

Lessee	承租人
Lessor	批租人
Month	月
Mortgage	按揭
Mortgage money	按揭金
Mortgagee	承按人
Mortgagor	按揭人
New Kowloon	新九龍
New Territories	新界
Occupy	佔用
Per cent	釐、百分之
Person	人、人士、個人、人物、人選
Power	權、權力
Preliminary agreement	初步協議
Purchase	購買
Registered	註冊
Right of re-entry	重收權
Sale	售賣
Sign	簽名、簽署
Stamping	加蓋印花
Terms of year absolute	絕對年期
Uncompleted development	未完成的土地發展項目
Under-lease	分租租契
Under-lessee	分租人
Year	年

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), and local legislation such as the Law Amendment and Reform (Consolidation) Ordinance (Cap 23), the Law of Property Amendment Ordinance (Cap 24), the New Territories Ordinance (Cap 97), the Law of Property (Enforcement of Covenants) Ordinance (Cap 297), and the Land Registration Ordinance (Cap 128). On 26 July 1984, the Conveyancing and Property Ordinance (Cap 219) 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* (1990, Hong Kong)). 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* (1988) p xli). A draft Law of Property and Conveyancing Bill was prepared (see *Law Lectures for Practitioners 1974* p 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 Ordinance on 26 July 1984 (see *Law Lectures for Practitioners 1984 (Day One)* p 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 2000, 2003 and 1997 respectively. In 2008, section 13A was added along with consequential amendments made to conditions 8 and 9 of Pt A 2nd Sch pursuant to sections 10 and 11 of the Statutes Law (Miscellaneous Provisions) (No. 2) Ordinance (25 of 2008).

Salient features of the Ordinance

The Conveyancing and Property Ordinance (Cap 219) (hereinafter 'Cap 219') aims to codify the existing legislation affecting property in Hong Kong, to introduce reforms to remedy existing deficiencies, to resolve uncertainties and 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).

(a) Codification

The Grantees of Reversions Act 1540, An Act Against Fraudulent Deeds, Gifts, Alienation etc 1571, An Act Against Covenous and Fraudulent Conveyances 1584, An Act to Prevent Frauds by Clandestine Mortgages 1692 and the Mortgage Act 1733, all of which were incorporated into Hong Kong law by the Application of English Law Ordinance (Cap 88), were repealed pursuant to Cap 219. All but the Act to Prevent Frauds by Clandestine Mortgages 1692 and the Mortgage Act 1733 were substituted with new provisions as ss 31—2 and 60—61 of Cap 219.

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 and the Law of Property Act 1925, was repealed and re-enacted in a revised form as ss 3 and 5-7 of Cap 219. 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 Cap 219. 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 Cap 219. Sections 48 and 59 of Cap 219 also owe their origins to the Law of Property Amendment Ordinance (Cap 24).

Furthermore, 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 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) was repealed, and the enforcement of covenants relating to land is now governed by ss 41-42 of Cap 219. Section 57 of Cap 219 slightly amendment to the Land Registration Ordinance (Cap 128) to deal with the problems encountered in the priority of floating charges. Section 63 of Cap 219 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).

(b) Reforms

Some of the new provisions introduced by 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 was 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 Ordinance 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, and further to 15 years pursuant to the Conveyancing and Property (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.

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 is 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 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.

(c) **Streamlining conveyancing documentation**

One of main objectives of 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 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 52 protects a purchaser from an improper or irregular exercise of the power of sale. 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 include 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 organizations for use or development (see art 7 of the Basic Law of the HKSAR, 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 recognized and protected under the laws of the HKSAR (see art 120 of the Basic Law of the HKSAR). 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 (110 of 1997)), 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 was enacted. However, the ordinance 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.

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) and *Halsbury's Statutes* (Butterworth & Co (Publishers) Ltd, 4th Ed 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 Ordinance 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 Land Registry should be referred to. In the following annotations, these materials are noted under the heading **Cross reference(s)**.

provide him with some control over the borrower's ability to do so.

The status of a negative pledge has been the subject to much debate and remains unresolved – see for instance *State Securities v Liquidity Ltd* [2006] EWHC 2644. It clearly gives rise to an in personam obligation between the borrower and lender but it is highly questionable whether it confers proprietary rights on the lender which are capable of binding third parties (*English & Scottish Mercantile Investment Co Ltd v Brunton* [1892] 2 QB 700, *De Mattos v Gibson* (1859) 4 De G. & J. 276, *Lord Strathcona Steamship Co Ltd v Dominion Coal Co Ltd* [1926] AC 108, *Re Castella & Brown Ltd* [1898] 1 Ch 315, *Wilson v Kelland* [1910] 2 Ch 306 and *Re Portbase Clothing Ltd* [1993] Ch 338, *Griffiths v Yorkshire Bank plc* [1994] 1 WLR 1427, *Mac-Jordan Construction Ltd v Brookmount Erostin Ltd* [1992] BCLC 350). Even if a negative pledge gives rise to an equity which is capable of binding third parties, the question of whether a not a third party will have notice raises further difficulties both as to the nature of the notice, whether actual or constructive, that is required and how it can be obtained. In this latter respect, although registration may give notice of the instrument it will not necessarily give notice of its contents including the negative pledge (*English & Scottish Mercantile Investment Co Ltd v Brunton* above, *Wilson v Kelland* above, *Siebe Gorman & Co v Barclays Bank Ltd* [1979] 2 Lloyd's Rep 142). Given the fixed nature of both an equitable mortgage and a legal charge of land these question are of less significance than where the lending is unsecured or where it is secured by a floating charge over assets other than land – see further *A McKnight Restrictions on Dealing with Assets in Financing Documents: Their Role, Meaning and Effect* (2002) 17 JIBL 193.

Where a borrower threatens to breach a negative pledge the lender may seek an injunction to restrain the breach against the borrower. Where the borrower has already breached the negative pledge the breach should constitute an event of default enabling the lender to call in the loan and exercise his powers of enforcement against the security – see [S4.52]. The lender may also pursue action against the third party with whom the borrower has dealt for the tort of interference with contractual relations (see *Swiss Bank Corp v Lloyds Bank Ltd* [1979] Ch 548, *Merkur Island Shipping Corp v Laughton* [1983] 2 AC 570, *Oriental Sharp Ltd v Hong Kong Housing Authority* [2007] 1 HKC 509). The lender might also try and seek injunctive relief against the third party with whom the borrower is proposing to deal although this cause of action is dependant upon the principle in *De Mattos v Gibson* above which has not been universally applied.

As to the meaning of 'underlet', 'dispose of', and 'equity of redemption', see [29.15], [2.36] and [44.15] above respectively.

[S2(B).11] Definitions

For 'assignment', 'borrower', 'land', 'legal charge', 'legal estate', 'lender' and 'mortgage', see s 2 above.

PART C

(IN A LEGAL CHARGE)

- (a) That the borrower shall during the continuance of the legal charge pay the premium and other moneys (if any) and Government rent and perform and observe the covenants terms and conditions by and in the Government lease reserved and contained and shall pay the property tax (if any) rates charges outgoings and impositions from time to time assessed charged or imposed on or payable in respect of the property or any part thereof and shall at all times keep the lender indemnified therefrom and from and against all actions suits expenses and claims which may be incurred or sustained on account of the non-payment of the said premium or other moneys (if any) or Government rent property tax rates charges outgoings and impositions or any part thereof or the breach or non-performance or non-observance of the said covenants terms and conditions or any of them.
- (b) That moneys due under any covenant relating to the property have been paid and any other covenants, terms and conditions relating to the property have been duly observed and performed.
- (c) That the borrower shall at all times during the continuance of the legal charge—
 - (i) keep and maintain the property in good and tenable repair and condition to the satisfaction of the lender and Government;
 - (ii) comply with all Government or other legal requirements and notices whether statutory or otherwise in respect of the property;
 - (iii) allow the lender and his servants or agents to enter and view the state of repair of the property at all reasonable times without the lender by so doing only being deemed to have taken possession of the property; and
 - (iv) pay all moneys due from time to time under and observe and perform the covenants terms and conditions contained in the deed of mutual covenant (if any).
- (d) That the borrower shall during the continuance of the legal

charge insure and keep insured the property with some insurance company in Hong Kong to be first approved in writing by the lender against loss or damage from fire and such other risks as the lender shall think fit in the full insurable value thereof for the time being and if so required by the lender in the joint names of the borrower and the lender and duly and punctually pay all premiums and other moneys necessary for effecting and keeping up such insurance immediately upon the same becoming due and shall forthwith endorse over and deliver to the lender the policies and all current receipts for premium for the time being.

- (e) That if the borrower shall make default in payment of the said premium and other moneys (if any) or the [Government] rent or any part thereof or in the performance or observance of the said covenants terms and conditions or any of them or in effecting such insurance or in paying the insurance premiums or in so repairing as aforesaid or in duly complying with all such requirements and notices as aforesaid or shall fail to endorse over and deliver such policies and receipts then and in such case and so often as the same shall happen it shall be lawful for the lender to pay such premium or other moneys (if any) or Government rent and so perform and observe such covenants terms and conditions effect such insurance or repairs pay such insurance premiums or comply with all such requirements and notices as aforesaid and the borrower shall forthwith repay to the lender on demand all moneys expended by the lender in so doing and until such repayment such moneys shall be a charge upon the property as if the same had formed part of the loan and bear interest accordingly. (Amended 29 of 1998 s 105)
- (f) That the borrower shall not without the prior written consent of the lender at any time during the continuance of the legal charge assign sub-divide charge underlet part with possession or in any manner otherwise deal with or dispose of the property or any part thereof or any interest therein or enter into any agreement or arrangement so to do.

[S2(C).01] Enactment history

The Second Schedule was amended pursuant to s 105 of the Adaptation of Laws (Crown Land) Ordinance 1998 (29 of 1998) by repealing 'Crown' wherever it appeared and substituting 'Government'.

[S2(C).02] Cross references

See s 36 and [36.02] above; and Sch 3 Forms 4 - 5 below.

[S2(C).03] General note

This Part sets out the most common covenants given by a borrower found in mortgages of land, whether legal or equitable, held under a Government lease or Conditions of Grant, which may be incorporated by reference under s 36 above (see [36.02] above). The covenants are incorporated by reference into the standard forms of Legal Charge found in Forms 4 and 5 of the Third Schedule.

[S2(C).04] Paragraph (a): General note

Under this Paragraph, the borrower agrees to pay the Government rent, any outstanding premium and property tax, rates, or other outgoings chargeable in respect of the property. The borrower also agrees to observe and perform the Government lease covenants and conditions. Furthermore, the borrower agrees to indemnify the lender against any loss should he fail to perform these obligations.

This Paragraph supplements the covenants for title contained in Sch 1 Pt V paras 1-2 above. The covenants for title relate to the validity of the Government lease at the time of the mortgage, and this Paragraph seeks to ensure the continued validity of the Government lease during the life of the mortgage.

[S2(C).05] Government lease

As to meaning, see [2.07] above.

[S2(C).06] Rates, charges, outgoings and impositions from time to time assessed, charged and imposed on or payable

As to meaning of 'charges' see [45.15].

'Outgoings', and 'impositions', have a similar extended meaning see [54.06] and [S2(A).08] above and in relation to 'impositions' *Re Warriner* [1903] 2 Ch 367 and *Goldstein v Hollingsworth* [1904] 2 KB 578.

[S2(C).07] And against all actions suits expenses and claims

It has been said that 'suit' is a term of wider signification than 'action' (see, eg, *Re Wallis* 23 LR Ir 7), but, generally speaking, the two words are almost synonymous. See also *Sutton v Sutton* (1882) 22 Ch D 511.

As to meaning of 'action', see [3.04] above.

As to meaning of 'expenses', and 'claims' see [45.16] and [33.08] above respectively.

[S2(C).08] Paragraph (b): General note

This covenant provides a warranty that the terms of any covenant or condition relating to the mortgaged property have been observed and performed. As such it compliments and supplements the covenants for title the borrower gives by implication into a legal charge where the borrower charges 'as beneficial owner'. These covenants for title warrant the due performance of the Government lease covenants and any deed of mutual covenant – see [S1(5).04] above. This covenant goes a little further by encompassing any other covenant which may affect the mortgaged property.

The warranty relates to the past performance. The borrower's obligation to perform the covenants and conditions affecting the property during the continuance of the mortgage is found in paragraph (c).

[S2(C).09] Paragraph (c): General note

This provision sets out a number of covenants by the borrower which are intended to preserve the value of the security. It includes an obligation to keep the mortgaged property in repair and to allow the lender access to inspect the state of repair, to comply with all Government or other legal requirements, in particular this would include observance of relevant planning, building and public health legislation and to observe and perform the obligations imposed by any deed of mutual covenant.

The covenant dovetails with paragraph (e) which enables the lender to rectify any default in the performance of these obligations.

[S2(C).10] Keep and maintain in good and tenable repair and condition

Under an obligation to keep premises in 'tenable repair', decorative repair is not included; wallpapering is always, and painting, unless needed for the protection of the property, is considered decorative repairs. The obligation does not extend to repairing, or restoring, what is worn out by age (*Crawford v Newton* (1886) 36 WR 54, *Proudfoot v Hart* (1890) 25 QBD 42, *Wood v Walsh* [1899] 1 QB 1009). However, waste, whether voluntary or permissive, is a breach of the obligation (*Proudfoot v Hart* above and also *Moxon v Marquis of Townshend* (1886) 2 TLR 717, *Truscott v Diamond Rock-Boring Co* (1882) 20 Ch D 251, *Fu Lam Investment Ltd v Mok Cheong Che* (1983) HCT 1978/83, HC, unreported).

Assistance in interpreting this repairing covenant may be derived from the law governing tenant's repairing covenants.

[S2(C).11] To the satisfaction of the lender

For cases on the evidential standard required before certain criteria can be said to have been 'satisfied' see *Everett v Griffiths* [1920] 3 KB 163, *Robinson v Minister of Town and Country Planning* [1947] KB 702, *Robertson v Police* [1957] NZLR 1193, *Ross-Clunis v Papadopoulos* [1958] 1 WLR 546, *Leung Chau Chun v Lau Lai Kuen (No 2)* [1964] HKLR 342 and *A-G of St Christopher, Nevis and Anguilla v Reynolds* [1980] AC 637.

As to meaning 'Government', see [34A.17] above.

[S2(C).12] Allow the lender and his servants and agents to enter and view the state of repair

The term 'allow' may have as wide a meaning as 'permit'. It necessarily involves knowledge or consent of the person concerned ie the borrower (*Crabtree v Fern Spinning Co Ltd* (1901) 85 LT 549, *De Kuyper v Crafter* [1942] SASR 238. See also *R v Chan Pui Kay* [1992] 1 HKCLR 218, HC, *A-G v Kwan Lee Construction Co Ltd* (1992) HCMA 659/92, HC, unreported).

'To 'view' is to take notice only by the eye, whereas to 'survey' generally also extends to other methods of inspection.

As to meaning of 'agents', see [5.08] above.

[S2(C).13] At all reasonable times

As to meaning, see [47.07] above.

[S2(C).14] Without the lender ... being deemed to have taken possession

As to the lender's right to take possession and his liability when in possession see [S4.17]. As this liability is strict the lender will wish to avoid such liability unless necessary.

[S2(C).15] Paragraph (d): General note

Under this Paragraph, the borrower shall insure the property so as to avoid any loss in the value of the security due to damage or destruction caused by fire or other risk. In the event of the borrower effecting insurance which is not in conformity with the requirements of the covenant, the lender may claim the benefit of such insurance as has been effected see s 33 above. If no insurance has been effected, the lender may exercise his statutory power to insure see s 51 above or may take steps to remedy the breach under Para (e) below. The borrower is also required to keep any insurance on foot during the continuance of the mortgage by paying the annual insurance premiums.

The insurance policy is required to be kept with the lender.

[S2(C).16] Insurance company in Hong Kong

For provisions governing insurers and insurance intermediaries in Hong Kong, see the Insurance Companies Ordinance (Cap 41).

[S2(C).17] Loss and damage from fire and such other risks as the lender shall think fit

The lender may require insurance from the risks of loss and damage from other risks eg typhoon or subsidence.

As to meaning of 'loss and damage by fire', see [33.06] above.

[S2(C).18] Full insurable value for the time being

Insurance is generally effected for reinstatement value and not the market value of the property. Reinstatement value will reflect the cost of reinstating the building on the land and thus will not include the value of the land.

[S2(C).19] Punctually pay all premiums ... immediately on the same becoming due

Where a thing has to be done 'punctually' on a day named, that means on the very day; and the day after the day named is too late (*Leeds Theatre Co v Broadbent* [1898] 1 Ch 343. See also *Simpson v Manley* (1831) 2 Cr & J 12, *Union Bank of London v Ingram* (1880) 16 Ch D 53 but compare *Nova Scotia Steel Co Ltd v Sunderland Steam Shipping Co Ltd* (1899) 5 Com Cas 106).

'Punctually' is a word of time; and therefore it is not a question of whether the money is faithfully or honourably paid, but whether it is paid at the time stipulated (*Scott-Chisholme v Campbell's Trustee* 30 SLR 558).

[S2(C).20] Paragraph (e): General note

This provision enables the lender to make good any default by the borrower in the performance of his obligations contained in paragraphs (a), (c) and (d) above so as to ensure that the value of the security is preserved. Any money expended by the lender in so doing is repayable on demand and until repayment forms part of the loan and will bear interest and be charged upon the mortgaged property accordingly.

[S2(C).21] On demand

As to meaning, see [S3(3).12].

[S2(C).22] Interest

As to meaning, see [45.13] above and [S3(3).13].

[S2(C).23] Paragraph (f): General note

This covenant creates what is commonly known as a negative pledge which prohibits the borrower from disposing of the mortgaged property without the prior written consent of the lender. The terms of this negative pledge are drawn in

slightly wider terms than that incorporated into an Equitable Mortgage of a Sale and Purchase Agreement - see Second Schedule Part B above.

As to the nature of a negative pledge see [S2(B).10].

As to the meaning of 'underlet', and 'dispose of', see [29.15] and [2.36] above respectively.

[S2(C).24] Any agreement or arrangement so to do

Generally speaking, there is an 'arrangement' where, although no formal agreement exists, the conduct of the parties shows that they have accepted mutual obligations: see *Mileage Conference Group of the Tyre Manufacturers' Conference's Agreement* [1966] 1 WLR 1137.

[S2(C).25] Definitions

As to meaning of 'agreement', see [3.09] above.

SCHEDULE 3

Remarks:

Amendments retroactively made - see 29 of 1998 s 105

[section 37]

FORM 1

ASSIGNMENT OF A LOT OR SECTION OF A LOT OR OF A RESIDENTIAL, COMMERCIAL, INDUSTRIAL OR OTHER UNIT IN A COMPLETED BUILDING

THIS ASSIGNMENT is made the day of 19

BETWEEN

(1)

('the Vendor') and

(2)

('the Purchaser').

In consideration of the sum of \$ paid by the Purchaser to the Vendor (receipt whereof is acknowledged) the Vendor as [] ASSIGNS to the Purchaser the land described in the Schedule hereto ('the Property') TO HOLD the same unto the Purchaser [as] for the residue of the term of years created by the Government lease referred to in the Schedule subject to

then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor.

(1 of 1883 s 26 incorporated)

[99.01] Enactment history

This section incorporates the Distress for Rent Ordinance (1 of 1883) s 26, commencing 2 February 1883.

[99.02] General note

Unlike the position in England, in Hong Kong a landlord is entitled both to bid for and purchase the distrained goods of his tenant: see *Lo Hon v Law Shek Shing* [1963] 3 HKDCLR 203.

[99.03] Subsection (1): Property

As to meaning, see [87.04] above.

[99.04] Bailiff

As to meaning, see [78.05] above.

[99.05] Definitions

For 'court' and 'Registrar', see s 75 above.

100. Right of debtor as to manner of sale

The debtor may require that the sale shall take place in any other manner than that directed by the Registrar, on giving security for any extra costs or loss thereby, or that, in the opinion of the Registrar, may be thereby occasioned.

(1 of 1883 s 27 incorporated)

[100.01] Enactment history

This section incorporates the Distress for Rent Ordinance (1 of 1883) s 27, which commenced on 2 February 1883.

[100.02] Debtor

As to meaning, see [89.06] above.

[100.03] Definitions

For 'Registrar', see s 75 above.

101. Case of deserted premises, where no distress left

- (1) If a tenant of premises with a rateable value not exceeding \$100,000 at the time of an application for a warrant under this section is in arrears for 2 months and deserts the demised premises and leaves the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, the court may, on the application of the lessor or landlord or his agent and on information upon oath, issue its warrant authorizing any bailiff to enter on the premises, breaking any doors, windows, or gates, if necessary; and, if the premises are found to be deserted with no sufficient distress therein, to place the same in charge of a bailiff and to affix a notice thereon, in a conspicuous place, that, unless cause to the contrary is shown before the court within 10 days, the premises will be given over to the applicant. (Amended 37 of 1986 s 6; 32 of 2002 s 5)
- (2) If no such cause is shown, the court may, on proof of the fact of desertion, of non-payment of at least 2 months' rent last due, of want of sufficient distress, and that the applicant is the lessor or landlord of the premises or entitled under this Part to a warrant, make an order directing a bailiff to put the applicant in possession of the premises, and the demise shall become void.
- (3) The Legislative Council may by resolution amend the sum mentioned in subsection (1). (Added 37 of 1986 s 6)

(1 of 1883 s 28 incorporated)

[cf. 1737 c 19 s 16 U.K. 1817 c 52 U.K.]

[101.01] Enactment history

This section incorporates the Distress for Rent Ordinance (1 of 1883) s 28, commencing 2 February 1883.

In subsection (1), the figure \$100,000 was amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance (32 of 2002) s 5, commencing 27 December 2002. Previously, this figure was \$30,000 pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance (37 of 1986) s 6, commencing 1 August 1986. Prior to these amendments, sub-s (1) read 'where any immovable property is held at a rack rent, or where the rent reserved shall be full three-fourths

of the yearly value of the demised premises, and where neither the value of the premises by the year, nor the rent payable in respect of the tenancy by the year, shall exceed three hundred dollars, if the tenant shall be'.

The words 'on the application' were amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance (37 of 1986) s 6, commencing 1 August 1986. Formerly, they read 'at the request'.

Subsection (3) was added pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance (37 of 1986) s 6, commencing 1 August 1986.

[101.02] England

Subsection (1) is modelled on the Distress for Rent Act 1737 (c 19, Eng) s 16, except that under this section application may only be made by the landlord where the rateable value of the premises does not exceed \$100,000 at the time of the application for the warrant and the tenant is in arrears for two months' rent. cf Deserted Tenements Act 1817 (c 52, Eng).

[101.03] Subsection (1): Tenant

As to meaning, see [81.02] above.

[101.04] Lessor or Landlord

As to meaning, see [81.02] above

[101.05] Agent

As to meaning, see [81.05] above.

[101.06] Oath

'An oath is a religious asseveration, by which a person renounces the mercy and imprecates the vengeance of Heaven if he do not speak the truth': see *R v White* (1786) 1 Leach 430 at 431 168 ER 317. The word 'oath' is defined in s 3 of the Interpretation and General Clauses Ordinance (Cap 1) to include, in the case of persons allowed or required by law to affirm instead of swearing, affirmation. Oaths are governed by the Oaths and Declarations Ordinance (Cap 11).

[101.07] Bailiff

As to meaning, see [78.05] above.

[101.08] Subsection (3): Legislative Council

This is defined in s 3 of the Interpretation and General Clauses Ordinance to mean (a) the Legislative Council of the Hong Kong Special Administration Region; and

(b) the Provisional Legislative Council during its existence.

[101.09] Definitions

For 'court', 'rateable value' and 'warrant', see s 75 above.

Rules as to Distress

102. Distress for arrears of rent on determination of lease

Arrears of rent may be distrained for after the end or determination of any term or lease at will, in the same manner as if such term or lease had not been ended or determined: Provided that such distress is made during the continuance of the possession of the tenant from whom such arrears became due.

(1 of 1883 s 29 incorporated)

[102.01] Enactment history

This section incorporates the Distress for Rent Ordinance (1 of 1883) s 29, which commenced on 2 February 1883.

[102.02] Arrears of rent

As to meaning, see [77.03] above.

[102.03] Term or lease at will

A tenancy at will arises where a person occupies land or premises with the consent of the registered owner under a tenancy of uncertain duration and either party may at any time terminate the arrangement at will: see *Errington v Errington and Woods* [1952] 1 KB 290 at 296; *Doe d Groves v Groves* (1847) 10 QB 486 at 491, 116 ER 185 at 187; *Buck v Howarth* [1947] 1 All ER 342 at 343G.

[102.04] Tenant

As to meaning, see [81.02] above.

103. Priority of landlord's right

Remarks:

Adaptation amendments retroactively made - see 29 of 1998 s 105; 44 of 2000 s 3

No personal property shall be removed from any premises under any writ from any court, other than writs in Government suits, until the claim for rent due to the landlord or lessor or person entitled to receive the rent is satisfied: (Amended 44 of 2000 s 3)

Provided that such claim shall not in any case exceed the amount due for 6 months' rent last due.

(1 of 1883 s 30 incorporated)

[cf. 1709 c 18 or c XIV U.K.]

[103.01] Enactment history

This section incorporates the Distress for Rent Ordinance (1 of 1883) s 30, commencing 2 February 1883.

[103.02] England

This section is based on s 1 of the Landlord and Tenant Act 1709 (c 18, Eng) except that under this section the landlord has priority for only six months' rent arrears.

[103.03] General note

The effect of this section is to confer upon the landlord a quasi-lien over the tenant's goods and express priority in respect of a claim for rent: see *Tung Wah Hospital v Deputy Registrar, Kowloon District Court* [1968] HKLR 261. In this case, the court held that the landlord had priority over execution creditors to take the proceeds of a sale on execution where the distress warrant was only issued seven days after the auction of the goods by the execution creditors. Furthermore, the landlord will have priority, as against any judgment creditor of the tenant, to the proceeds of sale of the goods even where the goods themselves are not distrainable, eg because they fall into one of the exceptions specified in s 88 above: see *Kong Heung Po v Cheong Tai Pawnshop and Ko Ho Ning* (1934-35) 27 HKLR 79.

Note, however, that where the tenant becomes bankrupt or insolvent, the landlord's rights are restricted. Under s 40 of the Bankruptcy Ordinance (Cap 6), if the landlord distrains for rent after the commencement of the bankruptcy, the maximum recoverable by the landlord is 6 months' arrears of rent accrued due prior to the date of the bankruptcy order. Further, under s 38(5) of that Ordinance, if the landlord distrains within 3 months immediately preceding the date of the bankruptcy order, the preferential debts constitute a first charge on the goods distrained on or the proceeds of sale thereof: See also the Companies Ordinance (Cap 32) s 265(5). See further, *The Annotated Ordinances of Hong Kong*, Bankruptcy Ordinance (Cap 6) and *The Annotated Ordinances of Hong Kong*, Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32).

As to the procedure to be followed in reconciling the competing claims of the distrainor and the execution creditor, see s 104 below.

[103.04] Personal property

This may roughly be described as comprising all forms of property, movable or immovable, corporeal or incorporeal, other than freehold estates and interests in land (which may include chattels affixed to land) and its appurtenances: see *Halsbury's Laws of Hong Kong* Vol 20, [295] Personal Property, para [295.001].

[103.05] Writ

This is one of the methods by which proceedings may be commenced in the Court of First Instance or the District Court: see the Rules of the High Court (Cap 4 sub leg A) O 5 r 1; and the District Court Rules (Cap 336 sub leg H) O 5 r 1.

[103.06] Court

This is defined in s 3 of the Interpretation and General Clauses Ordinance (Cap 1) to mean any court of the Hong Kong Special Administrative Region of competent jurisdiction.

[103.07] Government suits

These are proceedings taken by the Government, as to which see the Crown Proceedings Ordinance (Cap 300) s 22.

[103.08] Landlord

As to meaning, see [81.02] above.

104. Property seized under writ or warrant of Court of First Instance or the District Court

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s 2

- (1) If personal property, otherwise liable to distress for rent, is, at the time of the issue of a warrant or thereafter before seizure by the bailiff under the warrant, seized under any writ or warrant of the Court of First Instance or the District Court, the bailiff shall not seize the personal property, but shall return the warrant into court and deliver copies thereof to the execution creditor or his agent and to the debtor, either personally or by leaving the same at the place where the goods

were seized. (Amended 1 of 1953 Fourth Schedule; 92 of 1975 s 59; 25 of 1998 s 2)

- (2) The execution creditor or debtor or either of them may apply to the court to discharge or suspend the warrant within the time and in the manner mentioned in section 93, and if no application is made within the prescribed time, the Registrar shall, out of the first money to be received by him from the officer executing the writ or warrant, pay over to the person obtaining the warrant the amount thereof:

Provided that if the amount mentioned in the warrant exceeds the amount due for 6 months' rent, the Registrar shall pay the amount of rent due for 6 months and the costs and no more.

(1 of 1883 s 31 incorporated)

[104.01] Enactment history

This section incorporates the Distress for Rent Ordinance (1 of 1883) s 31, commencing 2 February 1883.

In sub-s (1), the words 'Supreme Court' were repealed and substituted by the words 'High Court' pursuant to the Supreme Court Ordinance 1975 (92 of 1975) s 59, commencing 20 February 1976. The words 'High Court' were repealed and substituted by the words 'Court of First Instance' pursuant to the Adaptation of Laws (Courts and Tribunals) Ordinance (25 of 1998) s 2, commencing 1 July 1997.

In sub-s (1), the words 'or the District Court' were added pursuant to the District Court Ordinance 1953 (1 of 1953) Sch 4, commencing 18 February 1953.

[104.02] General note

This section prescribes a procedure for the bailiff to follow where an execution creditor of the tenant has already seized the goods.

[104.03] Subsection (1): Personal property

As to meaning, see [103.04] above.

[104.04] Seizure

As to meaning, see [87.04] above.

[104.05] Bailiff

As to meaning, see [78.05] above.

[104.06] Writ or warrant

The word 'writ' here means a writ of execution by which a judgment may be enforced. There are separate writs of execution that fulfil different functions in the enforcement process: see *Halsbury's Laws of Hong Kong* Vol 5(2) (2000 Reissue), [90] Civil Procedure, para [90.1238]. A writ of execution includes a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration and any writ in aid of any of these writs: see the Rules of the High Court (Cap 4 sub leg A) O 46 r 1.

[104.07] Court of First Instance

This is defined in s 3 of the Interpretation and General Clauses Ordinance (Cap 1) to mean the Court of First Instance of the High Court.

[104.08] District Court

As to meaning, see [75.02] above.

[104.09] Execution creditor

This is the person who is named or ascertained in a judgment or order as entitled to the benefit of it who has caused a writ of execution to be issued against the person subject to such judgment or order: see *Halsbury's Laws of Hong Kong* Vol 5(2) (2000 Reissue), [90] Civil Procedure, para [90.1246]. For the meaning of execution generally, see [105.02] below.

[104.10] Agent

As to meaning, see [81.05] above.

[104.11] Debtor

As to meaning, see [89.06] above.

[104.12] Subsection (2): Prescribed

As to meaning, see [80.02] above.

[104.13] If no application is made...the Registrar shall, out of the first money to be received by him from the officer executing the writ pay over to the person obtaining the warrant

If no application is made to discharge or suspend the warrant, the execution levied against the tenant by the judgment creditor proceeds, but the landlord is given priority for six months' rent arrears out of the proceeds of the levy and his costs: see *Re Lokfumin Restaurant Ltd* [1978] HKLR 374. Even where a successful application is made by the judgment creditor or tenant, the landlord is entitled to

PART XIV

PROCEEDINGS UNDER THE BUILDING MANAGEMENT
ORDINANCE

(Enacted 1994)

76 Interpretation

In this Part-

“Ordinance” (條例) means the Building Management Ordinance (Cap 344).

(Enacted 1994)

77 Commencement of proceedings

Proceedings under the Ordinance shall be commenced by the applicant as follows-

- (a) under section 4 by filing with the registrar a notice of application substantially in accordance with Form 27;
- (b) under section 31 by filing with the registrar a notice of application substantially in accordance with Form 29; (L.N. 281 of 2006)
- (c) under Schedule 10 by filing with the registrar a notice of application substantially in accordance with Form 29. (5 of 2007 s 72)

(L.N. 158 of 2008)
(Enacted 1994)

78 Notice of opposition

The respondent shall, if he wishes to oppose the application, within 21 days of service of the notice of application upon him file with the registrar, and serve a copy on the applicant, a notice of opposition substantially in accordance with Form 7 stating the grounds thereof and that he wishes to be heard. The respondent shall, in his notice of opposition, state the facts relied upon by him in sufficient detail to enable the applicant to know the case he has to meet.

(L.N. 158 of 2008)
(Enacted 1994)

PART XIVA

PROCEEDINGS UNDER THE LAND (COMPULSORY SALE
FOR REDEVELOPMENT) ORDINANCE

(Part XIVA added L.N. 100 of 1999)

78A Interpretation

In this Part-

“connected application” (關聯申請) means an application to the Lands Tribunal for an order the cause of action of which is consequent upon the possible outcome of the main application;

“main application” (主體申請) means an application to the Lands Tribunal for an order for sale under section 3(1)(b) of the Ordinance;

“Ordinance” (《條例》) means the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545).

78B Commencement of proceedings

Section A-Originating Application

- (1) Proceedings under section 3(1) of the Ordinance shall be commenced by the applicant by filing with the registrar a notice of application substantially in accordance with Form 32.
- (2) The applicant shall cause a copy of the notice of application to be served and registered under section 3(3)(a) and (b) of the Ordinance not later than 7 days after it is filed.
- (3) The applicant shall file with the registrar an affidavit of service and an affidavit of the registration, of the notice of application, within 3 days after such service or registration to the effect that service or registration, as the case may be, has been effected.
- (4) The applicant shall cause a copy of the notice as specified in Part 2 of Schedule 1 to the Ordinance in the Chinese and English languages to be affixed and published under section 3(3)(c)(i) and (ii) of the Ordinance not later than 7 days after filing of the notice of application under subrule (1).
- (5) The applicant shall file with the registrar an affidavit of affixture and an affidavit of the publication within 3 days after

such affixture or publication to the effect that the affixture or publication, as the case may be, has been effected.

78C Notice of opposition

The respondent shall, if he wishes to oppose the application, within 21 days of the service of the notice of application upon him, file with the registrar, and serve a copy thereof on the applicant, a notice of opposition substantially in accordance with Form 33, stating the grounds thereof and whether he wishes to be heard or not.

78D Notice of hearing

The registrar shall cause a copy of the notice of hearing of the main application to be served on-

- (a) all parties to the main application; and
- (b) all parties to any connected applications filed with the registrar.

78E Commencement of proceedings

Section B-Application for Determination of Compensation Payable to Tenants

- (1) A tenant shall, if he wishes to make representations, within 21 days of affixing of the notice as specified in Part 2 of Schedule 1 to the Ordinance, file with the registrar a notice of application substantially in accordance with Form 34.
- (2) A copy of the notice of application shall be served by the applicant tenant on the owner, whether classified as majority owner or minority owner, and the applicant in the main application not later than 7 days after it is filed.
- (3) The applicant tenant shall, within 3 days of service of notice of application under subrule (2), file with the registrar an affidavit or affirmation of service substantially in accordance with Form 30, unless the respondent majority owner or minority owner so served has within that period filed with the registrar a notice of opposition to the application. (32 of 2000 s 48)

78F Notice of opposition

The respondent majority owner or minority owner shall, if he wishes to oppose the application, within 21 days of service of the notice of application upon him, file with the registrar, and serve a copy on the applicant tenant and the applicant in

the main application, a notice of opposition substantially in accordance with Form 35, stating the grounds thereof and whether he wishes to be heard or not. The respondent majority owner or minority owner shall, in his notice of opposition, state the facts relied upon by him in sufficient detail to enable the applicant tenant to know the case he has to meet.

(32 of 2000 s 48)

PART XIVB

APPEALS UNDER THE GOVERNMENT RENT
(ASSESSMENT AND COLLECTION) ORDINANCE

(Part XIVB added L.N. 78 of 2002)

78G Interpretation

In this Part-

“Ordinance” (條例) means the Government Rent
(Assessment and Collection) Ordinance (Cap 515).

78H Notice of appeal

Appeals to the Tribunal under section 26 of the Ordinance shall be instituted by filing with the registrar, within the period of 28 days referred to in subsection (1) of that section, the following- (L.N. 158 of 2008)

- (a) a notice of appeal substantially in accordance with Form 36; and
- (b) a copy of the notice of decision which has been served on the appellant under section 4(11), 21(1) or 25(3) of the Ordinance.

78I Notice of opposition

The respondent shall, if he wishes to oppose the appeal, within 21 days of the service on him of a copy of a notice of appeal under section 26(3) of the Ordinance, file with the registrar a notice of opposition substantially in accordance with Form 7 stating the grounds of opposing the appeal and that he wishes to be heard and shall serve a copy of the notice of opposition on the appellant. The respondent shall, in his notice of opposition, state the facts relied upon by him in sufficient detail to enable the appellant to know the case he has to meet.

(L.N. 158 of 2008)

78J Application for hearing appeal

(1) The appellant shall-

- (a) within 14 days after the service on him under rule 78I of a copy of the notice of opposition; or
- (b) where no such copy of a notice of opposition has been served on him, within 14 days after the

expiration of the time provided in rule 78I for the service on him of a copy of the notice of opposition, file with the registrar an application in writing for a date to be fixed for the hearing of the appeal and shall at the same time serve a copy of the application on the respondent. (L.N. 158 of 2008)

- (2) If no application for a date to be fixed for the hearing of the appeal has been filed within the time specified in subrule (1)(a) or (b), the appeal shall lapse.

PART XV

MISCELLANEOUS

(Enacted 1994)

79 Repeal, application and saving

- (1) The Lands Tribunal Rules (Cap 17 sub leg) in force immediately prior to the commencement of these Rules are repealed.
- (2) These Rules shall not apply in relation to applications made to the Tribunal before the commencement of these Rules, and in relation to such applications the Rules referred to in subsection (1) shall continue to apply as if these Rules had not been made.

(Enacted 1994)

SCHEDULE

[rule 1]

FORMS

[rule 4(1)]

FORM 1

INTERLOCUTORY APPLICATION

(Heading)

Lands Tribunal
Application No.

TO

of

YOU ARE HEREBY SUMMONED to appear before His Honour Presiding Officer at his Chambers at the Lands Tribunal at on day the day of 19 at o'clock in the noon on the hearing of an application on the part of the Applicant/Respondent* for an order to be made that (1)-

And you are to take notice that if you do not appear the Tribunal may consider and deal with the application in a summary way.

Dated this day of 19

The address of the Applicant/Respondent* is

The address of the Applicant/Respondent solicitor* is

.....+
Seal of the Tribunal

.....
Applicant/Respondent*

(1) State the object of the application.

* Delete whichever is inapplicable.