required to:

- (a) explain to the clients the meaning of each mandatory term implied for every “regulated tenancy” as set out in Schedule 7 to the Ordinance;
- (b) provide the clients with a copy of the summary mandatory terms implied for every “regulated tenancy” as set out in the **Annex**; and
- (c) invite the clients to contact the RVD if they have questions concerning the regulatory regime under Part IVA of the Ordinance, or recommend them to consider seeking legal advice if they do not understand any part of the explanation given under paragraph (13)(a) above.

Offences and Penalties

- (14) Licensees are required to draw the clients’ attention that it would constitute an offence¹⁵ under the Ordinance if:
- (a) the landlord or any person unlawfully deprives a tenant of occupation of the SDU¹⁶;
 - (b) the landlord requires the tenant to pay, or the landlord otherwise receives from the tenant, monies other than the rent, rental deposit¹⁷, reimbursement of charges for any of the utilities and services¹⁸ specified by Part IVA of the Ordinance, and damages for the tenant’s breach of the tenancy¹⁹; or

¹⁵ The maximum penalties for a person who commits an offence under paragraph (14)(a) are fine of \$1,000,000 and imprisonment for three years; and the maximum penalty for a person who commits an offence under paragraph (14)(b) or paragraph (14)(c) is fine of \$25,000.

¹⁶ For details, please refer to section 120AAZO(1) of the Ordinance.

¹⁷ The rental deposit payable by a tenant of a “regulated tenancy” may not be more than two months’ rent under the tenancy.

¹⁸ Means water, electricity, gas and communication services (which means services enabling a telephone (other than a mobile telephone); the Internet; a cable television; or a satellite television to be used.

¹⁹ For details, please refer to section 120AAZL(1) of the Ordinance.

- (c) the landlord requires the tenant to pay for, or the landlord otherwise receives from the tenant, the reimbursement of the charges for any of the specified utilities and services for the SDU at a sum exceeding the apportioned amount for the SDU as shown in the account in writing provided by the landlord to the tenant²⁰.
- (15) Taking into account paragraph (14)(b) above, a licensee who is also the landlord of a “regulated tenancy” must not require the tenant to pay, or otherwise receive from the tenant, any commission or remuneration in relation to the tenancy as this may constitute an offence under the Ordinance.

Stamping and Notification to the Commissioner of Rating and Valuation

- (16) 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 would handle the matters below directly):
- (a) where a written tenancy agreement has been entered into, arrange for stamping of the tenancy agreement under the Stamp Duty Ordinance (Cap. 117); and
- (b) arrange for submission of a Notice of Tenancy (Form AR2) to the Commissioner of Rating and Valuation to notify him of the particulars of the tenancy within 60 days after the term of a “regulated tenancy” (including a first term tenancy and a second term tenancy) commences²¹.

Others

- (17) For details of the new tenancy control regime under Part IVA of the Ordinance, including its scope of regulation, relevant

²⁰ For details, please refer to subsections (1) to (3) of section 120AAZM of the Ordinance.

²¹ The maximum penalty for a landlord who refuses or neglects to comply with this requirement without reasonable excuse is fine of \$10,000 and in the case of continuing offence, to a further fine of \$200 for each day during which the offence continues.

frequently asked questions and specified forms etc., licensees should refer to the designated webpage of the RVD website at (www.rvd.gov.hk/en/our_services/part_iva.html).

- (18) In order to protect licensees’ interests in case of dispute, licensees are advised to obtain a written acknowledgement from the clients stating that (i) licensee has informed them of the matters in paragraphs (11) to (14) above (where applicable); and (ii) licensee has provided them with a copy of the summary mandatory terms implied for every “regulated tenancy” as set out in the **Annex**.

* * *

For the avoidance of doubt, licensees must, in the course of their practice, comply with the Estate Agents Ordinance and its subsidiary legislation, and the Code of Ethics and guidelines issued by the Estate Agents Authority (“EAA”) from time to time, including particularly the guidelines with respect to unauthorised building works in respect of the lease of a property (Circular No. 10-01 (CR)) and the guidelines regarding tenancy matters for residential properties (Circular No. 01-09 (CR)) as well as all other applicable laws.

Licensees who fail to comply with the above guidelines or the relevant law may be disciplined by the EAA.

January 2022

Holders of Statements of Particulars of Business should bring this Circular to the attention of all staff engaged in estate agency work

Attention: This is a summary only. For full text of the Mandatory Terms Implied for Every “Regulated Tenancy”, please refer to Schedule 7 to the Landlord and Tenant (Consolidation) Ordinance.

**Summary Mandatory Terms Implied for Every “Regulated Tenancy” under
Part IVA of the Landlord and Tenant (Consolidation) Ordinance**

Tenancy Agreement

1. Stamp duty borne by landlord

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

2. Stamping of tenancy agreement by landlord

The landlord must, after receiving the signed tenancy agreement by the tenant:

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

3. Landlord’s return of stamped tenancy agreement

- (1) If the landlord fails to return a CSTA under section 2(b) above, the tenant may withhold the payment of rent until the landlord has done so.
- (2) If the landlord has eventually returned the CSTA to the tenant, the tenant must pay back without interest any rent withheld under subsection (1) to the landlord within 15 days after the tenant’s receipt of the CSTA.
- (3) If the tenant fails to comply with subsection (2), the landlord may, by giving the tenant not less than 15 days’ prior written notice, terminate the tenancy.

Landlord’s Obligations during Term

4. Maintenance and repair

- (1) The landlord must maintain and keep in repair (where applicable):
 - (a) drains, pipes and electrical wiring serving the premises exclusively; and
 - (b) windows of the premises.
- (2) The landlord must also keep the fixtures and fittings provided by the landlord in the premises in proper repair and working order.
- (3) On receiving a notice from the tenant for repair of items in subsection (1) or (2), the landlord must carry out the repair as soon as practicable.
- (4) For purposes of subsection (3), the landlord may, by giving not less than 2 days’ prior notice to the tenant, enter the premises to: (a) inspect the damage; (b) assess the need for the repair; and (c) carry out the repair, as required.
- (5) If the damage is caused by the wilful/negligent act of the tenant/an occupier

(other than the tenant) of the premises/his permitted person, the landlord is not responsible for the maintenance and repair.

5. Tenant's termination of tenancy

- (1) This section applies if the landlord fails to fulfil an obligation under section 4 above.
- (2) The tenant may, by giving the landlord not less than 30 days' prior notice in writing, terminate the tenancy.
- (3) Provisions in relation to early termination by the tenant (e.g. termination of tenancy after 12 months of the term) apply to a termination under this section.

Tenant's Obligations during Term

6. Payment of rent

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

7. No structural alteration without consent

The tenant must not make any structural alteration to the premises without the prior consent in writing of the landlord.

8. No immoral or illegal purpose

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

9. Annoyance, inconvenience or disturbance

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

10. No assignment or underletting

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

11. Landlord's re-entry

- (1) The landlord may re-enter the premises (in whole or in part) if the tenant:
 - (a) is in breach of section 6 above and fails to pay the rent within 15 days after the due date (except where the withholding is permitted by law); or
 - (b) is in breach of section 7, 8, 9 or 10 above.
- (2) The tenancy of the premises is terminated immediately upon landlord's re-entry in subsection (1).