

**《2021 年業主與租客（綜合）（修訂）
條例》**

**Landlord and Tenant (Consolidation)
(Amendment) Ordinance 2021**

Landlord and Tenant (Consolidation) (Amendment) Ordinance 2021

Contents

Section	Page
Part 1	
Preliminary	
1.	Short title and commencement A3659
2.	Enactments amended A3661
Part 2	
Amendments to Landlord and Tenant (Consolidation) Ordinance (Cap. 7)	
3.	Section 116 amended (application of this Part) A3663
4.	Part IVA added A3663
Part IVA	
Regulated Tenancies	
Division 1—Interpretation and Application	
120AA.	Interpretation A3663
120AAB.	Application of this Part A3673
120AAC.	Amendment of Schedule 6 A3675
Division 2—Determination relating to Regulated Tenancy	
Subdivision 1—General Provisions	
120AAD.	Interpretation A3675

Section	Page
120AAE.	Application to Tribunal A3677
120AAF.	Determination by Tribunal A3677
Subdivision 2—Domestic Tenancy	
120AAG.	Purpose specified in tenancy A3677
120AAH.	Purpose for which premises are actually used A3679
120AAI.	Tenant to establish landlord’s agreement to change of user as dwelling A3679
120AAJ.	Purpose of sub-tenancy subject to superior tenancy A3679
120AAK.	Use of premises other than as dwelling A3681
120AAL.	Other matters to be taken into account A3681
Subdivision 3—Tenant’s Own Dwelling	
120AAM.	Tenant’s own dwelling presumed A3683
120AAN.	Specified purpose may be disregarded A3683
Division 3—Regulated Cycle	
Subdivision 1—General Provisions	
120AAO.	Regulated cycle of tenancies A3685
120AAP.	First term tenancy A3685
120AAQ.	Deemed first term tenancy in certain circumstances A3685
120AAR.	Tenant is entitled to second term tenancy A3689

Section	Page
Subdivision 2—Second Term Offer	
120AAS.	Second term offer A3691
120AAT.	Landlord may make more than one second term offer A3693
120AAU.	Tenant’s acceptance of second term offer A3693
120AAV.	Tenant’s failure to notify acceptance of second term offer A3695
120AAW.	Deemed second term offer by landlord A3697
120AAX.	Second term offer pending court order A3699
120AAY.	Lapse of second term offer in certain circumstances A3701
Subdivision 3—Tenancy in Writing	
120AAZ.	Tenancy in writing for first term tenancy A3703
Subdivision 4—Tenant’s Interests in Certain Circumstances	
120AAZA.	Sub-tenancy of same or longer term of superior tenancy A3707
120AAZB.	Tenant’s interest to pass to family member on death A3709
Division 4—Rents and Deposit	
Subdivision 1—General Provisions	
120AAZC.	Rental deposit A3713
120AAZD.	Alteration in rent A3715

Section	Page
Subdivision 2—Renewed Rent	
120AAZE. Renewed rent for second term	A3717
Division 5—Implied Terms	
120AAZF. Mandatory terms implied for every regulated tenancy	A3719
120AAZG. Amendment of Schedule 7	A3721
Division 6—Termination of Tenancy	
120AAZH. Early termination by tenant	A3721
120AAZI. Landlord’s right of re-entry	A3723
120AAZJ. Termination of regulated tenancy as sub- tenancy	A3725
120AAZK. Limited liabilities of sub-tenant on termination of superior tenancy	A3727
Division 7—Offences relating to Regulated Tenancies	
120AAZL. Offence in relation to tenant’s payment of money other than certain types	A3735
120AAZM. Offence in relation to payment of apportioned amounts	A3737
120AAZN. Offence in relation to provision of rent receipts	A3741
120AAZO. Offence of harassment	A3741

Section	Page
---------	------

Division 8—Commissioner’s Powers

Subdivision 1—Interpretation

120AAZP. Interpretation	A3745
-------------------------------	-------

Subdivision 2—Commissioner’s Certificate

120AAZQ. Application for primary user certificate	A3747
120AAZR. Commissioner’s inspection	A3749
120AAZS. Commissioner’s issue of primary user certificate	A3751

Subdivision 3—Commissioner’s Endorsement

120AAZT. Notice of tenancy to Commissioner	A3753
120AAZU. Commissioner’s endorsement of notice of tenancy	A3755

Subdivision 4—Other Powers

120AAZV. Commissioner may serve requisition	A3755
120AAZW. Commissioner may require reference documents	A3757
120AAZX. Commissioner may enter premises with consent	A3759
120AAZY. Commissioner may enter premises with warrant	A3759
120AAZZ. Powers after entry	A3763
120AAZZA. Commissioner may disclose information	A3767

Section	Page
Division 9—Miscellaneous Provisions	
120AAZZB. Costs	A3767
120AAZZC. Giving evidence in proceedings	A3769
120AAZZD. Use of returned requisition as evidence	A3769
120AAZZE. Providing false or misleading particulars etc.	A3771
120AAZZF. Use of incriminating evidence in proceedings	A3773
120AAZZG. Forms	A3775
120AAZZH. Service of documents	A3777
5. Section 128 amended (interpretation)	A3779
6. Section 129 amended (summoning of tenant of premises with a rateable value not exceeding \$100,000 unlawfully holding over)	A3779
7. Section 131 amended (issue of warrant for possession of premises)	A3779
8. Schedules 6 and 7 added	A3781
Schedule 6 Tenancies Excluded from Application of Part IVA	A3781
Schedule 7 Mandatory Terms Implied for Every Regulated Tenancy	A3787

Section	Page
---------	------

Part 3

Related Amendments

Division 1—Amendment to Lands Tribunal Ordinance (Cap. 17)

9.	Section 8 amended (jurisdiction of the Tribunal)	A3799
----	--	-------

Division 2—Amendments to Lands Tribunal Rules (Cap. 17 sub. leg. A)

10.	Cross-heading before rule 68 amended	A3801
11.	Rule 68 amended (commencement of proceedings)	A3801
12.	Schedule amended (forms)	A3801

Division 3—Amendment to Lands Tribunal (Fees) Rules (Cap. 17 sub. leg. B)

13.	Schedule amended (fees)	A3803
-----	-------------------------------	-------

Division 4—Amendments to Rating Ordinance (Cap. 116)

14.	Section 6A amended (use of returned requisition as evidence)	A3803
-----	--	-------

Division 5—Amendment to Land Registration Ordinance (Cap. 128)

15.	Section 3 amended (priority of registered instruments; effect of non-registration)	A3805
-----	--	-------

Division 6—Amendments to Government Rent (Assessment and Collection) Ordinance (Cap. 515)

16.	Section 39 amended (use of returned requisition as evidence)	A3805
-----	--	-------

Division 7—Amendment to Electronic Transactions Ordinance (Cap. 553)

17.	Schedule 3 amended (service of documents)	A3807
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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 36 OF 2021



John LEE Ka-chiu
Acting Chief Executive
21 October 2021

An Ordinance to amend the Landlord and Tenant (Consolidation) Ordinance to regulate tenancies of subdivided units of buildings; and to provide for related matters.

[22 January 2022]

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2021.
- (2) This Ordinance comes into operation on the expiry of 3 months beginning on the day on which it is published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Landlord and Tenant (Consolidation) Ordinance (Cap. 7)

3. **Section 116 amended (application of this Part)**

Section 116(2)(a)—

Repeal

“I or II”

Substitute

“I, II or IVA”.

4. **Part IVA added**

After Part IV—

Add

“Part IVA

Regulated Tenancies

Division 1—Interpretation and Application

120AA. Interpretation

(1) In this Part—

building (建築物) means a building or structure constructed or adapted for use in accordance with a building plan;

building plan (建築圖則) means a plan—

- (a) approved by the Building Authority under the Buildings Ordinance; or
- (b) prepared by the Hong Kong Housing Authority in relation to a building to which the Buildings Ordinance does not apply under section 18(2) of the Housing Ordinance (Cap. 283);

Buildings Ordinance (《建築物條例》) means the Buildings Ordinance (Cap. 123);

child (子女) includes an illegitimate child, a stepchild and a child adopted in a way recognized by law, and **parent** (父母), **grandchild** (孫、外孫) and **grandparent** (祖父母、外祖父母) are to be construed accordingly;

Commissioner (署長) means the Commissioner of Rating and Valuation;

communication services (通訊服務) means services enabling any of the following to be used—

- (a) a telephone other than a mobile telephone;
- (b) the Internet;
- (c) a cable television;
- (d) a satellite television;

control percentage (管制百分比)—see section 120AAZE(2)(a);

court (法院) means the Court of First Instance, the District Court or the Tribunal;

deed of mutual covenant (公契), in relation to a building, means a document—

- (a) that defines the rights, interests and obligations of owners of the building among themselves; and

(b) that is registered in the Land Registry;

domestic tenancy (住宅租賃) means a tenancy of premises let as a dwelling;

family member (家庭成員), in relation to a person, means—

- (a) the person's spouse;
- (b) the person's parent;
- (c) the person's adult child;
- (d) the person's grandparent; or
- (e) the person's adult grandchild;

first term (首租期) means—

- (a) the term referred to in section 120AAO(2); or
- (b) (where appropriate) the term referred to in section 120AAQ(3)(a) or (5)(a);

first term tenancy (首期租賃) means a regulated tenancy of the first term;

Form AR1 (表格AR1) means the specified form for making and accepting a second term offer;

landlord (業主) 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;

material date (關鍵日期) means the commencement date of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2021 (36 of 2021);

offer period (要約期), in relation to a second term offer, means the period of the second calendar month immediately before the calendar month in which the purported second term tenancy commences;

regulated cycle (規管周期)—see section 120AAO;

regulated tenancy (規管租賃) means a tenancy to which this Part applies;

renewed rent (續期租金), in relation to a regulated cycle of tenancies for a subdivided unit, means the rent agreed, or taken to be agreed, by the landlord and tenant for a second term tenancy of the regulated cycle for the subdivided unit;

rental deposit (租金按金), in relation to a tenancy, means money intended to be held by the landlord as security for—

- (a) the performance of any obligations of the tenant; or
- (b) the discharge of any liability of the tenant, under the tenancy;

RVD officer (差估署人員) means a public officer employed in the Rating and Valuation Department;

second term (次租期) means the term referred to in section 120AAO(3);

second term offer (次租期要約), in relation to a regulated cycle of tenancies for a subdivided unit, means an offer of a second term tenancy of the regulated cycle for the subdivided unit;

second term tenancy (次期租賃) means a regulated tenancy of the second term;

Secretary (局長) means the Secretary for Transport and Housing;

specified form (指明表格) means a form specified by the Commissioner under section 120AAZZG;

specified utilities and services (指明公用設施及服務) means water, electricity, gas and communication services;

subdivided unit (分間單位) means premises that form part of a unit of a building;

tenancy (租賃) means a lease entered into orally or in writing and includes—

- (a) an agreement for a tenancy; and
- (b) a sub-tenancy;

tenant (租客) includes a sub-tenant but does not include a Government lessee;

term (租期), in relation to a regulated cycle of tenancies for a subdivided unit, means the first term or second term of the regulated cycle for the subdivided unit;

Tribunal (審裁處) means the Lands Tribunal established under the Lands Tribunal Ordinance (Cap. 17);

unit (單位), in relation to a building, means premises of the building falling within either or both of the following descriptions—

- (a) premises that are demarcated or shown as a separate unit (however described) in the building plan of the building;
- (b) premises that are referred to in the deed of mutual covenant 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.

- (2) For the purposes of the definition of *subdivided unit* in subsection (1), if the subdivided unit is a roof or a podium (or part of a roof or a podium), a reference to a subdivided unit includes any structure erected on it.
- (3) For the purposes of paragraph (a) of the definition of *unit* in subsection (1), to avoid doubt, a reference to premises includes a roof or a podium or, as appropriate, part of a roof or a podium.
- (4) For the purposes of this Part and except in section 120AAZB, a reference to a tenant includes the tenant's family member who is entitled to the tenant's specified interest under that section.
- (5) For the purposes of the Land Registration Ordinance (Cap. 128), a notice (except Form AR1) or an application under this Part is not to be regarded—
 - (a) as an instrument in writing by which any parcel of ground, tenement or premises may be affected; or
 - (b) as creating a *lis pendens*.

120AAB. Application of this Part

- (1) Subject to subsection (2), this Part applies to a tenancy—
 - (a) that commences on or after the material date;
 - (b) that is a domestic tenancy;
 - (c) the subject premises of which are a subdivided unit;
 - (d) the tenant of which is a natural person; and
 - (e) the purpose of which is for the tenant's own dwelling,

even though the tenancy contains any provision purporting generally or specifically to exclude the application of this Part.

- (2) This Part does not apply to the tenancies specified in Schedule 6.
- (3) For the purposes of subsection (1)(a), the reference to “commences on or after the material date” includes a reference to “is taken to be commencing on the date under section 120AAQ(5)(a)”.

120AAC. Amendment of Schedule 6

- (1) The Secretary may, by notice published in the Gazette, amend Schedule 6.
- (2) For the purposes of section 120AAB(2), a notice under subsection (1) may—
 - (a) specify any class of tenancies; and
 - (b) specify the circumstances in which, or the purposes for which, the class of tenancies is excluded from the application of this Part.

Division 2—Determination relating to Regulated Tenancy

Subdivision 1—General Provisions

120AAD. Interpretation

In this Division—

premises (處所) means the subject matter of a tenancy.

120AAE. Application to Tribunal

A person having an interest in any premises may apply to the Tribunal to determine whether or not a tenancy for the premises is a regulated tenancy for the purposes of this Part.

120AAF. Determination by Tribunal

- (1) The Tribunal must make a determination on receiving an application made under section 120AAE.
- (2) In making a determination, the Tribunal may take into account any matters that the Tribunal considers appropriate.
- (3) For the purposes of subsection (2), if the Tribunal is to determine whether or not a tenancy is a domestic tenancy, the Tribunal may consider the matters contained in Subdivision 2.
- (4) Also, for the purposes of subsection (2), if the Tribunal is to determine whether or not a tenancy is for the tenant's own dwelling, the Tribunal may consider the matters contained in Subdivision 3.

Subdivision 2—Domestic Tenancy

120AAG. Purpose specified in tenancy

If a tenancy specifies in writing that any premises are to be used for a particular purpose, the premises are taken to be used for that purpose unless it is proved otherwise.

120AAH. Purpose for which premises are actually used

- (1) Subject to section 120AAI, despite any evidence showing that any premises were originally let for a particular purpose, if the premises are being used primarily for another purpose, the premises are taken to have been let for that other purpose.
- (2) Subject to section 120AAJ, if there is not sufficient evidence showing that any premises were originally let for a particular purpose, the purpose of the tenancy of the premises is to be determined by the primary user of the premises.

120AAI. Tenant to establish landlord's agreement to change of user as dwelling

If—

- (a) the purpose referred to in a tenancy for any premises is other than as a dwelling; but
- (b) the premises are being used as a dwelling in breach of the tenancy,

the onus is on the tenant to establish that the change of user has been agreed to (whether expressly or by implication), or acquiesced in, by the landlord.

120AAJ. Purpose of sub-tenancy subject to superior tenancy

- (1) This section applies if a tenancy (*subject tenancy*) is a sub-tenancy created out of another tenancy (*superior tenancy*).
- (2) If there is evidence showing that the premises of the superior tenancy—
 - (a) were let other than as a dwelling; or
 - (b) were being used other than as a dwelling,

at the commencement of the subject tenancy, the premises of the subject tenancy (*subject premises*) are taken to be used other than as a dwelling unless the tenant of the subject premises satisfies the Tribunal to the contrary.

120AAK. Use of premises other than as dwelling

The use of any premises as a boarding or lodging house is a use other than as a dwelling.

120AAL. Other matters to be taken into account

- (1) In determining whether any premises were let, or are being used, as a dwelling, the following may be taken into account—
 - (a) the covenants, terms and conditions in the Government lease or tenancy in relation to the premises;
 - (b) any occupation permit issued in relation to the premises;
 - (c) normal additional uses of the premises that are consistent with the domestic nature of a tenancy having regard to the following—
 - (i) the floor area in occupation for the uses (whether at all times or not);
 - (ii) the number of persons engaged in the uses but not dwelling on the premises;
 - (iii) the furnishings, fittings and contents of the premises;
 - (iv) the gross profits resulting from the uses relative to the rent.

(2) In subsection (1)(b)—

occupation permit (佔用許可證) means an occupation permit or a temporary occupation permit issued under the Buildings Ordinance.

Subdivision 3—Tenant’s Own Dwelling

120AAM. Tenant’s own dwelling presumed

For the purposes of this Part, a tenancy—

- (a) that is a domestic tenancy;
- (b) the subject premises of which are a subdivided unit; and
- (c) the tenant of which is a natural person,

is taken to be for the tenant’s own dwelling unless the tenancy specifies otherwise in writing.

120AAN. Specified purpose may be disregarded

- (1) This section applies if—
 - (a) a tenancy falls within the descriptions of section 120AAM(a), (b) and (c); and
 - (b) the tenancy specifies in writing that the premises are not let for the tenant’s own dwelling.
- (2) Despite subsection (1)(b), the Tribunal may still determine that the premises are indeed let for the tenant’s own dwelling if the Tribunal considers it appropriate to do so.

Division 3—Regulated Cycle

Subdivision 1—General Provisions

120AAO. Regulated cycle of tenancies

- (1) A regulated cycle of tenancies for a subdivided unit is to comprise 2 consecutive regulated tenancies for the subdivided unit, each for a term of 2 years.
- (2) The term of the first regulated tenancy is to be 2 years commencing on—
 - (a) the date of the creation of the tenancy; or
 - (b) if the parties have agreed on a later date for the commencement of the tenancy—that date.
- (3) The term of the second regulated tenancy is to be 2 years commencing on the date immediately after the expiry of the first regulated tenancy.
- (4) The landlord and tenant of a subdivided unit may enter into one or more regulated cycles of tenancies for the subdivided unit.

120AAP. First term tenancy

A landlord and a tenant may enter into a first term tenancy for a subdivided unit at a rent agreed by the parties.

120AAQ. Deemed first term tenancy in certain circumstances

- (1) This section applies if—
 - (a) a landlord and a tenant enter into a domestic tenancy for a subdivided unit;
 - (b) the tenant is a natural person;

- (c) the purpose of the tenancy is for the tenant's own dwelling; and
 - (d) the tenancy is other than one—
 - (i) entered into by the parties by way of a Form AR1; or
 - (ii) taken to be granted under section 120AAW(2)(b).
- (2) If the tenancy purports to be—
 - (a) a periodic tenancy; or
 - (b) a tenancy for a term other than of 2 years, commencing on or after the material date, the tenancy is taken to be a first term tenancy.
- (3) For the purposes of subsection (2)—
 - (a) the term of the tenancy is taken to be 2 years commencing on—
 - (i) the date of the creation of the tenancy; or
 - (ii) if the parties have agreed on a later date for the commencement of the tenancy— that date; and
 - (b) the rent agreed by the parties to be payable by the tenant at the commencement of the tenancy is taken to be the rent for the first term tenancy.
- (4) If—
 - (a) the tenancy is a periodic tenancy commencing before and existing on the material date; and
 - (b) a period of the tenancy (*reference period*) either—
 - (i) commences on the material date; or
 - (ii) straddles the material date,

the tenancy is taken to be a first term tenancy.

- (5) For the purposes of subsection (4)—
 - (a) the term of the tenancy is taken to be 2 years commencing on—
 - (i) for paragraph (b)(i) of that subsection—
the material date; or
 - (ii) for paragraph (b)(ii) of that subsection—
the date immediately after the expiry of the period that straddles the material date; and
 - (b) the rent agreed by the parties to be payable by the tenant at the commencement of the reference period is taken to be the rent for the first term tenancy.

120AAR. Tenant is entitled to second term tenancy

- (1) A tenant of a first term tenancy for a subdivided unit is entitled to a second term tenancy of the regulated cycle for the subdivided unit to be granted in accordance with Subdivision 2.
- (2) Without limiting section 120AAZI, the landlord must grant the tenant the second term tenancy for the subdivided unit if the tenant accepts the second term offer in accordance with section 120AAU.
- (3) The terms and conditions of the second term tenancy offered and granted by the landlord are to be the same as those contained in the first term tenancy, except those relating to—
 - (a) the period of the tenancy; and
 - (b) (if applicable) the amount of rent.

Subdivision 2—Second Term Offer

120AAS. Second term offer

- (1) Without limiting section 120AAZI, a landlord of a first term tenancy for a subdivided unit must, within the offer period—
 - (a) make a second term offer to the tenant; and
 - (b) serve the offer on the tenant,for a second term tenancy of the regulated cycle for the subdivided unit.
- (2) The second term offer may only be made in Form AR1.
- (3) The landlord must—
 - (a) state the proposed amount of rent for the second term tenancy in Form AR1; and
 - (b) sign the Form.
- (4) The proposed amount of rent must not exceed the maximum amount of rent for the second term tenancy that is permitted under section 120AAZE.
- (5) The second term offer must not include any terms or conditions other than those contained in the first term tenancy.
- (6) Subject to section 120AAT, a second term offer, once made, remains open for acceptance by the tenant before the expiry of the first term tenancy, and the landlord may not withdraw the offer.

- (7) For the purposes of subsection (6), the reference to the landlord includes a person who becomes the landlord of the subdivided unit after the second term offer is made but before the expiry of the first term tenancy.

120AAT. Landlord may make more than one second term offer

- (1) The landlord may make one or more second term offers during an offer period, but a subsequent offer supersedes any earlier offer.
- (2) However, if the tenant accepts a second term offer under section 120AAU, the landlord may not make any further offer afterwards.

120AAU. Tenant's acceptance of second term offer

- (1) This section applies if a landlord of a first term tenancy for a subdivided unit serves a second term offer in Form AR1 (*served Form*) on the tenant within the offer period under section 120AAS.
- (2) The tenant may accept the second term offer any time before the expiry of the first term tenancy.
- (3) If the tenant accepts the second term offer, the tenant must notify the landlord of the tenant's acceptance in the served Form containing the offer by signing the served Form and serving it on the landlord before the expiry of the first term tenancy.
- (4) If the tenant disagrees with the landlord on the proposed amount of rent for the second term tenancy, the tenant may negotiate with the landlord for the amount before accepting the second term offer.

- (5) If, after the negotiation, the landlord agrees to revise the proposed amount of rent for the second term tenancy, the landlord must sign against the revised amount of rent as shown on the served Form.
- (6) If the tenant accepts the second term offer at the revised amount of rent, the tenant must—
 - (a) sign against the revised amount of rent as shown on the served Form; and
 - (b) serve the served Form on the landlord before the expiry of the first term tenancy.

120AAV. Tenant's failure to notify acceptance of second term offer

- (1) This section applies if a landlord of a first term tenancy for a subdivided unit serves a second term offer in Form AR1 on the tenant within the offer period under section 120AAS.
- (2) If the tenant fails to notify the landlord of the tenant's acceptance of the second term offer before the expiry of the first term tenancy, the tenant is taken to have rejected the second term offer.
- (3) For the purposes of subsection (2), the tenant fails to notify the landlord of the tenant's acceptance if—
 - (a) no notice of acceptance has ever been given by the tenant under section 120AAU;
 - (b) the notice of acceptance is served by the tenant on the landlord only after the expiry of the first term tenancy;
 - (c) the notice of acceptance is not given by the tenant in the same Form AR1 sent by the landlord that contains the second term offer; or

- (d) the tenant has not signed the Form AR1 sent by the landlord when the Form is returned to the landlord.

120AAW. Deemed second term offer by landlord

- (1) This section applies if a landlord of a first term tenancy for a subdivided unit fails to serve a second term offer on the tenant under section 120AAS.
- (2) The landlord is taken to have made a second term offer to the tenant on the expiry of the offer period, and the tenant is taken—
 - (a) to have accepted the second term offer; and
 - (b) to be granted the second term tenancy on the expiry of the first term tenancy.
- (3) For the purposes of subsection (1), a landlord fails to serve a second term offer on the tenant if—
 - (a) the offer is not served on the tenant within the offer period;
 - (b) the offer is not made in Form AR1;
 - (c) the landlord has not signed the Form AR1 sent to the tenant;
 - (d) the proposed amount of rent for the second term tenancy is not stated in the offer;
 - (e) the proposed amount of rent for the second term tenancy stated in the offer is higher than the maximum amount of rent for the second term tenancy permitted under section 120AAZE; or
 - (f) any terms or conditions other than those contained in the first term tenancy are included in the offer.

- (4) Subject to subsection (5), the renewed rent for the second term tenancy is to be the amount of rent last payable by the tenant for the first term tenancy.
- (5) If the control percentage ascertained in accordance with section 120AAZE for the rent for the second term tenancy is a negative figure, the renewed rent for the second term tenancy is to be reduced by that percentage.
- (6) Despite subsection (2), if the tenant delivers vacant possession of the subdivided unit to the landlord on or before the expiry of the first term tenancy—
 - (a) the second term offer taken to be made to the tenant is taken to be rejected by the tenant; and
 - (b) no second term tenancy is taken to be granted to the tenant.

120AAX. Second term offer pending court order

- (1) This section applies if—
 - (a) a landlord of a first term tenancy for a subdivided unit is proceeding by action to enforce a right of re-entry or forfeiture under section 120AAZI(2)(b); and
 - (b) the offer period for making a second term offer to the tenant has commenced.
- (2) Despite subsection (1)(a), the landlord must comply with section 120AAS to make a second term offer to the tenant pending the making of any order of the court for possession of the subdivided unit in connection with the action mentioned in that subsection.

- (3) The landlord's making of a second term offer to the tenant does not affect the landlord's right to enforce any breach of the first term tenancy against the tenant in accordance with an order of the court.
- (4) If an order of the court allows or permits the landlord to recover possession of the subdivided unit—
 - (a) where—
 - (i) the landlord has made a second term offer under subsection (2)—
 - (A) the offer is treated as never having been made by the landlord; and
 - (B) any second term tenancy granted by the landlord is treated as never having been granted; or
 - (ii) the landlord has not made any second term offer under that subsection—
 - (A) no second term offer is taken to have been made; and
 - (B) no second term tenancy is taken to be granted,
by the landlord to the tenant under section 120AAW; and
 - (b) the tenant must vacate the subdivided unit at the time and in the way specified in the order.

120AAY. Lapse of second term offer in certain circumstances

- (1) This section applies if—
 - (a) a second term offer for a subdivided unit—

- (i) is made by the landlord to the tenant under section 120AAS; or
 - (ii) is taken to have been made by the landlord to the tenant under section 120AAW; and
 - (b) the first term tenancy of the regulated cycle for the subdivided unit has already been terminated before its expiry otherwise than by the landlord enforcing by action a right of re-entry or forfeiture under section 120AAZI(2)(b).
- (2) On the termination of the first term tenancy—
- (a) the second term offer made by the landlord under section 120AAS lapses immediately and has no effect, and (if applicable) the tenant's acceptance of the offer under section 120AAU also has no effect; and
 - (b) the second term offer taken to have been made by the landlord under section 120AAW lapses immediately and has no effect, and the tenant is not to be taken as having accepted the offer under that section.

Subdivision 3—Tenancy in Writing

120AAZ. Tenancy in writing for first term tenancy

- (1) This section applies if—
- (a) the landlord and tenant of a subdivided unit have entered into a tenancy orally for a first term tenancy; and
 - (b) the first term tenancy has commenced.

- (2) The tenant may in writing demand the landlord to, within 30 days (*specified period*), serve on the tenant a tenancy in writing (*tenancy agreement*) reflecting the contents of the oral tenancy for signing by the parties.
- (3) If the landlord fails to serve the tenancy agreement on the tenant in accordance with subsection (2), the tenant may elect either—
 - (a) to withhold the payment of rent until the landlord has done so; or
 - (b) to terminate the tenancy by, within 7 days after the specified period, giving the landlord not less than 30 days' (*notice period*) prior notice in writing of the termination.
- (4) For the purposes of subsection (3)(b), the tenancy is terminated on the expiry of the notice period, and the tenant must, on the termination—
 - (a) deliver vacant possession of the subdivided unit to the landlord; and
 - (b) settle all outstanding money payable to the landlord under the tenancy.
- (5) If—
 - (a) the landlord has served the tenancy agreement on the tenant in accordance with subsection (2); or
 - (b) the tenant has made an election under subsection (3)(a) and the landlord has eventually served the tenancy agreement on the tenant,the tenant must do the things specified in subsection (6) within 15 days after the tenancy agreement has been served on the tenant.

- (6) The things are—
 - (a) to sign and return the tenancy agreement to the landlord; and
 - (b) (if applicable) to pay back, free of interest, any rent withheld under subsection (3)(a) to the landlord.
- (7) If the tenant fails to comply with subsection (5), the landlord may, by giving the tenant not less than 15 days' prior notice in writing, terminate the tenancy.

Subdivision 4—Tenant's Interests in Certain Circumstances

120AAZA. Sub-tenancy of same or longer term of superior tenancy

- (1) This section applies if—
 - (a) a regulated tenancy for a subdivided unit is (or purports to be) a sub-tenancy created out of another tenancy (*superior tenancy*) entered into by—
 - (i) the landlord of the superior tenancy as landlord (*superior landlord*); and
 - (ii) the landlord of the regulated tenancy as tenant (*sub-landlord*); and
 - (b) the term of the regulated tenancy provided under Subdivision 1 expires at the same time as, or on a day later than, the expiry of the term (being a fixed term) of the superior tenancy.
- (2) The regulated tenancy does not operate as an assignment of the superior tenancy by the sub-landlord to the tenant of the regulated tenancy (*sub-tenant*).

- (3) Despite subsection (1)(b) and without limiting subsection (5), the term of the regulated tenancy is to expire no later than the expiry of the term of the superior tenancy.
- (4) Subsection (3) does not affect any remedy that the sub-tenant may have for the revision of the term of the regulated tenancy.
- (5) If the term of the superior tenancy is extended or renewed by the superior landlord, the expiry of the term of the regulated tenancy would then be the earlier of the following—
 - (a) the expiry of the term of the superior tenancy as extended or renewed;
 - (b) the expiry of the term of the regulated tenancy.
- (6) The sub-landlord is treated as having a reversion expectant on the regulated tenancy even though the term of the regulated tenancy expires at the same time as the expiry of the term of the superior tenancy.

120AAZB. Tenant's interest to pass to family member on death

- (1) This section applies if—
 - (a) a tenant of a regulated tenancy for a subdivided unit dies during the term of the tenancy; and
 - (b) a family member of the tenant is residing with the tenant in the subdivided unit at the time of the tenant's death (*relevant time*).

- (2) The subsisting benefits and protection under the regulated tenancy to which the tenant is entitled under this Part during the tenant's life time (*specified interest*) are, after the tenant's death, available to the family member.
- (3) Only 1 family member of the tenant is entitled to the specified interest at one time.
- (4) If—
 - (a) 2 or more family members are residing with the tenant at the relevant time; and
 - (b) they are unable to reach an agreement among themselves as to who should be entitled to the specified interest,they must refer the matter to the Tribunal for a determination.
- (5) The Tribunal must determine the matter on any ground that appears to it to be just and equitable.
- (6) Despite any will or the law of succession on intestacy, the specified interest of the tenant is not to be available to—
 - (a) a personal representative of the tenant; or
 - (b) a person other than a family member referred to in subsection (1)(b).

Division 4—Rents and Deposit

Subdivision 1—General Provisions

120AAZC. Rental deposit

- (1) This section applies if a tenant of a regulated tenancy for a subdivided unit is required to pay to the landlord a rental deposit for the tenancy.
- (2) Despite any provision of the tenancy, the rental deposit payable by the tenant may not be more than 2 months' rent under the tenancy.
- (3) If a provision of the tenancy requires the tenant to pay a rental deposit of more than 2 months' rent, the provision is taken to be requiring the tenant to pay a rental deposit equal to 2 months' rent only.
- (4) Despite any provision of the tenancy, the rental deposit paid by the tenant is to be retained by the landlord during the term of the tenancy and is, subject to subsection (5), to be returned to the tenant free of interest no later than—
 - (a) if—
 - (i) the term is a first term followed by a second term—the expiry of the term; or
 - (ii) the term is a second term, or a first term not followed by a second term—the expiry of 7 days after the tenant's delivery of vacant possession of the subdivided unit to the landlord on—
 - (A) the expiry of the term; or
 - (B) an early termination of the tenancy; or

(b) the expiry of 7 days after the settlement of any outstanding money payable by the tenant to the landlord under the tenancy,

whichever is the later.

(5) The landlord may deduct from the rental deposit the amount of any arrears of rent, or costs, expenses, losses or damages sustained by the landlord as a result of any breach of the tenancy by the tenant.

(6) In this section—

2 months' rent (2個月租金), in relation to a tenancy, means 2 times the amount of the monthly rent payable at the commencement of the tenancy.

120AAZD. Alteration in rent

(1) Subject to subsection (3), despite any provision of a regulated tenancy or any subsequent agreement between the landlord and tenant, the amount of rent payable by the tenant for the term of the tenancy—

(a) must remain the same; and

(b) may not be altered during the term.

(2) An alteration of the amount of rent during the term is void and has no effect.

(3) The landlord may—

(a) whether or not on the tenant's request; and

(b) at any time during the term,

reduce the amount of rent payable by the tenant for the remaining period of the term.

(4) If the landlord decides to reduce the amount of rent, the landlord must notify the tenant in writing before the reduction.

Subdivision 2—Renewed Rent**120AAZE. Renewed rent for second term**

- (1) The landlord and tenant of a first term tenancy are to agree on the amount of rent for the second term tenancy of the same regulated cycle in accordance with this section.
- (2) The maximum percentage for an increase of rent for the second term tenancy is to be the lower of the following—
 - (a) the control percentage ascertained in accordance with the following formula—

$$A = \frac{B - C}{C} \times 100$$

where—

- A means the control percentage;
 - B means the figure of the rental index of the 4th calendar month immediately before the commencement month of the purported second term tenancy that is prevailing on the first day of the offer period;
 - C means the figure of the rental index of the commencement month of the first term tenancy that is prevailing on the first day of the offer period;
- (b) 10%.
 - (3) The control percentage is to be rounded down to 1 decimal place.
 - (4) If the control percentage ascertained is a negative figure, the rent for the second term tenancy is to be reduced at least by that percentage.

- (5) The maximum amount of rent for the second term tenancy calculated in accordance with subsection (2) or (4) is to be rounded down to the nearest integer.
- (6) If the amount of rent payable by the tenant has been reduced one or more times during the first term tenancy, the basis for calculating the amount of rent for the second term tenancy is to be the amount of rent last reduced during the first term tenancy.
- (7) In subsection (2)(a)—
- commencement month*** (開始月份), in relation to a first term tenancy or second term tenancy of a regulated cycle, means the calendar month in which the tenancy commences;
- rental index*** (租金指數) means the territory-wide rental index for all classes of private domestic properties compiled and published by the Rating and Valuation Department.

Division 5—Implied Terms

120AAZF. Mandatory terms implied for every regulated tenancy

- (1) The provisions in Schedule 7 are to be impliedly incorporated into every regulated tenancy.
- (2) The provisions incorporated into a regulated tenancy (***incorporated provisions***) because of this section—
- (a) bind the landlord and tenant of the tenancy; and
- (b) prevail over any other provision of the tenancy that is in conflict or inconsistent with the incorporated provisions to the extent of the conflict or inconsistency.

120AAZG. Amendment of Schedule 7

The Secretary may, by notice published in the Gazette, amend Schedule 7.

Division 6—Termination of Tenancy

120AAZH. Early termination by tenant

- (1) A tenant of a regulated tenancy for a subdivided unit may—
 - (a) without limiting any rights of the tenant to terminate the tenancy by notice under the tenancy; and
 - (b) by giving the landlord prior notice in writing (*termination notice*),
terminate the tenancy before the expiry of the term, and the tenancy is to be terminated on the date specified in the termination notice (*date of termination*).
- (2) A termination notice—
 - (a) may be given at any time during the term of the tenancy; but
 - (b) must not be given less than 30 days before the date of termination.
- (3) However, the date of termination must not be a date earlier than the last day of the first year of the term.
- (4) The tenant must, on or before the date of termination—
 - (a) deliver vacant possession of the subdivided unit to the landlord; and

- (b) settle all outstanding money payable to the landlord under the tenancy.

120AAZI. Landlord's right of re-entry

- (1) A landlord of a regulated tenancy for a subdivided unit may not terminate the tenancy before the expiry of the term despite any provision of the tenancy that purports to do so.
- (2) However, the landlord may—
 - (a) terminate the tenancy by notice in accordance with—
 - (i) section 120AAZ(7); or
 - (ii) section 4(3) of Part 2 of Schedule 7 impliedly incorporated into the tenancy under section 120AAZF; or
 - (b) enforce a right of re-entry or forfeiture in accordance with Part 4 of Schedule 7 impliedly incorporated into the tenancy under section 120AAZF.
- (3) Any condition for forfeiture (other than those set out in Part 4 of Schedule 7) provided in the tenancy is void and has no effect.
- (4) Despite section 58(14) of the Conveyancing and Property Ordinance (Cap. 219)—
 - (a) subsection (2)(b) and sections 7 and 12(1)(a) and (2) of Part 4 of Schedule 7 have effect subject to section 58(4) and (10) of that Ordinance; and

- (b) subsection (2)(b) and sections 8, 9, 10, 11 and 12(1)(b) and (2) of Part 4 of Schedule 7 have effect subject to section 58 (except section 58(14)) of that Ordinance.

120AAZJ. Termination of regulated tenancy as sub-tenancy

- (1) This section applies if—
 - (a) a regulated tenancy for a subdivided unit is a sub-tenancy created out of another tenancy; and
 - (b) a superior landlord applies to the court for possession of the subdivided unit (or any premises of which the subdivided unit forms part).
- (2) Before enforcing an order of the court for possession of the subdivided unit, the superior landlord must notify the tenant of the regulated tenancy (*sub-tenant*) in writing in the way specified in subsection (3).
- (3) The superior landlord must, on 3 successive days, post the notice on the main door or entrance to the subdivided unit (or the premises of which the subdivided unit forms part).
- (4) A notice posted in accordance with subsection (3) is taken to be an effective notice served on the sub-tenant.
- (5) Leave to issue a writ of possession to enforce the order is not to be granted by the court before the expiry of a period of 60 days beginning on the day immediately after the last day on which the notice is posted under subsection (3).

- (6) Subsection (5) does not apply if the sub-tenant has delivered up vacant possession of the subdivided unit before the leave is granted.
- (7) In this section—
superior landlord (上級業主), in relation to a subdivided unit (or any premises of which the subdivided unit forms part), means a person (other than the landlord of the regulated tenancy) entitled to the immediate reversion of the subdivided unit (or the premises).

120AAZK. Limited liabilities of sub-tenant on termination of superior tenancy

- (1) This section applies if—
- (a) a regulated tenancy for a subdivided unit is a sub-tenancy created out of another tenancy;
 - (b) the regulated tenancy is terminated because of the termination of a tenancy superior to the regulated tenancy (*superior tenancy*); and
 - (c) the tenant of the regulated tenancy (*sub-tenant*) fails to deliver up vacant possession of the subdivided unit on the date on which the regulated tenancy is terminated (*termination date*).
- (2) Only the following person may recover as a civil debt from the sub-tenant the compensation determined under subsection (3) (*compensation*) for the sub-tenant's failure to deliver up vacant possession of the subdivided unit on the termination date—
- (a) the superior landlord who terminates the superior tenancy; or

- (b) if the superior landlord in writing waives the right to recover the compensation—the landlord of the regulated tenancy (*sub-landlord*).
- (3) The compensation is determined in accordance with the following formula—

$$A = B \times C$$

where—

- A means the compensation;
- B means the monthly rent payable by the sub-tenant under the regulated tenancy for the subdivided unit immediately before the termination date;
- C means the number of months covering the period commencing on the date immediately after the termination date and ending on the date on which the sub-tenant delivers up vacant possession of the subdivided unit (*holding-over period*).
- (4) If the number of months covering a holding-over period is not an integer, it is to be rounded down to the nearest integer.
- (5) The compensation recoverable by the superior landlord or sub-landlord must be paid by the sub-tenant within 15 days after the date on which the sub-tenant delivers up vacant possession of the subdivided unit.
- (6) The right (if any) of the superior landlord or sub-landlord under common law rules or equitable principles to make further claims against—
- (a) the sub-tenant; or

- (b) a surety or guarantor for the sub-tenant's liabilities under the regulated tenancy,
for the sub-tenant's failure to deliver up vacant possession of the subdivided unit on the termination of the regulated tenancy and trespass to land in respect of the subdivided unit during the holding-over period is abrogated.
- (7) Also, the right (if any) of the superior landlord or sub-landlord to make claims against any other occupiers (who are residing with the sub-tenant in the subdivided unit during the holding-over period) for—
- (a) their failure to vacate the subdivided unit on the termination of the regulated tenancy; and
- (b) their trespass to land in respect of the subdivided unit during the holding-over period, is abrogated.
- (8) Subject to subsection (9), despite section 52A of the High Court Ordinance, section 53 of the District Court Ordinance and section 12 of the Lands Tribunal Ordinance, no order as to costs may be made in favour of the superior landlord or sub-landlord (whichever is applicable) against the sub-tenant in the following proceedings (*specified proceedings*)—
- (a) proceedings commenced by the superior landlord to recover possession of the subdivided unit;
- (b) proceedings commenced by the superior landlord or sub-landlord to claim the compensation from the sub-tenant.

- (9) Subsection (8) does not apply—
- (a) if the sub-tenant has conducted the sub-tenant's case in the specified proceedings in a frivolous or vexatious manner; or
 - (b) in respect of the costs of any counterclaim made by the sub-tenant in the specified proceedings.
- (10) Also, despite section 48 of the High Court Ordinance, section 49 of the District Court Ordinance and section 12B of the Lands Tribunal Ordinance, no interest on all or any part of the compensation may be included in the sum for which judgment is given in favour of the superior landlord or sub-landlord (whichever is applicable) against the sub-tenant in the specified proceedings.
- (11) In this section—

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

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

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

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

Division 7—Offences relating to Regulated Tenancies

120AAZL. Offence in relation to tenant’s payment of money other than certain types

- (1) A landlord of a regulated tenancy commits an offence if the landlord requires the tenant to pay, or the landlord otherwise receives from the tenant, any money in relation to the tenancy other than those falling within the following types—
 - (a) specified rents;
 - (b) specified rental deposits;
 - (c) reimbursement of charges for any of the specified utilities and services payable by the tenant under the tenancy;
 - (d) damages for the tenant’s breach of the tenancy.
- (2) A person who commits an offence under subsection (1) is liable on a first conviction to a fine at level 3, and on a second or subsequent conviction to a fine at level 4.
- (3) For an offence under subsection (1), the mistaken belief of the person charged as to the money the person is entitled or permitted to receive is not a defence.
- (4) On a person’s conviction of an offence under subsection (1), the magistrate may, in addition to imposing a fine, order the person to repay to the tenant any money received from the tenant other than that the person is entitled or permitted to receive under this Part.
- (5) In subsection (1)—

specified rental deposits (指明租金按金) means rental deposits payable by a tenant under a regulated tenancy as permitted under section 120AAZC;

specified rents (指明租金) means rents payable by a tenant under a regulated tenancy as permitted under this Part.

- (6) For the purposes of the definition of *specified rents* in subsection (5), if the tenancy is a second term tenancy, the reference to rents is a reference to renewed rents.

120AAZM. Offence in relation to payment of apportioned amounts

- (1) This section applies if the charges for any of the specified utilities and services for a subdivided unit incurred by a tenant of a regulated tenancy for the subdivided unit are not independently billed by the relevant authorities or service providers.
- (2) The landlord of the regulated tenancy commits an offence if the landlord requires the tenant to pay for, or the landlord otherwise receives from the tenant, the reimbursement of the charges as a separate payment from rent unless—
- (a) the landlord is the payer named in the bills covering the charges;
 - (b) copies of the bills are produced by the landlord to the tenant when the landlord requires payment; and
 - (c) the landlord has provided an account in writing to the tenant showing—

- (i) how the amounts under the bills (*billed amounts*) are apportioned for the different parts (of which the subdivided unit is one) forming the premises to which the bills relate; and
 - (ii) that the aggregate of the apportioned amounts does not exceed the billed amounts.
- (3) The landlord commits an offence if 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 subdivided unit at a sum exceeding the apportioned amount for the subdivided unit as shown in the account under subsection (2)(c).
- (4) A person who commits an offence under subsection (2) or (3) is liable on a first conviction to a fine at level 3, and on a second or subsequent conviction to a fine at level 4.
- (5) For an offence under subsection (2) or (3), the mistaken belief of the person charged as to the amount the person is entitled or permitted to receive is not a defence.
- (6) On a person's conviction of an offence under subsection (2) or (3), the magistrate may, in addition to imposing a fine, order the person to repay to the tenant any money received from the tenant other than, or in excess of, that the person is entitled or permitted to receive under that subsection.

120AAZN. Offence in relation to provision of rent receipts

- (1) A landlord of a regulated tenancy must give a receipt to the tenant for the amount of rent paid by the tenant to the landlord within 7 days after receiving the amount.
- (2) The landlord must specify the following in the receipt—
 - (a) the name and address of the landlord;
 - (b) the period for which the rent is paid;
 - (c) the date of payment.
- (3) If the landlord fails to comply with subsection (1) or (2), the landlord commits an offence and is liable on conviction to a fine at level 1.

120AAZO. Offence of harassment

- (1) If a person unlawfully deprives a tenant of a regulated tenancy for a subdivided unit of occupation of the subdivided unit, the person commits an offence.
- (2) A person who commits an offence under subsection (1) is liable on conviction on indictment by the court—
 - (a) on a first conviction, to a fine of \$500,000 and to imprisonment for 12 months; and
 - (b) on a second or subsequent conviction, to a fine of \$1,000,000 and to imprisonment for 3 years.
- (3) Subject to subsection (5), if a person, in relation to a subdivided unit—
 - (a) either—

- (i) does any act calculated to interfere with the peace or comfort of the tenant or members of the tenant's household; or
 - (ii) persistently withdraws or withholds services reasonably required for occupation of the subdivided unit as a dwelling; and
- (b) knows, or has reasonable cause to believe, that that conduct is likely to cause the tenant—
 - (i) to give up occupation of the subdivided unit; or
 - (ii) to refrain from exercising any right or pursuing any remedy in respect of the subdivided unit,

the person commits an offence.

- (4) A person who commits an offence under subsection (3) is liable on conviction on indictment by the court—
 - (a) on a first conviction, to a fine of \$500,000 and to imprisonment for 12 months; and
 - (b) on a second or subsequent conviction, to a fine of \$1,000,000 and to imprisonment for 3 years.
- (5) A person does not commit an offence under subsection (3) if the person proves that the person had reasonable grounds for doing the act, or withdrawing or withholding the services, concerned.
- (6) On a person's conviction of an offence under subsection (1) or (3), the court may, in addition to passing sentence, order the person convicted—

- (a) to pay to the tenant a sum that the court considers appropriate by way of compensation for damage, loss or inconvenience suffered by the tenant because of the conduct constituting the offence; and
 - (b) to forfeit to the Government a sum not exceeding the equivalent of the difference, as at the date of the contravention, between—
 - (i) the market value of the subdivided unit with vacant possession; and
 - (ii) the market value of the subdivided unit with the former tenant in possession.
- (7) In this section—
- court* (法院) means the Court of First Instance, the District Court or a magistrate;
- subdivided unit* (分間單位) includes part of a subdivided unit.

Division 8—Commissioner’s Powers

Subdivision 1—Interpretation

120AAZP. Interpretation

- (1) In this Division—
 - premises* (處所) means the subject matter of a tenancy;
 - primary user certificate* (主要用途證明書), in relation to any premises, means a certificate in the specified form as to the primary user of the premises.
- (2) For the purposes of this Division, a reference to the Commissioner includes, as the case requires, an RVD officer authorized in writing in that behalf by the

Commissioner to exercise any of the powers conferred, or perform any of the duties imposed, on the Commissioner for the purposes of this Part.

Subdivision 2—Commissioner’s Certificate

120AAZQ. Application for primary user certificate

- (1) If—
 - (a) a dispute arises as to whether a tenancy of any premises is a domestic tenancy; and
 - (b) the primary user of the premises is relevant to the dispute,

the landlord or tenant of the premises may apply to the Commissioner for the issue of a primary user certificate for the premises.
- (2) A landlord or tenant of any premises may also apply to the Commissioner for the issue of a primary user certificate for the premises, even though no dispute arises as to whether the tenancy is a domestic tenancy.
- (3) An application under this section—
 - (a) must be made in an application form; and
 - (b) if made under subsection (2)—
 - (i) must be submitted to the Commissioner not less than 10 days before the day proposed under subsection (5); and
 - (ii) must be accompanied by an application fee.
- (4) If the application is made under subsection (1), the applicant must also state in the application form the nature of the dispute.

- (5) If the application is made under subsection (2), the applicant must also propose in the application form a day (other than a public holiday) on which the Commissioner may carry out an inspection of the premises under section 120AAZR.
- (6) In this section—
- application fee*** (申請費用) means a fee determined by the Financial Secretary by notice published in the Gazette;
- application form*** (申請表格) means a specified form for an application under this section.
- (7) For the purposes of the definition of ***application fee*** in subsection (6), a notice published by the Financial Secretary determining the application fee is not subsidiary legislation.

120AAZR. Commissioner's inspection

- (1) Before the Commissioner issues a primary user certificate for any premises, the Commissioner must carry out an inspection of the premises for the purpose of determining the primary user of the premises.
- (2) The Commissioner may carry out the inspection—
- (a) for an application under section 120AAZQ(1)—
on a day specified by the Commissioner; and
- (b) for an application under section 120AAZQ(2)—
(i) on the day proposed under section 120AAZQ(5); or

- (ii) if the inspection cannot be carried out on that day—on another day as soon as reasonably practicable afterwards specified by the Commissioner.

120AAZS. Commissioner’s issue of primary user certificate

- (1) The Commissioner must, after carrying out an inspection of any premises under section 120AAZR—
 - (a) if satisfied on the evidence available as to the primary user of the premises—
 - (i) issue; and
 - (ii) serve on the landlord and tenant, a primary user certificate as to the primary user of the premises on the day of the inspection; or
 - (b) if not satisfied on the evidence available as to the primary user of the premises—
 - (i) issue; and
 - (ii) serve on the landlord and tenant, a notice in the specified form declining to express an opinion as to the primary user of the premises.
- (2) If the Commissioner issues a primary user certificate for any premises under this section, no further application may be made under section 120AAZQ(1) or (2) for the premises before the expiry of 1 year from the day on which the primary user certificate is issued.
- (3) A primary user certificate for any premises issued by the Commissioner under this section is, for all purposes, evidence (unless proved otherwise)—

- (a) of the facts set out in the primary user certificate; and
- (b) of the primary user of the premises as at the day of the inspection.

Subdivision 3—Commissioner’s Endorsement

120AAZT. Notice of tenancy to Commissioner

- (1) This section applies if—
 - (a) a landlord and a tenant have entered into a first term tenancy for a subdivided unit; or
 - (b) a second term tenancy—
 - (i) is entered into by the parties by way of a Form AR1; or
 - (ii) is taken to be granted by the landlord to the tenant under section 120AAW(2)(b),
for the subdivided unit.
- (2) The landlord must, within 60 days after the term of the tenancy commences or is taken to commence under section 120AAQ(3)(a) or (5)(a), submit a notice in the specified form to the Commissioner to notify the Commissioner of the particulars of the tenancy.
- (3) If the landlord, without reasonable excuse, refuses or neglects to comply with subsection (2), the landlord commits an offence.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 3, and in the case of a continuing offence, to a further fine of \$200 for each day during which the offence continues.

- (5) On a person's conviction of an offence under subsection (3), the magistrate may, in addition to any penalty that may be imposed, order the person to, within a time specified in the order, submit the notice to the Commissioner.

120AAZU. Commissioner's endorsement of notice of tenancy

- (1) On receiving a notice submitted under section 120AAZT, the Commissioner must—
 - (a) endorse the notice with the date of its receipt; and
 - (b) notify the landlord and tenant of the receipt of the notice.
- (2) The landlord may not maintain an action to recover any rent under the tenancy unless the notice is endorsed by the Commissioner under subsection (1).

Subdivision 4—Other Powers

120AAZV. Commissioner may serve requisition

- (1) For the purposes of this Part, the Commissioner may serve on any person a requisition in the specified form in relation to any premises.
- (2) The person must—
 - (a) within the period specified by the Commissioner; and
 - (b) in writing,provide to the Commissioner any particulars reasonably required by the requisition.

- (3) If the person, without reasonable excuse, refuses or neglects to comply with subsection (2), the person commits an offence.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 3 and to imprisonment for 3 months.

120AAZW. Commissioner may require reference documents

- (1) For the purposes of this Part, the Commissioner may require the landlord or tenant of any premises (*provider*) to provide any reference document to the Commissioner.
- (2) The provider must, within the period specified by the Commissioner, provide to the Commissioner the reference document required by the Commissioner.
- (3) If the provider, without reasonable excuse, refuses or neglects to comply with subsection (2), the provider commits an offence.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 3 and to imprisonment for 3 months.
- (5) For the purposes of subsection (1), the reference to the landlord or tenant includes a former landlord or a former tenant.
- (6) In this section—
reference document (參考文件), in relation to any premises, means a document relating to—
 - (a) a tenancy of the premises; or
 - (b) a user of the premises,

and includes a tenancy in writing, a receipt for rent, a rent-book, accounts and a bill for any of the specified utilities and services.

120AAZX. Commissioner may enter premises with consent

The Commissioner may, with the occupier's consent, enter any premises at any reasonable time for the following purposes—

- (a) to carry out an inspection of the premises under section 120AAZR;
- (b) to ascertain whether an offence under this Part is being, or has been, committed in relation to the premises.

120AAZY. Commissioner may enter premises with warrant

- (1) If the Commissioner—
 - (a) fails to obtain the occupier's consent for; or
 - (b) is otherwise frustrated or obstructed in, entering any premises for the purposes mentioned in section 120AAZX, the Commissioner may apply to a magistrate for a warrant to enter the premises for those purposes.
- (2) The Commissioner may, with a warrant issued under subsection (3), enter (by the use of reasonable force if necessary) the premises and exercise any of the powers specified in section 120AAZZ(1) and (2) (each a *specified power*).
- (3) A magistrate may issue a warrant authorizing the Commissioner to enter the premises and exercise a specified power if—

- (a) the magistrate is satisfied by information on oath that there are reasonable grounds to suspect that—
 - (i) the Commissioner’s determination of the primary user of the premises after an inspection is likely to affect a person’s interest in the premises;
 - (ii) an offence under this Part (*contravention*) is being, or has been, committed in relation to the premises; or
 - (iii) there is on the premises anything that constitutes, or is likely to constitute, evidence that a contravention is being, or has been, committed in relation to the premises; and
- (b) the magistrate is also satisfied that—
 - (i) it is not practicable to communicate with a person entitled to grant entry to the premises;
 - (ii) such a person has unreasonably refused entry to the premises by the Commissioner;
 - (iii) the Commissioner apprehends on reasonable grounds that entry to the premises is unlikely to be granted unless a warrant is issued; or
 - (iv) the purpose of entry to the premises would be frustrated unless the Commissioner arriving at the premises can secure immediate entry.
- (4) A warrant issued under subsection (3) must specify—
 - (a) the premises to be entered;

- (b) the purpose of the entry;
 - (c) the name and capacity of the person authorized to enter the premises; and
 - (d) the date of issue of the warrant.
- (5) A person entering the premises with a warrant issued under subsection (3) must, if requested, produce the warrant for inspection.
- (6) A warrant issued under subsection (3) must be executed at a reasonable hour unless the Commissioner believes that to execute it at a reasonable hour could frustrate the purpose of the execution.
- (7) When entering any premises under this section, the Commissioner may be accompanied by any person that the Commissioner considers necessary for the purpose of entering the premises.
- (8) Unless otherwise specified by the magistrate, a warrant issued under subsection (3) continues in force until the purpose of the entry has been satisfied.

120AAZZ. Powers after entry

- (1) The following are powers specified for the purposes of section 120AAZY(2) if the entry is for the purpose mentioned in section 120AAZX(a)—
- (a) to inspect the premises;
 - (b) to take any measurements and other particulars of the premises that the Commissioner considers appropriate;
 - (c) to take any photograph and video recording inside the premises;

- (d) to require any person present on the premises to provide any assistance or information necessary for enabling the Commissioner to perform the Commissioner's functions under section 120AAZR.
- (2) The following are powers specified for the purposes of section 120AAZY(2) if the entry is for the purpose mentioned in section 120AAZX(b)—
- (a) to inspect and search the premises;
 - (b) to examine any document found on the premises;
 - (c) to take any measurements and other particulars of the premises that the Commissioner considers appropriate;
 - (d) to take any photograph and video recording inside the premises;
 - (e) to seize and detain anything that is, or that appears to be or to contain, or that is likely to be or to contain, evidence of the commission of an offence under this Part in relation to the premises, and to take the steps that appear to be necessary for preserving the thing so seized or preventing interference with it;
 - (f) to do anything necessary for ascertaining whether an offence under this Part is being, or has been, committed in relation to the premises;
 - (g) to require any person present on the premises to provide any assistance or information necessary for enabling the Commissioner to perform the Commissioner's functions for the purpose mentioned in section 120AAZX(b).

120AAZZA. Commissioner may disclose information

(1) The Commissioner may disclose any information obtained under this Part to a specified person if the Commissioner considers that the disclosure will enable or assist the specified person to exercise a power (including a right) conferred, or perform a function (including a duty) imposed, on the person by—

- (a) this Ordinance;
- (b) the Rating Ordinance (Cap. 116); or
- (c) the Government Rent (Assessment and Collection) Ordinance (Cap. 515).

(2) In subsection (1)—

specified person (指明人士) means—

- (a) the Court of First Instance;
- (b) the District Court;
- (c) the Tribunal;
- (d) a magistrate; or
- (e) a public officer acting in the capacity of a public officer.

Division 9—Miscellaneous Provisions

120AAZZB. Costs

In any proceedings under this Part, the court must not make any order as to costs against a party unless that party has conducted the case in a frivolous or vexatious manner.

120AAZZC. Giving evidence in proceedings

- (1) Subject to subsection (2)—
 - (a) neither the Commissioner nor an RVD officer may be called to give evidence in proceedings before the court; and
 - (b) no subpoena may be issued against the Commissioner or an RVD officer.
- (2) The Commissioner or an RVD officer may only be called to give evidence in any proceedings before the court for determining whether or not a tenancy is a domestic tenancy for the purposes of section 120AAB(1)(b).

120AAZZD. Use of returned requisition as evidence

- (1) A returned requisition is, in any proceedings before the Tribunal, a magistrate, the District Court or the Court of Appeal, admissible as evidence of the facts stated in the returned requisition.
- (2) A document purporting to be a returned requisition is in the proceedings presumed, unless the contrary is shown—
 - (a) to be such a returned requisition;
 - (b) to have been made by the person by whom it purports to have been made; and
 - (c) if it purports to have been made by a person in a capacity specified in the returned requisition—to have been made by the person in that capacity.
- (3) In this section—

returned requisition (交回報表) means either—

- (a) a notice submitted to the Commissioner under section 120AAZT(2); or
- (b) a requisition—
 - (i) served under section 120AAZV(1) on a person;
 - (ii) served under section 5(1)(a) of the Rating Ordinance (Cap. 116) on a person who is the owner or occupier of a tenement; or
 - (iii) served under section 31(1)(a) of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) on a person who is the lessee of an applicable lease or the owner or occupier of a tenement,

and returned by the person to the Commissioner containing (or purporting to contain) all or any of the particulars required to be given by the person to the Commissioner.

120AAZZE. Providing false or misleading particulars etc.

- (1) This section applies if a person is required to—
 - (a) provide any particulars required by a requisition, any reference document or any other information to the Commissioner under this Part; or
 - (b) submit a notice in the specified form to the Commissioner to notify the Commissioner of any particulars of a tenancy under section 120AAZT(2).
- (2) A person commits an offence if the person—
 - (a) in purported compliance with the requirement—

- (i) provides any particulars that are false or misleading in a material particular;
 - (ii) provides any reference document that is false or misleading in a material particular; or
 - (iii) says or states anything (when providing the particulars, reference document or information) that is false or misleading in a material particular; and
- (b) knows that, or is reckless as to whether or not, the particulars, reference document or information, or the thing said or stated, is false or misleading in a material particular.
- (3) A person who commits an offence under subsection (2) is liable on conviction to a fine at level 3 and to imprisonment for 3 months.
- (4) In this section—
- reference document* (参考文件) has the meaning given by section 120AAZW(6).

120AAZZF. Use of incriminating evidence in proceedings

- (1) This section applies if the Commissioner requires a person to provide any particulars required by a requisition under section 120AAZV(2).
- (2) The Commissioner must ensure that the requisition served on the person contains sufficient information to inform and remind the person of the limitations imposed by subsection (3) on the admissibility in evidence of the Commissioner's requirement and the person's response.

- (3) Despite anything in this Ordinance, if the conditions specified in subsection (4) are satisfied, the Commissioner's requirement and the person's response are not admissible in evidence against the person in criminal proceedings.
- (4) The conditions are—
 - (a) that the person's response might tend to incriminate the person; and
 - (b) that the person so claims before giving the response.
- (5) However, a person is not excused from complying with a requirement imposed on the person under section 120AAZV(2) only on the ground that to do so might tend to incriminate the person.
- (6) Subsection (3) does not apply to any criminal proceedings in which the person is charged with an offence in respect of the person's response—
 - (a) under section 120AAZV or 120AAZZE; or
 - (b) under Part V of the Crimes Ordinance (Cap. 200).
- (7) In this section—

response (回應), in relation to a person, means any particulars provided by the person as required by a requisition under section 120AAZV(2).

120AAZZG. Forms

- (1) The Commissioner may specify the forms to be used under this Part.
- (2) The Commissioner may publish in the Gazette any form specified under subsection (1).

- (3) The Commissioner may, if considered appropriate, accept any notice or application submitted to the Commissioner that is not in the specified form.

120AAZZH. Service of documents

- (1) Service of any specified document under this Part may only be effected—
 - (a) by personal service;
 - (b) by post or courier, addressed to the last known place of business or residence of the person to be served; or
 - (c) if it is to be served on a tenant—
 - (i) by leaving the specified document with an adult occupier of the premises in which the tenant resides and to which the document relates; or
 - (ii) by affixing a copy of it to a prominent part of the premises in which the tenant resides and to which it relates.
- (2) A certificate purporting to be signed by a person who states in the certificate that the person effected service under subsection (1) is, unless proved otherwise, evidence of the facts stated in the certificate relating to the service.
- (3) Subsection (1)(c)(ii) does not apply if the specified document is a tenancy in writing or Form AR1.
- (4) In this section—

specified document (指明文件) means any notice (other than a notice under section 120AAZJ(2)), form, application, certificate or other document.”

5. Section 128 amended (interpretation)

Section 128—

Add in alphabetical order

“*landlord* (業主) has the meaning given by section 120AA(1);

regulated tenancy (規管租賃) has the meaning given by section 120AA(1);

subdivided unit (分間單位) has the meaning given by section 120AA(1);”.

6. Section 129 amended (summoning of tenant of premises with a rateable value not exceeding \$100,000 unlawfully holding over)

(1) Section 129—

Renumber the section as section 129(1).

(2) After section 129(1)—

Add

“(2) For the purposes of subsection (1), if the premises to be recovered are a subdivided unit subject to a regulated tenancy, the owner of the premises (or the owner’s agent) must, in the relevant application, specify whether or not the regulated tenancy is created out of another tenancy.”.

7. Section 131 amended (issue of warrant for possession of premises)

(1) Section 131—

Renumber the section as section 131(1).

(2) After section 131(1)—

Add

- “(2) For the purposes of subsection (1), if—
- (a) the premises are a subdivided unit subject to a regulated tenancy; and
 - (b) the regulated tenancy is created out of another tenancy,
- the District Court must, in issuing a warrant to a bailiff of the Court of First Instance or the District Court, include a condition in the warrant that the execution of the warrant is to be stayed for 60 days.
- (3) However, subsection (2) does not apply if the person making the application under section 129(1) is the landlord of the regulated tenancy for the premises.”.

8. Schedules 6 and 7 added

After Fifth Schedule—

Add

“Schedule 6

[ss. 120AAB & 120AAC]

Tenancies Excluded from Application of Part IVA

1. Interpretation

(1) In this Schedule—

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

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

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

social services organization (社會服務機構) means a non-profit-making organization operating on a non-profit-making basis for the purpose of providing social services.

(2) The following expressions have the same meaning in this Schedule as in section 120AA—

building;

building plan;

Buildings Ordinance;

landlord;

tenancy;

tenant;

unit.

2. Excluded tenancies

Part IVA does not apply to any of the following tenancies—

(a) a tenancy to which Part I or II applies;

- (b) 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;
- (c) a tenancy—
 - (i) that is not a sub-tenancy;
 - (ii) the subject premises of which are a bedroom in a unit; and
 - (iii) the landlord of which is—
 - (A) a natural person; and
 - (B) residing in the unit at the commencement of the tenancy;
- (d) a tenancy held from—
 - (i) the Government;
 - (ii) the Hong Kong Housing Authority;
 - (iii) the Hong Kong Housing Society;
 - (iv) the Hong Kong Settlers Housing Corporation Limited; or
 - (v) the Urban Renewal Authority (or any of its wholly owned subsidiaries);
- (e) a tenancy of premises under the Hong Kong Housing Society's Letting Scheme for Subsidised Sale Developments with Premium Unpaid;
- (f) a tenancy of premises that is subsisting at the time an order under section 4 is made in respect of the premises;

- (g) a tenancy held from a social services organization.

Schedule 7

[ss. 120AAZF, 120AAZG
& 120AAZI]

Mandatory Terms Implied for Every Regulated Tenancy

Part 1

Interpretation

1. Interpretation

- (1) In this Schedule—

premises (處所) means a subdivided unit that is the subject matter of a regulated tenancy;

tenancy agreement (租賃協議) means a tenancy, or an agreement for a tenancy, in writing for a regulated tenancy (including a Form AR1 signed by the landlord and tenant for a second term tenancy) and includes, where applicable, its counterpart.

- (2) The following expressions have the same meaning in this Schedule as in section 120AA—

Form AR1;

landlord;

regulated tenancy;
second term tenancy;
subdivided unit;
tenant;
term;
unit.

Part 2

Tenancy Agreement

2. Stamp duty borne by landlord

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

3. Stamping of tenancy agreement by landlord

The landlord must, after receiving the tenancy agreement for a regulated tenancy signed 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.

4. Landlord's return of stamped tenancy agreement

- (1) If the landlord fails to return a counterpart of the stamped tenancy agreement under section 3(b) of this Schedule, the tenant may withhold the payment of rent until the landlord has done so.

- (2) If the landlord has eventually returned the counterpart of the stamped tenancy agreement to the tenant, the tenant must pay back, free of interest, any rent withheld under subsection (1) to the landlord within 15 days after the tenant's receipt of the counterpart.
- (3) If the tenant fails to comply with subsection (2), the landlord may, by giving the tenant not less than 15 days' prior notice in writing, terminate the tenancy.

Part 3

Landlord's Obligations during Term

5. Maintenance and repair

- (1) The landlord must maintain and keep in repair (where applicable)—
 - (a) the drains, pipes and electrical wiring serving the premises exclusively; and
 - (b) windows of the premises.
- (2) The landlord must also keep in repair and proper working order the fixtures and fittings provided by the landlord in the premises.
- (3) On receiving a notice from the tenant for repair of an item referred to in subsection (1) or (2), the landlord must carry out the repair as soon as practicable.
- (4) For the 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) (as the case requires) carry out the repair.
- (5) However, if the damage to the item is caused by the wilful or negligent act of—
 - (a) the tenant;
 - (b) an occupier (other than the tenant) of the premises; or
 - (c) a person permitted by the tenant to be on the premises,the landlord is not responsible for the maintenance and repair of the item under subsection (1) or (2).

6. Tenant's termination of tenancy

- (1) This section applies if the landlord fails to fulfil an obligation under section 5 of this Schedule.
- (2) The tenant may, by giving the landlord not less than 30 days' prior notice in writing, terminate the tenancy.
- (3) Section 120AAZH(4) applies to a termination under this section.

Part 4

Tenant's Obligations during Term

7. Payment of rent

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

8. No structural alteration without consent

The tenant must not make any structural alteration, or permit or suffer any structural alteration to be made, to the premises without the prior consent in writing of the landlord.

9. 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.

10. Annoyance, inconvenience or disturbance

- (1) The tenant must not do anything, or permit or suffer anything to be done, on the premises that would cause any unnecessary annoyance, inconvenience or disturbance to the landlord or any other person.
- (2) For the purposes of subsection (1), 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.

11. 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.

12. Landlord's re-entry

- (1) The landlord may re-enter the premises (or any part of the premises in the name of the whole) if the tenant—
 - (a) is in breach of section 7 of this Schedule and fails to pay the rent within 15 days after the due date (except where the tenant is withholding the payment of rent under section 120AAZ(3)(a), or section 4(1) of this Schedule); or
 - (b) is in breach of section 8, 9, 10 or 11 of this Schedule.
 - (2) The tenancy of the premises is terminated immediately on the landlord's re-entry under subsection (1).”.
-

Part 3

Related Amendments

Division 1—Amendment to Lands Tribunal Ordinance (Cap. 17)

9. Section 8 amended (jurisdiction of the Tribunal)

(1) Section 8(8)(c)—

Repeal

“and”.

(2) Section 8(8)(d)—

Repeal the full stop

Substitute

“; and”.

(3) After section 8(8)(d)—

Add

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

(4) After section 8(8)—

Add

“(8AA) The Tribunal has jurisdiction, on an application, to determine whether any tenancy is a regulated tenancy for the purposes of Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).”.

Division 2—Amendments to Lands Tribunal Rules (Cap. 17 sub. leg. A)

10. Cross-heading before rule 68 amended

Cross-heading before rule 68—

Repeal

“IV and”

Substitute

“IV, IVA and”.

11. Rule 68 amended (commencement of proceedings)

Rule 68(1)—

Repeal

“IV and”

Substitute

“IV, IVA and”.

12. Schedule amended (forms)

The Schedule, Form 22—

Repeal

“respondent.”

Substitute

“respondent.

* Application for determination of whether a tenancy is a regulated tenancy for the purposes of Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).
/ *Application for determination on the entitlement of a family member of a deceased tenant to the deceased tenant’s benefits and protection under a regulated tenancy

under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).”.

Division 3—Amendment to Lands Tribunal (Fees) Rules (Cap. 17 sub. leg. B)

13. Schedule amended (fees)

The Schedule, item 5—

Repeal

“IV or”

Substitute

“IV, Part IVA or”.

Division 4—Amendments to Rating Ordinance (Cap. 116)

14. Section 6A amended (use of returned requisition as evidence)

(1) Section 6A(2)(b)—

Repeal

“119L(1)”

Substitute

“119L(1), a notice submitted to the Commissioner under section 120AAZT(2)”.

(2) Section 6A(2)(b)—

Repeal

“119T(1)(a)”

Substitute

“119T(1)(a) or 120AAZV(1)”.

Division 5—Amendment to Land Registration Ordinance (Cap. 128)

15. Section 3 amended (priority of registered instruments; effect of non-registration)

Section 3(2), proviso—

Repeal

“years.”

Substitute

“years, or to a regulated tenancy (as defined by section 120AA(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).”.

Division 6—Amendments to Government Rent (Assessment and Collection) Ordinance (Cap. 515)

16. Section 39 amended (use of returned requisition as evidence)

(1) Section 39(2)(a)—

Repeal

“119L(1)”

Substitute

“119L(1), a notice submitted to the Commissioner under section 120AAZT(2)”.

(2) Section 39(2)(a)—

Repeal

“119T(1)(a)”

Substitute

“119T(1)(a) or 120AAZV(1)”.

**Division 7—Amendment to Electronic Transactions
Ordinance (Cap. 553)**

17. Schedule 3 amended (service of documents)

Schedule 3, item 1—

Repeal

“Section 119Y(1)(a) and (b)”

Substitute

“Sections 119Y(1)(a) and (b) and 120AAZZH(1)(a) and (b)”.