

BUTTERWORTHS HONG KONG

**Conveyancing and Property Law**  
HANDBOOK

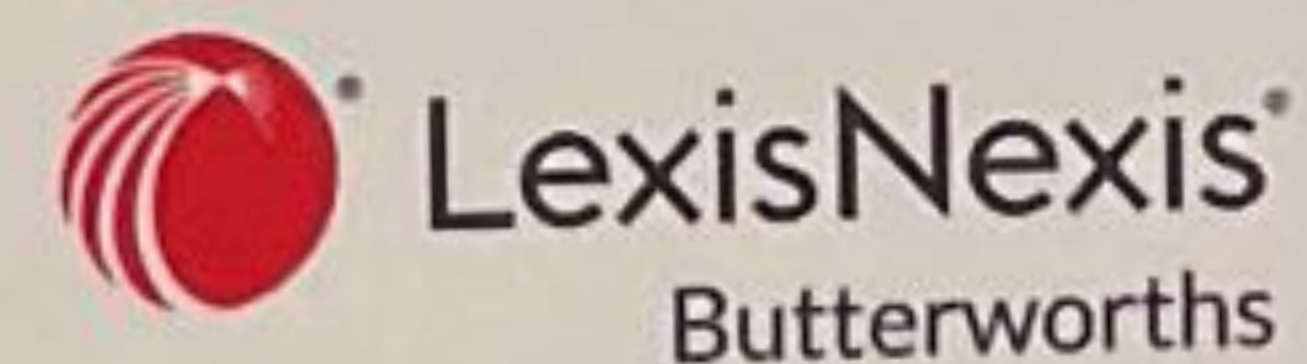
Seventh Edition (Volume 1)



BUTTERWORTHS HONG KONG

**Conveyancing and Property Law**  
HANDBOOK

Seventh Edition (Volume 2)



**Butterworths Hong Kong Conveyancing and Property Law Handbook** is a detailed work of reference on the Conveyancing and Property Ordinance (Cap 219), Land Registration Ordinance (Cap 128), Landlord and Tenant (Consolidation) Ordinance (Cap 7), Lands Resumption Ordinance (Cap 124), Land Acquisition (Possessory Title) Ordinance (Cap 130), Land (Miscellaneous Provisions) Ordinance (Cap 28), Lands Tribunal Ordinance (Cap 17) and selected sections of the Limitation Ordinance (Cap 347). This Handbook reproduces the text of the Ordinances and all relevant subsidiary legislation as currently in force along with section-by-section annotations. The annotations provide definitions of words and phrases, discussions on practical aspects and contentious issues, and other authoritative materials. It also examines significant judicial decisions and rules of the court.

This series has been cited with authority in over a hundred court cases in the Hong Kong Court of First Instance, the Court of Appeal and the Court of Final Appeal. This Handbook is an invaluable source of information for practitioners, legal advisers, students and anyone interested in the laws governing conveyancing and property in Hong Kong.

[lexisnexis.com.hk](http://lexisnexis.com.hk)



**Butterworths Hong Kong Conveyancing and Property Law Handbook** is a detailed work of reference on the Conveyancing and Property Ordinance (Cap 219), Land Registration Ordinance (Cap 128), Landlord and Tenant (Consolidation) Ordinance (Cap 7), Lands Resumption Ordinance (Cap 124), Land Acquisition (Possessory Title) Ordinance (Cap 130), Land (Miscellaneous Provisions) Ordinance (Cap 28), Lands Tribunal Ordinance (Cap 17) and selected sections of the Limitation Ordinance (Cap 347). This Handbook reproduces the text of the Ordinances and all relevant subsidiary legislation as currently in force along with section-by-section annotations. The annotations provide definitions of words and phrases, discussions on practical aspects and contentious issues, and other authoritative materials. It also examines significant judicial decisions and rules of the court.

This series has been cited with authority in over a hundred court cases in the Hong Kong Court of First Instance, the Court of Appeal and the Court of Final Appeal. This Handbook is an invaluable source of information for practitioners, legal advisers, students and anyone interested in the laws governing conveyancing and property in Hong Kong.

[lexisnexis.com.hk](http://lexisnexis.com.hk)



# Conveyancing and Property Law Handbook (Volume 1)

## *Table of Contents*

Table of Cases .....	xvii
Table of Legislation .....	ccxi
Table of Other Sources.....	cccxiii
Glossary of Chinese Words and Phrases.....	cccxxxi
Conveyancing and Property Ordinance (Cap 219) .....	1
Land Registration Ordinance (Cap 128).....	549

Professional Bookshop  
www.pbookshop.com

**Conveyancing and Property Law Handbook  
(Volume 2)**

***Table of Contents***

Landlord and Tenant (Consolidation) Ordinance (Cap 7) .....	657
Lands Resumption Ordinance (Cap 124).....	1011
Land Acquisition (Possessory Title) Ordinance (Cap 130).....	1179
Land (Miscellaneous Provisions) Ordinance (Cap 28) .....	1267
Lands Tribunal Ordinance (Cap 17).....	1427
Limitation Ordinance (Cap 347).....	1673

Professional Bookshop  
www.pbookshop.com

## Lands Tribunal Ordinance (Cap 17)

### English

appellant  
applicant  
Authority  
business day  
Cap. 545  
connected application  
defendant  
Director  
funds  
Lands Tribunal Suitors' Funds  
Account  
ledger account  
legal representative  
lodge  
main application  
Master  
member of the Tribunal  
order  
Ordinance  
ordinary post  
plaintiff  
power company  
President  
presiding officer  
purchaser  
qualified in law  
recognized stock market  
registrar  
respondent  
Secretary  
securities  
temporary member  
Tribunal  
wasted costs

### Chinese

上訴人  
申請人  
主管當局  
工作日  
《第545章》  
關聯申請  
被告人  
署長  
儲存金  
土地審裁處訴訟人儲存金帳戶  
分類帳帳目  
法律代表  
交存  
主體申請  
聆案官  
審裁處成員  
命令  
條例  
普通郵遞  
原告人  
電力公司  
庭長  
法官  
購買者  
具有法律專業資格  
認可證券市場  
司法常務官  
答辯人  
局長  
證券  
暫委成員  
審裁處  
虛耗訟費

## Conveyancing and Property Ordinance (Cap 219) 物業轉易及財產條例(第219章)

# CONVEYANCING AND PROPERTY ORDINANCE

(CAP 219)

## Introduction

Up until 1984, the law governing real property and conveyancing practice in Hong Kong consisted of common law and rules of equity, which were supplemented by several Acts of Parliament of the United Kingdom incorporated into Hong Kong law by the Application of English Law Ordinance (Cap 88) (not adopted as the laws of the HKSAR), and local legislation such as the Law Amendment and Reform (Consolidation) Ordinance (Cap 23), the Law of Property Amendment Ordinance (Cap 24) (now Securities and Futures Commission Ordinance) (repealed), the New Territories Ordinance (Cap 97), the Law of Property (Enforcement of Covenants) Ordinance (Cap 297) (now replaced), and the Land Registration Ordinance (Cap 128). On 26 July 1984, the Conveyancing and Property Ordinance (Cap 219) (the 'Ordinance') was enacted, which largely codified the law of real property and simplified conveyancing practice and documentation. The Ordinance came into effect on 1 November 1984.

## History of enactment

On 21 January 1885, all 15 lawyers of the day presented a petition which was supported by the names of 50 residents and land-owners, to the Legislative Council proposing the enactment of a comprehensive property code: see Katherine Mattock, *Partners in Law* (Shomei Ltd 1990 Issue). In 1904, a bill was published to simplify the practice of conveyancing; and in 1920, proposals were made to introduce a title registration system in Hong Kong. In 1965, the Law Society of Hong Kong tried to take the initiative with a report of their conveyancing sub-committee calling for early legislation: see Sarah Nield, *The Hong Kong Conveyancing and Property Ordinance* (Butterworths 1988 Issue) at xli. A draft Law of Property and Conveyancing Bill was prepared: see *Law Lectures for Practitioners (Hong Kong Law Journal Ltd 1974)* at 88. However, all these attempts proved to be futile.

Ninety-eight years after the first demand for reform, the Conveyancing and Property Bill 1983 was published as a discussion bill, and a working party comprising representatives of the Registrar General's Department, the Law Society and the University of Hong Kong was formed to comment on it. Consequently, a much revised Conveyancing and Property Bill 1984 was published and enacted as the Conveyancing and Property Ordinance (Cap 219) on 26 July 1984: see 'Law Lectures for Practitioners 1984' HKLJ 1-60 at v.

Some of the sections of the Ordinance were subsequently amended pursuant to the Conveyancing and Property (Amendment) Ordinance 1988 (31 of 1988). Sections 12A, 23A and 34A were subsequently enacted in the years 1997, 2000 and 2003 respectively. In 2008, s 13A was added along with consequential

amendments made to conditions 8 and 9 of Second Sch, Pt A pursuant to ss 10 and 11 of the Statutes Law (Miscellaneous Provisions) (No 2) Ordinance 2008 (25 of 2008).

### *Salient features of the Ordinance*

The Conveyancing and Property Ordinance (Cap 219) aims to codify the existing legislation affecting property in Hong Kong, to introduce reforms to remedy existing deficiencies, to resolve uncertainties, to update existing legislation, and to streamline conveyancing documentation and procedures which have changed little since the 19th century: see Sarah Nield, 'Conveyancing and Property Ordinance 1984' (1985) 15 HKLJ 48.

#### (1) Codification:

The Grantees of Reversions Act 1540 (UK), An Act Against Fraudulent Deeds, Gifts, Alienation etc 1571 (UK), An Act Against Covenous and Fraudulent Conveyances 1584 (UK), An Act to Prevent Frauds by Clandestine Mortgages 1692 (UK) and the Mortgage Act 1733 (UK), all of which were incorporated into Hong Kong law by the Application of English Law Ordinance (Cap 88) (not adopted as the laws of the HKSAR), were repealed pursuant to Conveyancing and Property Ordinance (Cap 219). All but the Act to Prevent Frauds by Clandestine Mortgages 1692 (UK) and the Mortgage Act 1733 (UK) were substituted with new provisions as ss 31–2 and 60–61 of the Conveyancing and Property Ordinance.

Part I of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23), which enacted the provisions governing formalities derived originally from the Statute of Frauds 1677 (UK) and the Law of Property Act 1925 (UK), was repealed and re-enacted in a revised form as ss 3 and 5–7 of the Conveyancing and Property Ordinance. Sections 10 and 28 of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23), concerning agreements made by a person with himself and others, were also repealed and re-enacted as ss 25 and 43 of the Conveyancing and Property Ordinance. The Law of Property Amendment Ordinance (Cap 24) no longer exists, and its various provisions regarding the enforcement of covenants in leases were re-enacted as ss 29–30 and 33–34 of the Conveyancing and Property Ordinance. Sections 48 and 59 of the Conveyancing and Property Ordinance also owe their origins to the Law of Property Amendment Ordinance (Cap 24) (now Securities and Futures Commission Ordinance) (repealed).

Furthermore, the Conveyancing and Property Ordinance (Cap 219) repealed provisions on standard forms, implied covenants, powers and provisions, which were contained in ss 22–41 of the New Territories Ordinance (Cap 97), an ordinance providing for a conveyancing code limited to the New Territories. They were replaced by similar territory-wide provisions. The Law of Property (Enforcement of Covenants)

Ordinance (Cap 297) (now replaced) was repealed, and the enforcement of covenants relating to land is now governed by ss 41–42 of the Conveyancing and Property Ordinance.

Section 57 of the Conveyancing and Property Ordinance is a slight amendment to the Land Registration Ordinance (Cap 128) to deal with the problems encountered in the priority of floating charges. Section 63 of the Conveyancing and Property Ordinance also amended s 15 of the Trustee Ordinance (Cap 29), so as to clarify those persons who can give a valid receipt for money arising on a trust for sale of land.

Some ordinances which deal with specific issues affecting property remain unaffected. See, for example, the Landlord and Tenant (Consolidation) Ordinance (Cap 7); the Building Management Ordinance (Cap 344); and the Partition Ordinance (Cap 352).

#### (2) Reforms:

Some of the new provisions introduced by the Conveyancing and Property Ordinance (Cap 219) merely reflect the established local practice prior to 1984, while others are truly reforms to property law and conveyancing procedures.

#### *Formalities*

A legal estate may be dealt with by a deed only (s 4), which must be signed (s 19). Neither requirement is required at common law. The execution of a document under seal by a corporation is governed by s 20 whilst s 23A assists in the proof of due execution of a deed by a corporation.

#### *Co-ownership*

Section 9 raises a presumption in favour of a tenancy in common unless a contrary intention is expressed. A corporation may hold property in joint tenancy as if it were an individual: s 10. A joint tenant may sever his or her interest both at law and in equity by notice, while severance at law must be in writing: s 8.

#### *Presumption of survivorship*

Where persons died in a common calamity and it is uncertain who survived the other, the younger is deemed to have survived the elder: s 11. The presumption applies to the succession of all property and not just land.

#### *Vendor and purchaser summons*

This provision was introduced by the Conveyancing and Property Ordinance (Cap 219) as what was intended to be a simpler and speedier way for resolving disputes arising out of a contract for sale of land: s 12.

### *Proof of title*

At common law, a vendor was required to show good title for 60 years. This was reduced to 25 years pursuant to s 13 of the 1984 Ordinance (Amendment) Ordinance 1988 (31 of 1988). A number of presumptions intended to assist in the proof of title were also introduced and s 12A provides a new procedure by which the court can discharge an encumbrance where the encumbrancer is uncertain or unknown or is out of the jurisdiction or cannot be found. Sections 22–23A of the Conveyancing and Property Ordinance (Cap 219) also provides deeming provisions which facilitates proof of title.

### *Conditions and Government leases*

Section 14 resolves a problem which was peculiar to Hong Kong arising from the practice of issuing Conditions of Grant rather than a formal Government lease, by removing the distinction between a Government lease and Conditions of Grant. The registration of a certificate of compliance provides conclusive proof of performance of the conditions precedent: s 14(3).

### *Agreement, assignments and covenants by a person to or with himself*

At common law, a person could not agree, covenant or assign to or with himself or to or with himself and others. Section 25 changes the common law position.

### *Leasehold covenants*

Section 29 preserves the effect of covenants after the grant of a licence or permission to do an act in breach of the covenants. Section 30 permits the severance of conditions, for example, a right of re-entry, upon the assignment of part of the landlord's reversion. Sections 31–32 revise the doctrine of privity of estate. Section 58 introduces a requirement for a statutory notice to be served before a landlord can commence forfeiture proceedings, and also grants a lessee a statutory right to relief from forfeiture.

### *Enforcement of covenants*

The ownership and management of multi-storey buildings in Hong Kong is normally governed by deeds of mutual covenants, and it is important that both negative and positive covenants are enforceable between the parties and their respective successors in title. The enforcement of both kinds of covenants are governed by s 41. Sections 39–40 raise a presumption that the benefit and burden of a covenant are intended to run with the land unless a contrary intention is expressed. A person intended to benefit from a covenant may sue upon it, notwithstanding that he is not a party to the deed: s 26. Covenantees are deemed to take the benefit

of a covenant jointly and severally, so that they may sue either together or individually: s 43.

### *Mortgages*

Prior to 1984, mortgages were made by the assignment of the mortgagor's interest in the land to the mortgagee subject to a proviso for redemption upon repayment of the advance. Under s 44, all legal mortgages must be created by way of legal charge. Section 56 introduces a convenient way of discharging or reassigning a mortgage by a receipt signed by the mortgagee for all the money's secured by the mortgage. The law relating to tacking is simplified by s 45.

### (3) *Streamlining conveyancing documentation:*

One of main objectives of the Conveyancing and Property Ordinance (Cap 219) was to streamline conveyancing documentation.

### *Standard covenants and conditions*

Section 35 implies automatically into every assignment of land, the standard indemnity covenant by a purchaser to perform the Government lease covenants and any deed of mutual covenant. It provides for the implication of the standard covenants for title found in assignments by a donor or beneficial or limited owner and legal charges by a mortgagor where certain 'trigger' words are used. The covenants are set out in Sch 1. Section 36 provides for the implication by reference of certain standard conditions (set out in Sch 2) in agreements for sale and purchase, equitable mortgages and legal charges.

### *Implied powers of mortgagees and receivers*

Powers of mortgagees and receivers are implied into all mortgages by deed (ss 50–51, and Sch 4). Section 52 protects a purchaser from an improper or irregular exercise of the power of sale. Section 53 governs the operation of the power of sale and foreclosure by a legal chargee to endure the effective passing of the legal estate free from subsequent encumbrances. Section 55 provides that the mortgagee's receipt is a good discharge, so that a purchaser is not concerned to see that the sale proceeds are applied as required by s 54, which governs the application of the proceeds of any sale or other disposal by a mortgagee or receiver.

### *Standard forms*

The standard forms set out in Sch 3 includes an agreement for sale and purchase, an assignment, an equitable mortgage, two forms of legal charge and a discharge of mortgage by receipt.

### *Drafting aids*

Section 15 provides for the construction of words and phrases commonly used in conveyancing documents. Sections 16–17 render it unnecessary

to use the standard 'general words' and 'all estate' clauses in assignments. Section 18 provides that a receipt in the body of a document is a sufficient discharge so that there is no need for a separate receipt. By virtue of s 28, it is not necessary to include a full recital of the previous instrument in a supplementary document.

*Effect of resumption of the exercise of sovereignty over Hong Kong by the People's Republic of China*

Before 1 July 1997, all land in Hong Kong was vested in the British Crown and, with the exception of St John's Cathedral, there was no freehold land in Hong Kong: see DME Evans, 'Aliens on British Soil: A Problem of Landholding in Early Hong Kong' (1978) 8 HKLJ 205. The Governors of Hong Kong were empowered under the Letters Patent to grant land that might lawfully be granted by the British Crown, and they did so by way of leasehold grant. Land was usually sold by way of public auction for a premium, together with a nominal Crown rent. Land for low cost housing, small houses in the New Territories, Home Ownership Scheme, public utilities and some charitable and educational purposes is granted by way of private treaty. Expressions such as 'Crown lease', 'Crown grant' and 'Crown rent' were therefore used.

From the entry into force of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on The Question of Hong Kong (dated 19 December 1984) (the 'Joint Declaration') until 30 June 1997, it was agreed between the governments that the British-Hong Kong Government might grant new leases of land for terms expiring not later than 30 June 2047 at a premium and a nominal rental until 1997, and thereafter at a rental of 3% of the rateable value as at 30 June 1997, adjusted in step with changes in the rateable value thereafter: see Annex III to the Joint Declaration. A Land Commission was established to monitor new grants of land: see para 4 of Annex III to the Joint Declaration.

In relation to Government leases with a right to renewal which expired before 1 July 1997, such leases were 'renewed' under the Crown Leases Ordinance (Cap 40), which was later renamed as the Government Leases Ordinance. Separate new government leases in respect of each section of the lot held by the then government leases are deemed to be granted upon expiry of the original government lease in respect of the whole lot. In relation to leases not containing a right of renewal expiring before 30 June 1997, with the exception of short term tenancies and leases for special purposes, para 2 of Annex III to the Joint Declaration provides that they may be extended without payment of a premium for a period not extending beyond 30 June 2047 at an annual rental of 3% of the rateable value. Government leases in the New Territories, which were expressed to expire on 30 June 1973 with a right of renewal for 24 years less three days, were automatically renewed by the New Territories (Renewable Government Leases) Ordinance (Cap 152) until 27 June 1997. Section 6 of the New Territories Leases (Extension) Ordinance (Cap 150) provides that the term of all leases in the New Territories that will expire before 30 June 1997 other than short term tenancies and leases for special purposes,

will, unless the lessee opts against such extension, be extended until 30 June 2047 without payment of an additional premium.

As from 1 July 1997, all land and natural resources within the Hong Kong Special Administrative Region ('HKSAR') have become State property and the Government is responsible for their management, use and development and for their lease or grant to individuals, legal persons or organisations for use or development (see art 7 of The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the 'Basic Law'), adopted by the National People's Congress on 4 April 1990). All leases of land granted, decided upon or renewed before 1 July 1997 are continuously recognised and protected under the laws of the HKSAR: see art 120 of the Basic Law. As for Government leases expiring before 1 July 1997, their re-grant, renewal or disposition is left to the HKSAR.

Although all laws previously in force are, with a few exceptions, adopted as the valid laws of the HKSAR after the reunification (see s 7(1) of the Hong Kong Reunification Ordinance (Instrument A601)), there are consequential changes in the terminology used in conveyancing documents. Any reference to the British Crown is now changed to the HKSAR Government. The expressions 'Crown lease', 'Crown grant' and 'Crown rent' have become 'Government lease' (or 'lease'), 'land grant' and 'Government rent', respectively.

*Proposed change to land registration system*

In 1988, it was proposed that the land registration system be amended to provide for a system of registration of titles and in 2004, the Land Titles Ordinance (Cap 585) was enacted. However, the Conveyancing and Property Ordinance (Cap 219) is subject to further amendment and has not yet come into force. It is anticipated that title registration once brought into force will be phased in over a 12-year period. See further Law Society Circular to Members No 323/2004; Registration of Titles and Land (Miscellaneous Amendments) Bill 2025.

*Note on the annotations*

Part of the material in the following annotations has been adapted from Sarah Nield, *The Hong Kong Conveyancing and Property Ordinance* (Butterworths 1988 Issue) and *Halsbury's Statutes* (4th edn, Butterworth & Co (Publishers) Ltd 1992 Reissue), with the kind permission of the publishers. The adaptation will not be individually acknowledged in the following annotations.

The primary purpose of the following annotations is to render easily available important judicial authorities to local legal practitioners. Given the importance of this Conveyancing and Property Ordinance (Cap 219) in the local conveyancing scene, much emphasis has been placed on recent decisions of Hong Kong courts. However, for the benefit of academic lawyers and law students, older English authorities, although many of them may not be commonly referred to in the court and in daily conveyancing practice, have been retained.

Apart from case law, relevant Circulars and Practice Directions issued from time to time by the Law Society of Hong Kong, as well as Memoranda issued by the

**7. Savings in regard to sections 5 and 6**

Nothing in section 5 or 6 shall—

- (a) invalidate dispositions by will;
- (b) affect any interest validly created before the commencement\* of this section;
- (c) affect the right to acquire an interest in land by virtue of taking possession; or
- (d) affect the operation of the law relating to part performance.

[cf. 1925 c. 20 s. 55 U.K.]

Editorial Note:

\* Commencement date: 1 November 1984.

**[7.01] Enactment history**

The section originally was enacted as s 8 of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23) which has been repealed and re-enacted in this section.

**[7.02] England**

cf s 55 of the Law of Property Act 1925 (UK).

**[7.03] General note**

This section contains further exemptions to the requirement of writing, laid down in s 5 above.

**[7.04] Invalidate dispositions by will**

As to the meaning of 'will', see [2.20] above.

A will must be made in writing; the only exception relates to a privileged will made by a member of the armed services being on actual service or any mariner or seaman at sea. (See ss 5 and 6 Wills Ordinance (Cap 30)). See also *Nina Kung v Wang Din Shin* (2005) 8 HKCFAR 387, [2005] HKCU 1254 (CFA) for the requirements to create a valid will.

**[7.05] Nothing ... affect any interest validly created before the commencement of this section**

The section was originally enacted as s 8 of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23). It thus predates the enactment of the Conveyancing and Property Ordinance (Cap 219) on 1 November 1984.

As to meaning of 'affect', see [3.19] above.

As to meaning of validly created, see [4.04] above. 'Valid' means correct in substance as well as in form: *Ellen Sammon v Patrick J Byrne* [1926] IR 411 at 420, per Kennedy CJ).

**[7.06] Nothing ... affect the right to acquire an interest in land by virtue of taking possession**

Title to land may be acquired by taking adverse possession against the owner for a period sufficient to bar the owner's right to take proceedings for repossession and to extinguish the owner's title to the land (see Limitation Ordinance (Cap 347), ss 7 and 17). The basic limitation periods in Hong Kong are 60 years where the Government is the owner and 12 years in the case of any other owner, unless the right to take possession proceedings accrued before 1 July 1991, when the limitation period is 20 years (Limitation Ordinance, s 7). These basic limitation periods may be extended where the owner is under a disability or is entitled to a future interest in the land: Limitation Ordinance, ss 22, 9 and 10 and *Leung Kuen Fai v Tang Kwong Yu and Ors* [2002] 2 HKLRD 705, [2002] HKCU 745 (CFI).

Notwithstanding s 13 of the New Territories Ordinance (Cap 97), which gives effect to Chinese customary law, limitation of actions for possession and adverse possession applies to New Territories land, including property held by a T'ong or T'so (*Wu Koon Tai & Anor v Wu Yau Loi* [1996] 3 HKC 559, [1996] 2 HKLR 477 (PC); *Leung Kuen Fai v Tang Kwong Yu & Ors* [2002] 2 HKLRD 705, [2002] HKCU 745 (CFI)). However, on the birth of each new member of the T'ong or T'so a new interest in the T'ong or T'so land will be created and a new limitation period will start to run which will not expire until six years after that member ceases to be an infant (see Limitation Ordinance, ss 7 and 22). Section 10(2) operates to preserve the title of the trustees, or managers, so long as there is at least one beneficial owner whose right to recover the T'ong or T'so land is not barred. It will thus only be in unusual circumstances that adverse possession can be successfully maintained against T'ong or T'so land: *Wong Shing Chau v To Kwok Keung* [2007] 4 HKLRD 232, [2007] HKCU 1049 (DC).

Adverse possession of an interest in a multi-unit development owned by co-owners in undivided shares must be shown against all the co-owners unless the co-owners have incorporated under the Building Management Ordinance (Cap 344); see for example, *The Incorporated Owners of San Po Kong Mansion v Shine Empire Ltd* (2007) 10 HKCFAR 588, [2007] HKCU 910 (CFA). In any event a co-owner in a multi-unit development cannot adversely possess against their fellow co-owners: *Incorporated Owners of Chungking Mansions v Shamdasani* [1991] 2 HKC 342 (HC); see also *Incorporated Owners of Man Hong Apartments v Kwong Yuk Ching & Ors* [2001] 3 HKC 116 (CA), the reason being that to acquire a squatter's title,

possession must be adverse, and this is not the case where a co-owner occupies a part of the multi-storey building.

Where the land is leasehold, limitation operates both against the lessee and the landlord. The lessee in possession's title to the lease will be extinguished by the appropriate period of adverse possession but the landlord's right to bring proceedings will not accrue until his leasehold reversion falls into possession at the expiry of the lease. A further period of adverse possession running from the expiry of the lease will thus be necessary to extinguish the landlord's title (*Mutual Luck Investment Ltd v Yeung Chi Kuen & Ors (No 2)* [2003] 1 HKC 90 (CFI)). It is possible for a lessee whose lease is extinguished against the squatter to surrender his leasehold term to his landlord because, although the lease is extinguished between the lessee and the squatter, it remains alive between the lessee and his landlord: *Fairweather v St Marylebone Property Co Ltd* [on appeal from *St Marylebone Property Co Ltd v Fairweather*] [1963] AC 510, [1962] 2 All ER 288, [1962] 2 WLR 1020 (HL); followed in *Cheuk Chau Co Ltd v Chau Kwan Nam* (unreported, HCMP 2774/82, 6 July 1982) (HC); but cf *Chan Tin Shi v Li Tin Sung & Ors* (2006) 9 HKCFAR 29, [2006] HKCU 16 (CFA).

The automatic exercise of a Government lessee's option to renew pursuant to the New Territories (Renewable Government Leases) Ordinance (Cap 152) does not revive a Government lessee's title or right to recover possession of land where his title to the initial Government grant has been extinguished by adverse possession nor does the deemed renewal trigger the start of a new limitation period, even where the limitation period had not expired at the time of the deemed renewal, being 1 July 1973 (*Chung Ping Kwan & Ors v Lam Island Development Co Ltd* [1996] 2 HKC 447, [1996] 2 HKLR 315 (PC)). A similar conclusion has been reached where the term of the Government lease is deemed extended by the New Territories Leases (Extension) Ordinance (Cap 150) (*Chan Tin Shi v Li Tin Sung & Ors* (2006) 9 HKCFAR 29, [2006] 1 HKLRD 185, [2006] HKCU 16 (CFA); *Chan Suk Yin and Anor v Harvest Good Development Ltd* [2005] HKCU 310 (unreported, CACV 101/2004, 10 March 2005) (CA)); *Yim Tin Fook & Anor v Li Chor Lai & Ors* [2025] 5 HKC 575, [2025] 4 HKLRD 193, [2025] HKCA 675. Following the same reasoning, a deemed renewal of a Government lease made pursuant to the Government Leases Ordinance (Cap 40) would also not revive a Government lessee's right to recover possession against a squatter.

Having said that, there are some dangling doubts as to whether time would run afresh against the Government after the change of sovereignty in 1997: see *Chau Ka Chik Tso by its manager Chau Fuk Sze (now replaced by Chow Lap Yan and Chau Mou Lin Tommy) duly registered under the New Territories Ordinance (Cap 97) & Ors v S-J* [2010] HKCU 16 (unreported, HCA 10670/2000, 30 September 2009 (CFI)); *Jade's Realm Ltd v Director of Lands for and on behalf of the Government of the Hong Kong Special Administrative Region* [2015] HKCU 137 (unreported, HCA 1509/2012, 19 January 2015) (CFI); *Li Kwok Ching (李國青) v S-J* [2015] HKCU 727 (unreported, HCA 1303/2010, 31 March 2015) (CFI); and *Lee Siu Fong v Wong Wan Leung and Ors* (unreported, HCA 122/2012, 3 January 2017) (CFI). In the last case, Lok J commented that: 'it seems that, until the 1997 Argument is conclusively determined in the higher courts, this issue will continue to haunt the courts in the future'.

The squatter acquires a new title and not a conveyance of the paper owner's title

(see *Wong King Lim v Incorporated Owners of Peony House* [2013] 4 HKC 295 (CA) and *Leung Pak Ki v The Estate of Pang Kau (彭九) deceased & Anor* [2016] HKCU 498 (unreported, HCA 624/2009, 1 March 2016) (CFI). Nevertheless, that title is subject to prior incumbrances (*Re Nisbet and Potts' Contract* [1906] 1 Ch 386; eg, the deed of mutual covenant in a multi-unit development; *Incorporated Owners of Man Hong Apartments v Kwong Yuk Ching & Ors* [2001] 3 HKC 116 (CA); *Incorporated Owners of Wah Kin Mansion v Hong Kong Grouting Co Ltd and Anor* [2003] 3 HKLRD 130, [2003] HKCU 318 (LT)). Until the period of limitation has expired, the squatter's title remains vulnerable to the paper owner and others who can show a better title. Where a tenant encroaches by adverse possession upon adjacent land to that contained in the tenancy he is presumed to be possessing on behalf of his landlord and the encroached areas will accrue to his landlord upon expiry of the lease. This presumption may however be rebutted by evidence that the tenant occupied the area for his own benefit: *Kingsmill v Millard* (1855) 11 Exch 313; *Lau Wing Hong & Ors v Wong Wor Hung & Anor* [2006] 4 HKC 221, [2006] 4 HKLRD 671 (CFI).

The accrual of a right of action for possession dates from date of dispossession of the paper owner or from the discontinuance of possession by the paper owner and the start of adverse possession by the squatter (Limitation Ordinance (Cap 347), ss 8, 13 and *Shine Empire Ltd v Incorporated Owners of San Po Kong Mansion & Ors* [2006] 4 HKC 288, [2006] 4 HKLRD 1 (CA)). Periods of adverse possession by successive squatters may be accumulated provided that the periods are continuous: Limitation Ordinance, s 13(2); *Asher v Whitlock* (1865) LR 1 QB 1 (QB); *Sze To Chun Keung v Kung Kwok Wai David & Anor* [1997] 2 HKC 231, [1997] 1 HKLRD 885 (PC); *Wong Kar Sue & Ors v Sun Hung Kai Properties Ltd & Anor* [2006] 2 HKC 600 (CFI).

The squatter must be in possession which is sufficiently adverse to that of the paper owner. The squatter must thus prove both sufficient physical possession and an intention to possession (*Treloar v Nute* [1977] 1 All ER 230, [1976] 1 WLR 1295; *Powell v McFarlane* (1977) 38 P & CR 452; *Buckinghamshire County Council v Moran* [1990] Ch 623, [1989] 2 All ER 225, [1989] 3 WLR 152; *Wong Tak Yue v Kung Kwok Wai David & Anor* [1998] 1 HKC 1, (1997-1998) 1 HKCFAR 55, [1998] 1 HKLRD 241 (CFA); *JA Pye (Oxford) Ltd and Anor v Graham and Anor* [2002] UKHL 30, [2003] 1 AC 419, [2002] 3 All ER 865; *Hong Kong Kam Lan Koon Ltd v Realray Investment Ltd (No 5)* [2007] 5 HKC 122 (CFI). Physical possession requires a sufficient degree of physical control of the land which will be dependant on the circumstances of the case and, in particular, the nature of the land and the manner in which such land is commonly enjoyed. Enclosure is often cited as 'the strongest possible evidence of possession but it is not indispensable' (*Seddon v Smith* (1877) 36 LT 168 at 169). Physical possession can be asserted through a licensee (*Sze To Chun Keung v Kung Kwok Wai David & Anor* [1997] 2 HKC 231, [1997] 1 HKLRD 885 (PC)) or a tenant (*Cheung Yat Fuk v Tang Tak Hong and Ors* (2004) 7 HKCFAR 70, [2004] 2 HKLRD 86, [2004] HKCU 356 (CFA); *Tang Kwan Tai v Tang Koon Lam & Anor* [2002] 4 HKC 482, [2002] 3 HKLRD 762 (CA); *Wong Kar Sue & Ors v Sun Hung Kai Properties Ltd & Anor* [2006] 2 HKC 600 (CFI)) or by receipt of rent, provided the rent is not less than HK space 20 and the lease pursuant to which the rent is paid is in writing (Limitation Ordinance, s 12(3) and *Wong Luen Chun & Anor v S-J* [1998] 4 HKC 122 (CFI)).

Possession taken with the consent of the paper owner is insufficient unless that consent has expired or otherwise has been terminated (*Common Luck Investment Ltd v Cheung Kam Chuen* [1999] 2 HKC 719, (1999) 2 HKCFAR 229, [1999] 2 HKLRD 417 (CFA)). Possession which is not inconsistent with the paper owner's future use is not taken with the implied consent of the paper owner: *Man Kam Tong v Man Lin Tai* [1985] 2 HKC 299, [1984] HKLR 181 (HC); *JA Pye (Oxford) Ltd and Anor v Graham and Anor* [2002] UKHL 30, [2003] 1 AC 419, [2002] 3 All ER 865 disapproving *Wallis's Cayton Bay Holiday Camp Ltd v Shell Mex and BP Ltd* [1975] QB 94, [1974] 3 All ER 575, [1974] 3 WLR 387 (CA, Eng); but see *Beaulane Properties Ltd v Palmer* [2005] EWHC 817, [2006] Ch 79, [2005] 4 All ER 461.

The squatter must demonstrate an intention to possess the land to the exclusion of all other persons including the paper owner. It is not necessary to demonstrate an intention to own (*Buckinghamshire County Council v Moran* [1986 B. No. 6212] [1990] Ch 623, [1989] 2 All ER 225, [1989] 3 WLR 152; *JA Pye (Oxford) Ltd and Anor v Graham and Anor* [2002] UKHL 30, [2003] 1 AC 419, [2002] 3 All ER 865). Unequivocal acts of physical possession will generally be sufficient of themselves to demonstrate an intention to possess but where the act of physical possession are equivocal additional evidence of the intention with which they were done is required (*Ho Hang Wan v Ma Ting Cheung as personal representative of Ma Sz-Tsang, deceased* [1990] 1 HKLR 649, [1990] HKCU 336 (CA); *Williams Bros Direct Supply Ltd v Raferty* [1958] 1 QB 159, [1957] 3 All ER 593, [1957] 3 WLR 931 (CA, Eng); *Powell v Mcfarlane* (1977) 38 P & CR 452). A squatter may mistakenly believe himself to be the owner of the land (*Hughes v Cork and Anor* (1994) EGCS 25 (CA, Eng); *Wong Luen Chun & Anor v S-J* [1998] 4 HKC 122 (CFI); *Kung Wong Sau Hin & Anor v Sze To Chun Keung & Ors* [1996] 2 HKC 616 (HC)). In England, the House of Lords have accepted that a squatter may still have the necessary intention to possess even though they would have been prepared to accept (if offered) a permission by the paper owner to occupy the land and to pay rent: see *JA Pye (Oxford) Ltd and Anor v Graham and Anor* [2002] UKHL 30, [2003] 1 AC 419, [2002] 3 All ER 865 following *Ocean Estates Ltd v Norman Pinder on appeal from the Court of Appeal for the Bahama Islands* [1969] 2 AC 19, [1969] 2 WLR 1359 (PC)). However the Hong Kong Court of Final Appeal in *Wong Tak Yue v Kung Kwok Wai David & Anor* [1998] 1 HKC 1 (1997-98) 1 HKCFAR 55, [1998] 1 HKLRD 241 (CFA) had earlier taken a different approach (see also *Wu Yee Pak & Anor v Un Fong Leung and Ors* [2004] 7 HKCFAR 498, [2005] 2 HKLRD 169, [2004] HKCU 1284 (CFA); *Lau Wing Hong & Ors v Wong Wor Hung & Anor* [2006] 4 HKC 221, [2006] 4 HKLRD 671 (CFI).

The extinction of title that is inherent in adverse possession has formed the basis of challenges to the compatibility of adverse possession with the Basic Law, in particular the protection afforded to property rights in arts 6 and 105 (see *HSBC Private Trust (Hong Kong) Ltd v Au-Yeung Chung* [2006] HKCU 1965 (unreported, HCA 1662/2001, 23 November 2006) (CFI); *The Hong Kong Buddhist Association (香港佛教聯合會) v The Occupiers & Anor* [2007] HKCU 815 (unreported, CACV 358/2006, 15 May 2007) (CA); *Harvest Good Development Ltd v S-J & Ors* [2007] 4 HKC 1 (CFI). These challenges have been inspired by the case in England of *JA Pye (Oxford) Ltd and Anor v United Kingdom* (2005) 43 EHRR 43, 19 BHRC 705 in which adverse possession, as it operated under the Land Registration Act 1925 (UK), was found to have contravened art 1 Protocol 1 of

the European Convention on Human Rights which has been incorporated into English law by the Human Rights Act 1998 (UK) (it should be noted that this decision is subject to appeal to the Grand Chamber of the European Court of Human Rights). In *Harvest Good Development Ltd v S-J* (above), Hartmann J, at first instance, rejected this challenge on several grounds:

- (1) no challenge could be made where title was extinguished by adverse possession before the coming into force of the Basic Law on 1 July 1997 nor did the Basic Law, in this context, have retrospective effect;
- (2) the prohibition upon the deprivation of property without compensation in arts 6 and 105 of the Basic Law relate only to the resumption or other deprivation of property by the Government or Government Agency and thus the Basic Law is not engaged by the operation of adverse possession between private individuals; and
- (3) the operation of adverse possession, despite the absence of compensation, may be justified given the conditions prevailing in Hong Kong as a proportionate and appropriate balance within the Government's margin of appreciation between the protection of property by Arts 6 and 105 of the Basic Law and the public interest in 'protecting individuals from stale claims, avoiding hardship in cases where boundaries or paper titles are uncertain, preventing land from falling into disuse and facilitating conveyancing'.

#### [7.07] The law relating to part performance

As to meaning of 'land', see s 2 above.

#### 8. Severance of joint tenancy

- (1) A joint tenancy of an estate or interest in land may be severed at law only by—
  - (a) a notice served by a joint tenant on the other joint tenants; or
  - (b) an instrument.
- (2) A joint tenancy of an estate or interest in land may be severed in equity by a notice served by a joint tenant on the other joint tenants or by any other method that is effective in equity or that would, but for subsection (1), be effective at law.

(Replaced 31 of 1988 s. 4)

#### [8.01] Enactment history

The original section, which provided that 'a joint tenant of an estate or interest in land may only sever the joint tenancy at law by an instrument or by notice to the other joint tenant' was repealed and substituted by the present section, pursuant to

s 4 of the Conveyancing and Property (Amendment) Ordinance 1988 (31 of 1988), commencing 3 June 1988.

### [8.02] England

cf s 36 of the Law of Property Act 1925 (UK); and s 1 of the Law of Property (Joint Tenants) Act 1964 (UK).

### [8.03] General note

Severance is the process by which a joint tenancy between co-owners is converted into a tenancy in common in equal shares and the right of survivorship destroyed. Page Wood V-C in the leading case of *William v Hensman* (1861) 1 John & H 546, at 557 defined the circumstances in which a joint tenancy is severed at common law namely by: (1) an act which operates on a joint tenant's interest that operates to destroy one of the unities of interest, time or title. For instance where a joint tenant alienates his interest, whether totally or partially (see *Freize v Unger* [1960] VR 230 re leases and *First National Securities Ltd v Hegerty and Anor* [1980 F No 2087] [1985] QB 850, [1984] 1 All ER 139, [1984] 3 WLR 769; *Ahmed v Kendrick and Ahmed* [1988] 2 FLR 22, (1987) 56 P & CR 120 (CA, Eng); *Malahon Credit Co Ltd v Siu Chun Wah Alice & Anor* [1987] 2 HKC 79, [1988] 1 HKLR 196 (CA); *Fortis Bank Asia HK v Yu Kam Hoi Herman & Anor* [2004] 2 HKC 314 (CFI); but see *Lyons v Lyons* [1967] VR 169 and *Penn v Bristol and West Building Society* [1995] 2 FLR 938 with regards to charges. See also the decision of *Ho Wai Kwan & Anor v Chan Hon Kuen & Anor* [2015] 2 HKC 99 [2015] 1 HKLRD 901 (CFI) on charging orders) or where a joint tenant acquires a larger interest or where a joint tenant is declared bankrupt and his interest transferred to his trustee in bankruptcy (*Re Chow Yuet Lam (a Bankrupt)* [2000] 1 HKC 404 (CFI); *Re Dennis (a bankrupt)* [1996] Ch 80, [1995] 3 All ER 171, [1995] 3 WLR 367 (CA, Eng) and; *Re Cheung Chan Hong* [2015] 2 HKLRD 1, [2014] HKCU 2989 (CFI); but see *re Palmer, decd (a debtor)* [1994] Ch 316, [1994] 3 All ER 835, [1994] 3 WLR 420—where a deceased's estate was insolvent); (2) the agreement of the joint tenants (*Brown v Raindle* (1796) 3 Ves 256; *Goddard v Lewis* (1909) 101 LT 528; *Burgess v Rawnsley* [1975] Ch 422, [1975] 3 All ER 142, [1975] 3 WLR 99 (CA, Eng); *Hunter v Babbage* [1994] 2 FLR 806; *Gore v Carpenter* (1990) 60 P & CR 456); or (3) the conduct of the joint tenants, which is sufficient to show a mutual intention that they are to hold their interests in common (*Greenfield v Greenfield* (1979) 38 P & CR 570; *Barron v Morris* [1985] 2 All ER 1032, [1985] 1 WLR 1257; *McDowell v Hirschfield* [1992] 2 FLR 126 (QB); *Bathurst v Scarborough* [2004] EWCA Civ 411 (CA, Eng); *Carr and Ors v Isard and Anor* [2006] EWHC 2095 (Ch), [2007] WTLR 409; *Nielson-Jones v Fedden and Ors* [1973 N No 889] [1975] Ch 222, [1974] 3 All ER 38, [1974] 3 WLR 583; *Gore and Snell v Carpenter* (above); cf, *Burgess v Rawnsley* (above), at 444, 447, per Lord Denning). In *The Ho Kong v Liu Weirong* [2023] 2 HKLRD 347, [2023] HKDC 274, DDJ Joseph Vaughan observed that the law was not settled as to the effect of a declaration of intention to sever. There are a number of Commonwealth authorities suggesting mere declaration by a joint tenant may suffice, but on the other hand, there are English authorities suggesting such declaration, if communicated to the other joint tenants, could amount to a severance in equity.

In the context of a Home Ownership Scheme property, it was held it there was a real prospect of success in the argument that a completed form for transfer of one joint tenant's interest to a third party, and passed to the Housing Authority (which then passed it along for the signature of the other joint tenant), may amount to severance in equity. Murder of one joint tenant by another joint tenant may also sever the joint tenancy, since the murderer should not be able to benefit from his crime and must forfeit any benefit that may flow from the death of his victim (*Cleaver v Mutual Reserve Fund Life Association* [1892] 1 QB 147 (CA, Eng); *Kemp v Public Curator of Queensland* [1969] Qd R 145; *Re K, decd* [1985] Ch 85, [1985] 1 All ER 403, [1985] 2 WLR 262; *Dunbar v Plant* [1998] Ch 412, [1997] 4 All ER 289, [1997] 3 WLR 1261 (CA, Eng)). Although it has been suggested the imposition of a constructive trust provides a more logical basis for the forfeiture rule than severance: *Rasmanis v Jurewitsch* (1969) 70 SR (NSW) 407.

Most acts of alienation falling within (1) an act operating on a joint tenant's interest must be affected by an instrument which will require registration at the Land Registry in order to bind a subsequent purchaser. In *Wong Anita Shu Ting (formerly known as Wong Shu Ting Anita) v Yuen Yiu Chung* [2022] HKCU 459, [2022] HKCFI 209, Ng J held that, as a matter of law, severance of the joint tenancy took place on the date of a consent order on the transfer of property between former spouses (joint tenants). In *Mak Pui Ki v Ho Wing Ha* [2020] HKCU 3650, [2020] HKCFI 2705, it was held a 'secret' mortgage by one owner did sever the joint tenancy. However, where a severance is based upon the conduct of the parties, a purchaser from a surviving joint tenant would run the risk that prior to the death of the other joint tenant there could have been a severance which was not evident from the Land Register but nonetheless was binding on him. The interest he acquired was then not the sole beneficial ownership in the property but a share in a tenancy in common. Further, the common law does not provide a convenient and simple way by which a joint tenant can unilaterally convert his interest into a tenancy in common. He could only do so by embarking on a contrived alienation.

This section is intended to overcome these two problems. Firstly, it provides that a joint tenant may sever his interest both at law and in equity by serving a notice on the other joint tenant. This notice is registrable at the Land Registry as an instrument affecting land. Secondly, it provides that a severance at law will only be effective if it is by instrument, eg, an agreement in writing to sever, or a sale, mortgage or other disposal in writing of the interest of one of the joint tenants in the property, or by a notice. That instrument or notice must also be registered in the Land Office in order to bind a subsequent purchaser or mortgagee: see s 3(2) of the Land Registration Ordinance (Cap 128). Severance by conduct is still effective in equity under this section, which will bind all but a bona fide purchaser of the legal estate for value without notice.

### [8.04] A joint tenancy

A joint tenancy enjoys the right of survivorship. Upon the death of a joint tenant his interest dies with him so that the surviving joint tenant(s) become entitled to the property. By contrast a tenant in common's interest will pass into their estate on their death.

A joint tenancy must display the four unities of possession, time, title and interest

[11.11]

**[11.11] Subsection (3): General note**

Section 7A of the Estate Duty Ordinance (Cap 111) was amended pursuant to this subsection by adding, 'or which of them' immediately after 'one of them'. Estate duty has been completely abolished for estates of those persons who died on or after 11 February 2016.

**12. Application to court by vendor and purchaser**

- (1) A vendor or purchaser of land may apply by petition or by originating summons to the court in respect of any question arising out of or connected with any contract for the sale or exchange of land (not being a question affecting the existence or validity of the contract or relating to compensation payable by the Government or a public body), and the court may make such order upon the petition or originating summons and as to costs as to the court appears just. (61 of 1999 s. 3)
- (2) In this section, *court* (法院) means the Court of First Instance unless the vendor and purchaser submit to the jurisdiction of the District Court. (Amended 25 of 1998 s. 2)

[cf. 1925 c. 20 s. 49 U.K.]

**[12.01] Enactment history**

Subsection (1) was amended pursuant to s 105 of the Adaptation of Laws (No 24) Ordinance 1999 (61 of 1999) by repealing the word 'Crown' and substituting the word 'Government'.

Subsection (2) was amended pursuant to s 2 of the Adaptation of Laws (Courts and Tribunals) Ordinance 1998 (25 of 1998) by repealing 'High Court' and substituting 'Court of First Instance'. Further, '地方法院' was repealed in the Chinese version and '區域法院' was substituted, but the corresponding term 'District Court' in the English version remains unchanged.

**[12.02] England**

cf s 49(1) of the Law of Property Act 1925 (UK).

**[12.03] General note**

This section introduces what is commonly called a 'vendor and purchaser summons' as a procedure by which a vendor or purchaser may cheaply and quickly obtain a judicial decision on disputes arising out of the performance of their obligations under a contract for the sale or exchange of land which will bind all parties before the court. The land can then be sold with the benefit or burden of such decision without the need to sue for specific performance or rescission. In

[12.04]

Hong Kong the procedure has been extensively used to settle disputes regarding the title of the land to be sold.

The court has on occasions commented upon the failure of parties to utilise the procedures under this section, see for eg, *Au Wai Ming (區偉明) & Anor v Kam Tze Ming Alfred (甘子銘) & Anor* [2009] 4 HKC 469, [2010] 1 HKLRD 198 (CA); *Ho Chung Yin & Anor v Chung Wai Chun Susanna* [2008] HKCU 1384 (unreported, DCCJ 7866/2002, 3 September 2008) (DC). On the other hand, the Court has also criticised the improper use of the procedure: see *Guang Xin Enterprises Ltd v Leung Kwai Mui* [1996] 4 HKC 572 (HC) (trivial matters raised) and *Cheng Sin Yau & Anor v Wong Kam Piu Dicky* [2015] 3 HKC 173 (CFI) (asking the Court to provide an advisory requirement).

The decision of the court will only bind the parties to the action and will have no effect upon third parties: *Wong Yiu (alias Wong Yiu Kwan) v Leung Sum* [1988] HKLY 567; *Lion Will Investment Ltd v Triple Will Ltd* [1992] 2 HKC 430 (HC).

This section presupposes the existence of a dispute between the vendor and purchaser of a property. It is not open to an owner, without entering into any contract for sale, to invoke this section: see *Lam Ho Tak Douglas v Lam Shun* [1994] HKLY 711 (DC). Furthermore, the court will not entertain any proceedings in which an owner of property attempts, ex parte, to obtain a declaration in order to arm himself against some difficulty which may arise in the future. It is not the function of the court to settle the doubts of property owners about the state of their title in the absence of any other party interested in the matter (*Re Estate of Leung Fong* [1991] 1 HKC 494 (HC)). Solicitors advising purchasers are required to give proper advice as to the title of the property. They must not treat the vendor and purchaser summons as a means of protecting themselves at their clients' expense: *Castle City Ltd v Choi Yue Development Ltd* [1995] 2 HKC 593 (HC) at 597, per Keith J.

Once the parties have agreed to resolve the dispute by a vendor and purchaser summons and to delay completion pending the outcome of the court's decision, the purchaser may not then rescind the agreement on the grounds that the vendor has failed to show title by the contractual date of completion: *Kwong Kai Hing and Know Mei Yin v Chan Lik* [1995] HKCU 171 (unreported, MP No 1529/1995, 27 July 1995) (SC).

For examples of local decisions under this section, see [13.04] below.

The jurisdiction to hear a vendor and purchaser summons is confined to the High Court, notwithstanding that the claim or the rateable value of the premises may be within the jurisdiction of the District Court, unless the parties submit to such jurisdiction: see sub-s (2).

**[12.04] Subsection (1): A vendor or purchaser of land**

Both 'land' and 'sale' are defined widely in s 2 above, and thus this subsection has a potentially wide application.

In England, s 49(1) of the Law of Property Act 1925 (UK) has been applied to contracts for the lease of land and contracts supported only by nominal consideration, but not to purely voluntary arrangements (*Re Marquis of Salisbury*

under this section: *Harbour Estates Ltd v HSBC Bank plc* [2004] EWHC 1714 (Ch), [2005] Ch 194, [2004] 3 All ER 1057; *Sugarman v Porter* [2006] EWHC 331, [2006] 2 P & CR 275: see also the relationship between this section and s 16. Thus, a right to name a building is incapable of passing under this section, see *Supreme Honour Development Ltd v Lamaya Ltd and Li & Fung (Properties) Ltd* [1990] 2 HKLR 294, [1990] HKCU 396 (HC).

Where an assignor purports to assign a greater estate or interest than that which he in fact holds, only the estate he is capable of assigning will pass: *Liddard* [1900] 2 Ch 635; *Thames Guaranty Ltd v Campbell* [1985] QB 210, [1984] 2 All ER 585, [1984] 3 WLR 109 (CA, Eng); and *First National Securities Ltd v Hegerty* [1985] QB 850, [1984] 3 All ER 641, [1984] 3 WLR 769 (CA, Eng); *Ahmed v Kendrick* [1988] 2 FLR 22, (1987) 56 P & CR 120 (CA, Eng); *Penn v Bristol & West Building Society* [1995] 2 FLR 938, [1996] Fam Law 20; *First National Bank plc v Achampong* [2003] EWCA Civ 487, [2004] 1 FCR 18.

As to meaning of 'interest in land', see [2.15] above.

### [17.06] Assignor has in the land and has power to assign

A person who is a party to a deed in more than one capacity need not execute more than once, but the better practice is to execute separately for each capacity: *Young v Schuler* (1883) 11 QBD 651. A party who holds more than one interest in the same capacity need execute only once in order to pass all interests, unless a contrary intention appears: *Drew v Earl of Norbury* (1846) 3 Jo & Lat 267; *Tait v London and County Banking Co* [1901] 2 Ch 231 (CA, Eng).

As to meaning of power, see [4.12] above.

### [17.07] Definitions

For 'assignment' and 'land', see s 2 above.

## 18. Receipt in body of an instrument

- (1) A receipt for consideration in the body of an instrument shall be a sufficient discharge to the person paying the consideration and, in favour of any other person acting on the faith of the receipt, shall be sufficient evidence of payment.
- (2) A solicitor producing an instrument containing a receipt for consideration shall be deemed to be authorized to receive that consideration unless the person liable to pay that consideration is served with a notice in writing stating that the solicitor is not so authorized.

[cf. 1925 c. 20 ss. 67, 68 & 69 U.K.]

### [18.01] England

cf ss 67-69 of the Law of Property Act 1925 (UK). See further [18.09] below.

### [18.02] Cross references

See Law Society Circulars to Members Nos 84/1981, 91/1982 and 218/1991.

### [18.03] General note

At common law, a subsequent purchaser is put on inquiry as to payment of the purchase price if an instrument does not have a receipt endorsed upon it. This section dispenses with a duplication of receipts by providing that a receipt in the body of the instrument is a sufficient discharge to a purchaser or other person responsible for payment of the consideration and is sufficient evidence of payment: *Bateman v Hunt* [1904] 2 KB 530 (CA, Eng). A separately endorsed receipt is thus no longer necessary.

A solicitor producing an instrument containing a receipt for the consideration will be deemed authorised to receive that consideration under sub-s (2).

Following Law Society Circular to Members No 84/1981, which was issued as a result of the comments of the Court of Appeal in *Johnson Stokes & Master v Edward Wong Finance Co Ltd* [1981] HKLR 454, [1981] HKCU 49 (CA) (see also *Edward Wong Finance Co Ltd v Johnson Stokes & Master (a firm)* [1984] AC 296, [1984] 2 WLR 1 (PC)), the practice in Hong Kong has been to include in a sale and purchase agreement a clause, whereby the vendor appoints his solicitor as his agent for the receipt of the consideration and declares that such receipt by his solicitors is a sufficient discharge of the purchaser's obligation under the agreement. This section seeks to dispense with the need for a separate authority, but in view of the present conveyancing practice, it is inadequate. When completion is by undertaking, the purchaser's solicitor delivers the balance of purchase price to the vendor's solicitors, upon their undertaking to send the duly executed assignment and title deeds: see Law Society Circulars to Members Nos 91/1982 and 169/1990. Thus, the vendor's solicitors do not produce the instrument containing their client's receipt before or at the time the purchaser's solicitors pay the purchase price to them. Separate authority should still be obtained, following the procedure set out in Law Society Circular to Members No 84/1981, which was approved by the Privy Council in *Edward Wong Finance Co Ltd v Johnson Stokes & Master* (above) and Condition 13 of Second Sch, Pt A: [SCH2.PtA.84] below.

This section applies to instrument relating to land and other property.

### [18.04] Receipt for consideration

As to the meaning of 'receipt' and 'consideration', see [4.14] and [6.08] above, respectively.

A statement that consideration has been given is not sufficient to constitute a receipt: *Renner v Tolley* (1893) 68 LT 815.

**Landlord and Tenant (Consolidation) Ordinance (Cap 7)**  
**業主與租客(綜合)條例(第7章)**

Professional Bookshop  
www.pbookshop.com

## LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE

### (CAP 7)

#### Introduction

Landlord and Tenant (Consolidation) Ordinance (Cap 7) (the 'Ordinance') is a consolidating ordinance gazetted in 1972, which comprises of seven parts. Part VII of the Ordinance contains transitional provisions dealing with the move from the previous ordinances to the new regime. The first six parts are made up of the six ordinances relating to the law of landlord and tenant that were consolidated into the Ordinance. These six ordinances form the first six parts of the Ordinance and are as follows:

- (1) Part I: The Landlord and Tenant Ordinance 1947 (25 of 1947) (Cap 255) (1964 edn) (now replaced) enacted on 23 May 1947;
- (2) Part II: The Rent Increases (Domestic Premises) Control Ordinance 1970 (56 of 1970) (Cap 338) (1970 edn) (now replaced) enacted on 5 June 1970;
- (3) Part III: The Distress for Rent Ordinance 1883 (1 of 1883) (Cap 7) (1964 edn) (now replaced) enacted on 2 February 1883;
- (4) Part IV: The Tenancy (Prolonged Duration) Ordinance 1952 (8 of 1952) (Cap 276) (1964 edn) (now replaced) enacted on 6 March 1952;
- (5) Part V: The Tenancy (Notice of Termination) Ordinance 1962 (14 of 1962) (Cap 335) (1964 edn) (now replaced) enacted on 24 May 1962;
- (6) Part VI: The Small Tenements Recovery Ordinance 1897 (27 of 1897) (Cap 17) (1969 edn) (now replaced) enacted on 13 December 1897.

Part I of the Landlord and Tenant (Consolidation) Ordinance (Cap 7) applies generally to domestic tenancies of the end of World War II and premises subject to buildings in respect of which an occupation permit (including a temporary occupation permit) was first issued by the Building Authority before 16 August 1945 and which do not come within the exceptions in s 3 and not excluded under s 4. The significance of 16 August 1945 is that it is the date of the Japanese surrender in Hong Kong at the end of World War II and premises subject to Pt I are, accordingly, commonly referred to as 'pre-war' premises. The basic objectives of Pt I were to impose rent controls and provide tenants with security of tenure.

Under Pt I, in the absence of agreement, a landlord is only entitled to receive the 'permitted rent' as calculated under the Landlord and Tenant (Consolidation) Ordinance. The 'permitted rent' is a multiple of the 'standard rent' (as defined in s 2) and is calculated according to the formula set out in s 10. The 'permitted rent' cannot exceed a sum, which equals the prevailing market rent (as defined in s 2) plus rates: see s 9A. Regarding security of tenure, s 17 provides that an order for

possession may only be granted under this part of the Landlord and Tenant (Consolidation) Ordinance (Cap 7) and a landlord is only entitled to possession of the premises if he can establish one of the grounds specified in s 52.

Part I expired on 31 December 1998 and was not renewed. By virtue of s 116(1)(b), all tenancies to which Pt I has ceased to apply will become subject to Pt IV of the Ordinance.

Part II of the Ordinance applies generally to all domestic tenancies of premises in respect of which an occupation permit or other appropriate certificate of occupancy issued after 16 August 1945 but before 19 June 1981 and whose rateable value on 1 June 1983 did not exceed HK\$ 30,000 a year provided the tenancy has not been transferred to Pt IV under s 51A. Premises subject to Pt II are commonly referred to as 'post-war' premises'. The main purpose of Pt II was to provide a form of rent control by protecting tenants against unrestricted increases in rent and to give them security of tenure.

Rent control is achieved in Pt II by giving the landlord the right to increase the existing rent only in four circumstances. These are:

- (1) by agreement between the parties;
- (2) where there has been an increase in rates or an imposition of a new rating at first time;
- (3) where the landlord has carried out recent improvements to the premises and the rent is increased accordingly;
- (4) on the certificate of the Commissioner of Rating and Valuation issued in response to an application by the landlord; see ss 55-65.

As for security of tenure, this is given effect to by s 52, which provides that a tenancy is continued under Pt II notwithstanding that the contractual term of the tenancy has expired or that it has been brought to an end by a common law notice. A landlord may only bring the tenancy to an end if he can obtain an order for possession of the premises from the Lands Tribunal. Section 53(2) sets out the grounds on which a landlord may apply for possession.

Part II expired on 31 December 1998 and was not renewed. By virtue of s 116(1)(b), all tenancies to which Pt II has ceased to apply will become subject to Pt IV of the Landlord and Tenant (Consolidation) Ordinance (Cap 7).

Part III of the Ordinance governs distress for rent, a specific remedy which is available to a landlord whose rent has not been paid on time. Under Pt III, the right for rent is vested exclusively in the District Court irrespective of the value of the premises and the amount of rent that is owed. A landlord whose rent has not been paid on time applies ex parte to the District Court for a warrant of distress. Provided that the landlord establishes a prima facie case, the court will issue a warrant directing the bailiff to seize the goods found upon the premises in the apparent possession of the tenant. The goods are then sold, usually at an

### Landlord and Tenant (Consolidation) Ordinance (Cap 7)

at an auction and the proceeds of sale are applied to satisfy the costs of the distress and the outstanding rent. Any surplus remaining is returned to the tenant.

For many years, the judicial position was that Pt III of the Landlord and Tenant (Consolidation) Ordinance (Cap 7) simply regulated the common law remedy of distress: see *Liu Chi Cheung v Tsang Wai Choi* [1958] HKDCLR 165, [1958] HKCU 40 (DC). However, as a result of the landmark decision by the Court of Appeal in *Fuleekoo Co Ltd v Spiral Tubes International Ltd* [1986] HKC 269 (CA), it is now clear that Pt III provides a comprehensive code for the law of distress which has supplanted the common law.

Part IV, like Pts I and II only applies to domestic tenancies and sub-tenancies. Previously under Pt IV, the tenant had the automatic right to apply to the Lands Tribunal for a new tenancy upon the expiry of his existing tenancy subject to paying the prevailing market rent. The Lands Tribunal had to grant a new tenancy unless the landlord was able to establish one of the six grounds of opposition. The Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (16 of 2004) ('Landlord and Tenant (Consolidation) (Amendment) Ordinance') removed these security of tenure provisions.

For domestic tenancies created on or after the Landlord and Tenant (Consolidation) (Amendment) Ordinance's commencement date, 9 July 2004, such tenancies can be terminated in accordance with the terms of the tenancy agreement or as otherwise agreed between the parties. A fixed term tenancy will end upon the expiry of the relevant term where no notice procedure is specified in the tenancy agreement. Similarly, a periodic tenancy can be terminated by serving a notice in accordance with the common law.

For tenancies in existence before 9 July 2004, the governing provisions will depend on when the renewal procedure commenced. Where the concerned procedure was started before 9 July 2004, then the old Pt IV provisions apply, meaning that the tenant can seek a renewal of his tenancy at the prevailing market rent one final time. Where the concerned procedure was started after 9 July 2004, then such tenancy can only be terminated by the landlord by serving a Transitional Termination Notice (TTN) on the tenant not less than 12 months before the day on which it is to take effect. The TTN should be served no earlier than the last day of the term of a fixed term tenancy, or in the case of a periodic tenancy, no earlier than the last day of the tenancy period current at 9 July 2004. Where the tenant seeks to end the tenancy, then the tenant should give not less than one month's notice before the day on which it is to take effect.

In addition, the landlord can apply to the Lands Tribunal for possession of the premises for self-occupation at any time after the original tenancy term has expired. This is so even if the TTN has been served. If a landlord obtains an order for possession for self-occupation, then he cannot let, sell, transfer, part with, or use the premises other than as his residence for a 24-month period. Contravention of these terms of possession constitutes a criminal offence.

Part IVA only applies to domestic tenancies of subdivided units (SDU) that begin on or after the effective date. It does not apply to a tenancy to which Pt I or II

## CHAPTER 7

# LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE

### ARRANGEMENT OF SECTIONS

1. Short title

#### PART I

### PROTECTED TENANCIES AND PERMITTED RENTS

#### Interpretation and Application

2. Interpretation  
3. Application of this Part  
4. Power to exclude application of this Part  
5. (Repealed)  
6. Re-entry by Government  
7. Registration in Land Registry of order under section 36  
7A. (Repealed)

#### Standard Rent

8. Assessment of standard rent  
9. (Repealed)  
9A. Relevance of prevailing market rent  
9B. Alterations in rent by agreement  
10. Permitted increases and adjustments  
10A. Certificates of prevailing market rent  
10AA. Increase in rent on account of rates  
10B. Increase in rent following apportionment  
10C. Increase in rent of sub-tenancy on account of rates  
10D. Application for certificate of increase in rent  
10E. Certificates of increase in rent  
10F. Review  
10G. Notices of increases  
10H. Effective date for increases  
11. Rent of premises conditionally excluded  
12. (Repealed)  
13. Statement to be supplied as to standard rent  
14. Postponement of permitted increase where repairs effected by tenant  
15. Offences  
16. Recovery of excessive payments by civil action

#### Protected Tenancies

17. Restriction on recovery of possession and effect of recovery of possession

### Landlord and Tenant (Consolidation) Ordinance (Cap 7)

18. No surrender etc. of tenancy without approval  
19. Duties of principal tenant  
19A. Provision of rent receipts  
20. (Repealed)  
21. Termination of principal tenancy  
22. Saving as to new agreements to vacate  
23. Saving for unexpired term  
24. Landlord may enter and effect necessary repairs  
25-27. (Repealed)  
28. Commissioner may approve contracting out in certain circumstances  
29. Commissioner may revise rent in certain cases  
30. Commissioner may increase standard rent if unreasonably low  
31. Commissioner may decrease standard rent if unreasonably high  
32. Tribunal may hear appeals and, in certain cases, fix or apportion rent, etc.  
33. Order for ejection of tenant  
34. Order for ejection of principal tenant not to operate against sub-tenants  
35. Order for recovery where domestic premises are required for occupation by landlord, etc.  
36. Order where subletting is made without landlord's consent  
37. Tenant if a party to an application under section 36 shall be bound by an order made thereunder  
38. Apparent change in occupancy shifts onus of proof to tenant  
39. A tenant about to absent himself from Hong Kong for certain periods may sublet under conditions  
40. Power to adjourn etc.  
41-42. (Repealed)  
43. Appeal to Court of Appeal  
43A. Costs

#### General

- 43B. Enlargement of time  
44. Service of notice  
44A. Exercise of powers of Commissioner  
44B. Refusal to furnish information and obstruction  
45. Prohibition of acts done mala fide with intent to induce a lessee to quit  
46. Collection of rates not to be affected  
47. Forms  
48. Expiry of this Part

#### PART II

### TENURE AND RENT OF DOMESTIC PREMISES

#### Interpretation and Application

49. Interpretation

- 50. Application
- 50A. Block lettings
- 50B. Continuation of tenancies in block lettings
- 50C. Interpretation
- 51. Meaning of domestic tenancy
- 51A. Transfer of tenancy to Part IV on joint application
- 51B. Transfer of tenancy to Part IV on unilateral application
- 51C. Review of decisions under sections 51A and 51B
- 51D. Appeal

### Continuation and Termination of Tenancies

- 52. Continuation of tenancies
- 52A. Surrender by tenant
- 53. Termination of tenancies
- 53A. Restriction on order for possession for rebuilding

### Increases in Rent

- 54. (Repealed)
- 55. Alterations in rent by agreement
- 55A. Increase in rent on account of improvements
- 56. Increase in rent on account of rates
- 56A. Increase in rent following apportionment
- 57. Application for certificate of increase in rent
- 58. Certificates of increase in rent
- 59. Review
- 60. Appeal
- 61. Notices of increases
- 62. Application of certain sections to sub-tenancies
- 63. Increase in rent of sub-tenancy on account of rates
- 63A. Increase in rent of sub-tenancy on account of improvements
- 64. Effective date for increases
- 65. Provision of rent receipts
- 66. Obligation to notify subletting of premises
- 67. (Repealed)
- 68. Proceedings in, and jurisdiction of, court or Tribunal
- 68A. Appeal on point of law
- 68B. Costs
- 69. (Repealed)
- 70. Exercise of powers of Commissioner
- 70A. Refusal to furnish information and obstruction
- 70B. Harassment
- 70C. False statement
- 71. Forms
- 72. Enlargement of time
- 73. (Repealed)
- 74. Service of notice
- 74A. Saving

### Landlord and Tenant (Consolidation) Ordinance (Cap 7)

- 74B. Expiry of this Part
- 74C. Provisions transitional to the enactment of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1980

## PART III DISTRESS FOR RENT

### Interpretation and Application

- 75. Interpretation
- 75A. Certificate as to rateable value
- 76. Application of this Part

### Jurisdiction

- 77. Issuing of warrants of distress
- 78. Penalty for unauthorized distress
- 79. Limitation of time for issue of warrant
- 80. Fees

### Making of distress

- 81. Application for warrant
- 82. Form of affidavit
- 83. Issue of warrant
- 84. Refusal of warrant
- 85. Appeal from refusal
- 86. Time for making distress
- 87. Property liable to seizure
- 88. Property not liable to seizure
- 89. Making of inventory on seizure
- 90. Filing of inventory, etc.
- 91. Entry and forcible entry
- 92. Impounding of property seized

### Discharge of Warrant

- 93. Discharge or suspension of warrant or release of distress
- 94. Costs of application
- 95. Wrongful distress
- 96. Adjudication in case of wrongful distress
- 97. Compensation for wrongful distress
- 98. Power to allow time for payment of rent

### Sale of Distress

- 99. Mode of sale of distress
- 100. Right of debtor as to manner of sale

### Deserted Premises

- 101. Case of deserted premises, where no distress left

- 102. Rules as to Distress
- 103. Distress for arrears of rent on determination of lease
- 104. Priority of landlord's right
- 105. Property seized under writ or warrant of Court of First Instance or the District Court
- 106. Distraint after satisfaction of execution
- 107. Persons who may apply for warrant
- 108. Right of one of several parties interested to institute proceedings
- 109. Removal of property under distraint
- 110. Following property liable to seizure and removed
- 111. Restoration of property removed but bona fide sold
- 112. Fraudulent removal of property by tenant
- 112. Protection against irregularity in proceedings

**General**

- 113. Exclusion of Government rents
- 114. Power to amend Schedules
- 114A. Forms

**PART IV**

**NEW TENANCIES OF DOMESTIC PREMISES**

- 115. Interpretation
- 115A. Determining the nature of a tenancy
- 116. Application of this Part
- Continuation and Renewal of Tenancies
- 117. Continuation of tenancies and grant of new tenancies
- 118-119. (Repealed)
- 119A. (Repealed)
- 119B. (Repealed)
- 119C. (Repealed)
- Application to Tribunal for new tenancy
- 119D. (Repealed)
- 119E. (Repealed)
- 119F. (Repealed)
- 119FA. (Repealed)
- 119G. (Repealed)
- 119H. (Repealed)
- 119I. (Repealed)
- 119J. (Repealed)
- 119K. (Repealed)
- 119L. (Repealed)
- 119M. Endorsement of tenancy agreement
- 119N. (Repealed)
- 119NA. (Repealed)
- 119O. (Repealed)

- 119P. (Repealed)
- 119Q. (Repealed)
- 119R. Costs
- 119RA. Provision of rent receipts
- 119S. Proceedings
- 119T. Exercise of powers of Commissioner
- 119TA. Use of returned requisition as evidence
- 119U. Refusal to furnish information and obstruction
- 119V. Harassment
- 119W. False statement
- 119X. Forms
- 119Y. Service of notice
- 120. (Repealed)

**PART IVA  
REGULATED TENANCIES**

**Division 1—Interpretation and Application**

- 120AA. Interpretation
- 120AAB. Application of this Part
- 120AAC. Amendment of Schedule 6

**Division 2—Determination relating to Regulated Tenancy**

**Subdivision 1—General Provisions**

- 120AAD. Interpretation
- 120AAE. Application to Tribunal
- 120AAF. Determination by Tribunal

**Subdivision 2—Domestic Tenancy**

- 120AAG. Purpose specified in tenancy
- 120AAH. Purpose for which premises are actually used
- 120AAI. Tenant to establish landlord's agreement to change of user as dwelling
- 120AAJ. Purpose of sub-tenancy subject to superior tenancy
- 120AAK. Use of premises other than as dwelling
- 120AAL. Other matters to be taken into account

**Subdivision 3—Tenant's Own Dwelling**

- 120AAM. Tenant's own dwelling presumed
- 120AAN. Specified purpose may be disregarded

**Division 3—Regulated Cycle**

**Subdivision 1—General Provisions**

- 120AAO. Regulated cycle of tenancies

[59.01]

**59. Review**

- (1) Where the Commissioner issues a certificate under section 58, the landlord or the tenant may within 14 days of the date of the certificate apply to the Commissioner by a duplicate in the specified form for a review of the certificate.
- (2) On receipt of an application under subsection (1), the Commissioner shall review his certificate issued under section 58 and, after giving both parties the opportunity to make written submissions, he may affirm the certificate as it is or issue a new certificate under that section, and on the parties a notice of his decision in the specified form. (Replaced 76 of 1981 s. 41. Amended 32 of 1985 s. 16; 53 of 1993 s. 24)
- (3) (Repealed 32 of 1985 s. 16)
- (4) The Commissioner may, at the time of any review under subsection (2), determine the date from which an increase in rent shall take effect, and, if he makes such determination, the notice of his decision shall include such determination in the notice of his decision served under subsection (2). (Replaced 76 of 1981 s. 41. Amended 77 of 1988 s. 6)

**[59.01] Enactment history**

Subsection (2) was amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance 1981 (76 of 1981), s 41, commencing 10 December 1981. It was further amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1985 (32 of 1985), s 16, commencing 1 July 1985; the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1988 (77 of 1988), s 6, commencing 4 November 1988 and the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1993 (53 of 1993), s 26, commencing 1 July 1993.

Subsection (3) was repealed pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1985 (32 of 1985), s 16, commencing 1 July 1985.

Subsection (4) was replaced pursuant to the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance 1981 (76 of 1981), s 41, commencing 10 December 1981. It was subsequently amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1988 (77 of 1988), s 6, commencing 4 November 1988.

**[59.02] Definitions**

For 'Commissioner', 'landlord' and 'tenant', see s 49 above.

[60.02]

**60. Appeal**

Any person aggrieved by a decision of the Commissioner under section 59 may, within 1 month of the service of the notice of the decision, appeal to the Tribunal which may make such order thereon as it thinks fit.

(Replaced 76 of 1981 s. 42. Amended 77 of 1988 s. 7)

**[60.01] Enactment history**

This section was replaced pursuant to the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance 1981 (76 of 1981), s 42, commencing 10 December 1981. It was subsequently amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1988 (77 of 1988), s 7, commencing 4 November 1988.

**[60.02] Definitions**

For 'Commissioner' and 'Tribunal', see s 49 above.

**61. Notices of increases**

- (1) Unless the Commissioner has made a determination under section 59(4) or the Tribunal has made an order under section 60 regarding the date from which an increase in rent shall take effect, an increase in rent specified in a certificate issued under section 58(1)(a) shall not take effect except in pursuance of a notice of increase in the specified form served by the landlord on the tenant, specifying the date from which the increase is to take effect. (Amended 5 of 1975 s. 5; 77 of 1988 s. 8)
- (2) Where a landlord serves a notice of increase on the tenant under subsection (1) he shall, at the same time, send a copy of the notice to the Commissioner.
- (3) The date specified in a notice under subsection (1) shall not, subject to section 64, be earlier than the first day when rent becomes due after the expiration of 1 month from the service of the notice.
- (4) Notwithstanding this section, where proceedings on a review under section 59 or an appeal under section 60 are not concluded on the date specified in a notice under subsection (1), the failure by the tenant or sub-tenant to pay the increase in rent prior to the conclusion of such proceedings shall not be a breach of covenant to pay rent nor give rise to a right to forfeiture.

**[61.01] Enactment history**

Subsection (1) was amended pursuant to the Landlord and Tenant (Amendment) Ordinance 1975 (5 of 1975), s 5. It was subsequently amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance (77 of 1988), s 7, commencing 4 November 1988.

**[61.02] Definitions**

For 'Commissioner', 'forfeiture', 'landlord', 'tenant', 'sub-tenant' and 'see s 49 above.

**62. Application of certain sections to sub-tenancies**

Sections 55, 57, 58, 59, 60 and 61 shall apply to a sub-tenancy. Any references therein to landlord and tenant shall be construed for this purpose, as references to principal tenant and sub-tenant respectively.

*(Replaced 76 of 1981 s. 43. Amended 40 of 1984 s. 24)*

**[62.01] Enactment history**

This section was replaced pursuant to the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance 1981 (76 of 1981), s 43, commencing 14 December 1981. It was subsequently amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1984 (40 of 1984), s 24, commencing 14 July 1984.

**[62.02] Definitions**

For 'landlord', 'principal tenant', 'tenant' and 'sub-tenant', see s 49 above.

**63. Increase in rent of sub-tenancy on account of rates**

(1) Where—

- (a) a principal tenant bears the rates in respect of premises the subject of a tenancy out of which a sub-tenancy has been created and there is an increase in the amount of rates payable;
- (b) rates are imposed in respect of any premises the subject of a tenancy out of which a sub-tenancy has been created and the principal tenant bears the rates; or
- (c) the rent of a tenancy has been increased

section 56 or 56A and a sub-tenancy has been created out of that tenancy,

the principal tenant may, if he cannot agree with the sub-tenant an increase in rent of the sub-tenancy, apply to the Commissioner in the specified form for a certificate under subsection (2).

(1A) For the purposes of subsection (1)(b), rates shall be deemed not to be imposed where rates become payable by reason only that the premises cease to be exempt from assessment to or payment of rates under section 36 of the Rating Ordinance (Cap. 116). *(Added 29 of 1983 s. 21)*

(2) On receipt of an application under subsection (1), the Commissioner shall make such apportionment or aggregation of the rates as he considers necessary to determine the amount of rates attributable to the premises the subject of the sub-tenancy and shall serve on the principal tenant and on the sub-tenant certificates in the specified form stating the amount by which the rent of the sub-tenancy may be increased. *(Amended E.R. 4 of 2020)*

(3) Where the Commissioner has served a certificate under subsection (2), the rent of the sub-tenancy may be increased by the amount shown in the certificate, but the increase in rent shall not take effect except in pursuance of a notice of increase in the specified form served by the principal tenant on the sub-tenant specifying the date from which the increase is to take effect.

(4) The date specified in a notice of increase under subsection (3) shall be not earlier than—

- (a) the date from which the increased rates or the rates imposed, as the case may be, are payable;
- (b) the date on which the increase in rent of the principal tenancy on account of rates became payable; or
- (c) 24 months prior to the date of service of the notice of increase on the sub-tenant,

whichever is the later. *(Amended 29 of 1983 s. 21)*

*(Replaced 10 of 1975 s. 11)*

**[63.01] Enactment history**

This section was replaced pursuant to the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance 1975 (10 of 1975), s 11.