

**DOMESTIC VIOLENCE (AMENDMENT)
ORDINANCE 2009**

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 18 OF 2009

L.S.

Donald TSANG
Chief Executive
23 December 2009

An Ordinance to amend the Domestic Violence Ordinance so that the Ordinance applies to a cohabitation relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship; and to make consequential and technical amendments.

[]

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Domestic Violence (Amendment) Ordinance 2009.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

PART 2

**AMENDMENTS TO THE DOMESTIC VIOLENCE ORDINANCE AND
ITS SUBSIDIARY LEGISLATION**

3. Long title amended

The long title to the Domestic Violence Ordinance (Cap. 189) is amended by repealing “domestic violence” and substituting “violence in domestic and cohabitation relationships”.

4. Short title amended

Section 1 is amended by repealing “Domestic Violence Ordinance” and substituting “Domestic and Cohabitation Relationships Violence Ordinance”.

5. Interpretation and application

(1) Section 2(1) is amended, in the definition of “respondent”, by repealing “or 3A.” and substituting “, 3A or 3B;”.

(2) Section 2(1) is amended by adding—

““applicant” (申請人) means a person who applies for an injunction to be granted under section 3, 3A or 3B;

“cohabitation relationship” (同居關係)—

(a) means a relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship; and

(b) includes such a relationship that has come to an end;

“party to a cohabitation relationship” (同居關係一方) does not include a person who is or was the spouse of the other party to that relationship;

“specified minor” (指明未成年人) means a minor—

(a) who is a child (whether a natural child, adoptive child or step-child) of the applicant or respondent concerned; or

(b) who is living with the applicant concerned.”.

(3) Section 2(2) is repealed.

6. Power of District Court to grant injunction: spouses and former spouses

Section 3(3) is repealed.

7. Power of District Court to grant injunction: other relatives

(1) Section 3A(1) is amended by repealing “(“the applicant”)”.

(2) Section 3A(1) is amended, in the Chinese text, by repealing “該申請人” and substituting “申請人”.

8. Section added

The following is added—

**“3B. Power of District Court to grant injunction:
cohabitants and former cohabitants**

(1) On an application by a party to a cohabitation relationship, the District Court, if it is satisfied that the applicant or a specified minor has been molested by the other party to the cohabitation relationship and subject to section 6, may grant an injunction containing any or all of the following provisions—

- (a) a provision restraining the respondent from molesting the applicant;
- (b) a provision restraining the respondent from molesting the specified minor;
- (c) a provision prohibiting the respondent—
 - (i) (where the applicant has been molested by the respondent) from entering or remaining in—
 - (A) the residence of the applicant;
 - (B) a specified part of the residence of the applicant;or
 - (C) a specified area whether or not the residence of the applicant is in that area, whether or not the residence is the common residence of the applicant and the respondent;
 - (ii) (where the specified minor has been molested by the respondent) from entering or remaining in—
 - (A) the residence of the specified minor;
 - (B) a specified part of the residence of the minor; or
 - (C) a specified area whether or not the residence of the minor is in that area, whether or not the residence is the common residence of the minor and the respondent;
- (d) a provision requiring the respondent to permit—
 - (i) (where the applicant resides with the respondent) the applicant to enter and remain in the common residence of the applicant and the respondent or in a specified part of such common residence; or
 - (ii) (where the specified minor resides with the respondent) the minor to enter and remain in the common residence of the minor and the respondent or in a specified part of such common residence,whether or not any other relief is being sought in the proceedings.

(2) In determining whether 2 persons (“the parties”) are in a cohabitation relationship, the court shall have regard to all the circumstances of the relationship including but not limited to any of the following factors that may be relevant in the particular case—

- (a) whether the parties are living together in the same household;
- (b) whether the parties share the tasks and duties of their daily lives;
- (c) whether there is stability and permanence in the relationship;
- (d) the arrangement of sharing of expenses or financial support, and the degree of financial dependence or interdependence, between the parties;
- (e) whether there is a sexual relationship between the parties;
- (f) whether the parties share the care and support of a specified minor;
- (g) the parties’ reasons for living together, and the degree of mutual commitment to a shared life;
- (h) whether the parties conduct themselves towards friends, relatives or other persons as parties to a cohabitation relationship, and whether the parties are so treated by their friends and relatives or other persons.

(3) A court may in an injunction containing a provision mentioned in subsection (1)(a) or (b) include a provision requiring the respondent to participate in any programme, approved by the Director of Social Welfare, that is aimed at changing the attitude and behaviour that have led to the granting of the injunction.

(4) In exercising its power to grant an injunction containing a provision mentioned in subsection (1)(c) or (d), the District Court shall have regard to the conduct of the parties, both in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any specified minor and to all the circumstances of the case.”.

9. Court of First Instance may exercise powers of District Court in certain cases

Section 4 is amended by repealing “or 3A” and substituting “, 3A or 3B”.

10. Arrest for breach of order

Section 5(1) is amended by repealing “or 3A” and substituting “, 3A or 3B”.

11. Limitations as regards injunctions and authorizations of arrest

(1) Section 6(1) is amended—

- (a) by repealing “or 3A(4)(b) or (c)” and substituting “, 3A(4)(b) or (c) or 3B(1)(c) or (d)”;
- (b) by repealing “3 or 3A” and substituting “3, 3A or 3B”.

(2) Section 6(3) is amended by repealing everything before “is satisfied” and substituting—

- “(3) Nothing in this Ordinance authorizes a court, on an application by a party to a cohabitation relationship—
- (a) to grant an injunction containing a provision mentioned in section 3B(1)(c) or (d); or
 - (b) to attach to an injunction an authorization of arrest under section 5(1),
- unless the court”.

12. Court may extend injunctions and authorizations of arrest

Section 7(1)(a) is amended—

- (a) by repealing “3 or 3A” and substituting “3, 3A or 3B”;
- (b) by repealing “or 3A(4)(b) or (c)” and substituting “, 3A(4)(b) or (c) or 3B(1)(c) or (d)”.

13. Court may vary or suspend custody or access order

Section 7A(1)(a) is amended—

- (a) by repealing “3 or 3A” and substituting “3, 3A or 3B”;
- (b) by repealing “or 3A(4)(b)” and substituting “, 3A(4)(b) or 3B(1)(c)”.

14. Injunctions not to be registered

Section 10 is amended by repealing “or 3A(4)(b) or (c)” and substituting “, 3A(4)(b) or (c) or 3B(1)(c) or (d)”.

Domestic Violence Rules

15. Citation

Section 1 of the Domestic Violence Rules (Cap. 189 sub. leg. A) is amended by repealing “Domestic Violence Rules” and substituting “Domestic and Cohabitation Relationships Violence Rules”.

16. Form of authorization of arrest

The Schedule is amended by repealing “Domestic Violence Ordinance” where it twice appears and substituting “Domestic and Cohabitation Relationships Violence Ordinance”.

PART 3

SAVING PROVISION

17. Saving provision

The Domestic Violence Ordinance (Cap. 189) (including subsidiary legislation) as it was in force immediately before the commencement date of this Ordinance (“the pre-amended Ordinance”) continues to apply, as if this Ordinance had not been enacted, in all respects to—

- (a) any proceedings—
 - (i) that have been commenced under the pre-amended Ordinance; and
 - (ii) that have not been disposed of as at the commencement date;
- (b) a court order (whether an injunction or any other order)—
 - (i) made under the pre-amended Ordinance; and
 - (ii) in force as at the commencement date;
- (c) a court order (whether an injunction or any other order) made in the proceedings mentioned in paragraph (a) on or after the commencement date; and
- (d) any further proceedings that are connected with a court order mentioned in paragraph (b) or (c).

PART 4

CONSEQUENTIAL AMENDMENTS

Rules of the High Court

18. Application

Order 1, rule 2(2) of the Rules of the High Court (Cap. 4 sub. leg. A) is amended, in the Table, by repealing item 8 and substituting—

“(HK)8. Proceedings under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189).	Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189), section 8.”.
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Rules of the District Court

19. Application

Order 1, rule 2(2A)(*ba*) of the Rules of the District Court (Cap. 336 sub. leg. H) is amended by repealing “domestic violence proceedings” and substituting “proceedings under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189)”.

Land Titles Ordinance

20. Consequential amendments

(1) Schedule 3 to the Land Titles Ordinance (Cap. 585) is amended by repealing the heading immediately before section 79 and substituting “**Domestic and Cohabitation Relationships Violence Ordinance**”.

(2) Section 79 of Schedule 3 is amended by repealing “Domestic Violence Ordinance” and substituting “Domestic and Cohabitation Relationships Violence Ordinance”.