THINGS THAT YOU NEED TO KNOW BEFORE SIGNING A TENANCY AGREEMENT OR A LEASE I. THINGS THAT YOU NEED TO KNOW BEFORE SIGNING A TENANCY AGREEMENT OR A LEASE As an overview, a Tenancy Agreement is a binding legal document which has important implications on the committed rights and obligations on the part of both landlord and tenant. The terms of a Tenancy Agreement must be carefully considered before signing. Contrary to the common belief of many lay parties, the potential consequences of breaching a Tenancy Agreement by a tenant may not be only limited to the ‘loss’ in the amount of the deposit paid to a landlord. The same also applies to a landlord where he may become liable or responsible to third parties for any breaches committed by the tenant. The contents of a Tenancy Agreement will normally include the period/length of the tenancy, rent, payment period, deposit, use (e.g. residence, office, or factory etc.), renewal terms, termination terms and other usual terms that will be described in the other parts of this topic. Depending on the period of the tenancy and the capacities of the parties entering into the agreement (whether a party to an agreement is an individual or a limited company, etc.), different formalities for execution may be required. While the terms "Tenancy Agreement" and "Lease" are often casually used as if they are synonyms in modern times and that both are generally binding, effective and enforceable in Court, there may still be some technical differences between them in their legal meaning. a) Period/length of the tenancy b) Capacities of the parties c) Implied covenants d) Deed of Mutual Covenant e) Interests affecting the tenancy f) Tenancy without a written tenancy agreement AFTER SIGNING A TENANCY AGREEMENT (OR A LEASE), HOW SHOULD THE PARTIES HANDLE THE DOCUMENT? II. AFTER SIGNING A TENANCY AGREEMENT (OR A LEASE), HOW SHOULD THE PARTIES HANDLE THE DOCUMENT? A tenancy document is usually executed in counterparts, both of which are forwarded to the Stamp Office of the Inland Revenue Department for stamping within 30 days after the date of execution. If the tenancy document is a Lease, then it should also be registered at the Land Registry within 30 days of the date of execution, otherwise it will lose priority under the Land Registration Ordinance (Cap.128 of the Laws of Hong Kong). For more information on the registration of tenancy documents, please go to the relevant question and answer. The landlord of a domestic property should also submit a Notice of New Letting or Renewal Agreement (Form CR109) to the Commissioner of Rating and Valuation for endorsement within 1 month of the execution of the tenancy document. A landlord is not entitled to maintain a legal action to recover rent under a tenancy document (in case the tenant fails to pay rent) if the Commissioner does not endorse the Form CR109. However, a landlord who does not submit the form within the one month period may later do so after paying a fee of $310. RENT III. RENT RATES, MANAGEMENT FEES AND OTHER CHARGES IV. RATES, MANAGEMENT FEES AND OTHER CHARGES A better drafted lease/tenancy agreement shall also deal with the issues as to whether the tenant shall be responsible for payment of management fees, rates, government rent or other charges (such as utilities and telecommunication services). In the absence of any express provision in dealing with such matters, it may generally mean that the ‘rent’ payable by a tenant covers all existing or ongoing expenses of the unit to be borne by the landlord and the tenant may not be liable to pay anything further. Therefore, if the landlord so wishes, it would be a better practice to expressly set out under a lease/tenancy agreement as to the following areas:- Who shall be responsible for payment of rates, government rent, management fees and/or other charges; Whether the tenant shall open and/or maintain an account with the utility/service company themselves for the unit (e.g. water supplies department, drainage services department, sewage scavenger services (applicable to village houses), electricity, telephone, towngas, internet services andTV subscription) until the termination of the lease; Who shall be responsible for payment of any deposits and their return upon termination of the lease/tenancy agreement; When such payment shall be effected (i.e. pre-payment or when the fall due) and how tenant shall be given notice about the amount due; How such payment shall be made (i.e. directly to the payee (i.e. the Government, Management Office or utility company) and whether such payment obligation shall form (or be separated from) part of the rent; The consequences for non-payment of such fees/charges. If existing utility account(s) are maintained by the landlord in respect of the unit, the landlord should make arrangements as to whether

such accounts shall be transferred or replaced by another account under the tenant's name. The tenancy agreement should also state as to upon termination of the lease (1) how outstanding amount(s) due should be paid, such as deduction from the rental deposit; and (2) if the tenant has paid any 'deposit' to such accounts maintained by the landlord, when and how such deposit shall be returned. Landlords should note that, as the registered owner of the property, he/she remains to be primarily liable to the Government for any default on payment of government rent/rates. The same also applies to management fees or other forms of contributions (e.g. renovation costs and contribution to litigation funds) to be made pursuant to the Deed of Mutual Covenant ("DMC") or the Building Management Ordinance (Cap. 344) (the "BMO"). Notwithstanding that a lease/tenancy agreement may provide that a tenant shall be liable to effect payment of management fees directly to the management office, such payment obligation is only privy between the landlord and tenant and is not binding on the manager or other co-owners. Moreover, since an obligation to pay money under the DMC/BMO is 'positive' in nature, by the effect of section 41(5) and (6) of the Conveyancing and Property Ordinance (Cap. 219), it is prima facie not directly enforceable by the manager/incorporated owners against a tenant so that the landlord remains to be liable for any tenant's default on payments. HOW TO RECOVER THE OUTSTANDING RENT AND GET BACK THE PROPERTY? V. HOW TO RECOVER THE OUTSTANDING RENT AND GET BACK THE PROPERTY? A tenancy agreement may contain a clause that entitles the landlord to forfeit the tenancy (i.e. to terminate the tenancy and to re-enter the property) if the tenant fails to duly pay rent. Even if the tenancy document does not contain a forfeiture clause, the law generally implies such a right of forfeiture upon non-payment of rent. Regarding tenancies of domestic properties that were created on or after 27 December 2002, section 117(3) of the Landlord and Tenant (Consolidation) Ordinance implies in such tenancies a covenant on the part of the tenant to pay the rent on the due date and a condition for forfeiture if that covenant is broken by virtue of non-payment of rent within 15 days of the due date. Regarding tenancies of non-domestic properties, section 126 of the Landlord and Tenant (Consolidation) Ordinance provides that in the absence of any express covenant for the payment of rent and condition for forfeiture, there will be implied in every tenancy a covenant to pay the rent on the due date and a condition for forfeiture for non-payment within 15 days of that date. Therefore, in general, if a tenant is late in paying the rent for 15 days, the landlord is entitled to terminate the tenancy and obtain an order for possession from the Court (including the Lands Tribunal) to recover vacant possession of the property. However, if the non-payment takes place for the first time during the course of a tenancy, the tenant who wishes to "save" the tenancy has a right to do so by paying all of the outstanding rent and the landlord's legal costs in arrears at a specified time granted by the Court before the landlord could take possession of the property by the Court order. This is commonly known as "relief against forfeiture". REGULATIONS ON USING OR OCCUPYING A LEASED PROPERTY VI. REGULATIONS ON USING OR OCCUPYING A LEASED PROPERTY At first sight, a landlord should not have to bother with what the tenant is doing in the property as long as the tenant duly pays the rent and keeps the property in good condition. However, the issue is not as simple as that. A property used for a non-authorised purpose may create trouble for its owner. SUB-LETTING VII. SUB-LETTING The Nature of sub-letting and its constraints 'Sub-letting' (also known as 'under-letting') of a property generally means that a tenant further lets out the property (or part of it) to another 'tenant' (known as 'sub-tenant') by another lease/tenancy agreement (known as the 'sub-lease' or 'underlease'). At law, a sub-lease executed between a tenant and sub-tenant is a separate and independent contract from the lease with the landlord (i.e. 'head-lease'). However, notwithstanding that a tenant and a sub-tenant are generally at liberty to negotiate and agree upon the terms of a sub-lease to be different from the 'head-lease' (e.g. additional restrictive covenants to be imposed), the demised area and the term of a sub-lease are confined by the head lease. This is because the tenant has no right/interest to grant any interest in a sub-lease beyond the interest that he had been granted under the head-lease. For example:- "A owns Flat A and Flat B. A lets Flat A to B for a term of 1 year. However, B entered into a 'sub-lease' of Flat A and

Flat B to C for a term of 2 years." In such scenario, B may be regarded to be in breach of the terms of the 'sub-lease' because he had no interest be 'let' to C in respect of Flat B and any flat beyond a 1 year period. Relationship between the tenant and sub-tenant As between the tenant and the sub-tenant, a tenant may incorporate and enforce the terms and covenants of the 'head-lease' by incorporating a covenant under a sub-lease that the sub-tenant shall observe certain covenants under the head-lease. It is generally better practice for the tenant to expressly and specifically set out which covenants are to be complied with and provide a copy of the head-lease to the sub-tenant whenever possible (rather than incorporation by general reference to the 'covenants of the head-lease'). However, since the landlord is not a party to the sub-lease, such covenant may only be binding and contractually enforceable by a tenant against a sub-tenant. Effect of termination of head lease on the sub-lease At law, the right of the tenant to grant a valid estate to a sub-tenant originates from the head lease. This means that, if the head-lease becomes ineffective (e.g. resumption/re-entry by the Government against the landlord or a third party being able to establish that he is the true owner of the land instead of the landlord) or terminated by the landlord for whatever reasons (i.e. non-payment of rent, other kinds of breaches committed by the tenant), the leasehold estate under the sub-lease will also become destroyed. In such case, notwithstanding that the sub-tenant might not be involved in any breach under the sub-lease, the sub-tenant will have no legal right or interest to possess and occupy the property vis-à-vis the landlord (or the Government/third party) and must deliver back the property. The only possible relief of the sub-tenant is to apply for 'relief against forfeiture' from the Court of First Instance under section 58(4) of the Conveyancing and Property Ordinance (Cap. 219) for a 'vesting order' to vest the remaining term (or any less term) of the head-lease to the sub-tenant with conditions that may be imposed by the Court (e.g. to comply with any outstanding breaches committed by the tenant). If such discretionary relief against forfeiture is granted, the sub-tenant may be able to 'stand into the shoes of the tenant' and continue to occupy the property as if he was the tenant until the expiry of the 'vested term'. The inter-relationship between a landlord/tenant/sub-tenant may involve difficult legal concepts and tactical considerations. It is strongly recommended that legal advice should be sought from legal professionals in any of the aforesaid related matters. Prohibition of sub-letting: If I have found that my tenant has sub-let my property to some other person without my consent, then what can I do to protect my interests? To prohibit a tenant from sub-letting, it is necessary for a tenancy document to provide for an express clause that prohibits the tenant from subletting the property (or any part of it) to another party. It is also common practice of landlords to extend the prohibition against any act of licensing or sharing/parting of possession or occupation of the property. If the tenancy document does not contain a clause that restrains a tenant from subletting, then the mere act of subletting of the unit (or part of it) to another person, even without the landlord's consent, may not be illegal per se (subject to whether the tenant's sub-letting has contravened any government regulations as explained above). As a tenancy has the effect of passing the landlord's interests in the property to the tenant during the tenancy period, the tenant may deal with the property in whatever manner as if he owns the property (except for any illegal activities or actions which would amount to a breach of the tenancy agreement), including subletting the property to another party. Based on the same reasoning, the breach of a prohibition clause on subletting may make the tenant liable to the landlord for injunction and/or damages. In certain cases, it may also enable the landlord to forfeit the tenancy agreement upon such breach. In practice, even if a covenant against sub-letting is in force and without any other kinds of restriction, a tenant is still at liberty to cohabit, share occupation or use the property with other parties (who are often claimed to be guests, relatives or friends of the tenant). Prima facie, they do not fall within the ambit of 'sub-letting'. In the absence of any direct evidence that the tenant is engaging in sub-letting activities of the premises (e.g. copies of signed sub-leases, further partitions being made, admissions made by occupants, advertisements/ invitations made by tenant and excessive consumption of utilities), it is often

difficult in practice for the landlord to prove and enforce restrictive covenants against sub-letting. PROPERTIES WITH MORTGAGES VIII. PROPERTIES WITH MORTGAGES If the property has been mortgaged to a bank/financial institution, the landlord must obtain the consent of the bank/financial institution before leasing the property. Otherwise, it will have a negative impact on both the landlord and the tenant. REPAIR/MAINTENANCE OBLIGATIONS IX. REPAIR/MAINTENANCE OBLIGATIONS Whether or not a party to the tenancy agreement is legally obliged to improve, maintain or carry out any repairs to a property is a complicated topic. As an overview, the obligation to repair/maintain the subject property is mainly a matter of private contract between the landlord and the tenant. This means, in the absence of any express agreement between the parties with the obligation to repair/maintenance, there is generally no implied duty under a tenancy agreement to compel either the landlord or the tenant to carry out repairs or maintain the property in a fit and habitable state. The implied obligation on the landlord to maintain the property to be “fit for habitation” only applies to furnished lettings (e.g. serviced apartments or other leases with extensive furniture or fittings (e.g. sofa, bed, cupboards/cabinets/wardrobes, dining tables, curtains and/or electrical appliances) to be provided to the tenant in that the unit was ready for residential purposes without the need of purchasing any further essential fittings). Very often, tenancy agreements do expressly provide for the landlord’s right to enter, inspect and/or carry out repairs to the property. But such right cannot be construed as a duty to be imposed on the landlord. Rather, it is common for tenancy agreements to stipulate that tenants are to be responsible to maintain/repair the internal and non-structural matters of the property and/or deliver back the property at its original handover state to the landlord (with fair wear and tear excepted) when tenancies are terminated. There is an implied obligation on the part of a tenant to use the property in a tenant-like manner (i.e. to use the property in a reasonable and proper manner) and not to commit waste (i.e. not to destroy/damage the property). However, such duties only relates to the reasonable use of the property and does not impose any duty on the part of a tenant to carry out repairs. Having said the above, the landlord may be under other statutory obligations to maintain the property as required by Government departments:- The Buildings Ordinance (Cap. 123 of the Laws of Hong Kong) confers power on the Building Authority to declare a building dangerous and to compel an owner to remedy any structural defects. However, this does not provide much assistance in the case of defects which are non-structural in nature. The Public Health and Municipal Services Ordinance (Cap. 132) of the Laws of Hong Kong) confers power on specified public officers to require the owner or occupier of a property to cleanse the property or take steps to deal with nuisances which are injurious to health (e.g. water seepage which originates from the property itself). However, this only concerns the hygienic condition of the property and does not provide much assistance in terms of general repairs and maintenance, especially if any damage caused to the property was originated from by neighbours and/or the common parts of the building. In respect of demands or orders issued by government authorities, it is almost invariable that the landlord, as the registered owner of the property, will be responsible for carrying out repairs or maintenance and any failure to comply with demands or orders often attracts penalties or other adverse consequences (e.g. re-entry by the Government). A tenant who receives such an order should duly inform the landlord so that the necessary steps can be taken as soon as possible. Similarly, the Incorporated Owners of a building (or its management company) may also demand the landlord (or its occupants) to carry out appropriate steps to terminate any nuisance or other damage (e.g. dangerous structures, water seepage, drainage blockage and infestation of pests) caused to other occupants of the building. For the reasons above and to avoid unnecessary disputes, it is most suitable for parties to enter into tenancy agreement which clearly specifies the obligations for repair and maintenance. TERMINATION OF TENANCIES BY NOTICE BEFORE EXPIRATION (WITHOUT BREACH) X. TERMINATION OF TENANCIES BY NOTICE BEFORE EXPIRATION (WITHOUT BREACH) In usual circumstances, both the landlord and the tenant cannot terminate the tenancy before its expiration unless either of them has breached the vital terms of the agreement which entitles the other party to forfeit or terminate the tenancy (e.g. the tenant fails to

pay rent or the landlord illegally re-enters the property). However, early termination may be possible with the existence of a valid break clause which may be exercisable by either party by giving prior notice at a certain time during the term of the tenancy. Landlord's perspective: 1, 5 Tenant's perspective: 2, 3, 4, 5, 6, 7 LANDLORD SELLS THE PROPERTY WITH EXISTING TENANCY XI. LANDLORD SELLS THE PROPERTY WITH EXISTING TENANCY When a landlord intends to sell a property that is let to a tenant, the landlord should make it clear to the estate agent, the solicitors and the potential purchaser that the property will be sold subject to a tenancy (instead of delivering up "vacant possession"). The landlord shall also state clearly in the sale and purchase agreement (or preliminary agreement) about the apportionment of rent (including unpaid rent as receivable from the tenant) before completion of the sale. The landlord should also notify the tenant about the intended sale and properly, the identity/contact method of the purchaser and the payment method (e.g. bank account of the purchaser) and deal with the deposit paid by the tenant. To get more information about sale and purchase of property, please click here. RENEWAL MATTERS XII. RENEWAL MATTERS Supposing that an existing tenancy is about to expire, the landlord and the tenant can commence negotiation on whether to renew the tenancy. For tenancy agreements entered before 9th July 2004, a landlord was in most cases bound to renew a tenancy for a domestic property with an existing tenant under the law. However, the law has changed. Tenancy agreements entered after such date no longer offers any statutory right of renewal in favor of a tenant. A tenant could only 'renew' his tenancy either through negotiation or contractually exercising an 'option to renew' under a tenancy agreement (if so provided). An 'option to renew' clause in the contract usually requires the tenant to give a written notice to the landlord not later than a date specified in the contract. The clause may also contain reference to the terms of the new tenancy document, such as on the same terms as the existing tenancy or a slight increase in payable rent over the renewed term of tenancy. Subject to the agreement between the parties, an "option to renew" clause may look like this (for reference only): "It is hereby agreed that if the Tenant wishes to take a further term of two years from the expiration of the Term and at least six months prior to such expiration gives the Landlord written notice to that effect and has paid the rent and all monies hereby reserved and reasonably performed and observed the terms and conditions on its part herein contained up to the expiration of the Term, then the Landlord will let the Property to the Tenant for a further term of two years from such expiration at a new monthly rent and subject to the same terms and conditions as are herein contained except this clause for renewal." TERMINATION OF TENANCIES (BY NON-PAYMENT OF RENT) XIII. TERMINATION OF TENANCIES (BY NON-PAYMENT OF RENT) For a tenant who fails to pay rent fully or partially, sometimes the tenancy agreement may contain an express clause which entitles the landlord to terminate (or 'forfeit') the tenancy agreement upon any extent of non-payment or late payment of rent. Under sections 117 and 126 of the Landlord and Tenant (Consolidation) Ordinance (Cap.7), it is implied by law that non-payment of rent for more than 15 days of the due date would give rise to a right for the landlord to forfeit/terminate the tenancy agreement. Alternatively, a landlord may also accept repudiation and terminate a tenancy agreement upon persistent non-payment of rent of a tenant for many months or there is evidence to suggest that the tenant has absconded/abandoned the property for good. Upon termination/forfeiture of the lease, the landlord may claim for an order for possession of the property in Court (or the Lands Tribunal). If the tenant does not oppose such claim, such order would usually be made. However, a tenant whom defaulted in payment of rent for the first time may apply for a grace period and would usually be given a chance by the Court or the Lands Tribunal (i.e. once during the term of the tenancy agreement) to pay up for all outstanding rent and the landlord's legal costs at the time of hearing of the application or within a specified period after the possession order is made. This is commonly known as 'relief against forfeiture' (for non-payment of rent) which is governed under section 21F of the High Court Ordinance(Cap.4). If 'relief against forfeiture' is granted to the tenant and he does pay up the in full all outstanding rent and the landlord's costs within the stipulated period as imposed by the Court, the term of the tenancy agreement will become 'resurrected' upon the

tenant’s compliance and be treated as continuing under its original terms as if there was no default on rental payment before. In such event, the tenancy will become ‘revived’ notwithstanding that this might be against the landlord’s wishes. It must be noted that ‘relief against forfeiture’ can only be granted as of right upon the application of the tenant for once the Court during the duration of the tenancy agreement. If there is a repeated instance of non-payment of rent, the Court would decline to grant any relief unless good reason is shown by the defaulting tenant. TERMINATION OF TENANCIES (FOR BREACHES OF THE TENANT OTHER THAN NON-PAYMENT OF RENT) XIV. TERMINATION OF TENANCIES (FOR BREACHES OF THE TENANT OTHER THAN NON-PAYMENT OF RENT) In the event that the tenant pays rent on time but commits serious breach(s) of the tenancy agreement (e.g. subletting, conducting illegal activities, causing nuisance, installation of illegal structures or causing enforcement actions by the Incorporated Owners), the landlord may wish to terminate the tenancy and find another replacement tenant. In such case, it would be necessary for the landlord to rely on any forfeiture/termination clause as expressly provided under the tenancy agreement to put an end to the tenancy and claim possession from the tenant. If the tenancy agreement is silent on such matter, the landlord (for residential premises only) may only rely on section 117(3)(d) to (h) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) to exercise implied rights of forfeiture as a fallback. Note that the law does not imply such right to terminate the tenancy agreement for tenancy agreements other than residential tenancies. The landlord who wishes to terminate the tenancy on such ground is also required to give prior written notice to the tenant by specifying the breach and require the tenant to remedy the breach (or compensation payable) before termination and/or claiming possession of the property against the tenant. When the claim for possession is heard before the Court, the Court has a discretion in deciding whether or not to grant ‘relief against forfeiture’ in favor of a tenant under section 58 of the Conveyancing and Property Ordinance(Cap. 219) (i.e. continuation of the tenancy by the tenant who already ceased the breach and upon payment of all legal costs incurred by the landlord) by considering the seriousness of the breach, whether the breach was ‘remediable’ and/or whether any permanent damage/stigma was attached to the property. TABLE 1 TABLE 1 The following table summarises the wording that may be used for the execution clause in a Lease/Tenancy Agreement. Capacity of parties Wording commonly used for the execution clause Lease Tenancy agreement Individual Signed, sealed and delivered by [name of party] Signed by [name of party] Sole proprietorship Signed, sealed and delivered by [name of the sole proprietor] trading as [trading name of the sole proprietorship] CHOPPED WITH the chop of the [Landlord/Tenant] and signed by [name of the sole proprietor] trading as [trading name of the sole proprietorship] Partnership Signed, sealed and delivered by [names of all partners of the partnership] trading as [trading name of the partnership] CHOPPED WITH the chop of the [Landlord/Tenant] and signed by [names of all the partners] trading as [trading name of the partnership] Limited company Sealed with the common seal of [name of the company] and signed by [name(s) of the signatory(ies)], duly authorised by its Board of Directors Signed for and on behalf of the [Landlord/Tenant, with company chop] by [name of signatory], duly authorised by its Board of Directors Last revision date: 4 May, 2022 FORFEITURE OF RENTAL DEPOSIT AND OTHER CONSEQUENCES FOLLOWING TERMINATION BY THE TENANT’S BREACH XV. FORFEITURE OF RENTAL DEPOSIT AND OTHER CONSEQUENCES FOLLOWING TERMINATION BY THE TENANT’S BREACH It is common practice in Hong Kong for tenancy agreements to include payment of a ‘rental deposit’ in the amount equivalent to two months’ rent (or more in commercial premises) as security and as an ‘earnest of performance’ of obligations under the tenancy agreement. However, it is often the case that most pro-forma agreements used might not contain an express provision for a right to forfeit the deposit as a consequence of breach. Very often, it is even more unclear as to the following matters which frequently arose in disputes between landlords and tenants regarding the treatment of the deposit:- Whether the deposit could be ‘used’ or ‘deducted’ by the landlord to satisfy the actual losses suffered as a result of tenant’s breach (e.g. unpaid management fees); Whether the deposit could be forfeited by the landlord absolutely and/or in full regardless of the degree and extent of the

tenant’s breach (e.g. partial non-payment of rent for one month only); Whether the landlord must ‘give credit’ to the amount of deposit as forfeited in claiming damages against the tenant for losses sustained as a result of the breach; Whether the deposit shall be construed as ‘liquidated damages’ and/or whether landlord is entitled to recover any extra losses against which was suffered on top of to the deposit forfeited (e.g. repair costs); In the event that the tenancy continues, whether the tenant was obliged to replenish, top-up and pay to the landlord the amount of deposit as forfeited; When disputes arise after termination of the lease, whether the landlord is entitled to withhold return of the deposit until final resolution of Court proceedings. The resolution of the above issues is case-specific which highly depends on the proper construction of tenancy agreements. There is no standard answers to the above matters. To avoid any unnecessary dispute between parties, it is recommended that the tenancy agreement do expressly address the above matters in relation to treatment of the rental deposit. More importantly, it is a common misconception on the part of tenants that, after termination of the tenancy agreement upon breach of the tenant (i.e. non-payment of rent which resulted in ejection), the compensation payable to the landlord shall be confined to the amount of the deposit and there shall be a ‘clean break’ between the parties after termination. This is wrong because a landlord might have sustained further losses (e.g. loss of rent due to the inability to find a replacement tenant for the remainder of the unexpired term of the lease) as a result of the tenant’s wrongful termination (i.e. repudiation). In such event, assuming the landlord had taken reasonable steps to mitigate his losses, even the tenant did NOT occupy the property after termination, he may become prima facie liable to compensate the landlord the outstanding rent for remainder term as ‘consequential losses’. This may end up in a very harsh result for the tenant in the event that the unexpired term is a long one (See: Goldon Investment Ltd v. NPH International Holdings Ltd HCA 5457/1999 (10th August 2004) A tenant was held liable to pay to the landlord an amount of HKD 17 million as a result of non-payment of 2 months rent). For such reason, wrongful termination of the tenancy agreement on the part of the tenant is a very serious matter which must not be taken lightly. 1. HOW IS STAMP DUTY CALCULATED ON A TENANCY DOCUMENT? 1. HOW IS STAMP DUTY CALCULATED ON A TENANCY DOCUMENT? Stamp duty is a tax on certain written documents that evidence transactions. Parties to a tenancy document are liable to pay stamp duty on the document according to Schedule 1 of the Stamp Duty Ordinance (Cap. 117 of the Laws of Hong Kong). The rate of stamp duty varies with the term/period of the tenancy. The current rates are as follows. Term of the tenancy Rate of stamp duty Not defined or uncertain 0.25% of the yearly or average yearly rent Not exceeding 1 year 0.25% of the total rent payable Exceeding 1 year but not exceeding 3 years 0.5% of the yearly or average yearly rent Exceeding 3 years 1% of the yearly or average yearly rent $5 is also be payable for the stamping of each counterpart of the tenancy document. A licence does not transfer any interest in land and is not liable for stamp duty. However, if there is any doubt as to whether a tenancy document is liable for stamp duty, then it is good practice to seek adjudication from the Stamp Office. The current adjudication fee is $50. No law specifies whether the landlord or the tenant should pay the stamp duty. Therefore, the parties to a Tenancy Agreement can freely agree between themselves on their respective shares of stamp duty. In most cases, the parties will pay the stamp duty in equal shares. Example There is a two month rent-free period in a tenancy with a term of three years and a rent of $10,000 per month. How can the stamp duty be calculated for this Tenancy Agreement? The stamp duty chargeable on a tenancy document and its counterpart is based on the rent payable or the yearly or average yearly rent. A rent-free period will therefore diminish the base on which stamp duty is calculated. The following examples will serve to illustrate how a rent-free period affects the stamp duty payable. Example A Example B A property is let for $10,000 per month and the term of the tenancy is 3 years without a rent-free period. The stamp duty payable is: ($10,000.00 x 36)/3 x 0.5% + $5 = $605 A property is let for $10,000 per month and the term of the tenancy is 3 years with a rent-free period of 2 months. The stamp duty payable is: ($10,000 x (36 - 2))/3 x 0.5% + $5 = $572 A) RENTING ABROAD - ESTATE AGENT A) RENTING ABROAD - ESTATE AGENT 6. MY NEIGHBOUR CAUSES EXCESSIVE NOISE AT NIGHT EVERY

DAY. MY CHILDREN AND I CANNOT SLEEP. CAN I TERMINATE THE TENANCY AGREEMENT? 6. MY NEIGHBOUR CAUSES EXCESSIVE NOISE AT NIGHT EVERY DAY. MY CHILDREN AND I CANNOT SLEEP. CAN I TERMINATE THE TENANCY AGREEMENT? Whether or not the tenant can do so would depend on whether any breach by the landlord of its covenants in the tenancy agreement so as to entitle the tenant to early terminate the tenancy. The landlord's usual covenant for quiet enjoyment cannot assist the tenant, unless, very exceptionally, the neighbouring premises is also owned by the same landlord and it can be shown that the excessive noise caused by the occupant is authorised by the landlord. The covenant for quiet enjoyment does not offer absolute protection against all forms of interference by any person during the tenancy, but only protects the tenant against interference with quiet and peaceful enjoyment of the premises by the landlord or persons deriving title from the landlord. The remedies available to the tenant may be an injunctive relief prohibiting the neighbour from causing or permitting nuisance and a claim for monetary damages against the neighbour resulting from breach of the deed of mutual covenants or nuisance. Of course, if the tenancy agreement has a break clause, the tenant may also rely on the break clause and early terminate the tenancy accordingly. C) TRANSITIONAL ARRANGEMENTS C) TRANSITIONAL ARRANGEMENTS Transitional arrangements for fixed-term and periodic tenancies under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) are different. Fixed-term tenancy is a tenancy agreement for a certain term (e.g. for two years). At common law a tenancy for a fixed term expires automatically at the end of that term and, subject to any agreement between the parties to the contrary, is determined by the effluxion of time alone, without the need for any other act or notice. Periodic tenancy is a tenancy by the period (e.g. weekly tenancy and monthly tenancy) and does not expire without notice at the end of the period or at the end of each period, there being not a reletting at the beginning of every week or period but a springing interest which arises and which is determined only by proper notice to quit. Both periodic and fixed-term tenancies can be created orally or in writing. Tenancies commenced before the material date Transitional arrangement for fixed-term tenancies commenced before 22 January 2022: The terms as well as rights and obligations of the landlord and the tenant under fixed-term tenancy agreements are not regulated. Transitional arrangement for periodic tenancies commenced before 22 January 2022: The arrangement is governed by section 120AAQ of the Ordinance which provides for "deemed first term tenancy in certain circumstances": If a period of the tenancy commences (usually taken as the monthly rent payment date) on 22 January 2022, the tenancy is taken to be a first term tenancy, and the term of the tenancy is taken to be 2 years commencing on 22 January 2022. The rent agreed by the parties to be payable by the tenant at the commencement of the reference period is taken to be the rent for the first term tenancy. If a period of the tenancy straddles 22 January 2022, the tenancy is taken to be a first term tenancy and the term of the tenancy is taken to be 2 years commencing on the date immediately after the expiry of the period that straddles 22 January 2022. Similarly, the rent agreed by the parties to be payable by the tenant at the commencement of the reference period is taken to be the rent for the first term tenancy. Tenancies commenced on or after the material date A fixed-term tenancy for a term of 2 years commencing on or after 22 January 2022, will be taken to be the first term tenancy regulated by the Ordinance. A tenancy that purports to be (i) a periodic tenancy or (ii) a tenancy for a term other than of 2 years, commencing on or after 22 January 2022 is taken to be a first term tenancy: the term of the tenancy is taken to be 2 years commencing on (i) the date of the creation of the tenancy; or (ii) a later date agreed by the parties for the commencement of the tenancy; and the rent agreed by the parties to be payable by the tenant at the commencement of the tenancy is taken to be the rent for the first term tenancy. The following examples, applicable to both written and oral tenancies, demonstrate when the regulated first term tenancies would commence: A fixed-term tenancy commencing on 1 January 2022: The tenancy, the term and the rent are not regulated by the Ordinance. A fixed-term tenancy commencing on or after 22 January 2022: The first regulated term of 2 years would commence with the beginning of the tenancy term, no matter how long the term is provided in the tenancy agreements. The rent agreed by the parties to be payable at the commencement of the tenancy is taken to

be the rent of the first term tenancy. A periodic (monthly) tenancy commencing on 1 December 2021: The first regulated term of 2 years commenced on 1 February 2022, the date immediately after the expiry of the period (1 January – 31 January 2022) that straddles the material date (22 January 2022). In the usual term, that is the first rent payment day after the material date of the Ordinance. The rent agreed by the parties to be payable by the tenant at the commencement of the straddling period (i.e., 1 January 2022) is taken to be the rent of the first term tenancy. A periodic (monthly) tenancy commencing on 22 December 2021: The first regulated term of 2 years commenced on 22 January 2022, since a period of the tenancy (22 January – 21 February 2022) commenced exactly on the material date of the Ordinance. The rent agreed by the parties to be payable by the tenant at the commencement of that period (i.e., 22 January 2022) is taken to be the rent of the first term tenancy. A periodic (monthly) tenancy commencing on or after 22 January 2022: The first regulated term of 2 years commenced with the beginning of the tenancy term. The rent agreed by the parties to be payable at the commencement of the tenancy is taken to be the rent of the first term tenancy. Q1. MY NEIGHBOUR IN THE SAME SUBDIVIDED FLAT CAUSES EXCESSIVE NOISE AT NIGHT EVERY DAY. MY CHILDREN AND I CANNOT SLEEP. CAN I TERMINATE THE TENANCY AGREEMENT? Q1. MY NEIGHBOUR IN THE SAME SUBDIVIDED FLAT CAUSES EXCESSIVE NOISE AT NIGHT EVERY DAY. MY CHILDREN AND I CANNOT SLEEP. CAN I TERMINATE THE TENANCY AGREEMENT? It depends on whether the landlord is in breach of its covenant for quiet enjoyment and whether the interference is substantial enough to entitle the tenant to early terminate the tenancy. The covenant for quiet enjoyment does not offer absolute protection against all forms of interference by any person during the tenancy, but only protects the tenant against interference with quiet and peaceful enjoyment of the premises by the landlord. On the basis that all the subdivided units are owned by a common landlord, the tenant may have a valid complaint if it can be shown that the excessive noise caused by the neighbour is authorised by the landlord. To constitute a breach of the covenant, there must be substantial disturbance to the tenant’s possession and enjoyment of its own subdivided unit. Mere personal annoyance or inconvenience does not generally qualify. Relevant factors include the character of the locality, the standard of comfort, the reasonableness of the conduct complained of and the duration, frequency and degree of the interference, etc. Each case must turn on its own facts. Separately, if the tenancy agreement has a break clause, the tenant may rely on the break clause and terminate the tenancy early. 1. IN GENERAL, WHO SHALL BE RESPONSIBLE FOR MAINTAINING AND REPAIRING THE PROPERTY? 1. IN GENERAL, WHO SHALL BE RESPONSIBLE FOR MAINTAINING AND REPAIRING THE PROPERTY? As explained above, when dealing with the issue of repair and maintenance, the landlord and the tenant must predominantly rely on the tenancy document to ascertain their respective duties on a contractual basis. A commonly adopted approach under tenancy agreements is that the landlord is responsible for external and structural repairs and maintenance, and the tenant is responsible for internal and non-structural ones. However, such a simple dichotomy may still be problematic because the words internal, external, structural and non-structural can have different interpretations under different circumstances. Therefore, a well-drafted tenancy document will try to anticipate and accommodate all potential areas of dispute that are specific to the particular property, and clarify the parties’ duties in details. As a matter of common practice and depending on the parties’ bargaining abilities, it will also be quite normal for a tenant to become responsible for many onerous duties which includes the carrying out of repair and maintenance works to a certain extent. Such term may be unfair on its face but in reality, it is actually quite reasonable because the tenant has full rights of occupying and dealing with the property on an ongoing basis during the term of the tenancy. Naturally, a tenant would be in a position to ascertain defects and carry out repair works which are necessary. It is also common to find in a tenancy document that the tenant’s obligations for repair and maintenance are limited by the phrase "fair wear and tear excepted". This excuses the tenant from damage arising from the passing of time and the ordinary and reasonable use of the property. A well-drafted tenancy document should also contain a clause which specifies that the landlord’s obligations for structural repairs and maintenance will arise only upon notice of the structural defects. This is

reasonable because the landlord, not being in occupation of the properties, cannot be expected to remedy defects or problems of which they are not aware of or not having any control over. On the whole, the answer to the question of who is responsible for repairs and maintenance is to be found in the terms agreed upon by the landlord and the tenant. If there is no written tenancy document or if the particular issue is not tackled by the tenancy document, then the outcome of any dispute may turn out to be highly uncertain and costly. Irrespective of parties' rights and obligations as agreed, the landlord may also volunteer to carry out repairs and maintenance works out of goodwill and preservation of relationship with tenant. Indeed, as most tenancy agreements in Hong Kong are short-termed, any state of disrepair or resultant damage caused by defects would most likely be detrimental to the landlord's interests in the long run. On such basis, it is often the case that the landlords do agree to incur expenses to remedy any defects in the property (e.g. patching up of damaged walls, replacement of faulty air-conditioners/refrigerators andinjection of termite/insect repellents etc.). In extreme cases (e.g. serious water leakage within the property), the landlord may also exercise a right (if so provided under the tenancy agreement) to enter the property and carry out necessary inspection and repair works by giving prior notice/appointment notwithstanding that the tenancy agreement did not impose any duty on him/her. If the tenant becomes uncooperative, the landlord may even apply for an urgent interlocutory injunction in Court to exercise such right or even terminate the tenancy agreement for such reason. 3. IF A TENANCY AGREEMENT SPECIFIES THE END DATE, PROVIDES A RENEWAL CLAUSE STATING THAT IT CAN BE RENEWED EVERY TWO YEARS WITH AN ADJUSTED RENT, AND A TERMINATION CLAUSE OF ONE-MONTH NOTICE BY EITHER PARTY, IS IT LEGALLY BINDING? WILL IT BE DEEMED AS A TENANCY AT WILL AFTER THE FIRST TERM? 3. IF A TENANCY AGREEMENT SPECIFIES THE END DATE, PROVIDES A RENEWAL CLAUSE STATING THAT IT CAN BE RENEWED EVERY TWO YEARS WITH AN ADJUSTED RENT, AND A TERMINATION CLAUSE OF ONE-MONTH NOTICE BY EITHER PARTY, IS IT LEGALLY BINDING? WILL IT BE DEEMED AS A TENANCY AT WILL AFTER THE FIRST TERM? This example is likely to be a tenancy for a fixed term with an option to renew and a break clause allowing either the landlord or the tenant to early terminate the tenancy agreement by one-month notice during the currency of the term. An option to renew typically provides that the tenant would be entitled to take a further term of the tenancy if the tenant gives prior written notice to that effect to the landlord at least a specified period before the expiration of the original tenancy and on the condition that the tenant has reasonably performed and observed the terms and obligations during the original tenancy. In order for the option to renew to be binding upon the successor(s)-in-title of the landlord (e.g. the succeeding owner of the property), the tenancy agreement in writing has to be duly registered in the Land Registry in accordance with section 3(1) of the Land Registration Ordinance (Cap. 128). The landlord should be conscious that whether to exercise the option to renew is largely a choice for the tenant. In practice, it is not usual for the landlord to commit to successive terms of renewed tenancy with yet an option to renew for another term. In any case, a break clause such as the one mentioned in this example would serve its purpose when the landlord wishes to terminate the tenancy. Last revision date: 18 October, 2022 2. AS A TENANT, MUST I SIGN AN ESTATE AGENCY AGREEMENT WHEN I ASK AN AGENT TO SHOW ME A FLAT? 2. AS A TENANT, MUST I SIGN AN ESTATE AGENCY AGREEMENT WHEN I ASK AN AGENT TO SHOW ME A FLAT? In compliance with section 45 of the Estate Agents Ordinance (Cap. 511), you as the tenant must sign an estate agency agreement 'Form 6' before you can engage an estate agent for leasing a residential property in Hong Kong. The form must be duly signed by you and your estate agent. You must read the agreement carefully before signing. If you do not understand any part of the agreement, you may ask the estate agent or consult a lawyer. The estate agent should give you the original or a copy of the signed agreement and you are advised to retain the copy for future reference. Q1. HOW TO CHECK THE RENTAL INDEX, WHICH SERVES AS THE BENCHMARK OF THE RENEWED RENT IN THE SECOND TERM, PUBLISHED BY THE RATES AND VALUATION DEPARTMENT ("RVD")? Q1. HOW TO CHECK THE RENTAL INDEX, WHICH SERVES AS THE BENCHMARK OF THE RENEWED RENT IN THE SECOND TERM, PUBLISHED BY THE RATES AND VALUATION DEPARTMENT ("RVD")? The most direct way to obtain the indexes is to check them out at the RVD website:

https://www.rvd.gov.hk/doc/en/statistics/his_data_3.xls Please note that: The index required to calculate the “control percentage” in determining the rent in the second term offer is (1) the private domestic rental index, (2) territory-wide, (3) by-month, and (4) of all classes. The rental index for the last few months is provisional figures which may be revised from time to time. The figure prevailing on the first day of the offer period should be applied. An online calculator for rent of second term tenancy under Part IVA of the Ordinance will be available at the RVD web page from October 2023. 2. THE NEIGHBOR HAS COMPLAINED THAT THE TENANT OF MY PROPERTY (IN AN INDUSTRIAL BUILDING) HAS PERSISTENTLY CAUSED EXCESSIVE NOISE DURING LATE EVENINGS BY HAVING OVERNIGHT BINGE DRINKING PARTIES WITH OVER 100 GUESTS AND A LOT OF GARBAGE WAS LEFT AT THE LIFT LOBBY IN EARLY MORNINGS. THE MATTER WAS REPORTED TO THE POLICE TOO AND CERTAIN PEOPLE WERE ARRESTED FROM THE SCENE BEING SUSPECTED OF DRUG ABUSE. CAN I TERMINATE THE TENANCY AGREEMENT? IF THE CASE IS HEARD IN COURT, WILL THE COURT GRANT ANY ‘MERCY’ TO THE TENANT? 2. THE NEIGHBOR HAS COMPLAINED THAT THE TENANT OF MY PROPERTY (IN AN INDUSTRIAL BUILDING) HAS PERSISTENTLY CAUSED EXCESSIVE NOISE DURING LATE EVENINGS BY HAVING OVERNIGHT BINGE DRINKING PARTIES WITH OVER 100 GUESTS AND A LOT OF GARBAGE WAS LEFT AT THE LIFT LOBBY IN EARLY MORNINGS. THE MATTER WAS REPORTED TO THE POLICE TOO AND CERTAIN PEOPLE WERE ARRESTED FROM THE SCENE BEING SUSPECTED OF DRUG ABUSE. CAN I TERMINATE THE TENANCY AGREEMENT? IF THE CASE IS HEARD IN COURT, WILL THE COURT GRANT ANY ‘MERCY’ TO THE TENANT? The position of the landlord also depends on whether there is any express provision for the landlord to rely upon in alleging breach on the part of the tenant and terminate the tenancy agreement for such reason. In the absence of any express agreement conferring a right to terminate under the tenancy, there may be difficulty in claiming forfeiture against the tenant. In such case, the landlord’s remedy may be confined to application for injunctive relief against the tenant to prohibit any nuisance caused or illegal use. In the event of a forfeitable breach and depending on the actual circumstances of the breach, serious nuisance caused and illegal use of the property by a tenant may be sufficient reason to deny relief against forfeiture given that some stigma might have been attached to the property itself. 1. WHAT IS THE POTENTIAL RISK TO THE LANDLORD AND THE TENANT IN LEASING AND RENTING A PROPERTY WITHOUT A WRITTEN AGREEMENT? 1. WHAT IS THE POTENTIAL RISK TO THE LANDLORD AND THE TENANT IN LEASING AND RENTING A PROPERTY WITHOUT A WRITTEN AGREEMENT? The most obvious risk has to be dispute on the precise terms of the tenancy agreement, or sometimes, even whether a landlord and tenant relationship has in fact existed. These uncertainties could have been avoided if the parties have signed a written tenancy agreement setting out clearly the terms of the tenancy. Indeed signing a printed tenancy agreement conveniently available in local stationery shops, though far from being adequate in many aspects, may still more desirable than relying on a purely oral tenancy agreement. When dispute arises, by the effect of section 3(1) of the Conveyancing and Property Ordinance (Cap. 219), the parties may not be able to bring a legal action to enforce the terms of an oral tenancy agreement unless the case falls under one of the exceptions to the rule that a lease of a landed property shall be in writing. Last revision date: 18 October, 2022 Q3. WHAT ARE THE PROPER STEPS TO INSTALL ELECTRICITY AND WATER METERS FOR CALCULATING THE UTILITY CHARGES FOR THE SUB-DIVIDED UNIT TENANTS? Q3. WHAT ARE THE PROPER STEPS TO INSTALL ELECTRICITY AND WATER METERS FOR CALCULATING THE UTILITY CHARGES FOR THE SUB-DIVIDED UNIT TENANTS? Electricity On electricity supply, the power companies will install individual meters for customers if prior consent from landlords and building management has been obtained, and that the units concerned comply with the relevant prerequisites and safety standards such as the installation of an individual door, and that the separate electrical installations and other facilities can meet the safety standards stipulated in the Electricity Ordinance (Cap. 406) and requirements of the Supply Rules of the power companies. If the rental premises are sub-divided units equipped with electrical installations and separate meters, landlords’ consent will be required to modify the existing electrical installations to meet the safety standards stipulated in the Electricity Ordinance and the requirements of the Supply Rules before individual meters can be installed. In addition, meters must be connected to the riser which supplies electricity in a building and be installed in the

common areas to facilitate meter reading by the staff of the power companies. Therefore, before applying for individual meters, tenants of sub-divided units should identify suitable locations in the common areas of the buildings for installing meters and obtain the consent of building management for the allocation of space for meter installation. The Hongkong Electric has launched an SDU (subdivided unit) Rewiring Subsidy Programme subsidizing eligible households in subdivided units to rewire and install individual tariff meters. The applicant shall obtain the prior consent of every household in the flat, the owner of the flat and the Building Owners' Corporations. Meanwhile, the CLP Power has released a similar scheme for owners as applicants. For details, please visit their websites: Hongkong Electric SDU Rewiring Subsidy Scheme CLP Power Rewiring Works for Subdivided Units Water As regards installation of water meters, if the relevant unit has a proper postal address to ensure that letters from the Water Supplies Department (WSD) such as notices and water bills can be posted to the occupier, the occupier may apply for a separate water meter from the WSD. The following factors will also be taken into account by the WSD when processing the applications: Whether the premises can be accessed without passing through any area occupied by others to ensure that the Water Authority can enter the premises directly for inspection or carrying out other relevant duties in case of any problem of the inside service; Whether the premises have proper drainage systems to ensure that no flooding will occur in case of inside service fault; and Whether the application satisfies the requirements of the Waterworks Ordinance. For example, the applicant is required to accept responsibility for the custody and maintenance of inside service, and submit the plumbing proposal in respect of the inside service etc. Landlords or tenants may also consider applying to the WSD for the installation of separate water meters for sub-divided units to enable tenants to pay water charges based on their water consumption. For subdivided units which have separate plumbing systems for individual units installed, the landlord can apply for a pilot scheme with streamlined procedures to facilitate the installation of the WSD's water meter. After approval, water supplied to individual subdivided units will be charged according to the schedule for domestic consumers as stipulated in the Waterworks Regulations. For more details, please visit the WSD webpage on Pilot Scheme for Installation of Separate Water Meters for Subdivided Units. 2. WHAT ARE THE CONSEQUENCES OF FAILING TO STAMP A TENANCY DOCUMENT? 2. WHAT ARE THE CONSEQUENCES OF FAILING TO STAMP A TENANCY DOCUMENT? An obvious consequence is that the landlord and the tenant will be liable to civil proceedings by the Collector of Stamp Duty of the Inland Revenue Department. Moreover, a tenancy document must be stamped before it can be lodged with the Land Registry for registration. A more important consequence is that the Court may not accept an unstamped tenancy document as evidence in civil proceedings. In other words, a party will have difficulties in enforcing the tenancy document against the other party (who has breached the Tenancy Agreement or Lease) in Court. 1. DO HONG KONG LAWS APPLY TO THE TENANCY OF OVERSEAS PROPERTIES? 1. DO HONG KONG LAWS APPLY TO THE TENANCY OF OVERSEAS PROPERTIES? Subject to any laws in the jurisdiction where the property is located, the governing law is determined primarily by the express terms of the tenancy agreement. In the absence of an express or implied agreement between the parties, the Hong Kong courts would generally regard the contract as governed by the law with which the contract has its closest and most real connection. Given that the subject property is located outside Hong Kong, this is a strong pointer that the tenancy is governed by the laws of the place where the property is situated. Last revision date: 20 October, 2022 7. I RENT A FLAT WITH A BALCONY WHICH IS FOUND TO BE AN UNAUTHORIZED BUILDING WORK. LATER THE LANDLORD REMOVED THE BALCONY. CAN I TERMINATE THE TENANCY AGREEMENT? 7. I RENT A FLAT WITH A BALCONY WHICH IS FOUND TO BE AN UNAUTHORIZED BUILDING WORK. LATER THE LANDLORD REMOVED THE BALCONY. CAN I TERMINATE THE TENANCY AGREEMENT? Not every breach of the tenancy agreement would entitle the innocent party to terminate the tenancy early. Whether the tenant in this example can terminate the tenancy agreement depends on whether the removal of the balcony was serious enough to constitute a repudiatory breach of the agreement on the part of the landlord so as to allow the tenant to elect to accept the repudiation and terminate the tenancy. The landlord expressly or impliedly covenants not to derogate from its grant. That means the landlord

cannot do any act so as to defeat the purpose for which the lease was granted to the tenant. Each case must turn on its own facts. It is very unlikely though the flat was rented for the main purpose of using the balcony. The occupation and use of the flat should remain largely unaffected. In the circumstances, it seems unlikely that the landlord has breached its covenant not to derogate from the grant so as to entitle the tenant to terminate the tenancy agreement. Q1. A TENANCY ON A SUBDIVIDED UNIT WAS CREATED ORALLY OR BY CONDUCT WITH RENT PAID PERIODICALLY AND NO WRITTEN TENANCY HAD EVER BEEN SIGNED. ARE THE TENANCY REGULATIONS APPLICABLE? Q1. A TENANCY ON A SUBDIVIDED UNIT WAS CREATED ORALLY OR BY CONDUCT WITH RENT PAID PERIODICALLY AND NO WRITTEN TENANCY HAD EVER BEEN SIGNED. ARE THE TENANCY REGULATIONS APPLICABLE? Yes. A tenancy whose term is defined by reference to the period for payment of rent, rather than by a fixed period expressly stated in the agreement, is a periodic tenancy, whether oral or in writing. Periodic tenancy extends indefinitely from period to period until it is terminated by a notice to quit given by one party to the other. The tenancy regulations on subdivided units are applicable to such tenancy. If a period of the tenancy in question straddles the material date of Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), i.e., 22 January 2022, the tenancy is taken to be the first term tenancy and the term of the tenancy is taken to be 2 years commencing on the date immediately after the expiry of the period that straddles 22 January 2022. In usual terms, that is the first rent payment day after the material date of the Ordinance. If the periodic tenancy commences on or after 22 January 2022, it is taken to be the first term tenancy and the term of the tenancy is taken to be 2 years commencing on (i) the date of the creation of the tenancy, or (ii) a later date agreed by the parties for the commencement of the tenancy. 2. IF THERE WAS A FIRE BROKEN OUT ON A LEASED PROPERTY AND THE LANDLORD HAS SUFFERED SOME LOSSES AS A RESULT, CAN THE LANDLORD CLAIM AGAINST THE TENANT? 2. IF THERE WAS A FIRE BROKEN OUT ON A LEASED PROPERTY AND THE LANDLORD HAS SUFFERED SOME LOSSES AS A RESULT, CAN THE LANDLORD CLAIM AGAINST THE TENANT? It depends on the terms agreed by the landlord and the tenant in the tenancy agreement. It also depends on the cause of the fire (e.g. the source of the fire, was it a pure accident or was it caused by someone's negligence or even willful damage). In practice, it is not easy to determine who was at fault. A prudent landlord will take out insurance policies to cover the relevant property and household damage. Loss of or damage to household contents such as furniture, decoration, electrical appliances and personal valuables can be insured. A typical example of such kind of insurance is a "Householder's Comprehensive" insurance. Another important note is that the landlord has a duty to inform the insurance company that the flat/house is rented out to a tenant. Subject to the terms of the relevant tenancy document, the tenant may also be required to take out proper insurance for the property. 4. IS THERE A MAXIMUM/MINIMUM TENANCY PERIOD IN HONG KONG? 4. IS THERE A MAXIMUM/MINIMUM TENANCY PERIOD IN HONG KONG? In Hong Kong, there is no maximum or minimum tenancy period as a matter of law. The length of the tenancy period is based on the agreement of the landlord and the tenant. A standard residential tenancy agreement in Hong Kong is for 2 years, either with no break clause or a break clause to allow either the landlord or the tenant to terminate the tenancy by one-month notice after one year has passed (commonly known as “one year fixed, one year flexible”). Note: Short-term accommodation rental for not longer than 28 continuous days is regulated by the Hotel and Guesthouse Accommodation Ordinance (Cap. 349). A flat with more than 12 or bedspaces used as sleeping accommodation under rental agreements is regulated under the Bedspace Apartments Ordinance (Cap. 447). Last revision date: 18 October, 2022 A) GENERAL A) GENERAL G) ENTERING INTO WRITTEN TENANCY AGREEMENT G) ENTERING INTO WRITTEN TENANCY AGREEMENT If an oral tenancy fulfils all of the conditions for a regulated tenancy under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), the tenancy is also regulated under Part IVA of the Ordinance. The statutory requirements and mandatory terms are to be implied into the oral tenancy of the subdivided unit. Where the landlord and the tenant of a subdivided unit have entered into a tenancy orally for a first term tenancy, after the tenancy has commenced, the tenant may in writing demand the landlord to, within 30 days, serve on the tenant a written tenancy agreement reflecting the contents of the oral tenancy. If the landlord

fails to do so, the tenant may elect either: to withhold the payment of rent until the landlord has done so; or to terminate the tenancy by within, 7 days after the specified period of 30 days mentioned above, giving the landlord not less than 30 days' prior notice in writing of the termination. HANDOVER MATTERS AT EXPIRY/TERMINATION OF A LEASE XVI. HANDOVER MATTERS AT EXPIRY/TERMINATION OF A LEASE It is another common problem in Hong Kong that tenancy agreements do not explicitly provide for the conditions of the property to be handed over back to the landlord at the time of termination or expiry of the tenancy agreement. This often constitutes a source of litigation between parties as to whether and to what extent a tenant shall be obliged to incur costs in restoring the property back to the 'original' state. Generally, a tenant is under no obligation to 'improve' the property into a better state than what was given to him at the commencement of the tenancy. It is also expected that the property may suffer from fair wear and tear as result of aging and normal use in which the landlord may have to reasonably accept at the time of handover. It is common for tenancy agreements to list out the 'landlord's fixtures' that the tenant shall be 'handed back' to the landlord at handover of the property at a reasonable status or replacements at equivalent value after depreciation (e.g. air-conditioners, electrical/cooking/heating appliances, bathing and sanitary fittings, built-in closets, doors and windows etc.). For renovations carried out by the tenant within the property, it is a more complicated matter as to whether the landlord would be willing to accept delivery up of the property with such state given that renovations are often a matter of personal preference. For commercial premises, it is often common for tenancy agreements to include an express obligation to delivery up of premises at a 'bare-shell' state to the reasonable satisfaction of the landlord (i.e. removal of all fixtures, including electrical/drainage appliances, ceilings, ground layers, sanitary fittings and fire-service installations, and leaving behind only the plastering/concrete surfaces). There is no definitive indicator as to what constitutes 'reasonable satisfaction of the landlord' (which denotes a rather subjective and arbitrary standard). The duty to deliver up a 'bare-shell' is often an onerous and costly obligation for tenants to comply with. A tenant must quit earlier to allow sufficient time for restoration works to take place. In practice, to avoid unnecessary disputes, it is often desirable for both parties to sign on a written acknowledgement about the state of handover of the property after inspection. 2. CAN THE RENT RECEIPT OR UTILITY FEES RECEIPT ISSUED TO A TENANT BY A LANDLORD BE PROOF OF A TENANCY RELATIONSHIP BETWEEN TWO PARTIES? 2. CAN THE RENT RECEIPT OR UTILITY FEES RECEIPT ISSUED TO A TENANT BY A LANDLORD BE PROOF OF A TENANCY RELATIONSHIP BETWEEN TWO PARTIES? A rent receipt can serve as written evidence that the tenant has paid rent to the landlord. For a tenancy of domestic premises falling under Part IV of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), it is a mandatory requirement under section 119RA that the landlord shall give the tenant a receipt setting out the amount of the rent paid, the period for which the rent was paid and the date of payment. A landlord who fails to comply commits a criminal offence and is liable to a fine of HK$2,000. Utility fees receipt is rather neither here nor there. An occupant of the property not in the capacity of a tenant may also be willing to pay for the utilities for its day-to-day use. In either case, however, proof of a tenancy relationship is no substitute for a properly drafted tenancy agreement. Taking a typical rent receipt as an example, other than the identities of the landlord and the tenant, the location of the property and the amount of rent, it discloses almost nothing else about the terms of the tenancy. Last revision date: 18 October, 2022 1. CAN UNLICENSED ESTATE AGENTS PROVIDE SERVICES TO LANDLORDS AND TENANTS IN RELATION TO OVERSEAS PROPERTIES? 1. CAN UNLICENSED ESTATE AGENTS PROVIDE SERVICES TO LANDLORDS AND TENANTS IN RELATION TO OVERSEAS PROPERTIES? Currently estate agents in Hong Kong who deal exclusively with overseas properties are exempted from the licensing regulations under the Estate Agents Ordinance (Cap. 511). Q4. IS THERE A STANDARD WAY TO DETERMINE THE PORTION OF THE UTILITY FEE TO BE SHARED BY A HOUSEHOLD IN A SUB-DIVIDED UNIT? Q4. IS THERE A STANDARD WAY TO DETERMINE THE PORTION OF THE UTILITY FEE TO BE SHARED BY A HOUSEHOLD IN A SUB-DIVIDED UNIT? Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) has not stipulated any standard way to determine the portion of the

utility fee to be shared by a tenant in a sub-divided unit. Provided that there is no conflict with the relevant legislation, before entering into a tenancy, the landlord and tenant may discuss and agree on an acceptable method of apportionment, including the level of and basis for calculating rents and other charges (e.g. water and electricity charges). Once the tenancy agreement is entered into, both parties are required to abide by the relevant terms and conditions. As for charges outside the scope of the written tenancy agreement, landlords and tenants should discuss and negotiate an arrangement based on any previous agreement, including oral agreement. Tenants may make use of the Rating and Valuation Department's free advisory service on tenancy matters. 3. SOME TENANCY DOCUMENTS MUST BE REGISTERED WITH THE LAND REGISTRY BUT SOME DO NOT. WHY? 3. SOME TENANCY DOCUMENTS MUST BE REGISTERED WITH THE LAND REGISTRY BUT SOME DO NOT. WHY? The major purpose of registering documents at the Land Registry is to notify the public of all documents affecting lands in Hong Kong and to set up a priority system regarding documents affecting a particular property. Once a document is registered, the public is deemed to have notice of its existence and its content. The date of registration also affects the priority of a party' s rights in a particular property. A written tenancy agreement, being an instrument affecting land, is of course registrable at the Land Registry. The laws that govern the registration of documents at the Land Registry are contained primarily in the Land Registration Ordinance (of the Laws of Hong Kong). Strictly speaking, the Land Registration Ordinance does not contain any provision that compels the registration of documents. It only spells out the consequences of non-registration. Therefore, the question should be: why is it that some tenancy documents should be registered with the Land Registry? Lease and Tenancy Agreement Although a tenancy document is registrable with the Land Registry, Section 3(2) of the Land Registration Ordinance provides that the principles of notice and priority do not apply to "bona fide leases at rack rent for any term not exceeding 3 years". Therefore, a document that creates a tenancy for a term of more than 3 years (i.e. a Lease) should be registered, otherwise it is prone to be defeated by successors in title of the landlord (e.g. purchasers or new tenants) and will lose its priority against other registered documents that affect the same property. In such event, the existing tenant may become evicted. In contrast, a document that creates a tenancy for a term of 3 years or less (i.e. a Tenancy Agreement) does not gain or lose anything by registration. However, if a Tenancy Agreement contains an option to renew the existing tenancy, it should be registered even though the term of the tenancy does not exceed 3 years. An option to renew confers on the tenant a right to continue to rent the property after the expiry of the current term, i.e. to renew the existing tenancy. As this exercisable option to renew represents a legal interest in land and affects the principles of notice and competing priority with third parties, the relevant Tenancy Agreement should be registered. To play safe, parties to a Tenancy Agreement should check with legal professionals to ascertain the necessity of registration. 1. HOW TO RESOLVE THE SITUATION OF THE TENANT AND LANDLORD NOT AGREEING THE AMOUNT TO BE DEDUCTED FROM THE RENTAL DEPOSIT (DUE TO THE DISAGREEMENT ON “REASONABLE SATISFACTION OF THE LANDLORD”)? 1. HOW TO RESOLVE THE SITUATION OF THE TENANT AND LANDLORD NOT AGREEING THE AMOUNT TO BE DEDUCTED FROM THE RENTAL DEPOSIT (DUE TO THE DISAGREEMENT ON “REASONABLE SATISFACTION OF THE LANDLORD”)? It is rather common for a tenancy agreement to provide that the tenant shall deliver up possession of the premises upon the termination of the tenancy in a condition “to the reasonable satisfaction of the landlord” (with fair wear and tear excepted). In law, there is no standard or determinative answer for what is meant by “reasonable satisfaction of the landlord” in this context. The landlord and the tenant should, and certainly would the Court, exercise a degree of reasonableness and common sense in assessing whether the tenant is at fault. Bearing in mind that the tenancy has already come to an end, the parties should carefully consider whether it is worthwhile and economically efficient to incur time and costs to dispute how much is to be deducted from the rental deposit. In the absence of terms in the tenancy agreement stipulating the mechanism on how to resolve the differences, the tenant may have to resort to legal action to recover the rental deposit from the landlord in the case that negotiations between the parties fail. Q2. AN ORIGINAL TENANCY AGREEMENT HAS EXPIRED.

THE TENANT CONTINUES TO PAY FOR THE MONTHLY RENT AND STAY IN THE SUBDIVIDED UNIT WITH THE LANDLORD' S CONSENT. ARE THE TENANCY REGULATIONS APPLICABLE? Q2. AN ORIGINAL TENANCY AGREEMENT HAS EXPIRED. THE TENANT CONTINUES TO PAY FOR THE MONTHLY RENT AND STAY IN THE SUBDIVIDED UNIT WITH THE LANDLORD' S CONSENT. ARE THE TENANCY REGULATIONS APPLICABLE? Yes. Where a tenant holds over with the landlord' s consent, express or implied, at the end of a fixed-term tenancy and either party may at any time terminate the arrangement at will, it is a tenancy at will. If the tenant pays rent to the landlord by reference to a period, and the landlord accepts, the tenancy becomes a periodic tenancy. The next day after the expiry of the fixed-term tenancy is taken as the commencement of the periodic tenancy. The tenancy regulations on subdivided units are applicable to such tenancy. If a fixed-term tenancy expires before the material date of Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) , i.e., 22 January 2022, and a period of the periodic tenancy in question straddles the material date, that periodic tenancy is taken to be the first term tenancy and the term of the tenancy is taken to be 2 years commencing on the date immediately after the expiry of the period that straddles material date. In usual terms, that is the first rent payment day after the material date of the Ordinance. If the periodic tenancy immediately following the fixed-term tenancy in question commences on or after the material date, it is taken to be the first term tenancy and the term of the tenancy is taken to be 2 years commencing with the periodic tenancy. 1. I HAVE LET MY PROPERTY TO A TENANT ON A THREE YEAR TERM. THERE ARE STILL MORE THAN 2 YEARS REMAINING IN THE TERM. HOWEVER, I NOTE THAT THE RENTAL VALUE OF NEIGHBOURING PROPERTIES HAS RISEN SIGNIFICANTLY. CAN I TERMINATE THE TENANCY WITH THE EXISTING TENANT AND RE-LET THE PROPERTY OUT FOR A BETTER RENT? 1. I HAVE LET MY PROPERTY TO A TENANT ON A THREE YEAR TERM. THERE ARE STILL MORE THAN 2 YEARS REMAINING IN THE TERM. HOWEVER, I NOTE THAT THE RENTAL VALUE OF NEIGHBOURING PROPERTIES HAS RISEN SIGNIFICANTLY. CAN I TERMINATE THE TENANCY WITH THE EXISTING TENANT AND RE-LET THE PROPERTY OUT FOR A BETTER RENT? A party to a contract is bound by the terms of that contract. Therefore, unless a tenancy document contains a break clause that allows the landlord to terminate the tenancy before the expiry of its term by giving prior notice at a certain time (e.g. after the expiration of one year from the commencement of the tenancy), or there is mutual agreement for an early termination, the landlord is bound by the tenancy document and cannot unilaterally terminate the tenancy with the existing tenant. An act of wrongful termination of the lease may render the landlord to be in breach (or even in repudiatory breach) and become liable to the tenant for damages or sometimes an order for 'specific performance' of the lease (explained below). C) IMPLIED COVENANTS C) IMPLIED COVENANTS In the absence of express provisions in the tenancy agreement to the contrary, certain basic obligations will be implied in a tenancy: Implied covenants of the landlord include: The tenant to have quiet enjoyment of the property. This is to protect the tenant against eviction or interference with the use and enjoyment of the property by the landlord during the tenancy. The landlord not to derogate from its grant. That means the landlord shall not do anything to defeat the purpose for which the premises was let to the tenant. Fitness for habitation. This covenant applies only to furnished tenancy and only at the beginning of the tenancy, where the landlord warrants that the premises is in such a condition that it fits for human habitation. Implied covenants of the tenant include: To pay rent on the due date. To pay rates. To use the property in a tenant-like manner. The tenant is under a duty to use the premises in a manner as a reasonable tenant will do, fair wear and tear excepted. Not to commit waste. The tenant must not do any act which alters the nature of the premises, e.g. an act of destruction or damage. To deliver up possession of the property upon expiry of the tenancy. For tenancies of domestic premises entered on or after 27th December 2002, where the tenancy does not already contain covenants substantially to the same effect, section 117(3) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) implies the following covenants of the tenant: To pay the rent on the due date; Not to use or suffer or permit the use of the premises for an immoral or illegal purpose; Not to cause unnecessary annoyance, inconvenience or disturbance to the landlord or any other person; and Not to make or suffer or permit any structural alteration to the premises without the prior written consent of the landlord.

C) SERVICES TO TENANTS C) SERVICES TO TENANTS Q1. IS THERE A TEMPLATE OF TENANCY AGREEMENT FOR A REGULATED TENANCY? Q1. IS THERE A TEMPLATE OF TENANCY AGREEMENT FOR A REGULATED TENANCY? A Template for Tenancy Agreement for a Regulated Tenancy to which Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) applies has been prepared by the Transport and Housing Bureau for general reference purposes and can be downloaded from the webpage of the Rating and Valuation Department (“RVD”): www.rvd.gov.hk/en/our_services/tenancy_matters.html The landlord and tenant may use and adapt the template with such modifications as appropriate (except mandatory terms) to suit their own circumstances. Kindly note the requirements applicable to a regulated tenancy as set out in Part IVA of the Ordinance and ensure that the requirements are complied with. If there is any doubt about how the provisions in the template are to be applied or interpreted in their cases, please consult their legal advisors or other professionals as appropriate. A) PERIOD/LENGTH OF THE TENANCY A) PERIOD/LENGTH OF THE TENANCY A Lease is generally legally referred to a document that creates a fixed term tenancy for more than 3 years. It has to be executed in the form of a deed, meaning that it has to be signed, sealed and delivered by the parties. That is to say, the parties have to sign the Lease, affix a red seal (a small red wafer) next to their signatures and exchange copies of the lease. It is desirable for a Lease to become registered in the Lands Registry. A Tenancy Agreement is generally be referred to a tenancy for a period not exceeding 3 years. A tenancy agreement may be signed or agreed verbally between the parties . For tenancy agreements which are put into writing, the parties to a Tenancy Agreement only have to sign it, without needing to affix the red seal and exchanging the document. To protect the interests of both parties, however, it is recommended that the parties should exchange and keep copies of the Tenancy Agreement as signed. Last revision date: 18 October, 2022 E) SUSPENSION OF RENT E) SUSPENSION OF RENT Sometimes a tenancy agreement may contain provisions to the effect that the payment of rent or a proportionate part thereof shall be suspended in the case that the subject premises or any part thereof is destructed or damaged by certain calamities, for example fire, flood, typhoon, earthquake or white ants, or if the premises is rendered uninhabitable or inaccessible for any cause beyond the control of the parties. A suspension of rent clause is often construed narrowly. If the premises is damaged but not destroyed, it must be so severely damaged as to be rendered unfit for use, not merely in a dilapidated state or in need of repair. Typically rent shall become payable again once the property is repaired or become accessible. 2. IS THERE A REGULATORY BODY OVERSEEING ESTATE AGENTS WHO PROVIDE AGENCY SERVICES IN RELATION TO OVERSEAS PROPERTIES? 2. IS THERE A REGULATORY BODY OVERSEEING ESTATE AGENTS WHO PROVIDE AGENCY SERVICES IN RELATION TO OVERSEAS PROPERTIES? Currently estate agents in Hong Kong who deal exclusively with overseas properties are not regulated by the Estate Agents Authority. Estate agents in Hong Kong who deal with both local and overseas properties have to be licensed and are regulated by the Estate Agents Authority. Q5. CAN THE TENANT RECOVER THE UTILITY FEES AND NON-PERMITTED FEES THAT HAVE BEEN OVERCHARGED? Q5. CAN THE TENANT RECOVER THE UTILITY FEES AND NON-PERMITTED FEES THAT HAVE BEEN OVERCHARGED? On a conviction of an offence of overcharging the utility fees or charging non-permitted fees under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), in addition to imposing a fine, the magistrate may order the landlord to repay to the tenant any money received from the tenant other than, or in excess of, that the landlord is entitled or permitted to receive. There is no need for the tenant to institute a separate civil action to recover the amount concerned. 4. HOW IS PROPERTY TAX CALCULATED? 4. HOW IS PROPERTY TAX CALCULATED? Property Tax is computed at the standard rate of 15% (from 2008/2009 assessment year onwards) on the “net assessable value” of the property. A “Net Assessable Value” is computed as follows:- [A] Rental Income [B] Less: Irrecoverable Rent [C] (A-B) [D] Less: Rates paid by owner(s) [E] (C-D) [F] Less: Statutory allowance for repairs and outgoings (E x 20%) Net Assessable Value: [E]-[F] It is notable that “Rental Income” covers the following:- Gross rent received Payment for the right to use premises under licence Services charges or management fees paid to the owner Landlord’s expenditure borne by the tenant, e.g. repairs and property tax paid by the tenant Lump sum premium As explained, the law imposes a flat rate of 20% as

statutory allowance for repairs regardless of the actual amount(s) being spent or incurred in repairing/refurbishment of a property by the landlord. Further deductions may be made through election on “Personal Assessment” (for properties wholly owned by individuals) Based on the foregoing, it is commonplace for tenants to become responsible for and pay management fees directly under a tenancy agreement, while it is usually the landlord who shall be responsible for payment of government rent/rates by themselves. For details regarding the exact computation of Property Tax, please visit the Inland Revenue Department’s website. 2. IF MY LANDLORD REFUSES TO RETURN THE RENTAL DEPOSIT TO ME, WHAT CAN I DO? 2. IF MY LANDLORD REFUSES TO RETURN THE RENTAL DEPOSIT TO ME, WHAT CAN I DO? The nature of the rental deposit is to secure the tenant’s performance of its obligations under the tenancy. Depending on the terms of the tenancy agreement, the landlord may be entitled to forfeit the rental deposit in full or in part if the tenant fails to pay the rent or other sum due under the tenancy agreement, or if the landlord has suffered any damage due to the failure by the tenant to perform its covenant. If the landlord has unreasonably refused to return the rental deposit, and the parties fail to reach consensus by negotiation, the tenant may need to commence legal action to recover the rental deposit from the landlord. The proper venue for the litigation would depend on the amount in dispute:- (a) Small Claims Tribunal — where the claim is for HK$75,000 or less; (b) District Court — where the claim exceeds HK$75,000 but do not exceed HK$3,000,000; or (c) Court of First Instance, for any claim exceeding HK$3,000,000. D) DETERMINATION OF REGULATED TENANCY D) DETERMINATION OF REGULATED TENANCY A tenancy which fulfils all of the following conditions is a regulated tenancy under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) : the tenancy commences on or after 22 January 2022; the tenancy is a domestic tenancy; the subject premises of the tenancy are a subdivided unit; the tenant is a natural person; the purpose of the tenancy is for the tenant’s own dwelling; and the tenancy is not one specified in Schedule 6 to the Ordinance, i.e. the tenancy is not an excluded tenancy. Lands Tribunal Any person, including landlord and tenant, having an interest in any premises may apply to the Lands Tribunal to determine whether or not a tenancy for the premises is a regulated tenancy for the purpose of Part IVA of the Ordinance. Applicants are required to file with the Registrar of the Tribunal a notice of application substantially in accordance with Form 22 (Part B of Form 22 be completed) in order to set out the nature of the application. For application details, please refer to the Tribunal webpage. Commissioner of Rating and Valuation If a dispute arises as to whether a tenancy of any premises is a domestic tenancy (see item (2) above) and the primary user of the premises is relevant to the dispute, the landlord or tenant of the premises may apply to the Commissioner of the Rating and Valuation Department (the Commissioner) for the issue of a primary user certificate for the premises in Form TR4 at no fee. Before the Commissioner issues a primary user certificate for any premises, the Commissioner must carry out an inspection of the premises for the purpose of determining the primary user of the premises. If the evidence available as to the primary user of the premises is satisfied, the Commissioner must issue a primary user certificate as to the primary user of the premises on the day of the inspection and serve on the landlord and tenant. Otherwise, the Commissioner must issue a notice declining to express an opinion as to the primary user of the premises. The certificate shall, for all purposes, be evidence of the facts set out in the certificate and of the primary user of the premises as at the day when they were inspected. However, if the Commissioner has already issued a primary user for any premises, no further application may be made for the premises before the expiry of 1 year from the day on which the primary user certificate is issued. A landlord or tenant of any premises may also apply to the Commissioner for the issue of a primary user certificate for the premises, even though no dispute arises as to whether the tenancy is a domestic tenancy. In such cases, the applicant is required to submit Form TR4D at a fee and propose in the application form a day (other than a public holiday) on which the Commissioner may carry out an inspection of the premises. For application details, please refer to the notes of the relevant forms available on the Rating and Valuation Department’s webpage. 2. I HAVE RECENTLY ENTERED INTO A LEASE WITH THE LANDLORD BUT, BEFORE MOVING IN, THE LANDLORD CHANGED HIS POSITION AND SAID THAT

HE DID NOT WISH TO LET THE PROPERTY TO ME ANYMORE, TERMINATED THE TENANCY AGREEMENT AND REFUSED TO LET ME MOVE IN. I CONSIDERED THAT THE TERMS OF THE LEASE WAS A GOOD BARGAIN TO ME AND I LIKED THIS PROPERTY A LOT. INSTEAD OF ASKING FOR MONEY COMPENSATION, CAN I ASK THE COURT TO COMPEL THE LANDLORD TO LET THE PROPERTY TO ME ON THE ORIGINAL TERMS DESPITE THE LANDLORD HAS BREACHED IT? 2. I HAVE RECENTLY ENTERED INTO A LEASE WITH THE LANDLORD BUT, BEFORE MOVING IN, THE LANDLORD CHANGED HIS POSITION AND SAID THAT HE DID NOT WISH TO LET THE PROPERTY TO ME ANYMORE, TERMINATED THE TENANCY AGREEMENT AND REFUSED TO LET ME MOVE IN. I CONSIDERED THAT THE TERMS OF THE LEASE WAS A GOOD BARGAIN TO ME AND I LIKED THIS PROPERTY A LOT. INSTEAD OF ASKING FOR MONEY COMPENSATION, CAN I ASK THE COURT TO COMPEL THE LANDLORD TO LET THE PROPERTY TO ME ON THE ORIGINAL TERMS DESPITE THE LANDLORD HAS BREACHED IT? Assuming the landlord has breached the tenancy agreement by wrongfully terminating it (i.e. without any ‘break clause’ as further explained below), there may be a chance for the tenant to promptly apply to the Court for the remedy of ‘specific performance’ of the tenancy agreement by ordering the landlord to comply with the terms of the tenancy agreement (instead of payment of damages) by reason that each property is unique and the award of damages for loss of bargain (or other kinds of compensation) is insufficient. If the order for specific performance is granted, the landlord needs to lease the property to the tenant. However, the remedy of ‘specific performance’ is discretionary and equitable in nature (rather than as of right). In some cases, the Court may not be convinced that a suitable substitute property is not readily available in the market (especially for residential properties in larger developments). The Court may also be concerned that it may not be in a position to constantly supervise and continually enforce a tenancy agreement against the landlord for years. There may also be third party rights involved if the landlord has already sold the property to other parties which may decline the grant of specific performance. In such event, the tenant may only be entitled to an award of damages to compensate his/her losses in terms of money. 1. THE WATER TAP IS BROKEN. THE LANDLORD REFUSES TO REPAIR IT AND THERE IS NO WATER COMING INTO THE FLAT. IS THE LANDLORD IN BREACH OF THE COVENANT OF "FITNESS FOR HABITATION"? 1. THE WATER TAP IS BROKEN. THE LANDLORD REFUSES TO REPAIR IT AND THERE IS NO WATER COMING INTO THE FLAT. IS THE LANDLORD IN BREACH OF THE COVENANT OF "FITNESS FOR HABITATION"? The implied covenant on the landlord that the premises is fit for habitation only applies to furnished tenancy and only at the commencement of the tenancy. Such covenant does not last throughout the life of the tenancy. So where the water tap is broken during the currency of the tenancy, the landlord is unlikely to be in breach of the covenant as to habitability. In fact, whether the obligation to repair the broken water tap falls on the landlord or the tenant or neither of them is to be determined by reference to the specific provisions of the tenancy agreement. Last revision date: 18 October, 2022 3. WHAT IF I SIGN A ’FORM 6’ WITH AN AGENT WHO SHOWS ME A FLAT, AND LATER, I RENT THE FLAT THROUGH ANOTHER AGENT OR DIRECTLY FROM THE LANDLORD? 3. WHAT IF I SIGN A ’FORM 6’ WITH AN AGENT WHO SHOWS ME A FLAT, AND LATER, I RENT THE FLAT THROUGH ANOTHER AGENT OR DIRECTLY FROM THE LANDLORD? You are still liable, during the validity period of the estate agency agreement, to pay commission to the first estate agent in accordance with Schedule 3 of ‘Form 6’. Q2. CAN I DRAFT MY OWN REGULATED TENANCY AGREEMENT? WHAT ARE THE ESSENTIAL TERMS OF THE TENANCY AGREEMENT? Q2. CAN I DRAFT MY OWN REGULATED TENANCY AGREEMENT? WHAT ARE THE ESSENTIAL TERMS OF THE TENANCY AGREEMENT? Yes. The template is for general reference only. The landlord and tenant may use and adapt the template with modifications as appropriate, or enter into a tenancy agreement on their own terms, as long as there is no conflict or inconsistency with the mandatory terms of a regulated tenancy: Tenancy term: The term of regulated tenancies must be 2 years. Even if a tenancy purports to be a tenancy for a term other than 2 years, the term of the tenancy is taken to be 2 years (see Section 120AAQ); Break clause for the landlord: Any break clause allowing a landlord to terminate the tenancy early is void and has no effect (see Section 120AAQ); Break clause for the tenant: Any break clause allowing a tenant to terminate the tenancy at a predetermined date later than the first day of the second year of the term, or the absence of a break clause for the tenant, will be taken as having one allowing the tenant to terminate the tenancy on the first day of the second year of the term with a

notice period of 30 days (see Section AAZH); Landlord's right of re-entry: Any condition for forfeiture (other than those set out in Part 4 of Schedule 7) provided in the tenancy is void and has no effect (see Section 120AAZF, Part 4 of Schedule 7); Amount of rental deposit: The rental deposit payable by the tenant may not be more than 2 months' rent under the tenancy (see Section 120AAZC(2)); Return of rental deposit: The rental deposit should be returned, free of interest, no later than the expiry of 7 days after the tenant's delivery of vacant possession of the subdivided unit to the landlord (see Section 120AAZC(4)); Repair and maintenance responsibilities: The repair and maintenance responsibilities of the facilities and fixtures set out in Part 2 of Schedule 7 are to be borne by the landlord (see Section 5 of Schedule 7); Payment of money of certain types: The landlord cannot require the tenant to pay any money in relation to the tenancy other than specified items (see Section 120AAZL); Payment for specified utilities and services: The landlord cannot require the tenant to pay for reimbursement of utility and service charges as a separate payment from the rent, where the aggregation of the amount exceeds the amount under the bills issued by the relevant authorities (see Section 120AAZM); Stamp duty: The stamp duty on the tenancy agreement is to be borne by the landlord solely. It is the responsibility of the landlord to arrange for the stamping of the agreement under the Stamp Duty Ordinance (117) (see Section 2 of Schedule 7). If the landlord enforces the tenancy terms that are inconsistent or in conflict with those of mandatory terms in a regulated tenancy, depending on the terms, in addition to the potential liability for criminal offences (e.g., overcharging for reimbursement of utility and service charges), the resulting disputes may also be resolved in civil proceedings. Tenancy terms that are inconsistent with mandatory terms stipulated in the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) will be deemed void or equivalent to the relevant terms stipulated in the Ordinance. B) CAPACITIES OF THE PARTIES B) CAPACITIES OF THE PARTIES The capacities of the parties entering into the Lease/Tenancy Agreement also affect the formalities of execution. It is preferable for an individual, sole proprietorship or a partnership entering into a Lease to affix a red seal next to the signature of the signing person(s). A limited company must affix its common seal next to the signature(s) of the person(s) authorised to sign the Lease. Furthermore, the Lease has to be executed in accordance with requirements stipulated under the company's Articles of Association accompanied by properly executed written board resolutions to authorize such execution. If the party to a Tenancy Agreement is a sole proprietorship, a partnership or a limited company, the chop or the rubber stamp (as the case may be) of the signing party also has to be affixed onto the Tenancy Agreement together with the signature of the signatory. You can go to Table 1 for more information regarding the execution clause (i.e. the part of a Tenancy Agreement/Lease where you sign your name). If the property has been mortgaged to a bank/financial institution, the landlord must obtain the prior consent from that company before leasing it out. For more information regarding this matter, please go to part VIII - properties with mortgages. F) RENT REVIEW F) RENT REVIEW Especially in longer leases, a rent review clause allows for adjustments of the rent periodically. The purpose of a rent review clause is obviously to bring the rent in line with the open market rental from time to time. A rent review clause in its basic form will provide for the rent to be reassessed at intervals of 2 - 3 years. The clause will usually provide that the new rent is to be agreed between the landlord and the tenant; and if there is no agreement by a certain date, the parties are to agree on an independent valuer to assess the new rent. 3. IF THE ESTATE AGENT PROVIDED FALSE OR MISLEADING INFORMATION IN THE LEASING OF OVERSEAS PROPERTIES, WILL HE OR SHE BE LIABLE? HOW CAN LANDLORDS' AND TENANTS' RIGHTS BE PROTECTED? 3. IF THE ESTATE AGENT PROVIDED FALSE OR MISLEADING INFORMATION IN THE LEASING OF OVERSEAS PROPERTIES, WILL HE OR SHE BE LIABLE? HOW CAN LANDLORDS' AND TENANTS' RIGHTS BE PROTECTED? If the services are rendered by an estate agent in Hong Kong and the parties involved are also Hong Kong entities, the estate agent may be liable in breach of the estate agency agreement or misrepresentation or negligence in Hong Kong. You should first consult a legal professional before commencing any legal action. Landlords and prospective tenants are advised to engage only established and reputation estate agency to handle matters

relating to the leasing of overseas properties. M) ENFORCEMENT OF REGULATED TENANCIES M) ENFORCEMENT OF REGULATED TENANCIES The provisions of regulated tenancies under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) are to be enforced by criminal charges and civil proceedings. Criminal Charges A landlord commits an offence if the landlord: without reasonable excuse, fails to submit a Notice of Tenancy (Form AR2) to the Rating and Valuation Department (“RVD”) within 60 days after the term of a regulated tenancy commences, on a conviction to a fine at level 3 (HK$10,000), and a further fine of $200 for each day during which the offence continues; charges the tenant non-permitted fees, on a first conviction to a fine at level 3 (HK$10,000) and subsequent conviction to a fine at level 4 (HK$25,000); improperly charges the tenant the reimbursement of the charges for utilities and services specified by the Ordinance, on a first conviction to a fine at level 3 (HK$10,000) and subsequent conviction to a fine at level 4 (HK$25,000); fails to give a receipt to the tenant within 7 days after receiving the amount of rent, on conviction to a fine at level 1 (HK$2,000); or unlawfully deprives the tenant of occupation of the subdivided unit, on a first conviction to a fine of HK$500,000 and to imprisonment for 12 months, and subsequent conviction to a fine of HK$1,000,000 and to imprisonment for 3 years. In addition, for the purpose of fulfilling the duties related to the tenancy regulation, the Commissioner of the RVD (“the Commissioner”) may serve on any person a requisition in the specified form or require the landlord or tenant of any premises to provide any reference document. A person commits an offence if he/she: without reasonable excuse, refuses or neglects to comply with Commissioner’s requisition in specified form or requests to provide reference documents, on a conviction to a fine at level 3 (HK$10,000) and to imprisonment for 3 months. in purported compliance with Commissioner’s requisition or request knows that or is reckless as to whether or not, the particulars, reference documents or information, or the thing said or stated, is false or misleading in a material particular, on a conviction to a fine at level 3 (HK$10,000) and to imprisonment for 3 months. Statutory Rights in Civil Proceedings Apart from criminal charges, the Ordinance also stipulates the rights of tenants of the regulated tenancies to withhold the rent payable or terminate the tenancy regardless of the break clause provided in the tenancy agreement, under the following circumstances: Arranging the tenancy agreement to be stamped: If the landlord fails to return a counterpart of the stamped tenancy agreement within 30 days after receiving the tenancy agreement signed by the tenant, the tenant may withhold the payment of rent until the landlord has done so. Providing written tenancy: If the landlord fails to serve on the tenant a tenancy in writing reflecting the contents of the oral tenancy for signing by the parties within 30 days (the specified period) after receiving the written demand by the tenant, the tenant may either to withhold the payment of rent until the landlord has done so; or to terminate the tenancy by, within 7 days after the specified period, giving the landlord not less than 30 days’ prior notice in writing of the termination. Fulfilling maintenance and repair obligations: If the landlord fails to fulfill the maintenance and repair obligations specified in part 3, Schedule 7 of the Ordinance, the tenant may, by giving the landlord not less than 30 days’ prior notice in writing, terminate the tenancy. The Ordinance also stipulates the rights of landlords to terminate the tenancy and repossess the property regardless of the 4-year security of tenure, if the tenant fails to pay the rent to the landlord within 15 days after the due date or in breach of the tenant’s obligations specified in part 4, Schedule 7 of the Ordinance. Given these statutory rights that both parties may uphold in civil proceedings (e.g., in an application by the landlord to repossess the property due to non-payment of rent), there is an incentive for the landlords and tenants to comply with the related provisions in the regulated tenancies. In case of a dispute between the parties over the terms of the regulated tenancies and the issue does not involve committing the offences of the Ordinance, the parties may use the free advisory or mediatory services provided by the RVD (see below). If both parties cannot reach an agreement on the disputes, they may be resolved by civil action. The principle is that if the Ordinance clearly set out the rules, which are different from the provisions in the oral or written agreement between the parties, the law shall prevail. For example, a landlord in the regulated tenancy

failed to offer the second term tenancy to the tenant in accordance with the Ordinance and tried to evict the tenant at the expiry of the first term. The tenant refused and stayed in the subdivided unit. If the landlord attempts to reclaim the possession of the property on the ground of the expiry of the first term tenancy, Section 120AAW of the Ordinance will be applicable. It stipulates that the landlord in this case is taken to have made a second term offer to the tenant on the expiry of the offer period, and the tenant is taken to have accepted the second term offer and to be granted the second term tenancy on the expiry of the first term tenancy. The provisions of the regulated tenancy concerned will then be established. Complaint Channels and Procedures To complain about another person for suspected non-compliance with the requirements of the Ordinance, you may lodge your complaint through the following channels: by post or visiting RVD in person: 15/F., Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon by email: enquiries@rvd.gov.hk by telephone: 2150 8303 Upon receipt of a complaint, RVD will process it in accordance with the following procedures: RVD will first consult the complainant on the facts of the complaint and collect the relevant information (e.g. in case of complaining the landlord about overcharging the water and electricity charges, RVD will collect, among other things, information about the request of the landlord for water and electricity charges from the tenant). If needed, RVD will conduct site inspection and collect information from the complainee. If, after investigation, the complaint does not involve committing the offences under the Ordinance, RVD will explain to the complainant and provide free advisory or mediatory services as appropriate. If the complaint involves committing the offences under the Ordinance, RVD will seek legal advice from the Department of Justice and consider whether legal action is warranted depending on the circumstances (including the information and evidence collected) of the case. For details, please visit the RVD webpage. 1. MY TENANT HAS FAILED TO PAY RENT FOR TWO MONTHS. WHAT CAN I DO TO RECOVER THE RENT AND THE POSSESSION OF MY PROPERTY? 1. MY TENANT HAS FAILED TO PAY RENT FOR TWO MONTHS. WHAT CAN I DO TO RECOVER THE RENT AND THE POSSESSION OF MY PROPERTY? If a tenant fails to pay rent, then the following measures are usually available to the landlord. a) Action for the recovery of outstanding rent If landlords intend only to recover the outstanding rent but not to regain possession of the properties, then they may make their claim for rent arrears at one of the followings. - The Small Claims Tribunal: for claims of $75,000 or less (To get more information about how to prepare for the trial (from both the Claimant's and the Defendant's perspective), please click here; - The District Court: for claims that exceed $75,000 but do not exceed $3,000,000; - The Court of First Instance of the High Court, which has unlimited jurisdiction. Landlords of domestic properties domestic property, should ensure that they have submitted a Notice of New Letting or Renewal Agreement (Form CR109) to the Commissioner of Rating and Valuation for endorsement within one month of the execution of the tenancy document. Landlords of domestic properties are not entitled to maintain legal action to recover rent under tenancy documents if the Commissioner does not endorse the form. However, landlords who do not submit the form within the one month period can do so at any time after paying a fee of $310. b) Action for forfeiture (to get back the property) and to recover outstanding rent In the case of serious default on payment of rent or in the event that landlords believe that their tenants have been absconded or will not be able to pay the rent for the remaining term of the tenancy, then they will probably want to get back the property and recover the rent in arrears. In such circumstances, the landlords are said to be exercising their right of forfeiture and may file their claims at: - the Lands Tribunal; - the District Court if the outstanding rent does not exceed $3,000,000 and the rateable value of the property does not exceed $320,000; or - the Court of First Instance of the High Court for outstanding rent of any amount. The landlord, if successful in obtaining a judgment against the tenant, will be able to apply to the tribunal/appropriate court for a Writ of Possession. Upon the issue of the Writ of Possession, the court bailiff will recover the possession of the property on the landlord's behalf. Jurisdiction of the High Court It should be noted that although the High Court has unlimited jurisdiction to handle any of the above claims, it normally will not entertain a claim that falls within the jurisdiction of the District Court or the Lands Tribunal.

Application for Summary Judgment for possession/Interim payment After commencement of proceedings, it may take some time to wait for trial to take place at Court (especially for the District Court/Court of First Instance). However, for many cases, there may be procedure for landlords to recover possession/rent in a more speedy fashion known as “summary judgment” or “interim payment” if the landlord is satisfied that there is no arguable defence on the part of the tenant to resist an application for an order of repossession and/or payment of outstanding rent. You must seek legal advice on any grounds for obtaining a summary judgment or an interim payment before you make the relevant application to court. c) Action for distress Distress means the seizure, detention and sale of movable chattels/goods found in the rented property to satisfy the rent arrears pursuant to a warrant issued by the District Court upon application by the landlord. Due to the nature of distress, it is mostly used in cases in which a tenant is still operating a business at the rented property. Part III of the Landlord and Tenant (Consolidation) Ordinance governs the procedures and formalities for applications for distress. The application for distress is an ex-parte application (by one party only) to the District Court, meaning that the tenant will not have the chance to appear before the judge to make any submission (or objection). This is to avoid the tenant knowing of the application and dissipating the available assets. The landlord must file an affidavit/affirmation to support the application in a prescribed form. If the Court accepts the landlord's application, then a warrant of distress is issued. The bailiff then enters the property, seizes the movable chattels/goods found inside and in the apparent possession of the tenant, and sells the chattels/goods to satisfy the rent in arrears. Note that the bailiff cannot seize land fixtures (e.g. air-conditioning machines and, some built-in appliances), things in use, tools and implements or the goods which is apparently owned by parties other than the tenant. The goods as seized will be impounded by the bailiff until the rent is paid or being sold by an auctioneer as the Court may direct. As distress is complicated both in terms of procedures and legality, it is usually done with the assistance of legal professionals. 3. DOES THE LANDLORD HAVE THE RIGHT TO DISPOSE OF THE BELONGINGS LEFT BY THE TENANT AFTER THE HANDOVER? 3. DOES THE LANDLORD HAVE THE RIGHT TO DISPOSE OF THE BELONGINGS LEFT BY THE TENANT AFTER THE HANDOVER? Generally the landlord has no right to dispose of the former tenant's personal belongings. The belongings are still owned by the former tenant. The landlord is advised to give reasonable notice in writing to the former tenant, requesting him to collect the belongings left behind on or before a specified time. If necessary, the landlord should institute court proceedings to regain possession of the property by proper means with the assistance of the Bailiff. A more ideal tenancy agreement would have made provision that the tenant shall remove all its belongings from the suit premises within a certain number of days upon the termination of the tenancy; failing which the tenant shall be deemed to have abandoned its ownership of all the items left behind and the landlord shall have the absolute right to dispose of the items without further notice. Q1. A LANDLORD LETTING A SUBDIVIDED UNIT IN AN INDUSTRIAL BUILDING MAINTAINS THAT THE TENANCY IS NOT FOR DOMESTIC USE, AND THEREFORE NOT TO BE REGULATED BY PART IVA OF THE LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE. THE TENANT DISAGREES AND WOULD LIKE TO TAKE LEGAL ACTION. WHAT CAN THE TENANT DO IN ORDER TO PROVE THAT THE TENANCY IS FOR DOMESTIC USE AND THUS A REGULATED TENANCY UNDER THE ORDINANCE? WHAT FACTORS WILL BE TAKEN INTO CONSIDERATION BY THE COURT WHEN DETERMINING WHETHER THE TENANCY OF THE SUBDIVIDED UNIT IS A REGULATED TENANCY? Q1. A LANDLORD LETTING A SUBDIVIDED UNIT IN AN INDUSTRIAL BUILDING MAINTAINS THAT THE TENANCY IS NOT FOR DOMESTIC USE, AND THEREFORE NOT TO BE REGULATED BY PART IVA OF THE LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE. THE TENANT DISAGREES AND WOULD LIKE TO TAKE LEGAL ACTION. WHAT CAN THE TENANT DO IN ORDER TO PROVE THAT THE TENANCY IS FOR DOMESTIC USE AND THUS A REGULATED TENANCY UNDER THE ORDINANCE? WHAT FACTORS WILL BE TAKEN INTO CONSIDERATION BY THE COURT WHEN DETERMINING WHETHER THE TENANCY OF THE SUBDIVIDED UNIT IS A REGULATED TENANCY? The tenant may apply to the Lands Tribunal to determine whether or not a tenancy for the premises is a regulated tenancy for the purpose of Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7). In determining whether a tenancy is a domestic tenancy or not, the Tribunal may consider the following matters: Purpose

specified in tenancy; Purpose for which premises are actually used; Tenant to establish landlord’s agreement to change of user as dwelling; Purpose of sub-tenancy subject to superior tenancy; Whether the premises are used as a boarding or lodging house; The covenants, terms and conditions in the Government lease or tenancy in relation to the premises; Any occupation permit issued under the Building Ordinance (123) in relation to the premises; Normal additional uses of the premises that are consistent with the domestic nature of a tenancy having regard to the following: 1. the floor area in occupation for the uses (whether at all times or not); 2. the number of persons engaged in the uses but not dwelling on the premises; 3. the furnishings, fittings and contents of the premises; 4. the gross profits resulting from the uses relative to the rent. Although most of the covenants, terms and conditions in the Government lease or tenancy on the industrial buildings expressly state that the premises can only be used for specific purposes other than dwellings, the tenancies in these premises might still be taken as domestic tenancies and be regulated by Part IVA of the Ordinance in the following circumstances: Tenancy with a written purpose of dwelling If a tenancy specifies in writing that any premises are to be used for a domestic purpose, the premises are taken to be used for that purpose unless it is proved otherwise; Tenancy with a written purpose other than dwelling Where the purpose referred to in a tenancy on the subdivided unit is for industrial use only, the premises are taken to have been let for dwelling, if: the tenant can establish that the landlord has agreed on or acquiesced in the change of user in breach of the tenancy expressly or by implication; and the premises are being used primarily for dwelling. For the purpose of establishing (2), the Primary User Certificate issued by the Commissioner of Rating and Valuation (Commissioner) can serve as evidence of the primary user of the premises as at the day of the inspection. Tenancy without a written purpose or user If there is not sufficient evidence showing that any premises were originally let for a particular purpose, the purpose of the tenancy of the premises is to be determined by the primary user of the premises. For this purpose, the Primary User Certificate issued by the Commissioner can serve as evidence of the primary user of the premises as at the day of the inspection. Sub-tenancy under a superior tenancy For a tenancy on a subdivided unit that is a sub-tenancy created out of a head lease (or superior tenancy), the terms and use of the head lease (or superior tenancy) will be taken into consideration. If there is evidence showing that the premises of the head lease: were let other than as a dwelling; or were being used other than as a dwelling, at the commencement of the subject tenancy, the premises of the subject tenancy (subject premises) are taken to be used other than as a dwelling unless the tenant of the subject premises satisfies the Tribunal to the contrary. 3. I HAVE RENTED A PROPERTY ON A THREE YEAR TERM. THERE ARE STILL MORE THAN 2 YEARS REMAINING IN THE TERM. HOWEVER, I NOTE THAT THE RENTAL VALUE OF NEIGHBOURING PROPERTIES HAS DROPPED SIGNIFICANTLY. CAN I TERMINATE THE TENANCY WITH THE LANDLORD SO THAT I CAN GET A COMPARABLE PROPERTY FOR A LOWER RENT? 3. I HAVE RENTED A PROPERTY ON A THREE YEAR TERM. THERE ARE STILL MORE THAN 2 YEARS REMAINING IN THE TERM. HOWEVER, I NOTE THAT THE RENTAL VALUE OF NEIGHBOURING PROPERTIES HAS DROPPED SIGNIFICANTLY. CAN I TERMINATE THE TENANCY WITH THE LANDLORD SO THAT I CAN GET A COMPARABLE PROPERTY FOR A LOWER RENT? A party to a contract is bound by the terms of the contract. Therefore, unless a tenancy document contains a break clause that allows the tenant to terminate the tenancy before the expiry of its term, by giving prior notice at a certain time (e.g. after the expiration of one year from the commencement of the tenancy), or there is mutual agreement for an early termination, the tenant is bound by the tenancy document and cannot unilaterally terminate the tenancy with the landlord. A “break clause” from the tenant’s perspective may look like this (for reference only). Notwithstanding anything herein contained, it is hereby agreed and declared that if at any time after the expiration of one year from the commencement of the Term, the Tenant shall be desirous of terminating this Agreement, then the Tenant shall have the right to terminate it by giving not less than two months prior written notice to the Landlord, provided that the notice is received by the Landlord at least two months prior to the date of termination stated therein, or by paying to the Landlord two months rent in lieu of such notice, provided always that the operation of this clause is without prejudice

to the rights and remedies of either party against the other in respect of any antecedent claims or breach of the agreements, stipulations, terms and conditions herein contained. If the tenancy document does not contain a break clause, then neither the landlord nor tenant can unilaterally terminate the tenancy. The only option open to a tenant who wants to end a tenancy before the expiry of the agreed term is then to offer to the landlord to surrender the tenancy. Subject to negotiation between the parties, the tenant may agree to pay a sum in exchange for the landlord' s acceptance of the surrender. Alternatively, the parties' may continue with the tenancy by agreeing to increase/reduce the rent after renegotiation based on prevailing market conditions. 2. I AM A TENANT OF A RESIDENTIAL PROPERTY. I TRIED TO LOCK THE DOOR OF THE PROPERTY. HOWEVER, I FOUND THAT THE DOOR CANNOT BE CLOSED PROPERLY (E.G. A GAP OF ABOUT 2CM) UPON THE COLLECTION OF KEYS FROM THE ESTATE AGENT. GIVEN THAT I HAVE ALREADY SIGNED THE FORMAL TENANCY AGREEMENT AND I AM PREPARING TO MOVE IN, IS IT REASONABLE FOR ME TO REQUEST THE LANDLORD TO REPAIR IT? IN CONTRAST, THE LANDLORD WANTED TO AMEND THE AGREEMENT TO INCLUDE A NEW CLAUSE REQUIRING US TO ACKNOWLEDGE THIS DEFECT WITH A PHOTO. IS IT LAWFUL? 2. I AM A TENANT OF A RESIDENTIAL PROPERTY. I TRIED TO LOCK THE DOOR OF THE PROPERTY. HOWEVER, I FOUND THAT THE DOOR CANNOT BE CLOSED PROPERLY (E.G. A GAP OF ABOUT 2CM) UPON THE COLLECTION OF KEYS FROM THE ESTATE AGENT. GIVEN THAT I HAVE ALREADY SIGNED THE FORMAL TENANCY AGREEMENT AND I AM PREPARING TO MOVE IN, IS IT REASONABLE FOR ME TO REQUEST THE LANDLORD TO REPAIR IT? IN CONTRAST, THE LANDLORD WANTED TO AMEND THE AGREEMENT TO INCLUDE A NEW CLAUSE REQUIRING US TO ACKNOWLEDGE THIS DEFECT WITH A PHOTO. IS IT LAWFUL? Whether the landlord is an obligation to carry out repairs depends primarily on the terms of the tenancy agreement. Some tenancy agreements may state that the tenant is solely responsible for the repair of doors, windows, etc. during the continuance of the tenancy. If the defect is not substantial enough to affect the normal use and enjoyment of the flat, it is rather unlikely that the tenant could terminate the tenancy agreement on such ground. On the other hand, assuming that the parties have already entered into a legally binding tenancy agreement, in principle, the tenant is not obliged to agree to an addition or amendment of the terms of the tenancy agreement. Pragmatically, when faced with the above situation, the tenant should inform and liaise with the landlord and endeavour to solve the problem amicably. It is advisable for a prospective tenant to arrange for an inspection of the subject property in the presence of the estate agent before committing to a tenancy agreement. If any noticeable defect is detected at the commencement of the tenancy, it should be documented properly to avoid potential dispute between the parties in the future. Last revision date: 18 October, 2022 4. WHAT IF I SIGN A 'FORM 6' WITH AN AGENT WHO SHOWS ME A FLAT, AND LATER, SOMEONE RELATED TO ME (E.G. MY SPOUSE) RENT THE FLAT THROUGH ANOTHER AGENT OR DIRECTLY FROM THE LANDLORD? 4. WHAT IF I SIGN A 'FORM 6' WITH AN AGENT WHO SHOWS ME A FLAT, AND LATER, SOMEONE RELATED TO ME (E.G. MY SPOUSE) RENTS THE FLAT THROUGH ANOTHER AGENT OR DIRECTLY FROM THE LANDLORD? You are still liable, during the validity period of the estate agency agreement, to pay commission to the estate agent in accordance with Schedule 3 of 'Form 6'. H) SUBMISSION OF NOTICE OF TENANCY AND STAMPING OF TENANCY AGREEMENT H) SUBMISSION OF NOTICE OF TENANCY AND STAMPING OF TENANCY AGREEMENT Once a tenancy agreement of a regulated tenancy has been offered by the landlord and signed by the tenant (or endorsed by the tenant in case of an oral tenancy), the landlord is obliged to submit the Notice of Tenancy to the Commissioner of Rating and Valuation (Commissioner) and stamp the Tenancy Agreement at the Inland Revenue Department ("IRD"). The responsibility to submit the Notice of Tenancy also applies to landlords offering oral tenancies regulated by Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7). Please note that the tenancies concerned are still regulated by the Ordinance if the landlord fails to submit the Notice of Tenancy or stamp the tenancy agreement. On the contrary, there might be legal consequences for landlords who fail to do so. Notice of Tenancy (Form AR2) The landlord must, within 60 days after the term of a regulated tenancy (including a first term tenancy and a second term tenancy) commences or is taken to commence under the Ordinance, submit a completed Notice of Tenancy (Form AR2) to notify the Commissioner of the particulars of the tenancy. If the landlord, without reasonable excuse, refuses or neglects to comply with this requirement, the

landlord commits an offence and is liable on conviction to a fine at level 3 (HK$10,000), and in the case of a continuing offence, to a further fine of HK$200 for each day during which the offence continues. Moreover, the landlord may not maintain an action to recover any rent under the tenancy unless the notice is endorsed by the Commissioner. On receiving the notice, the Commissioner must endorse the notice with the date of its receipt, and notify the landlord and tenant of the receipt of the notice. Stamping of Tenancy The landlord must, after receiving the tenancy agreement signed by the tenant, arrange for the tenancy agreement to be stamped under the Stamp Duty Ordinance (Cap. 117) and return to the tenant a counterpart of the stamped tenancy agreement within 30 days. If the landlord fails to return the counterpart of the stamped tenancy agreement, the tenant may withhold the payment of rent until the landlord has done so. However, if the landlord has eventually returned the said counterpart, the tenant must pay back, free of interest, any rent withheld to the landlord within 15 days after receipt of the counterpart. The Ordinance stipulates that the stamp duty on the tenancy agreement of regulated tenancies is to be borne by the landlord solely. Compared with Non-Regulated Residential Tenancies The requirement of noticing the Commissioner in the regulation is more stringent than the one required for common residential tenancies that are not regulated by Part IVA of the Ordinance. The landlord in a non-regulated tenancy is also required to submit a Notice of New Letting or Renewal Agreement (Form CR109) to the Commissioner. Similarly, the landlord shall not be entitled to maintain an action to recover any rent under the tenancy unless the notice is endorsed by the Commissioner. However, failure to submit the notice does not involve criminal offences. The notice may be lodged within 1 month of the tenancy term without charge, or upon payment to the Commissioner of a fee at any time. As for the regulation on the stamping of tenancies, the requirement to the landlord is more stringent than common residential tenancies. As far as the concern of non-regulated tenancies, the landlord, tenant and any other persons signing the tenancy agreement are liable for payment of stamp duty. Failure to return the counterpart of the stamped tenancy agreement might not be a justifiable reason for the tenant to withhold the payment of rent. D) DEED OF MUTUAL COVENANT D) DEED OF MUTUAL COVENANT The deed of mutual covenant (commonly known as “DMC”) is a document which regulates the relationship between the co-owners and occupants of individual units in a multi-storey building, setting out their rights and obligations. The DMC is legally binding upon all the owners, persons deriving title from the owners and occupants of the building, including tenants of individual units. In a typical DMC, the following restrictions, which are of particular relevance to the occupants of individual units in a building, can usually be found:- (a) Not to make any structural alteration to the individual unit or any part of the building. (b) Not to cut, alter or interfere with any water or gas pipes, electrical conduits or plumbing or drainage pipes intended for the use of the whole building. (c) Not to use or permit or suffer any unit of the building to be used for any illegal, unlawful or immoral purpose. (d) Not to do or permit anything in the unit to become a nuisance or annoyance or cause damage or inconvenience to the owners or occupiers of the building. (e) Not to project or display any sign, notice or advertisement at the window or at the balcony or on the exterior wall of the building. (f) Not to convert any common parts of the building to its own use. Some DMCs may contain more draconian prohibitions, for example occupiers are not allowed to hang out laundry outside the exterior of the building, or restrictions on keeping of pets. 4. IF THE TENANT CAUSES NUISANCE TO NEIGHBOURS, WILL THE LANDLORD BE LIABLE? DOES THE LANDLORD HAVE ANY REMEDIES AGAINST THE TENANT? 4. IF THE TENANT CAUSES NUISANCE TO NEIGHBOURS, WILL THE LANDLORD BE LIABLE? DOES THE LANDLORD HAVE ANY REMEDIES AGAINST THE TENANT? The landlord may be liable for nuisance committed by the tenant if he has expressly or impliedly authorised the tenant to commit nuisance, or has adopted or continued such nuisance. Tenancy agreements commonly contain a covenant by the tenant not to cause or permit nuisance, annoyance, inconvenience or disturbance to the occupants of neighbouring premises. For tenancies of domestic premises entered on or after 27th December 2002, section 117(3) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) implies in the tenancy a covenant that the tenant not cause unnecessary annoyance, inconvenience or disturbance to the landlord or

to any other person, if the tenancy does not already contain a covenant substantially to the same effect. The legislation also implies in the tenancy a condition for forfeiture if such implied covenant is broken. Before the landlord can enforce the right of re-entry or forfeiture to terminate the tenancy early, section 58 of the Conveyancing and Property Ordinance (Cap. 219) requires that a prior written notice be served on the tenant, specifying the breach complained of and requesting the tenant to remedy the breach or the compensation payable. So if it can be proved that the tenant has been causing nuisance or annoyance to the occupiers of adjacent premises and where the tenant has refused to remedy the breach, the landlord may exercise the right to forfeit the tenancy and may claim against the tenant any damages caused by such early termination of the tenancy. B) RENTING ABROAD - CONFLICT OF LAWS B) RENTING ABROAD - CONFLICT OF LAWS “Conflict of laws” refers to the body of law which concerns the choice of governing law, the jurisdiction of the courts and the recognition of foreign judgments. Q1. WHAT IS THE ROLE OF THE COMMISSIONER OF THE RATES AND VALUATION DEPARTMENT (COMMISSIONER) IN EXECUTING THE REGULATED TENANCY? Q1. WHAT IS THE ROLE OF THE COMMISSIONER OF THE RATES AND VALUATION DEPARTMENT (COMMISSIONER) IN EXECUTING THE REGULATED TENANCY? Duties To enforce Part IVA of Landlord and Tenant (Consolidation) Ordinance (Cap. 7), the Commissioner has three main duties: endorse the Notice of Tenancy (Form AR2) submitted by the landlord; determine the primary user of the premises upon receiving an application; ascertain whether an offence under Part IVA of the Ordinance is being, or has been, committed in relation to the premises. Power The last two duties (duties 2 and 3) may require the Commissioner to gather evidence through the service of documents or forms, and entry into the premises. For these purposes, the Commissioner is given the power to: serve on any person a requisition in the specified form in relation to any premises and reasonably require them to provide any particulars in writing within specified period (Section 120AAZV); require the landlord or tenant of any premises to provide any reference document within specified period, including: a document related to the tenancy of the premises; a document related to the user of the premises; a tenancy in writing; a receipt for rent; a rent-book; accounts; and, a bill for any of the specified utilities and services; (Section 120AAZW): with the occupier’s consent, enter any premises at any reasonable time (Section 120AAZX); without the occupier’s consent, apply to a magistrate for a warrant to enter the premises for the purposes mentioned and, with a warrant issued, enter (by the use of reasonable force if necessary) the premises (Section 120AAZY); after entry into the premises with a warrant issued, for the purpose of determining the primary user of the premises: inspect the premises; take any measurements and other particulars of the premises that the Commissioner considers appropriate; take any photograph and video recording inside the premises; require any person present on the premises to provide any assistance or information necessary for the purpose; (Section 120AAZZ(1)) after entry into the premises with a warrant issued, for the purpose of ascertaining whether an offence under Part IVA of the Ordinance is being, or has been, committed in relation to the premises: inspect and search the premises; examine any document found on the premises; take any measurements and other particulars of the premises that the Commissioner considers appropriate; take any photograph and video recording inside the premises; to seize and detain anything that is, or that appears to be or to contain, or that is likely to be or to contain, evidence of the commission of an offence in relation to the Ordinance and the premises, and to take the steps that appear to be necessary for preserving the thing so seized or preventing interference with it; to do anything necessary for the purpose; to require any person present on the premises to provide any assistance or information necessary for the purpose. (Section 120AAZZ(2)) Related offences If a person, without reasonable excuse, refuses or neglects to comply with Commissioner’s requisition in specified form (power 1) or requests to provide reference documents (power 2), the person commits an offence and is liable on a conviction to a fine at level 3 (HK$10,000) and to imprisonment for 3 months (see Sections 120AAZV and 120AAZW). Moreover, if a person in purported compliance with Commissioner’s requisition or request knows that or is reckless as to whether or not, the particulars, reference documents or information, or the thing said or stated, is false or misleading in a material particular, the person

commits an offence and is liable on a conviction to a fine at level 3 (HK$10,000) and to imprisonment for 3 months. This offence is also applicable to particulars provided in the Notice of Tenancy (Form AR2) submitted by the landlord (see Section 120AAZZE). Giving evidence in proceedings Although the Commissioner has the duty and power to collect evidence related to regulated tenancies, the Ordinance stipulates that the Commissioner or an RVD officer may only be called to give evidence in any proceedings before the court for determining whether or not a tenancy is a domestic tenancy (duty 2). In other proceedings including those between a landlord and a tenant of a subdivided unit, no subpoena may be issued against the Commissioner or an RVD officer to give evidence before the court (see Section 120AAZZC). 2. MY TENANT HAS FAILED TO PAY RENT FOR SEVERAL MONTHS. CAN I REGAIN POSSESSION OF MY PROPERTY BY BREAKING OPEN THE DOOR, THROWING AWAY THE TENANT'S BELONGINGS AND CHANGING THE LOCK WITHOUT RESORTING TO COURT PROCEEDINGS? 2. MY TENANT HAS FAILED TO PAY RENT FOR SEVERAL MONTHS. CAN I REGAIN POSSESSION OF MY PROPERTY BY BREAKING OPEN THE DOOR, THROWING AWAY THE TENANT'S BELONGINGS AND CHANGING THE LOCK WITHOUT RESORTING TO COURT PROCEEDINGS? It must be borne in mind that if the property is still being occupied by the tenant (or some other occupants), any forcible entry by the landlord into the Property without obtaining any court order may amount to criminal offence under section 23 of the Public Order Ordinance (Cap. 245). The landlord may also face other criminal charges such as 'harassment'. Section 119V of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) expressly provides that any person who unlawfully deprives a tenant of occupation of the relevant premises commits an offence and may be liable to a fine or even imprisonment. A tenancy document will usually contain a clause that allows the landlord to re-enter the property if the tenant fails to pay rent. In the event that the landlord is sure that the tenant has deserted and abandoned the property in a vacant state (or only with inexpensive belongings left behind) for a reasonably long time, the law may recognize a right for the landlord treat the tenancy as terminated and quietly re-enter the premises by himself without resorting to court proceedings (i.e. self-help). For some owners in Hong Kong, this might be a convenient and inexpensive way to recover possession against absconding tenants. However, it is generally unsafe for the landlord to rely solely on such method and re-enter the property by self-help. There is always a risk that the tenant may reappear a few months later and allege that the landlord has wrongfully re-entered into the property or that valuables left in the property became misappropriated. Therefore, even if it may be quite certain that the tenant has deserted the property, the landlord should go through the appropriate legal procedures, which will eventually lead to the recovery of the property with the assistance of the bailiff. B) RENT-FREE PERIODS B) RENT-FREE PERIODS There is no mandatory rent-free period prescribed by the law. Whether there is a rent-free period and the duration of the rent-free period depends on the agreement of the landlord and the tenant. In practice, rent-free period in Hong Kong can range from a couple of days to 2 - 3 months. 4. DOES THE LANDLORD HAVE THE RESPONSIBILITY TO KEEP THE BELONGINGS FOR A CERTAIN PERIOD OF TIME IF THE TENANT HAS INDICATED THAT THEY WILL COLLECT THEM? 4. DOES THE LANDLORD HAVE THE RESPONSIBILITY TO KEEP THE BELONGINGS FOR A CERTAIN PERIOD OF TIME IF THE TENANT HAS INDICATED THAT THEY WILL COLLECT THEM? In this situation, the landlord should definitely not throw away the tenant's belongings outright. Otherwise the landlord may risk being accused by the tenant of conversion or even stealing of the properties. Unless the parties have otherwise agreed, the landlord is not obliged to retain the tenant's belongings inside the subject property. If the landlord has decided to move the belongings to a storage, it is advisable to take inventory of all the items left behind and well document the logistics process. With the advancement of technology, it is not at all difficult to take photographs or even videos of the items and during the process. Depending on the wordings of the tenancy agreement, the landlord may be able to set-off logistics and storage fees reasonably incurred against the rental deposit on hand. E) SECURITY OF TENURE E) SECURITY OF TENURE Security of tenure usually involves the provision of a certain level of certainty to a tenant that he will not be arbitrarily ejected or evicted from the land. Each regulated tenancy is a term of 2 years. Unless under the circumstances specified in the Part IVA of the Landlord and Tenant

(Consolidation) Ordinance (Cap. 7), the landlord cannot terminate the tenancy before the expiry of the term. A regulated cycle is to comprise 2 consecutive regulated tenancies (i.e., the first term tenancy and the second term tenancy). A tenant of a first term tenancy is entitled to be granted a second term tenancy of the regulated cycle, thus enjoying a total of 4 years (first term 2 years + second term 2 years) of security of tenure. The term and the conditions of the second term tenancy are to be the same as those of the first term tenancy, except for the period of the tenancy and the amount of rent. At the end of the 4-year cycle, the landlord and the tenant can freely negotiate the first tenancy agreement for the next regulated cycle. Early Termination of Regulated Tenancy by Tenant A tenant may terminate the tenancy by giving the landlord not less than 30 days' prior notice in writing. However, the date of termination must not be a date earlier than the last day of the first year of the term. If there is no other provision in the tenancy agreement that the tenant may determine the tenancy during its term other than that provided in the Ordinance, the tenant is subject to the restriction that the date of termination of the tenancy cannot be earlier than the last day of the first year of the first term tenancy or the second term tenancy. Nonetheless, Part IVA of the Ordinance does not prohibit a tenant from surrendering the tenancy to the landlord before the expiry of the term if both parties can reach a consensus. The tenant may negotiate with the landlord on early termination of the tenancy, but the landlord is not obligated to accept the request. However, the tenant may terminate the tenancy throughout the term by giving the landlord not less than 30 days' prior notice in writing, in accordance with the following provisions under Part IVA of the Ordinance, if the landlord fails: to serve the tenancy agreement in writing within 30 days upon demand by the tenant; or, to maintain and keep in repair, where applicable: the drains, pipes, electrical wiring serving the premises exclusively; the windows of the premises; the fixtures and fittings provided by the landlord in the premises, and keep in working order. If a tenant foresees that he/she may need to terminate a regulated tenancy early under certain circumstances, he/she may wish to negotiate with the landlord to secure such a right for early termination in the tenancy agreement before entering into the first term tenancy. Part IVA of the Ordinance does not limit any rights of the tenant to terminate the tenancy by notice under the tenancy. Early Termination of Regulated Tenancy by Landlord Unless under the provisions specified by Part IVA of the Ordinance, the landlord cannot terminate the tenancy before the expiry of the term. Even if the tenancy has any conditions for forfeiture other than the specified provisions, they should be deemed invalid and shall be void. According to Part IVA of the Ordinance, if the tenant is in breach of any of the following provisions under Part 4 of Schedule 7 to the Ordinance, the landlord may enforce the right of re-entry or forfeiture: fails to pay rent within 15 days after the due date, except where the tenant is withholding the payment of rent on the ground that the landlord fails: to serve the tenancy agreement in writing within 30 days upon demand by the tenant; or, to return a counterpart of the stamped tenancy agreement within 30 days upon receiving the agreement signed by the tenant; persistently fails to pay rent as and when it falls due; makes any structural alteration, or permits or suffers any structural alternation to be made, to the premises without the prior consent in writing of landlord; uses the premises, or permit or suffer the premises to be used, for any immoral or illegal purpose; does anything, or permits or suffers anything to be done, on the premises that would cause any unnecessary annoyance, inconvenience or disturbance to the landlord or any other person; assign or underlet the whole of the premises to another person, or otherwise part with possession of the whole of the premises; underlet part of the premises to another person without the prior consent in writing of the landlord. The tenancy of the premises is terminated immediately on the landlord's re-entry on any of the grounds above. Other Interests However, even though the landlord cannot wilfully terminate the tenancy early, the 4-year security of tenure may be subject to other interests related to the premises. For example, subdividing premises into units may result in breaches of government leases, building regulations, fire regulations and/or deed of mutual covenants etc. (see "Other Legal Issues"). If a statutory order is served to require the demolition of a subdivided unit that is under a regulated tenancy, the relevant person is obliged to

comply with such order. In old districts where many of the subdivided units are located, it is not uncommon that the premises concerned would be included in a redevelopment plan or subject to compulsory sales. The ownership of the premises will be transferred while the tenants, compensated or resettled, are required to move out according to statutes (see the question on urban renewal and compulsory sales). If the regulated tenancy is a sub-tenancy arising from another tenancy, the sub-tenant living in the subdivided unit must also hand over the property back to the landlord when the superior tenancy ends or is forfeited (see “Regulated Tenancy as Sub-tenancy”). 4. I HAVE RENTED A PROPERTY ON A THREE YEAR TERM. AS A RESULT, I HAVE INCURRED RATHER BIG SUM OF MONEY ON RENOVATIONS AND PURCHASING FURNITURE AND EXPENSIVE APPLIANCES WHICH ONLY FITS INTO THE PROPERTY’S LAYOUT AND DIMENSIONS. HOWEVER, THE LANDLORD RELIED ON THE ‘BREAK CLAUSE’ AND GAVE MY NOTICE TO QUIT AT THE COMMENCEMENT OF THE SECOND YEAR. THE LANDLORD AT THE SAME TIME THREATENED ME THAT IF I WISHED TO STAY, I MUST PAY EXTRA RENT FOR THE REMAINING TERM, OR ELSE I MUST LEAVE AFTER RESTORING THE PROPERTY INTO ITS ORIGINAL STATE AT MY OWN COSTS. IS THAT FAIR? CAN I SUE THE LANDLORD FOR COMPENSATION? 4. I HAVE RENTED A PROPERTY ON A THREE YEAR TERM. AS A RESULT, I HAVE INCURRED RATHER BIG SUM OF MONEY ON RENOVATIONS AND PURCHASING FURNITURE AND EXPENSIVE APPLIANCES WHICH ONLY FITS INTO THE PROPERTY’S LAYOUT AND DIMENSIONS. HOWEVER, THE LANDLORD RELIED ON THE ‘BREAK CLAUSE’ AND GAVE MY NOTICE TO QUIT AT THE COMMENCEMENT OF THE SECOND YEAR. THE LANDLORD AT THE SAME TIME THREATENED ME THAT IF I WISHED TO STAY, I MUST PAY EXTRA RENT FOR THE REMAINING TERM, OR ELSE I MUST LEAVE AFTER RESTORING THE PROPERTY INTO ITS ORIGINAL STATE AT MY OWN COSTS. IS THAT FAIR? CAN I SUE THE LANDLORD FOR COMPENSATION? Assuming that the landlord has rightfully invoked the break clause at the correct time as stipulated under the tenancy agreement (i.e. after 1 year fixed term), the landlord is not in breach. Regardless of how much sympathy you may gain from your position, the Court is likely to give recognition to the break clause to terminate the lease and no compensation will be awarded in favor of the tenant. Whether or not the landlord has put pressure on you by increasing rent may not be relevant as it is permissible for parties to freely negotiate on terms based on their bargaining power on a commercial basis. While ‘break clauses’ do grant flexibility, a tenant shall take into consideration as to whether the inclusion of ‘break clause’ is truly desirable for him/her interests. It must also be noted that if there is no security of tenure for the entire term, the tenant shall be cautious as to whether it would be worth to commit expenditures into the property by renovating it. The question of handover standard will be dealt with further below. 1. A DOG-OWNER ENTERED INTO A TENANCY AGREEMENT WITH A LANDLORD ON A PROPERTY WITH ITS DMC PROHIBITING PROPERTY OWNERS AND TENANTS FROM KEEPING PETS. WHAT ACTIONS CAN BE TAKEN FROM THE INCORPORATED OWNERS OF THE PROPERTY OR THE MANAGEMENT COMPANY TO HIM AND HIS LANDLORD IF HE INSIST KEEPING THE DOG WITH HIM? 1. A DOG-OWNER ENTERED INTO A TENANCY AGREEMENT WITH A LANDLORD ON A PROPERTY WITH ITS DMC PROHIBITING PROPERTY OWNERS AND TENANTS FROM KEEPING PETS. WHAT ACTIONS CAN BE TAKEN FROM THE INCORPORATED OWNERS OF THE PROPERTY OR THE MANAGEMENT COMPANY TO HIM AND HIS LANDLORD IF HE INSISTS ON KEEPING THE DOG WITH HIM? The Incorporated Owners and the management company are under a duty to enforce the DMC in the proper management of the building. Enforcement actions that may be taken against the tenant and the landlord include issuing warning letter and, if ineffective, instituting court action for an injunction and for monetary damages (if any). If the landlord is aware of any breach of the DMC by the tenant but has chosen to remain inaction, the landlord may also be found liable for allowing or permitting such breach. The tenant and the landlord would likely be held responsible also for the legal costs incurred for taking enforcement action against them. Last revision date: 18 October, 2022 1. CAN THE SAME ESTATE AGENT SERVE BOTH THE LANDLORD AND THE TENANT? 1. CAN THE SAME ESTATE AGENT SERVE BOTH THE LANDLORD AND THE TENANT? Yes, if both the landlord and the tenant have been informed and consent to such arrangements. I) RENTAL DEPOSIT I) RENTAL DEPOSIT Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) stipulates the amount and the repayment terms of rental deposits for regulated tenancies. Maximum Amount Despite any provision of the tenancy, the rental deposit payable by the tenant may not be more than 2 months’ rent under the tenancy. If a provision of the tenancy requires the tenant to pay a rental deposit of more than 2

months' rent, the provision is taken to be requiring the tenant to pay a rental deposit equal to 2 months' rent only; Repayment Terms If the outstanding money payable by the tenant to the landlord under the regulated tenancy has been settled, the landlord must return the rental deposit to the tenant, free of interest, no later than the expiry of 7 days after the tenant has handed over the subdivided unit back to the landlord on the expiry of the term or an early termination of the tenancy. Otherwise, the rental deposit can be returned no later than 7 days after the settlement of the outstanding money payable by the tenant. If it is a first term tenancy followed by a second term and the outstanding money payable by the tenant has been settled, the landlord must also return the rental deposit to the tenant no later than the expiry of the term. The landlord may deduct from the rental deposit the amount of any arrears of rent, or costs, expenses, losses or damages sustained by the landlord as a result of any breach of the tenancy by the tenant. A) OVERVIEW A) OVERVIEW Rent is the pecuniary return to the landlord from a tenancy arrangement. The tenant is bound by the tenancy agreement to pay rent to the landlord for the use of the subject property. As surprising as it may seem, rent is not an essential term of a valid tenancy agreement. Rent, in most cases, is in monetary term, but it may also consist of goods or services if so agreed by the parties. The amount of rent payable is determined by the terms of the tenancy agreement. The rent must be certain, or can be calculated with certainty; otherwise it may be void for uncertainty. 4. ISSUES RELATING TO BAILIFF 4. ISSUES RELATING TO BAILIFF The Bailiff is a public officer empowered to execute the order or judgment of a Court or Tribunal. After the plaintiff has obtained a court order or judgment, and if the opponent does not comply, the plaintiff may, depending on the nature of the case, apply for enforcement by the Bailiff. Particularly relevant to the landlord and tenant context, the Bailiff can take appropriate steps to try to recover judgment debts or to deliver possession of premises. (a) Execution of a Writ of Fieri Facias or Warrant of Distress A Writ of Fieri Facias is used to enforce a judgment or order for the payment of money by seizure of goods, chattels or other property of the judgment debtor. A Warrant of Distress is used, where the landlord has filed distress proceedings in the District Court, for the seizure and sale of goods, chattels or other property found in a rented premises to satisfy the arrears of rent. On the date of execution of either of these writs, a Bailiff, together with a security guard, will visit the subject premises. If there are sufficient goods and chattels on the premises to justify a seizure, the Bailiff will seize them up to the amount endorsed on the writ, plus the estimated costs of the execution. The applicant needs to give an undertaking to pay the necessary costs involved in effecting a seizure, otherwise the seizure will be withheld and treated as unsuccessful. (b) Execution of a Writ of Possession A Writ of Possession can be applied for to regain possession of land or premises. The Bailiff will first go to the premises and serve a Notice to Quit for the occupant to vacate the premises in 7 days. The Bailiff will review the situation after a lapse of 7 days before proceeding to execution. If the premises is still occupied, the Bailiff will proceed to the Writ of Possession on a scheduled date. If the Bailiff cannot enter the premises, a locksmith may be called upon to break into the premises. The applicant should, if possible, accompany the Bailiff to go to the subject premises to carry out execution of the writ. The applicant will have to pay:- (a) a filing fee for the writ of the execution; (b) a deposit for the Bailiff's travelling expenses; and (c) a deposit for the services by the security guard. Irrespective of whether the execution is successful, the Bailiff's expenses and the security guard service fees are to be deducted from the deposits for each attempt at execution. The more attempts are made, the more costs will be incurred. The costs the applicant incur may only have recovered if the execution is successful and the payment of the defendant or the proceeds of the sale of goods and chattels are enough to cover the judgment debt plus the costs incurred. You can visit the Judiciary website for more details about the Bailiff. 2. IS THERE ANY LAW REGULATING THE RATE OF ESTATE AGENT COMMISSION? 2. IS THERE ANY LAW REGULATING THE RATE OF ESTATE AGENT COMMISSION? The legislation in Hong Kong does not prescribe or restrict the amount of commission chargeable by the estate agent. The amount or rate of commission is negotiable between the landlord or the tenant and the estate agent. N) REGULATED TENANCY AS SUB-TENANCY N) REGULATED TENANCY AS

SUB-TENANCY At times, the regulated tenancy for a subdivided unit is a sub-lease created out of another tenancy. In such cases, the termination of a tenancy superior to the regulated tenancy (the head lease or superior lease) would destroy the leasehold estate under the regulated sub-lease (or sub-tenancy). Notwithstanding that the regulated sub-lease has not yet expired, the sub-tenant will have no legal right or interest to possess and occupy the property vis-à-vis the landlord and must deliver up vacant possession of the subdivided unit. The general rule of the relationship between head lease and sub-lease applies (see “Subletting”). Recover the possession of the subdivided unit A superior landlord who applies to the court for possession of the subdivided unit must post the Notice to Recover Possession on the main door or entrance to the subdivided unit (or the premises of which the subdivided unit forms part) on 3 consecutive days. Such notice is taken to be an effective notice served on the sub-tenant. Unless the sub-tenant has handed over the subdivided unit back to the landlord, the court will not grant leave to issue a writ of possession to enforce the order before the expiry of a period of 60 days beginning on the day immediately after the last day on which the notice is posted. In other words, the sub-tenants are granted a grace period of 63 days for moving out from subdivided units to be repossessed. Claim compensation from the sub-tenant In case the tenant of the regulated tenancy (sub-tenant) fails to hand over the subdivided unit back to the landlord on the date the regulated tenancy is terminated (termination date), the superior landlord who terminates the head lease may recover compensation from the sub-tenant as a civil debt. If the superior landlord waives the right to recover the compensation in writing, the landlord of the regulated tenancy (sub-landlord) may do so. The compensation amount is calculated by the monthly rent payable by the sub-tenant under the regulated tenancy times the number of months covering the period between the termination date and the date on which the sub-tenant hands over the subdivided unit back to the landlord. If the number of months covering the period is not an integer, it is to be rounded down to the integer. The compensation recoverable must be paid by the sub-tenant within 15 days after the date on which the sub-tenant hands over the subdivided unit back to the superior landlord or sub-landlord. Beyond the compensation, however, the right of superior landlords or sub-landlords to make further claims to sub-tenants, sureties or guarantors for the sub-tenants and other occupiers under common law rules or equitable principles is abrogated. Costs Notwithstanding the usual practice of “costs follow the events” in civil proceedings, subject to certain exceptions the court is not allowed to make any order to costs in favour of the superior landlord or sub-landlord (whichever is applicable) against the sub-tenant in the following proceedings: proceedings commenced by the superior landlord to recover possession of the subdivided unit; proceedings commenced by the superior landlord or sub-landlord to claim the compensation from the sub-tenant. However, if the sub-tenant has conducted the case in a frivolous or vexatious manner, or in respect of the costs of any counterclaim made by the sub-tenant in the above proceedings, the rule will not apply. Also, no interest on all or any part of the compensation may be included in the sum for which judgment is given in favour of the superior landlord or sub-landlord (whichever is applicable) against the sub-tenant in the above proceedings. 1. IS IT NECESSARY TO HAVE A SOLICITOR TO REPRESENT ME WHEN I ENTER INTO A TENANCY AGREEMENT? 1. IS IT NECESSARY TO HAVE A SOLICITOR TO REPRESENT ME WHEN I ENTER INTO A TENANCY AGREEMENT? No law requires a party to a contract to be represented by a solicitor. As a matter of fact, some people enter into standard form tenancy agreements without obtaining legal advice or even without reading the contents of the agreements. Depending on the circumstances, some parties may also enter into leases/tenancy agreements with the assistance of estate agents in recording the agreed terms under a standard form provided and including whatever additional clauses that they wish to add. A template residential tenancy agreement which was drafted by a team of law lecturers and students of the University of Hong Kong is now available on CLIC. Please refer to “E-package: DIY Residential Tenancy Agreement” for reference. Parties that have the benefit of solicitors, however, have their legal interests better protected because their solicitors will draft or scrutinise a written tenancy agreement from a legal perspective with the parties’ interests in mind. A tenancy document prepared by

solicitors typically covers more aspects than standard form agreements because the former tends to identify more issues that can potentially lead to disputes. By identifying and dealing with these issues before the parties commit themselves to the terms of the tenancy, the chance of future disputes between the parties may be reduced. It is more common for parties in commercial or industrial tenancies to be legally represented by solicitors to cater for their specific needs and interests. This is particularly the case when both parties are body corporates (e.g. companies) and that there might be a need for the landlord to require a natural person to act as guarantor on behalf of the tenant to ensure due performance of all obligations under the tenancy agreement. Last revision date: 28 February, 2020 3. MY TENANT HAS FAILED TO PAY OR ALLEGEDLY 'DEDUCTED' THE RENT FOR SEVERAL MONTHS BY THE EXCUSE THAT HE SUFFERED FROM MINOR WATER LEAKAGE PROBLEMS OR DISCOMFORT/DISTURBANCES. CAN HE/SHE DO SO AND IS THAT A GOOD DEFENCE TO THE RECOVERY OF THE PAYABLE RENT/FORFEITURE? 3. MY TENANT HAS FAILED TO PAY OR ALLEGEDLY 'DEDUCTED' THE RENT FOR SEVERAL MONTHS BY THE EXCUSE THAT HE SUFFERED FROM MINOR WATER LEAKAGE PROBLEMS OR DISCOMFORT/DISTURBANCES. CAN HE/SHE DO SO AND IS THAT A GOOD DEFENCE TO THE RECOVERY OF THE PAYABLE RENT/FORFEITURE? Shortly speaking, the issue generally depends on whether the obligation to pay rent was dependent on the fulfillment of any obligations on the part of the landlord (e.g. repair or quiet enjoyment, if so agreed) and/or whether the tenancy agreement expressly allowed the tenant to 'deduct' any rent payable by any reason. In most situations and in the absence of any special clauses under the tenancy agreement, the tenant's obligation to pay rent is independent of other obligations to be performed by the landlord. Simply put, no 'rent' is likely to become 'deductible' or 'set-off' as such even if the allegation of the tenant may appear to be true. This is to say, the complaints by a tenant over the standard/quality/condition of living in the property is unlikely to constitute a sound legal defence to non-payment of rent. As explained, non-payment of rent alone would enable the landlord to exercise his/her right to claim for outstanding rent and even forfeit the tenancy (subject to relief against forfeiture exercisable by the tenant). The above is only a preliminary analysis of general propositions of the law and whether such principle is applicable to all cases would be heavily dependent on the terms of the tenancy agreement and exact individual circumstances. If you encounter such subject matter, you are definitely recommended to seek assistance from legal professionals. 1. THE TENANCY AGREEMENT STIPULATES THAT RENT SHALL BE PAYABLE IN ADVANCE ON THE 1ST DAY OF EACH MONTH. THE TENANCY WILL TERMINATE ON 15TH JANUARY. DOES THE TENANT NEED TO PAY MONTHLY RENT IN FULL ON 1ST JANUARY? IF SO, DOES THE LANDLORD NEED TO REFUND THE RENT FOR THE PERIOD 16TH TO 31ST JANUARY TO THE TENANT LATER? 1. THE TENANCY AGREEMENT STIPULATES THAT RENT SHALL BE PAYABLE IN ADVANCE ON THE 1ST DAY OF EACH MONTH. THE TENANCY WILL TERMINATE ON 15TH JANUARY. DOES THE TENANT NEED TO PAY MONTHLY RENT IN FULL ON 1ST JANUARY? IF SO, DOES THE LANDLORD NEED TO REFUND THE RENT FOR THE PERIOD 16TH TO 31ST JANUARY TO THE TENANT LATER? Unless there is express agreement to the contrary, the apportionment mechanism under the Apportionment Ordinance (Cap. 18) does not apply to rent payable in advance, as in this example. The tenant is still obliged to pay the monthly rent in full on 1st January and it is not a legal requirement for the landlord need to refund the rent for the period 16th and 31st January. For a tenancy agreement with a break clause which allows for early termination, the entitlement to early terminate the tenancy does not in principle affect the obligation to pay rent of the tenant. In such a case, it would be more desirable to serve notice to quit on the pay day of the monthly rent. 1. IS IT MANDATORY TO ENGAGE AN ESTATE AGENT TO ENTER INTO A TENANCY OF A FLAT? 1. IS IT MANDATORY TO ENGAGE AN ESTATE AGENT TO ENTER INTO A TENANCY OF A FLAT? Not necessarily. The landlord and the tenant may negotiate on their own and enter into a tenancy agreement. In practice, many landlords and tenants in Hong Kong choose to purchase a printed tenancy agreement in English and Chinese from local stationery shops and use it as the basis of their tenancy. Such printed tenancy agreements contain the very basic terms of a typical tenancy, though it may not be adequate to cater for features specific to an individual case. Parties who choose to act by themselves should pay special attention to the formalities and procedures that need to be followed after the signing of the tenancy agreement, particularly those in

relation to stamping and the registration of the tenancy document(s) in the Land Registry. Q1. WHAT WILL HAPPEN TO THE TENANCY IF THERE IS AN ACQUISITION BY URBAN RENEWAL AUTHORITY OR COMPULSORY SALE INVOLVING THE PREMISES IN REGULATED TENANCIES? CAN A LANDLORD TERMINATE THE REGULATED TENANCIES UNILATERALLY OR NOT OFFER SECOND TERM TENANCY IN THE OFFERING PERIOD IF THE LANDLORD BELIEVES THAT THERE WILL SOON BE A FORESEEABLE ACQUISITION OR COMPULSORY SALE? Q1. WHAT WILL HAPPEN TO THE TENANCY IF THERE IS AN ACQUISITION BY URBAN RENEWAL AUTHORITY OR COMPULSORY SALE INVOLVING THE PREMISES IN REGULATED TENANCIES? CAN A LANDLORD TERMINATE THE REGULATED TENANCIES UNILATERALLY OR NOT OFFER SECOND TERM TENANCY IN THE OFFERING PERIOD IF THE LANDLORD BELIEVES THAT THERE WILL SOON BE A FORESEEABLE ACQUISITION OR COMPULSORY SALE? Early Termination of Regulated Tenancies Unless the tenant has violated the mandatory terms implied for every regulated tenancy provided in Schedule 7 of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), the landlord cannot terminate the tenancy before the expiry of the term. Even if the tenancy has any conditions for forfeiture other than the specified provisions, they should be deemed invalid and shall be void. A mere “belief” that the unit concerned is to be included in a redevelopment plan by the Urban Renewal Authority is a not sufficient reason to terminate the regulated tenancy before its expiry or not to offer the second term tenancy to the tenant in the specified offer period. If the premises are included in a redevelopment plan or are ordered by the court for a compulsory sale, the ownership of the premises will be transferred while the tenants, compensated or resettled, are required to move out in accordance with statutory procedures. Urban Renewal The Urban Renewal Authority (“URA”) was established under the Urban Renewal Authority Ordinance (Cap. 563) as the statutory body to undertake, encourage, promote and facilitate urban renewal of Hong Kong. When a resumption is ordered, a Government Notice will be published in the Gazette and a freezing survey will be conducted. A copy of the Government notice will be affixed on or near the properties affected, and sent to the registered owners thereof, where possible. Under normal circumstances, the Government will give a period of notice of 3 months from the date upon which the notice was affixed on or near the properties and upon expiry of the period specified in the notice, the ownership of the properties will revert to the Government. Upon the date of reversion, all legal rights and interests of the owners no longer exist. Henceforth, the former owner is not entitled to collect rents or fees of any kind from his tenant or the occupant. Eligible persons will be offered compensation or ex-gratia allowances. Rehousing arrangements may be made for occupiers of domestic flats (ex-tenants), if applicable. In order to assess the compensation and allowances as well as to identify persons eligible to compensation or rehousing, the Government will appoint the URA to send staff to properties to be resumed to conduct surveys. The area occupied by each household will be identified and relevant information can be obtained. If both parties fail to reach an agreement on the compensation, the case can be referred to the Lands Tribunal for adjudication. As to eligible domestic occupiers, whether they opt for cash compensation or rehousing, they have to follow the necessary procedures before receiving the compensation or rehousing unit. Compulsory Sale In order to encourage the redevelopment of dilapidated buildings, the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) was brought into force on 7th June 1999. The Ordinance enables people who hold a specified majority of the undivided shares in a lot to make an application to the Lands Tribunal for an order to sell it for redevelopment. When making an order for compulsory sale, the Tribunal may order that compensation be paid to a tenant for termination of tenancy. The Tribunal may specify in directions that: tenancies shall be terminated immediately upon the purchaser becomes the owner; and tenants are to deliver vacant possession only upon expiry of 6 months immediately following the day the purchaser becomes the owner. The Lands Tribunal may take into account the following in determining the amount of compensation: the tenants’ representations; and the benefit afforded to the tenants for not being required to deliver vacant possession until six months after the purchaser becomes the owner of the lot. Lease covers both oral or written agreement. Upon the sale of the lot, each ex-owner will be responsible for paying the compensation to their own “ex-tenants” if compensation is specified in the order issued by the Lands Tribunal. The trustee will

deduct the compensation amount specified by the Lands Tribunal from the sale proceeds before releasing the residual amount to the owners. 1. MY PROPERTY, WHICH IS CURRENTLY LET TO A TENANT, HAS RISEN IN VALUE AND I INTEND TO SELL IT. WHAT DO I NEED TO DO TO DISCHARGE MYSELF FROM ANY LIABILITY UNDER THE TENANCY BEFORE SELLING THE PROPERTY? 1. MY PROPERTY, WHICH IS CURRENTLY LET TO A TENANT, HAS RISEN IN VALUE AND I INTEND TO SELL IT. WHAT DO I NEED TO DO TO DISCHARGE MYSELF FROM ANY LIABILITY UNDER THE TENANCY BEFORE SELLING THE PROPERTY? The landlord should make it clear to the estate agent, the solicitors and the potential purchaser that the property will be sold subject to a tenancy. The landlord's solicitors will be responsible for putting relevant provisions in the agreement for sale and purchase to be made between the landlord and the potential purchaser, so that the landlord will be discharged from any liability under the tenancy. Typical provisions include declaring that the landlord has fully disclosed the particulars of the tenancy, reserving the landlord's rights to claim against the tenant arrears of rent that were incurred before the completion of the sale, and excluding liabilities under the tenancy document on the landlord's part incurred subsequent to the completion of the sale. The landlord should also notify the tenant about the intended sale and properly make an agreement with the tenant to deal with the deposit. Simply transferring the deposit to the new owner will not exempt the landlord from being held liable for returning the deposit to the tenant when the tenancy expires. Upon completion, the landlord should, in exchange, obtain from the new owner an indemnity against claims on the deposit by the tenant (i.e. the landlord will be free from any future deposit claim by the tenant). Alternatively, the landlord may refund the deposit to the tenant and request the tenant to lodge the same deposit with the new owner. 2. FOLLOWING 1, WHAT ACTION CAN THE LANDLORD TAKE TO THE DOG-OWNED TENANT? 2. FOLLOWING 1, WHAT ACTION CAN THE LANDLORD TAKE TO THE DOG-OWNED TENANT? A more well-drafted tenancy agreement would usually contain a provision requiring the tenant to obey and comply with all the covenants in the DMC of the building and to indemnify the landlord against the non-observance of the DMC. Alternatively, tenancies of domestic premises typically contains a convent, express or implied under section 117(3) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), that the tenant is not to cause unnecessary annoyance, inconvenience or disturbance to any other occupant. Subject to the exact wordings of the tenancy agreement, the landlord may be entitled to exercise the right of forfeiture and break the tenancy early. But before doing so, under section 58 of the Conveyancing and Property Ordinance (Cap. 219), the landlord is required to serve a prior written notice on the tenant, specifying the breach complained of and requesting the tenant to remedy the breach. If the tenant fails to remedy the breach within a reasonable time, the landlord may then forfeit the tenancy. Last revision date: 18 October, 2022 1. WHERE CAN I LODGE A COMPLAINT IF I AM NOT SATISFIED WITH MY ESTATE AGENT? 1. WHERE CAN I LODGE A COMPLAINT IF I AM NOT SATISFIED WITH MY ESTATE AGENT? You may lodge a complaint to the Estate Agents Authority by telephone at hotline 2111 2777, or in writing, by email or in person. You can visit the website of the Estate Agents Authority for more information. J) MANDATORY TERMS IMPLIED FOR EVERY REGULATED TENANCY J) MANDATORY TERMS IMPLIED FOR EVERY REGULATED TENANCY According to Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), the mandatory terms are to be impliedly incorporated into every regulated tenancy. The mandatory terms bind the landlord and tenant. The landlord and tenant may negotiate to include other requirements or provisions in the tenancy agreement. However, if such other requirements or provisions are in conflict or inconsistent with the mandatory terms, the mandatory terms shall prevail. Landlord's Obligations (a) Maintenance and repair The landlord must maintain and keep in repair the drains, pipes and electrical wiring serving the premises exclusively; and windows of the premises. In addition, the landlord must keep in proper working order the fixtures and fittings (e.g., the air-conditioner specified in the tenancy agreement) provided by the landlord in the premises. On receiving a notice from the tenant for repair of an item mentioned above, the landlord must carry out the repair as soon as practicable. If the landlord fails to fulfill any of his obligations, the tenant may, by giving the landlord not less than 30 days' prior notice in writing, terminate the tenancy. (b) Stamping of tenancy agreement The landlord must, after

receiving the tenancy agreement (including a Form AR1 signed by the landlord and tenant for a second term tenancy) signed by the tenant, arrange for the tenancy agreement to be stamped under the Stamp Duty Ordinance (Cap. 117), and within 30 days, return to the tenant a counterpart of the stamped tenancy agreement signed by the parties. The relevant stamp duty on the tenancy agreement is to be borne by the landlord solely. If the landlord fails to return the counterpart, the tenant may withhold the payment of rent until the landlord has done so. Tenant's Obligations The tenant must pay the rent to the landlord on or before the due date. The tenant must not persistently fail to pay rent as and when it falls due. The tenant must not make any structural alteration to the premises without the prior consent in writing of the landlord. The tenant must not use the premises, or permit or suffer the premises to be used, for any immoral or illegal purpose. The tenant must not do anything on the premises that would cause any unnecessary annoyance, inconvenience or disturbance to the landlord or any other person. The tenant must not assign or underlet the whole of the premises to another person. The tenant must not underlet part of the premises to another person without the prior consent in writing of the landlord. If the tenant fails to pay rent within 15 days after the due date, or is in breach of any of the other provisions above, the landlord may enforce the right of re-entry or forfeiture. C) APPORTIONMENT C) APPORTIONMENT The issue of apportionment of rent may arise when: (a) there is a break in time during the term of the tenancy; or (b) there is a change of ownership of the subject property. Under section 3 of the Apportionment Ordinance (Cap. 18), with the exception of rent payable in advance, rent accrues from day to day and shall be apportionable in time accordingly. Where there is a change of ownership of the property during the currency of the tenancy, the rent payable is normally apportioned between the former landlord and the new landlord respectively. In practice, the former landlord normally would receive the rent for the whole month and apportion the rent to the new landlord upon the completion of the conveyance. 5. WHAT AMOUNTS TO “STRUCTURAL ALTERATION”? CAN THE TENANT MAKE ANY STRUCTURAL ALTERATION TO THE PREMISES? 5. WHAT AMOUNTS TO “STRUCTURAL ALTERATION”? CAN THE TENANT MAKE ANY STRUCTURAL ALTERATION TO THE PREMISES? “Structural alteration” refers to alteration or interference with the form, fabric or framework of the building capable of affecting the integrity of the structure. Examples of structural alteration include demolition of a load-bearing wall, erection of a canopy or making an opening on the external wall of the building. Usually the terms in the tenancy agreement prohibit the tenant from making structural additions or alterations to the premises. For tenancies of domestic premises entered on or after 27th December 2002, there is a statutory implied covenant under section 117(3) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) that the tenant not to make or suffer or permit any structural alteration to the premises without the prior written consent of the landlord. Separately, the deed of mutual covenant of the building most likely prohibits owners and occupiers from making structural alterations to the building. All necessary approvals from government departments, for example those under the Building Ordinance (Cap. 123), must be obtained before the commencement of any structural building works. If in doubt, the tenant should notify the landlord in advance and obtain the landlord's consent, preferably in writing, prior to the commencement of any works which may potentially involve structural additions or alterations. 1. DOES HONG KONG LAW APPLY TO THE TENANCY OF OVERSEAS PROPERTIES? 1. DOES HONG KONG LAW APPLY TO THE TENANCY OF OVERSEAS PROPERTIES? Subject to any laws in the jurisdiction where the property is located, the governing law is determined primarily by the express terms of the tenancy agreement. In the absence of an express or implied agreement between the parties, the Hong Kong courts would generally regard the contract as governed by the law with which the contract has its closest and most real connection. Given that the subject property is located outside Hong Kong, this is a strong pointer that the tenancy is governed by the laws of the place where the property is situated. Q1. WHAT ARE THE REMEDIES FOR THE SUB-TENANT IN A REGULATED TENANCY IF THE TENANCY HAS BEEN TERMINATED BEFORE EXPIRY DUE TO THE FORFEITURE OF ITS HEAD LEASE BY THE SUPERIOR LANDLORD? Q1. WHAT ARE THE REMEDIES FOR THE SUB-TENANT IN A REGULATED TENANCY IF THE TENANCY HAS BEEN TERMINATED BEFORE EXPIRY DUE TO THE FORFEITURE OF ITS HEAD LEASE BY THE SUPERIOR LANDLORD? If the superior landlord rightly

forfeits the head lease agreement upon such breach, it may have the effect of destroying any sub-lease created out of it. Where the head lease is forfeited, a sub-tenant can apply for “relief against forfeiture” from the Court of First Instance under section 58(4) of Conveyancing and Property Ordinance (Cap. 219) for a ‘vesting order’ for the subdivided unit occupied by the sub-tenant. The order vests the remaining term (or any less term) of the head lease to the sub-tenant with conditions that may be imposed by the Court (e.g., payment of rent) (see “Subletting”). Alternatively, the sub-tenant may need to vacate the premises and bring an action against the sub-landlord granting such sub-lease for relief against the breach of the sub-lease. 2. I HEARD ABOUT SOMEONE WHO CLAIMED THAT THEY WERE THE OWNER OF A PROPERTY FOR LET. AFTER THE POTENTIAL TENANT HAD PAID THE DEPOSIT AND THE RENT IN ADVANCE, THE “LANDLORD” DISAPPEARED WITH THE MONEY. IF I AM GOING TO RENT A PROPERTY, THEN HOW CAN I BE SURE THAT THE LANDLORD IS THE REAL OWNER? 2. I HEARD ABOUT SOMEONE WHO CLAIMED THAT THEY WERE THE OWNER OF A PROPERTY FOR LET. AFTER THE POTENTIAL TENANT HAD PAID THE DEPOSIT AND THE RENT IN ADVANCE, THE “LANDLORD” DISAPPEARED WITH THE MONEY. IF I AM GOING TO RENT A PROPERTY, THEN HOW CAN I BE SURE THAT THE LANDLORD IS THE REAL OWNER? The Land Registry provides a “Land Search” service to the public. Any person can conduct a search at the Land Registry to ascertain the ownership particulars of any property in Hong Kong. A potential tenant should always conduct a land search before entering into a tenancy document to verify the identity of the landlord (or his/her representatives). If the potential tenant is renting the property through an estate agent or has retained a solicitor firm, then the agent and the firm are duty bound to conduct such a search to protect the tenant's interests. To best safeguard one’s interests, it is also appropriate for the prospective tenant to request the landlord to actually enter and view the unit to be let in the presence of estate agents before entering into any tenancy agreements. Last revision date: 28 February, 2020 1. WHY IS IT NECESSARY AND HOW DO WE ASCERTAIN THE PRIMARY USE, FOR EXAMPLE “DOMESTIC” OR “NON-DOMESTIC”, OF A PROPERTY? 1. WHY IS IT NECESSARY AND HOW DO WE ASCERTAIN THE PRIMARY USE, FOR EXAMPLE “DOMESTIC” OR “NON-DOMESTIC”, OF A PROPERTY? A tenancy document may contain a clause which specifies that the property is only to be used for domestic or non-domestic purposes (or in accordance with the uses permitted by law/regulations). If the tenant runs a shop in a residential property, the use may constitute a breach of such covenant. To support any intended claim, the landlord may obtain evidence/proof of such a breach before proceeding with any further action (e.g. taking of photographs). Sometimes it may be difficult to obtain evidence from the management office (e.g. CCTV records) or ask caretakers/neighbours to give evidence in Court. Where a question or dispute arises about whether a property is used for domestic or non-domestic purposes, one may also ask the Rating and Valuation Department to issue a Certificate of Primary User of Premises for verification. If the dispute has been brought up to the Court, then you should submit Form TR4 to apply for the Certificate. If the dispute has not yet been brought up to the Court, then you should submit Form TR4D and pay the application fee of $3,850. Although the Certificate does not provide a conclusive answer to the issue, it will be persuasive when the issue is brought to Court. For more details regarding the Certificate, please contact the Rating and Valuation Department at 21520111 or 21508229. An owner may also check from the Government Lease (including any conditions of grant), the Occupation Permit (issued by the Buildings Department), the Approved Building Plans (by the Buildings Department) and/or the Outline Zoning Plan (from the Town Planning Board) to ascertain the permitted use(s) of the property as under the law. These documents, however, are technical in nature and might not be easy to read and properly understood without professional assistance. For owners of multi-storey buildings, it may also be prudent to also check from the Deed of Mutual Covenant for any user restrictions in the unit (or even the common area of the building). 1. CAN THE TENANT WITHHOLD SOME PORTION OF THE RENT IF THE LANDLORD FAILS TO FULFILL HIS OBLIGATION TO REPAIR? 1. CAN THE TENANT WITHHOLD SOME PORTION OF THE RENT IF THE LANDLORD FAILS TO FULFILL HIS OBLIGATION TO REPAIR? The short answer is ‘No’. It is well established in case law that, unless there is express agreement to the contrary, the tenant’s covenant to pay rent is independent of other covenants or obligations under the lease, including the

compliance by the landlord of its obligation to repair. 1. I WANT TO LET MY FLAT. WHAT SERVICES CAN I EXPECT FROM AN ESTATE AGENT? 1. I WANT TO LET MY FLAT. WHAT SERVICES CAN I EXPECT FROM AN ESTATE AGENT? The estate agent's duties include: (a) market the property on behalf of the landlord; (b) obtain information in relation to the property for the landlord; (c) arrange for tenants to inspect the Property; (d) conduct negotiation and submit all offers in relation to the property to the landlord; and (e) assist the landlord in entering into a binding lease with a tenant. Q2. A LANDLORD WISHES TO EVICT THE TENANT WITHIN THE REGULATED CYCLE BY WITHHOLDING THE MAINTENANCE AND REPAIR RESPONSIBILITY REASONABLY REQUIRED FOR THE OCCUPATION. DOES THE LANDLORD VIOLATE PART IVA OF THE LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE? Q2. A LANDLORD WISHES TO EVICT THE TENANT WITHIN THE REGULATED CYCLE BY WITHHOLDING THE MAINTENANCE AND REPAIR RESPONSIBILITY REASONABLY REQUIRED FOR THE OCCUPATION. DOES THE LANDLORD VIOLATE PART IVA OF THE LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE? Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) stipulates that the maintenance and repair of certain basic facilities in the premises is a mandatory responsibility of the landlord in a tenancy on a subdivided unit. A landlord who fails to comply with such responsibility could be filed by the tenant in civil proceedings for recovery of the cost involved. More seriously, if such an abstain from action is to evict the tenant from the unit, the landlord may commit an offence of harassment under the Ordinance. Mandatory responsibility for repair and maintenance Under Part IVA of the Ordinance, the landlord must maintain and keep in repair the drains, pipes and electrical wiring serving the premises exclusively; and windows of the premises. In addition, the landlord must keep in proper working order the fixtures and fittings provided by the landlord in the premises. On receiving a notice from the tenant for the repair of an item mentioned above, the landlord must carry out the repair as soon as practicable. If the landlord fails to fulfill any of his obligations, the tenant may, by giving the landlord not less than 30 days' prior notice in writing, terminate the tenancy. However, the provision of early termination is a right that the tenant can exercise, and the tenant can opt to occupy the unit without surrendering the tenancy. Civil proceedings Alternatively, the tenant may first carry out the repairs where practicable, and claim the landlord for the repair costs. If needed, the tenant may take legal actions (e.g. the Small Claims Tribunal deals with monetary claims not exceeding HK$75,000). Apart from section 5 in Schedule 7 to the Ordinance which stipulates a few mandatory terms on maintenance and repair as part of landlord's obligations under a regulated tenancy to which Part IVA of the Ordinance applies, a landlord and a tenant may freely negotiate and agree on appropriate terms. In the event of tenancy disputes on maintenance and repair matters which cannot be settled between the landlord and the tenant, either party may resort to legal proceedings to deal with the matters. Offence of harassment Perhaps of greater concern is that withholding services reasonably required for occupation of the tenant might commit an offence of harassment under Part IVA of the Ordinance. If a person, in relation to a subdivided unit: either does any act calculated to interfere with the peace or comfort of the tenant or members of the tenant's household; or persistently withdraws or withholds services reasonably required for occupation of the subdivided unit as a dwelling; and knows, or has reasonable cause to believe, that that conduct is likely to cause the tenant to give up occupation of the subdivided unit; or to refrain from exercising any right or pursuing any remedy in respect of the subdivided unit, the person commits an offence and is liable on conviction on indictment by the court on a first conviction, to a fine of $500,000 and to imprisonment for 12 months; and on a second or subsequent conviction, to a fine of $1,000,000 and to imprisonment for 3 years (see Section 120AAZO). 2. MY LANDLORD HAS INFORMED ME THAT THE PROPERTY I AM RENTING WAS SOLD RECENTLY. I WAS ALSO TOLD TO PAY RENT TO THE NEW LANDLORD ON THE NEXT DUE DATE. CAN I OBJECT? WILL MY INTERESTS UNDER THE "OLD" TENANCY BE PROTECTED? 2. MY LANDLORD HAS INFORMED ME THAT THE PROPERTY I AM RENTING WAS SOLD RECENTLY. I WAS ALSO TOLD TO PAY RENT TO THE NEW LANDLORD ON THE NEXT DUE DATE. CAN I OBJECT? WILL MY INTERESTS UNDER THE "OLD" TENANCY BE PROTECTED? The landlord, as the owner of the property, is entitled to sell the property. If there is a tenancy subsisting at the property, it is likely that the property will be sold subject to the tenancy. That is to say, the new owner will be

aware of the tenancy and will expect to collect rent from the tenant. The agreement for sale and purchase made between the old owner and the new owner should also have specified that the new owner will inherit from the old owner all of the rights and liabilities under the tenancy. Therefore, a tenant's rights and liabilities under the existing tenancy will generally remain unchanged in relation to the new owner. However, the deposit paid by the tenant deserves particular attention. According to a judgment made by the Privy Council (the final appellant court for Hong Kong before 1 July 1997) in 1986, the covenant made by a landlord to return the deposit to a tenant is a personal promise, and is thus enforceable only against the landlord personally but not against the new owner. Therefore, unless there are some other arrangements or agreements, the new landlord may not become liable to the tenant in respect of the deposit paid to the old landlord. The tenant should make sure that a fresh deposit is paid to the new landlord after return of the same from the former landlord. 3. IF THE ESTATE AGENT AND THE LANDLORD HAVE NOT MENTIONED THE PROHIBITION OF PET KEEPING TO THE TENANT BEFORE ENTERING INTO THE TENANCY AGREEMENT, IS IT THE TENANT'S RESPONSIBILITY TO PROVIDE REMEDIES AS PER THE REQUESTS IN 1 AND 2? 3. IF THE ESTATE AGENT AND THE LANDLORD HAVE NOT MENTIONED THE PROHIBITION OF PET KEEPING TO THE TENANT BEFORE ENTERING INTO THE TENANCY AGREEMENT, IS IT THE TENANT'S RESPONSIBILITY TO PROVIDE REMEDIES AS PER THE REQUESTS IN 1 AND 2? Generally the covenants forming part of the DMC are binding upon the tenant irrespective of whether the estate agent or the landlord has specifically drawn the contents of the DMC to the attention of the tenant. So the Incorporated Owners of the building and the management company can take enforcement action against the tenant for non-compliance of the DMC as mentioned above. A prospective tenant is advised to look into the DMC and make proper enquiries, if appropriate, to ascertain whether there may be any special restrictions under the DMC prior to entering into a binding tenancy agreement. As to whether the tenant would have a claim against the estate agent or the landlord for damages or for early termination of the tenancy agreement, it may depend on whether the tenant was procured to enter into the tenancy agreement by misrepresentation. Last revision date: 18 October, 2022 2. BEFORE I RENT THE FLAT, I FIND OUT THAT MY ESTATE AGENT GAVE ME FALSE OR MISLEADING INFORMATION ABOUT THE FLAT. CAN I TERMINATE THE TENANCY AGREEMENT AND SUE MY AGENT (OR HIS EMPLOYER) FOR COMPENSATION? 2. BEFORE I RENT THE FLAT, I FIND OUT THAT MY ESTATE AGENT GAVE ME FALSE OR MISLEADING INFORMATION ABOUT THE FLAT. CAN I TERMINATE THE TENANCY AGREEMENT AND SUE MY AGENT (OR HIS EMPLOYER) FOR COMPENSATION? The tenant generally cannot terminate the tenancy agreement on this basis, unless it can be shown that the landlord has instructed or authorised the estate agent to provide false or misleading information to the tenant. Furthermore, an entire agreement clause in the tenancy agreement may operate to limit or exclude the tenant's right to terminate the tenancy on the ground of pre-contractual misrepresentation by the landlord. The estate agent may nonetheless be held liable for misrepresentation or negligence if it can be proved on a civil standard that the tenant was induced to enter into the tenancy agreement by the false or misleading information given by the estate agent. The employer may also be vicariously liable for the wrongful conduct of the estate agent so closely connected with the employment. K) SECOND TERM OFFER K) SECOND TERM OFFER For a regulated tenancy, the landlord of a first term tenancy must make a second term offer within the offer period. A landlord of a first term tenancy for a subdivided unit must, within the offer period, make a second term offer in Form AR1 (to be available from October 2023) to the tenant for a second term tenancy of the regulated cycle for the subdivided unit, and serve the offer on the tenant. The landlord must state the proposed amount of rent for the second term tenancy in Form AR1 and sign the Form. "Offer period" means the period of the second calendar month immediately before the calendar month in which the purported second term tenancy commences. For example, if a second term tenancy is to commence on any date in January 2024, the relevant offer period is the whole month of November 2023. If the tenant accepts the second term offer, the tenant must sign Form AR1 containing the offer as served by the landlord, and serve it on the landlord before the expiry of the first term tenancy. If the tenant fails to notify the landlord of the tenant's acceptance of the second term offer before the expiry of the first term tenancy, the tenant is taken to

have rejected the second term offer. It is not necessary to submit Form AR1 to RVD. If the landlord of the first term tenancy for a subdivided unit fails to serve a second term offer on the tenant within the offer period, the landlord is taken to have made a second term offer to the tenant on the expiry of the offer period, and the tenant is taken to have accepted the second term offer and to be granted the second term tenancy on the expiry of the first term tenancy unless the tenant has handed over the subdivided unit back to the landlord on or before the expiry of the first term tenancy. In that case, the renewed rent for the second term tenancy is to be the amount of rent last payable by the tenant for the first term tenancy, or if the control percentage ascertained for the rent for the second term tenancy is a negative figure, the renewed rent for the second term tenancy is to be reduced by that percentage. If it is now the offer period and the tenant has not yet received the landlord's second term offer, the tenant may wish to check with the landlord if he/she has already sent out Form AR1 which has gone astray, etc. D) PAYMENT OF RENT D) PAYMENT OF RENT One of the most important obligations on the part of the tenant is to pay rent to the landlord punctually on the due date. For tenancies of domestic premises entered on or after 27th December 2002, section 117(3) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) implies in favour of the landlord a covenant that the tenant to pay rent on the due date, with an implied condition for forfeiture of the tenancy if such implied covenant is broken by non-payment of the rent within 15 days of the due date. The time for payment of rent is normally specified in the tenancy agreement. It is often the case that the rent is payable in advance, that is, on the first day of the rental period. If there is no express agreement, the rent is generally payable in arrears at the end of each rental period. 6. I AM A TENANT OF AN INDUSTRIAL PROPERTY. THE LANDLORD AND I HAD AN UNDERSTANDING THAT I WOULD USE THE PROPERTY FOR RESIDENTIAL PURPOSE WHEN THE TENANCY AGREEMENT WAS SIGNED. THE LANDLORD LATER EVICTED ME FROM THE PROPERTY. CAN I GO TO THE COURT TO ENFORCE THE TENANCY AGREEMENT AND SEEK REMEDIES? 6. I AM A TENANT OF AN INDUSTRIAL PROPERTY. THE LANDLORD AND I HAD AN UNDERSTANDING THAT I WOULD USE THE PROPERTY FOR RESIDENTIAL PURPOSE WHEN THE TENANCY AGREEMENT WAS SIGNED. THE LANDLORD LATER EVICTED ME FROM THE PROPERTY. CAN I GO TO THE COURT TO ENFORCE THE TENANCY AGREEMENT AND SEEK REMEDIES? Entering into such kind of tenancy arrangements is not advisable and is very risky, especially to the tenant. Presumably it has been written in the tenancy agreement that the subject property is for industrial use only. It is not hard to imagine when dispute emerges, the landlord is all the more tempted to deny the existence of the alleged understanding that the property would be used for residential purpose. If the tenant cannot prove on evidence that there was such an understanding, the tenant, instead of the landlord, would, on the face of it, be the party in breach of the user restriction in the tenancy agreement and naturally would unlikely be entitled to any remedies. Even if the tenant manages to establish the understanding with the landlord at the outset, it is very doubtful whether the court would specifically enforce a tenancy agreement which is in breach of the user restriction of the property. Separately, the landlord and the tenant are most likely in breach of the deed of mutual covenant of the building for allowing the property to be used for non-industrial purposes. Both of them may be liable in legal action by the management company, the incorporated owners (if any) or other owners of the building. A) OBJECTIVE AND SCOPE OF APPLICATION OF LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) ORDINANCE 2021 A) OBJECTIVE AND SCOPE OF APPLICATION OF LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) ORDINANCE 2021 a. Objective: Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) came into effect on 22 January 2022 to regulate tenancies of subdivided units. The key requirements under the Ordinance are as follows: a regulated cycle of tenancies for a subdivided unit is to comprise two consecutive regulated tenancies, each for a term of two years; a tenant of a first term tenancy for a subdivided unit is entitled to be granted a second term tenancy of the regulated cycle, thus enjoying security of tenure of four years; rent increase during the term of a regulated tenancy is not allowed; the rate of rent increase for the second term tenancy of a regulated cycle must not exceed the percentage change of the territory-wide rental index for all classes of private domestic properties compiled and published by the

Rating and Valuation Department (“RVD”) during the relevant period, and is capped at 10 per cent; a landlord of a regulated tenancy commits an offence if the landlord requires the tenant to pay any non-permitted money or reimbursement of charges for specified utilities and services (including water and electricity); and a landlord of a regulated tenancy must, within 60 days after the term of the tenancy commences, submit a Notice of Tenancy (Form AR2) to the RVD. If the landlord, without reasonable excuse, fails to comply with the requirement, the landlord commits an offence. b. Scope of Application: A tenancy which fulfils all of the following conditions is a “regulated tenancy” under Part IVA of the Ordinance: the tenancy commences on or after 22 January 2022; the tenancy is a domestic tenancy; the subject premises of the tenancy are a subdivided unit; the tenant is a natural person; the purpose of the tenancy is for the tenant’s own dwelling; and the tenancy is not one specified in Schedule 6 to the Ordinance, i.e. the tenancy is not an excluded tenancy. Which premises are covered? A “subdivided unit” means premises that form part of a unit of a building. As long as the building plan of the premise that has been divided and rented has been approved by the Building Department, tenancies on the unit will be regulated by Ordinance, regardless of whether the interior structures involved comply with the Building Ordinance. In general, the Ordinance covers subdivided units in domestic, industrial and commercial buildings, and of different types (including cubicles, bedspaces, space capsules, lofts, cage homes, rooftop houses and podium houses, etc.) for domestic use. Which premises are not covered? The regulations do not cover structures/building works that have not been covered by approved building plans. In the absence of such plans, it would be impossible to delineate the boundary of a “unit” and hence determine whether the premises of the subject tenancy are a subdivided unit. It follows that tenancies of the following categories do not fall within the regulations under the Ordinance: tenancies on unauthorized building works or structures erected on private land or government land for domestic uses (e.g., squatters), irrespective of whether they are tolerated or not; tenancies on “New Territories Exempted Houses” for domestic uses. Legality of building structures The Ordinance does not “legalise” subdivided units in industrial/commercial buildings or temporary structures. The new tenancy control regime would not prejudice law enforcement actions taken by relevant authorities under existing legislations, particularly in respect of building and fire safety; and regulated tenancy would not necessarily constitute a reasonable excuse for owners not to comply with statutory orders, lease enforcement notices and other enforcement notices issued by relevant government departments in the exercise of their legal authorities. If a statutory order is served to require the demolition of a subdivided unit that is under a regulated tenancy, the relevant person is obliged to comply with such order. O) TENANT’S INTEREST TO PASS TO FAMILY MEMBER ON DEATH O) TENANT’S INTEREST TO PASS TO FAMILY MEMBER ON DEATH If a tenant dies during the term of the tenancy, the subsisting benefits and protection under the regulated tenancy to which the tenant is entitled under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) during the tenant’s lifetime are, after the tenant’s death, available to a family member of the tenant who is residing with the tenant in the subdivided unit at the time of the tenant’s death. “Family member”, in relation to a person, means: the person’s spouse; the person’s parent; the person’s adult child; the person’s grandparent; or the person’s adult grandchild. A child includes an illegitimate child, a stepchild and a child adopted in a way recognized by law, and parent, grandchild and grandparent are to be construed accordingly. Only one family member of the tenant is entitled to the specified interest at one time. If two or more family members are residing with the tenant at the relevant time and they are unable to reach an agreement among themselves as to who should be entitled to the specified interest, they must refer the matter to the Lands Tribunal for a determination. The Tribunal must determine the matter on any ground that appears to it to be just and equitable. Despite any will or the law of succession on intestacy, the specified interest of the tenant is not to be available to a personal representative of the tenant; or a person other than a family member referred to above. 2. I HAVE LET A RESIDENTIAL PROPERTY TO A TENANT AND I RECENTLY FOUND THAT THE TENANT IS USING THE PROPERTY AS AN OFFICE. WILL THIS AFFECT MY INTERESTS OR CAUSE ANY

LIABILITY TO ME AS A LANDLORD? IF MY TENANT CONDUCTS CRIMINAL ACTIVITIES THERE, WHAT FURTHER PROBLEMS WILL I FACE? 2. I HAVE LET A RESIDENTIAL PROPERTY TO A TENANT AND I RECENTLY FOUND THAT THE TENANT IS USING THE PROPERTY AS AN OFFICE. WILL THIS AFFECT MY INTERESTS OR CAUSE ANY LIABILITY TO ME AS A LANDLORD? IF MY TENANT CONDUCTS CRIMINAL ACTIVITIES THERE, WHAT FURTHER PROBLEMS WILL I FACE? A property that is used for a unauthorized purpose may create trouble and/or legal liability for its owner (the landlord) in the following ways. Breach of Government Lease All lands in Hong Kong (except the piece on which St. John's Cathedral is standing) are owned by the government, and landowners only lease their land. A typical owner of a flat in a building is therefore only a 'tenant' (of the Government) and co-owner of the shares in the land on which the building stands. When the government leases a piece of land to the "owner", a contract is signed. The contract, generally called a Government Lease, imposes various conditions on the "owners" and their successor in title. One commonly found condition is that the "owners" have to comply with the land use purpose specified in the Government Lease. If there is a breach of this condition, for example conducting business activities at a property designated for residential use, then the government is entitled to re-enter and take back the possession of the property as its own. Although such a drastic measure is seldom used, in serious cases the Lands Department has no hesitation in re-entering properties where its occupants continued its breaches in blatant disregard of warnings given. The Government is entitled to exercise its powers under the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) by registering a memorial of an instrument of re-entry in the Lands Registry and upon such registration, the property is deemed to have been re-entered by the Government so that the owner will cease to become an owner of such land with immediate effect. In such event, under section 8 of the said ordinance, the former owner may only petition to the Chief Executive for the grant of relief (if a breach is admitted to have been committed) or apply to the Court of First Instance if disputes arose. Breach of the Deed of Mutual Covenant A deed of mutual covenant is a contract that is binding on all owners of a multi-unit or multi-storey building. It basically sets out the rules for the management of the building. A standard deed of mutual covenant will state that a unit owner must comply with the terms of the relevant Government Lease and will use the property only for the authorised purpose(s). A unit owner will usually also be required to prevent the tenant or occupiers from breaching the relevant terms. Therefore, even though it may be the tenant who is in breach of the Government Lease and the deed of mutual covenant, the landlord can still be liable to legal action by the management company, the incorporated owners (if any) or the other unit owners of the building. Liability to a third party If a residential property is used for business purposes, then one can naturally expect that more visitors than originally anticipated will frequently enter into the vicinity of the property. The risks of such visitors suffering from accidents related to the property and thus claiming against the landlord will also increase. A well-drafted tenancy document may contain a clause which specifies that the tenant shall indemnify the landlord from and against all claims and liabilities caused by the tenant's acts or omissions. However, if the landlord does not have a well-drafted tenancy document, there may be a vacuum in the terms of liability to be borne by the landlord or tenant. In such circumstances, the landlord may be entangled in totally unanticipated litigation caused by unauthorized uses or accidents which occurs within the property by its occupants. Criminal liability If the tenant is merely using the property for purpose(s) other than that authorised, then the worst that the landlord will face is monetary loss and damages. However, if the landlord knows that the tenant is using the property for criminal activities, e.g. as a gambling place or a vice establishment, and does nothing about it, the landlord may face criminal liability. Any illegal use of the property is also likely to trigger the enforcement of the Government Lease (by the Lands Department) or the Deed of Mutual Covenant (by other co-owners) as explained above against the owner directly. As a tenancy document is likely to contain a clause that designates the use of the property, e.g. residential, retail, or industrial. The tenant's breach of this clause may give rise to the landlord's right of forfeiture. The landlord may also want to seek professional legal advice about the landlord's rights and liabilities, including

a possible application for the grant of an injunctive relief. For instance, a tenant who uses a residential property as a “home office” may simply be using it as a business correspondence address with all transactions made on a computer. While it may be argued that the use of the property might have included business elements, there may not be any actual harm to the property or any actual negative effects to the landlord. In such circumstances, even though the tenant may be technically in breach of the term of the tenancy document, an injunction (whether temporary or permanent) might not lie as of right in favor of the landlord. 2. THE WATER TAP WAS BROKEN. THE LANDLORD IS RESPONSIBLE FOR REPAIRING IT, BUT HE REFUSED TO DO SO. I PAID $500 TO REPLACE THE TAP WITH A NEW ONE. CAN I PAY $500 LESS IN RENT? 2. THE WATER TAP WAS BROKEN. THE LANDLORD IS RESPONSIBLE FOR REPAIRING IT, BUT HE REFUSED TO DO SO. I PAID $500 TO REPLACE THE TAP WITH A NEW ONE. CAN I PAY $500 LESS IN RENT? The answer is not at all straightforward. The common law does recognise that the tenant may have a right to set-off the costs of carrying out repairs against the rent payable, but if and only if it is clear that the landlord has a duty to carry out the repairs, and where the amount to be expended is reasonable and undisputed. In practice, arguments can easily ensue over whether the tenant can legitimately deduct the repair costs from the rent. Firstly, it may not be clear-cut whether the landlord or the tenant or neither of them is under a duty to carry out repairs. Secondly, the landlord may dispute the extent of the repairs and whether repair costs are reasonable. Furthermore, the express words of the tenancy agreement may exclude the tenant from the right to set-off any amount against the rent payable. If the tenant has decided to deduct the amount from the rent, but it turns out that he is held not entitled to make such a deduction, he runs the risk that the landlord may then exercise the right to forfeit the tenancy from the tenant. Alternatively, the tenant can sue the landlord for breach of the covenant to repair and recover reasonable costs of carrying out the repairs from the landlord in damages. B) SERVICES TO LANDLORDS B) SERVICES TO LANDLORDS Q3. IF BOTH THE LANDLORD AND THE TENANT AGREE, CAN THEY SIGN A TENANCY AGREEMENT WITH A TERM OTHER THAN 2 YEARS? Q3. IF BOTH THE LANDLORD AND THE TENANT AGREE, CAN THEY SIGN A TENANCY AGREEMENT WITH A TERM OTHER THAN 2 YEARS? The landlord and the tenant cannot enter into a tenancy for a term other than 2 years by mutual agreement. Even if a tenancy purports to be a tenancy for a term other than 2 years, the term of the tenancy is taken to be 2 years under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7). A tenant of a first term tenancy is entitled to be granted a second term tenancy of the regulated cycle, thus enjoying a total of 4 years (first term of 2 years plus second term of 2 years) of security of tenure. 1. WHAT IS THE DIFFERENCE BETWEEN AN OPTION TO RENEW AND A BREAK CLAUSE? 1. WHAT IS THE DIFFERENCE BETWEEN AN OPTION TO RENEW AND A BREAK CLAUSE? An option to renew confers on the tenant a right to continue to rent the property for a fresh term after the expiry of the current term, i.e. to renew the existing tenancy. With an option to renew, the tenant obtains another term of tenancy and the landlord is somewhat secured with rental income as agreed beforehand. As an option to renew represents a legal interest in land and affects the principles of notice and priority, the relevant tenancy document containing such option should be registered even if the tenancy period does not exceed 3 years. A break clause, in contrast, confers rights to a party to prematurely terminate a tenancy after a certain period has elapsed or upon the occurrence of certain incidents. That is to say, a party is allowed to break the agreement before the expiry of the original term. E) INTERESTS AFFECTING THE TENANCY E) INTERESTS AFFECTING THE TENANCY Unlike a transaction for the sale and purchase of land, it is indeed lesser common for a potential tenant to investigate the title of the landlord to the subject property prior to entering into a tenancy agreement. The interests and rights of the tenant can nonetheless be affected by other interests or encumbrances in relation to the same property or land. Examples are: 1. Instruments registrable under the Land Registration Ordinance (Cap. 128) Instruments affecting land duly registered under the Land Registration Ordinance (Cap. 128), e.g. an existing lease for a term exceeding 3 years, takes priority according to their respective dates of registration and are generally binding on subsequent interests in land. Even a registrable but unregistered instrument affecting land may take priority over the tenancy as a tenant is not a bona fide

purchaser for value of the property under the meaning of section 3(2) of the Ordinance. 2. Interests of beneficial owner of the property In some cases, the registered owner is in fact holding the property for the benefit of a beneficial owner by way of constructive trust or resulting trust. Sometimes it is not easy to ascertain the beneficial ownership of a property on paper. For example, at the time when the property was purchased, X and Y had a common intention or agreement that whilst the property was held in the sole name of X, both X and Y would have beneficial interest in the property and both of them had contributed to the purchase price, then both X and Y may be the beneficial owners of the subject property. The beneficial owner may not agree to lease the property and may even obstruct the tenant from taking possession. The beneficial owner also has the right to receive the rent. 3. Interests of occupiers of the property If it happens that there is a subsisting tenancy in respect of the same property, the existing tenant will have an interest in the property. The new tenant may not be able to enter or have possession of the property on the intended commencement date of the tenancy. 4. Orders or notices from the Building Authority or other government departments These documents tend to show that the property or even the building as a whole is in an unsafe or dangerous state not fit for habitation or occupation. To better protect its own interests, the potential tenant is advised to conduct a land search to ascertain what instruments or encumbrances are registered against the subject property. The potential tenant should also, as far as practicable, arrange an inspection of the property before entering into the tenancy agreement. E) MISCONDUCT E) MISCONDUCT L) OVERCHARGING FEES AND CHARGES L) OVERCHARGING FEES AND CHARGES Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) prohibits landlords from charging non-permitted fees and overcharging tenants on certain utility charges such as water charges and electricity charges. Prohibition on charging non-permitted fees A landlord commits an offence if the landlord requires the tenant to pay, or the landlord otherwise receives from the tenant, any money in relation to the tenancy other than those falling within the following types: rents; rental deposits; reimbursement of charges for any of the specified utilities and services payable by the tenant under the tenancy; damages for the tenant’ s breach of the tenancy. On a person’ s conviction, the magistrate may, in addition to imposing a fine, order the person to repay to the tenant any money received from the tenant other than that the person is entitled or permitted to receive. Prohibition on overcharging specified utilities and services In Part IVA of the Ordinance, “specified utilities and services” means water, electricity, gas and communication services. Where the charges for any of the specified utilities and services for a subdivided unit incurred by a tenant are not independently billed by the relevant authorities or service providers, the landlord may require the tenant to pay for the reimbursement of the charges as a separate payment from the rent. In doing so, the landlord commits an offence unless the following are observed: the landlord is the payer named in the bills covering the charges; copies of the bills are produced by the landlord to the tenant when the landlord requires the payment; and the landlord has provided an account in writing to the tenant showing: how the amounts under the bills (billed amount) are apportioned for the different parts (of which the subdivided unit is one) forming the premises to which the bills relate; and that the aggregate of the apportioned amounts does not exceed the billed amounts. The landlord commits an offence if the landlord requires the tenant to pay for, or the landlord otherwise receives from the tenant, the reimbursement of the charges for any of the specified utilities and services for the subdivided unit at a sum exceeding the apportioned amount for the subdivided unit as shown in the account provided to the tenant. Penalties A person who commits any of the above offences is liable on a first conviction to a fine at level 3 (currently HK$10,000), and on a second or subsequent conviction to a fine at level 4 (currently HK$25,000). On a person’ s conviction, the magistrate may also order the person to repay to the tenant any money received from the tenant other than that the person is entitled or permitted to receive. The mistaken belief of the person charged with the offences above as to the amount the person is entitled or permitted to receive is not a defence. Waterworks Regulations Further, in light of the enactment of the Waterworks (Waterworks Regulations) (Amendment) Ordinance 2021, the amended Regulation

47 of the Waterworks Regulations only allows a registered consumer of the Water Supplies Department (“WSD”) (usually the landlords) to recover from the occupants of the premises (usually the tenants) the water charge paid to the WSD. The amendment, which has taken effect, strengthens the protection of tenants of sub-divided units from being overcharged for water. If the amount recovered by the landlord exceeds the water charge paid to the WSD, the landlord shall be guilty of an offence. Offenders are liable to a maximum fine of HK$10,000. The WSD encourages the public to report unscrupulous landlords for overcharging tenants of sub-divided units for water. A relevant option has been available under its enquiry hotline on 2824 5000. Meanwhile, the WSD will continue to conduct proactive patrols in suspected sub-divided units to investigate any situation of overcharging for the use of water. Prosecutions will be instituted should there be sufficient evidence. The WSD website provides useful information about the avoidance of water overcharge situations for landlords and tenants of sub-divided units. 3. THERE IS AN OPTION TO RENEW CLAUSE IN THE TENANCY AGREEMENT SIGNED BETWEEN THE OLD LANDLORD AND THE TENANT. THE TENANT TRIES TO EXERCISE THE OPTION TO RENEW, BUT THE NEW LANDLORD REFUSES. CAN THE NEW LANDLORD DO SO? 3. THERE IS AN OPTION TO RENEW CLAUSE IN THE TENANCY AGREEMENT SIGNED BETWEEN THE OLD LANDLORD AND THE TENANT. THE TENANT TRIES TO EXERCISE THE OPTION TO RENEW, BUT THE NEW LANDLORD REFUSES. CAN THE NEW LANDLORD DO SO? It depends on whether the option to renew has been duly registered in the Land Registry. An option to renew in a written tenancy agreement is an interest in land registrable in the Land Registry under section 3(1) of the Land Registration Ordinance (Cap. 128), irrespective of whether the tenancy is for a term not exceeding 3 years. Non-registration of registrable instrument is rendered absolutely null and void to all intents and purposes as against any subsequent bona fide purchaser for valuable consideration of the same property, regardless of whether the purchaser has notice of the option to renew or not. So if the written tenancy agreement containing the option to renew has not been duly registered in the Land Registry, it is not binding on a subsequent bona fide purchaser for value. In contrast, if the tenancy agreement has been so registered, the option to renew takes priority and the new landlord is not entitled to refuse if the tenant chooses to exercise the option to renew. B) EXCLUDED TENANCIES B) EXCLUDED TENANCIES Tenancies specified in Schedule 6 of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) are excluded from the tenancy regulations on subdivided units. Such tenancies include: A tenancy of which the landlord is the employer and the tenant is the employee in possession of the premises in accordance with the terms and conditions of the tenant’s employment, being terms and conditions requiring the tenant to vacate the premises on ceasing to be so employed; A tenancy: that is not a sub-tenancy; the subject premises of which are demarcated as a bedroom in a unit of a building in the latest building plan of the building, which is the latest building plan approved by the Building Authority under the Buildings Ordinance (Cap. 123) as at the date on which the occupation permit in relation to the building is issued; and the landlord of which is a natural person and residing in the unit at the commencement of the tenancy; A tenancy of premises under the Hong Kong Housing Society’s “Letting Scheme for Subsidised Sale Developments with Premium Unpaid”. A tenancy held from: the Government; the Hong Kong Housing Authority; the Hong Kong Housing Society; the Hong Kong Settlers Housing Corporation Limited; the Urban Renewal Authority (or any of its wholly owned subsidiaries); a tenancy held from a social services organization; a tenancy of premises that is subsisting at the time when the regulation is in effect (i.e., 22 Jan 2022). If the relevant tenancies of the premises being rented out satisfy any of the above, they are excluded from regulation under Part IVA of the Ordinance. Q1. IF THE LANDLORD DIES DURING THE TERM OF THE REGULATED TENANCY AND THE UNIT HAS BEEN TRANSFERRED TO ANOTHER PERSON/ENTITY BY WAY OF PROBATE, ARE THE BENEFITS AND PROTECTION UNDER THE TENANCY AVAILABLE TO THE TENANT? DOES THE TENANT NEED TO LEAVE THE PROPERTY? Q1. IF THE LANDLORD DIES DURING THE TERM OF THE REGULATED TENANCY AND THE UNIT HAS BEEN TRANSFERRED TO ANOTHER PERSON/ENTITY BY WAY OF PROBATE, ARE THE BENEFITS AND PROTECTION UNDER THE TENANCY AVAILABLE TO THE TENANT? DOES THE TENANT NEED TO LEAVE THE PROPERTY? If the landlord dies during the term of the tenancy and the unit has been transferred to other person/entity by way of probate, such other person/entity

is the successor of the landlord who is/are bound by the terms of the tenancy. The tenant does not need to leave the property just because of the death of the landlord. 3. I AM A TENANT OF AN APARTMENT UNIT WHO HAVE BEEN DISTURBED BY MY NEIGHBOUR (SINCE HE HABITUALLY SINGS KAROAKE AT A HIGH VOLUME AT NIGHT). I COMPLAINED TO THE MANAGER OF THE BUILDING AND WAS TOLD THAT AS I WAS NOT THE OWNER OF THE PROPERTY. HE FURTHER STATED THAT, AS TENANT, I DID NOT HAVE ANY RIGHT UNDER THE DEED OF MUTUAL COVENANT. IS HE CORRECT AND WHAT CAN I DO? 3. I AM A TENANT OF AN APARTMENT UNIT WHO HAVE BEEN DISTURBED BY MY NEIGHBOUR (SINCE HE HABITUALLY SINGS KAROAKE AT A HIGH VOLUME AT NIGHT). I COMPLAINED TO THE MANAGER OF THE BUILDING AND WAS TOLD THAT AS I WAS NOT THE OWNER OF THE PROPERTY. HE FURTHER STATED THAT, AS TENANT, I DID NOT HAVE ANY RIGHT UNDER THE DEED OF MUTUAL COVENANT. IS HE CORRECT AND WHAT CAN I DO? A deed of mutual covenant is a contract binding on all owners of a multi-unit or multi-storey building. It basically sets out rules for the management and regulation of the building. A typical deed of mutual covenant will state that a unit owner shall not cause or permit nuisance either created by the owner or his/her tenant to other occupiers of the same building. It is technically incorrect to say that a tenant does not have any right under the deed of mutual covenant. In fact, the law confers a right to a tenant to enjoy and enforce the benefit of all covenants relating to land under the deed of covenant against other co-owners and their tenants. As such, the tenant may have the right to sue his/her noisy neighbours directly to enforce the said covenants under the deed of mutual covenant in Courts (e.g. Lands Tribunal). by obtaining an injunction and/or compensation for any harm or damage caused. The manager of the building is also mostly likely to be under a duty to enforce restrictions under the deed of mutual covenants against all owners and their tenants. If there is an incorporated owners of the building (i.e. an “IO”), the IO will also be under a statutory duty to enforce the provisions under the deed of mutual covenant. In the event that the manager/incorporated owners willfully refuses to take any step to remedy the situation, the tenant may consider commencing a claim to compel such parties to enforce their duties. Likewise, a tenant is also under an obligation to comply with the negative/prohibitive covenants under the deed of mutual covenant (e.g. an owner shall not cause any nuisance or annoyance in his unit). Any breach of the same may be subject to claims to be made by co-owners, the manager of the building and/or the IO. In the event the tenant finds himself/herself facing with a deed of mutual covenant which is silent on the issue of nuisance, another option is probably to sue the singing neighbour under the law of nuisance by obtaining an injunctive relief as well as monetary compensation for the disturbances caused. As the relevant legal procedures are complicated both procedurally and evidentially, it is strongly recommended to obtain lawyer’s assistance in such regard. 1. IF A TENANCY AGREEMENT DOES NOT SPECIFY THE END DATE OF THE TENANCY, WOULD IT STILL BE LEGALLY BINDING UNTIL ANY OF THE PARTY REQUESTS TO TERMINATE? WHAT WOULD BE THE POTENTIAL RISK TO TENANTS AND LANDLORDS ENTERING INTO SUCH KIND OF TENANCY AGREEMENT? 1. IF A TENANCY AGREEMENT DOES NOT SPECIFY THE END DATE OF THE TENANCY, WOULD IT STILL BE LEGALLY BINDING UNTIL ANY OF THE PARTY REQUESTS TO TERMINATE? WHAT WOULD BE THE POTENTIAL RISK TO TENANTS AND LANDLORDS ENTERING INTO SUCH KIND OF TENANCY AGREEMENT? A tenancy at will may arise where the tenant occupies the land with the consent of the landlord and on the understanding that either party can terminate the tenancy immediately at any time by informing the other party. A tenancy at will is for an indefinite duration and is a vulnerable form of tenancy. It is purely a personal interest and will come to an end upon the death of either party. The tenant has to leave within a reasonable time when a tenancy at will is terminated. Perhaps more of a concern to the landlord, section 12(1) of the Limitation Ordinance (Cap. 347) provides that a tenancy at will is deemed to be brought to an end at the expiration of 1 year from its commencement. This in effect limits the landlord’s right to recover unpaid rent for up to a maximum of 12 months. Last revision date: 18 October, 2022 2. AS THE LANDLORD, MUST I SIGN AN ESTATE AGENCY AGREEMENT WHEN I ASK AN AGENT TO HELP ME LET MY FLAT? 2. AS THE LANDLORD, MUST I SIGN AN ESTATE AGENCY AGREEMENT WHEN I ASK AN AGENT TO HELP ME LET MY FLAT? In compliance with section 45 of the Estate Agents Ordinance (Cap. 511), you as the landlord must sign an estate agency agreement ‘Form 5’ before you can engage an estate agent for leasing a

residential property in Hong Kong. The form must be duly signed by you and your estate agent. You must read the agreement carefully before signing. If you do not understand any part of the agreement, you may ask the estate agent or consult a lawyer. The estate agent should give you a copy of the signed agreement and you are advised to retain the copy for future reference. Q4. CAN THE TENANTS BE CHARGED A TENANCY RENEWAL FEE? Q4. CAN THE TENANTS BE CHARGED A TENANCY RENEWAL FEE? A tenant of a first term tenancy for a subdivided unit is entitled to be granted a second term tenancy of the regulated cycle, thus enjoying a total of 4 years (first term of 2 years plus second term of 2 years) of security of tenure. A landlord commits an offence if the landlord requires the tenant to pay, or the landlord otherwise receives from the tenant, any money in relation to the tenancy other than those falling within the following types: rents; rental deposits; reimbursement of charges for any of the specified utilities and services payable by the tenant under the tenancy; damages for the tenant's breach of the tenancy. Charges or fees related to the renewal of regulated tenancies are not included in the list above. Therefore, the landlord cannot require a tenant to pay a renewal fee, whether it is taken as a pre-condition of granting a second term tenancy. 2. A LANDLORD AND A TENANT INTEND TO RENEW AN EXISTING TENANCY. EXCEPT THE RENT, ALL OF THE TERMS ARE AGREED. IS THERE ANY WAY THAT THE PARTIES CAN RESOLVE THE PROBLEM AMICABLY? 2. A LANDLORD AND A TENANT INTEND TO RENEW AN EXISTING TENANCY. EXCEPT THE RENT, ALL OF THE TERMS ARE AGREED. IS THERE ANY WAY THAT THE PARTIES CAN RESOLVE THE PROBLEM AMICABLY? The concept of "prevailing market rent" may be helpful under such circumstances. To find out the prevailing market rent of a property, the parties can jointly appoint an independent professional valuation surveyor to do the job, the decision of whom will be final and binding on the parties. The major advantage of this exercise is that the issue can be resolved amicably without endless and unfruitful negotiation. In practice, of course it will only be worthwhile to retain a professional valuation surveyor if the property has a substantial rental value such as commercial premises. F) TENANCY WITHOUT A WRITTEN TENANCY AGREEMENT F) TENANCY WITHOUT A WRITTEN TENANCY AGREEMENT A lease for a term not exceeding 3 years at market rent which takes effect in possession is an exception to the general rule under section 3(1) of the Conveyancing and Property Ordinance (Cap. 219) that a lease of landed property shall be in writing in order to be enforceable by legal action. Even for a lease for over 3 years, it may not be problematic if both the landlord and the tenant are willing to honour their obligations to perform the tenancy as the oral tenancy agreement is legally binding upon the parties. But if dispute about the tenancy arises, no legal action can be brought on an oral tenancy agreement unless:- (a) there is some memorandum or note in writing evidencing the tenancy agreement and signed by the parties; or (b) the parties can rely on the doctrine of part performance by demonstrating that they have performed sufficient acts pursuant to the oral agreement between them. 3. IS THE ESTATE AGENT OBLIGED TO DISCLOSE TO THE POTENTIAL TENANT ABOUT TRAGIC INCIDENT WHICH OCCURRED IN THE FLAT? 3. IS THE ESTATE AGENT OBLIGED TO DISCLOSE TO THE POTENTIAL TENANT ABOUT TRAGIC INCIDENT WHICH OCCURRED IN THE FLAT? The estate agent acting for the potential tenant has a duty to act in the best interest of the client and must not provide false or misleading information. So when the potential tenant asks its estate agent whether any tragic incident has happened in the flat, the estate agent should give an honest answer to the best of his knowledge and information. Q1. WHAT DOCUMENTATION IS THERE TO PROVE THAT THE UTILITY FEES HAVE BEEN OVERCHARGED? Q1. WHAT DOCUMENTATION IS THERE TO PROVE THAT THE UTILITY FEES HAVE BEEN OVERCHARGED? Examples of documents to gather to prove that the utility fees have been overcharged: All written demands for the overcharged utility fees; Payment proof for the overcharged utility fees; and Receipt for the overcharged utility fees. D) JOINT REPRESENTATION D) JOINT REPRESENTATION The relationship between an estate agent and the landlord or the tenant may take one of the following forms:- "Single representation" means the estate agent acts for either the landlord or the tenant only. "Joint representation" means the estate agent acts for both the landlord and the tenant at the time. "Potentially dual agency" means the estate agent now acts for the landlord or the tenant only, but may also act for the other party at a later stage. 5. HOW TO COUNT THE NOTIFYING PERIOD OF TENANCY TERMINATION? IF IT IS SPECIFIED A ONE-MONTH NOTICE PERIOD, DOES IT COUNT FROM

THE DAY OF NOTIFICATION? OR DOES IT COUNT FROM THE 1ST DAY OF THE NEXT RENTAL MONTH? 5. HOW TO COUNT THE NOTIFYING PERIOD OF TENANCY TERMINATION? IF IT IS SPECIFIED A ONE-MONTH NOTICE PERIOD, DOES IT COUNT FROM THE DAY OF NOTIFICATION? OR DOES IT COUNT FROM THE 1ST DAY OF THE NEXT RENTAL MONTH? The computation of the notice period shall be based on the terms of tenancy agreement. If the tenancy is for a fixed term with no break clause, neither the landlord nor the tenant has the right to early terminate the tenancy. The term of the tenancy expires automatically by effluxion of time. It is not necessary to give notice to quit. If the tenancy agreement has a break clause allowing either the landlord or the tenant to give notice to terminate earlier than the end of the term, then the date when the notice is served is normally excluded when calculating the notice period. In the case of a yearly tenancy, the common law rule is that it can be terminated by at least a half year' s notice expiring at the end of a yearly period, unless the parties have otherwise agreed. For other periodic tenancies, that is, a weekly, monthly or quarterly tenancy, the general rule is the notice period is the same as one full period of the tenancy, unless the parties have otherwise agreed. The notice to quit shall, unless the contrary intention is expressed, be in writing and must be served in the form and manner prescribed in section 62 of the Conveyancing and Property Ordinance (Cap. 219). Q1. WOULD A LANDLORD RESIDING IN ONE OF THE SUBDIVIDED UNITS BE A SUFFICIENT CONDITION TO EXEMPT THE TENANCIES OF OTHER SUBDIVIDED UNITS FROM THE REGULATION OF THE PART IVA OF THE PART IVA OF THE LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE? Q1. WOULD A LANDLORD RESIDING IN ONE OF THE SUBDIVIDED UNITS BE A SUFFICIENT CONDITION TO EXEMPT THE TENANCIES OF OTHER SUBDIVIDED UNITS FROM THE REGULATION OF THE PART IVA OF THE LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE? If the following three conditions are satisfied, then the tenancy is excluded from the application of Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7). A tenancy: that is not a sub-tenancy; the subject premises of which are a bedroom in a unit; and the landlord of which is a natural person and residing in the unit at the commencement of the tenancy. In this context, the term "bedroom" has been specifically defined under Section 1 of Schedule 6 to mean: "in relation to a building, means premises in a unit of the building that are demarcated as a bedroom in the latest building plan of the building". In other words, the exclusion only applies when the primary landlord rents out a bedroom so demarcated as in the approved building plan of a premise in which he/she has been residing. If the subdivided unit being rented is not "a bedroom in the latest building plan of the building", the above exclusion does not apply. Likewise, the exclusion will not apply if the tenancy is a sub-tenancy. P) OTHER LEGAL ISSUES P) OTHER LEGAL ISSUES The sub-division or partitioning of flats for rental purposes has become a common phenomenon in Hong Kong. As explained in the question about converting property for short term leases, such partitioning often departs from the original design and purposes of the building. It may run the risk of contravening various laws, regulations or other legal obligations such as the Government Lease, Building Regulations, Fire Regulations and/or the Deed of Mutual Covenant which may attract civil or even criminal liability. The use of the property for the purposes of short-term accommodation purposes for guests without license may also infringe the Hotels and Guesthouse Accommodation Ordinance (Cap. 349) and/or the Bedspace Apartment Ordinance (Cap. 411). In fact, the rationale behind such restrictions is obvious: The rental of sub-divided units entails a much higher population density of the unit which exceeds its original designed capacity which renders the use of the unit unsafe; The partitioning walls and extra fittings installed by tenants may increase the load bearing capacity of the building structures. Such fittings might elevate risks of casualties during a fire and the emergency passageways may become obstructed as a result; The sharing of the property between tenants/sub-tenants may also generate other management problems in hygiene, nuisance (such as excessive noise or foul smell), excessive storage of inflammable matters, fire hazards, high electricity loading, water seepage, drainage blockage, lost mail, poor air ventilation, rental collection, infringement of privacy and security risks; and Given the illegal or risky nature of such tenancies, it is often also much more difficult to enforce any rights against any breaches committed by a tenant or other occupiers residing in sub-divided flats. 1. I RECEIVED A LETTER FROM A BANK CLAIMING TO BE THE

MORTGAGEE OF THE PROPERTY THAT I AM RENTING. THE BANK CLAIMED THAT THE TENANCY DOCUMENT BETWEEN MY LANDLORD AND ME WAS MADE WITHOUT ITS CONSENT AND ASKED ME TO MOVE OUT OF THE PROPERTY. WHAT CAN I DO? 1. I RECEIVED A LETTER FROM A BANK CLAIMING TO BE THE MORTGAGEE OF THE PROPERTY THAT I AM RENTING. THE BANK CLAIMED THAT THE TENANCY DOCUMENT BETWEEN MY LANDLORD AND ME WAS MADE WITHOUT ITS CONSENT AND ASKED ME TO MOVE OUT OF THE PROPERTY. WHAT CAN I DO? All properly drafted mortgages may contain a clause that requires the mortgagor (the landlord) to seek consent from the mortgagee (the bank) before the mortgagor lets the property to another party (the tenant). If the landlord complies with this requirement, then the bank has notice of and consented to the tenant's presence and may not evict the tenant even if the bank eventually exercises its power of repossession (or forfeiture) under the mortgage upon any default on repayment. The bank, under such circumstances, will become the landlord and is entitled to receive rent from the tenant. If the landlord lets a mortgaged property to a tenant without obtaining the bank's consent, then the landlord is in breach of the mortgage and the property is liable to be repossessed by the bank. When the bank eventually exercises its power of repossession under the mortgage, the tenancy agreement may not be effective to protect the tenant's interest against the right exercisable by the bank. In such event, the tenant may become a trespasser on the property and the bank is perfectly entitled to ask the tenant to leave even if the tenant is prepared to pay the rent. As a mortgage will invariably be registered with the Land Registry, the tenant is deemed to have notice of the mortgage and its terms. If the bank exercises its power of repossession under the mortgage, then the tenant cannot use ignorance as an excuse. Therefore, before entering into a tenancy document, a tenant should always conduct a land search at the Land Registry to check whether the property is mortgaged. If the answer is affirmative, then the tenant must ensure that the landlord has obtained consent from the mortgagee. 2. IF A TENANCY AGREEMENT DOES NOT SPECIFY THE END DATE OF THE TENANCY, BUT WHEN THE TENANT MOVED INTO THE FLAT, THE LANDLORD AND TENANT ORALLY AGREED WHEN THE TENANCY WOULD TERMINATE. IS THE TENANCY AGREEMENT VALID? 2. IF A TENANCY AGREEMENT DOES NOT SPECIFY THE END DATE OF THE TENANCY, BUT WHEN THE TENANT MOVED INTO THE FLAT, THE LANDLORD AND TENANT ORALLY AGREED WHEN THE TENANCY WOULD TERMINATE. IS THE TENANCY AGREEMENT VALID? In principle, there can be a tenancy agreement partly in writing and partly orally. But this is not desirable and may lead to unnecessary complications in practice. A lease for a term not exceeding 3 years at market rent which takes effect in possession may be created orally by virtue of section 6(2) of the Conveyancing and Property Ordinance (Cap. 219). For leases which do not fall under the above exception, whilst in general they are legally binding as between the landlord and the tenant, problems may arise if the parties need to take legal action to resolve disputes relating to the tenancy. This is because section 3(1) of the Conveyancing and Property Ordinance (Cap. 219) states that no legal action may be brought on an oral agreement for lease, unless:- (a) there is some memorandum or note in writing evidencing the tenancy agreement and signed by the parties; or (b) the parties can rely on the doctrine of part performance by demonstrating that they have performed sufficient acts pursuant to the oral agreement between them. By way of example, upon entering into an oral tenancy agreement with the landlord, the tenant has already moved into the flat and has duly paid rent to the landlord periodically, then the tenant may be able to invoke the doctrine of part performance to assert that there has been an oral tenancy agreement between the parties. Last revision date: 18 October, 2022 1. I WANT TO RENT A FLAT. WHAT SERVICES CAN I EXPECT AND WHAT INFORMATION CAN I OBTAIN FROM THE AGENT WHO SHOWS ME A FLAT? 1. I WANT TO RENT A FLAT. WHAT SERVICES CAN I EXPECT AND WHAT INFORMATION CAN I OBTAIN FROM THE AGENT WHO SHOWS ME A FLAT? The estate agent's duties include: (a) obtain information in relation to the property for the tenant; (b) arrange for the tenant to inspect the Properties if requested by the tenant; (c) conduct negotiation and submit all offers to the landlord of the property as instructed by the tenant; and (d) assist the Tenant in entering into a binding tenancy agreement with the landlord of the property. Q5. CAN THE LANDLORD AND TENANT NEGOTIATE FREELY ON THE BREAK CLAUSE OF A REGULATED TENANCY? Q5. CAN THE LANDLORD AND TENANT NEGOTIATE FREELY ON THE BREAK CLAUSE OF A REGULATED TENANCY? The landlord and tenant are free to negotiate on the break clause of the regulated tenancy

that can be exercised by the tenant. However, Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) stipulates that “without limiting any rights of the tenant to terminate the tenancy by notice under the tenancy”, the tenant can terminate the tenancy before the expiry of the term by giving the landlord prior notice in writing. Accordingly: the date of termination: must not be a date earlier than the last day of the first year of the term; the termination notice: must be given 30 days before the date of termination or earlier to the landlord. In other words, notwithstanding the break clause provided in the tenancy agreement, the tenant can, at the earliest, by giving a termination notice to the landlord on the 30th day counting backwards from the last day of the first year of the term, terminate the tenancy on the last day of the first term. Such statutory rights of the tenant implies that a break clause in the tenancy agreement can only be established if the break clause is consistent with the statutory right stipulated in the Ordinance, or if it offers more rights to the tenant than the Ordinance does. Example 1: No break clause is provided in the tenancy agreement, which is commonly known as a “two-year fixed agreement”. Since the tenant can exercise the right to terminate the tenancy early in accordance with the Ordinance, the tenancy becomes essentially a commonly known “one-year flexible, one-year fixed” tenancy. Example 2: A break clause provides that the tenant may terminate the tenancy on or after the last day of the first year of the tenancy by giving not less than 90 days’ prior notice. Since the tenant can exercise the statutory right to give shorter notice, the 30 days’ notice requirement prevails over the 90 days’ specified in the tenancy agreement. Example 3: A break clause provides that the tenant can terminate the tenancy at any time by giving not less than 30 days’ notice, which is commonly known as the "two-year flexible agreement". Since it offers more rights to the tenants to terminate the tenancy early than the Ordinance does and there is no such occasion that the tenant will exercise the statutory right, the break clause in the tenancy agreement prevails. 1. MY TENANT REMOVED ONE OF THE PARTITION WALLS OF THE UNIT (WHICH IS RESIDENTIAL) WITHOUT MY CONSENT. CAN I TERMINATE THE TENANCY AGREEMENT FOR SUCH REASON? 1. MY TENANT REMOVED ONE OF THE PARTITION WALLS OF THE UNIT (WHICH IS RESIDENTIAL) WITHOUT MY CONSENT. CAN I TERMINATE THE TENANCY AGREEMENT FOR SUCH REASON? The issue primarily depends on whether the tenancy agreement contains a clause which prohibits the removal of a partition wall and whether such breach would entitle the landlord to terminate/forfeit the tenancy agreement contractually. It is also important to investigate as to whether the partition wall as demolished was ‘structural’. If so, section 117(3)(g) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) was breached which gives rise to a right to the landlord to forfeit the tenancy agreement. In either case, the landlord should give a written demand to the tenant to specify the breach and request the partition wall to become reinstated (if possible). If the wall was structural, the damage done may be permanent and non-remediable. 1. I AM LOOKING FOR A FLAT TO RENT. I SEE A NUMBER OF DOCUMENTS ISSUED BY GOVERNMENT DEPARTMENTS ARE POSTED AT THE ENTRANCE OF THE BUILDING OF THE FLAT, BUT I DON’T KNOW WHAT THEY ARE. WILL MY INTEREST BE AFFECTED IF I RENT THAT FLAT LATER? 1. I AM LOOKING FOR A FLAT TO RENT. I SEE A NUMBER OF DOCUMENTS ISSUED BY GOVERNMENT DEPARTMENTS ARE POSTED AT THE ENTRANCE OF THE BUILDING OF THE FLAT, BUT I DON’T KNOW WHAT THEY ARE. WILL MY INTEREST BE AFFECTED IF I RENT THAT FLAT LATER? These documents may or may not affect your interest as a potential tenant. Examples include various forms of statutory orders issued by the Buildings Department under the Buildings Ordinance (Cap. 123) mandating demolition and remedial works to be carried out before a specified time. You should at least read the contents to ascertain what the documents are. If in doubt, you should seek legal advice before you commit to any tenancy agreement with the landlord. Last revision date: 18 October, 2022 Q2. DOES THE LANDLORD VIOLATE ANY LAWS IF HE/SHE ALTERS THE METER TO OVERCHARGE THE UTILITY FEES FOR A SUB-DIVIDED UNIT? Q2. DOES THE LANDLORD VIOLATE ANY LAWS IF HE/SHE ALTERS THE METER TO OVERCHARGE THE UTILITY FEES FOR A SUB-DIVIDED UNIT? Whether the landlord has altered the meter or not, the landlord commits an offence if the landlord requires the tenant to pay for, or the landlord otherwise receives from the tenant the reimbursement of the charges for any of the specified utilities and services at a sum exceeding the apportioned amount for the subdivided unit as shown in the

abovementioned account or the aggregate of the apportioned amounts exceeds the billed amounts. The landlord is liable on a first conviction to a fine at level 3 (currently HK$10,000), and on a second or subsequent conviction to a fine at level 4 (currently HK$25,000). A landlord who fraudulently alters the meter to overcharge the utility fees for a sub-divided unit may commit further criminal offences. SUB-DIVIDED FLATS AND TENANCY REGULATION XVII. SUB-DIVIDED FLATS AND TENANCY REGULATION Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (the “Ordinance”) took effect on 22 January 2022. Generally speaking, landlords and tenants may freely negotiate and enter into an agreement for fresh letting or renewal of tenancies. The Ordinance to a certain extent imposes restrictions/regulations to that by regulating a specific category of tenancy, namely, tenancies of subdivided units. Other categories of tenancies falling outside the scope of the Ordinance remain unaffected. Historically, security of tenure regime is not totally new to Hong Kong. The Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 has removed the former security of tenure regime which provided a domestic tenant with a statutory right to renew his tenancy at prevailing market rent. Following the commencement of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 with effect from 9 July 2004, domestic tenancies (created on or after 9 July 2004) should be terminated in the following ways: in accordance with the terms of the tenancy or as agreed between the parties; in the absence of a contractual notice requirement or parties’ agreement, a fixed term tenancy will end upon expiry of the term whereas a periodic tenancy may be terminated by a notice to quit at the length of the notice period in accordance with the common law. Significantly, as will be seen below, a breach of some of the requirements under the new Part IVA of the Ordinance may entail criminal sanctions. It is therefore a regime of some importance to both landlords and tenants/sub-tenants of subdivided units. 7. CAN A FOREIGNER RENT A PROPERTY IN HONG KONG? 7. CAN A FOREIGNER RENT A PROPERTY IN HONG KONG? In Hong Kong, there is no law to prohibit or restrict a foreign individual or corporation from renting a landed property. 8. IF I AM A FOREIGNER WHO IS POSTED BY MY COMPANY TO WORK IN HONG KONG, WHAT SHOULD I PAY SPECIAL ATTENTION TO WHEN ENTERING INTO A TENANCY OF A FLAT HERE? 8. IF I AM A FOREIGNER WHO IS POSTED BY MY COMPANY TO WORK IN HONG KONG, WHAT SHOULD I PAY SPECIAL ATTENTION TO WHEN ENTERING INTO A TENANCY OF A FLAT HERE? In a typical tenancy agreement of residential flat, there is no specific terms applicable only to a tenant who is a foreigner. Some landlords may ask a foreigner tenant to provide proof of his employment in Hong Kong so as to be satisfied that he has a stable source of income to meet the rental payments. For those who may need to leave Hong Kong within a relatively short period of time, it is worthwhile to note that a standard residential tenancy agreement in Hong Kong is for 2 years, either with no break clause or a break clause which allows either party to give notice after the first year to early terminate the tenancy. The tenant would have greater flexibility where the tenancy agreement has a break clause. 1. WHAT MAJOR GOVERNMENT DEPARTMENTS ARE RESPONSIBLE FOR GOVERNING TENANCY MATTERS IN HONG KONG? TO WHICH DEPARTMENT(S) SHOULD A PARTY GO TO IF A TENANCY DISPUTE/PROBLEM ARISES? 1. WHAT MAJOR GOVERNMENT DEPARTMENTS ARE RESPONSIBLE FOR GOVERNING TENANCY MATTERS IN HONG KONG? TO WHICH DEPARTMENT(S) SHOULD A PARTY GO TO IF A TENANCY DISPUTE/PROBLEM ARISES? The Rating and Valuation Department is responsible for administering the Landlord and Tenant (Consolidation) Ordinance (Cap.7 of the Laws of Hong Kong). Regarding tenancy matters, it also provides such services as endorsement of Notice of New Letting or Renewal Agreement, issuance of Certificate of Rateable Value and determination of the primary use of a property (i.e. whether it is used as a domestic or business/non-domestic premises). The Rent Officers of the Rating and Valuation Department will also answer public queries on tenancy matters through a telephone hotline at 21508229. The Lands Tribunal is the major body responsible for handling tenancy disputes especially when recovery of possession is involved. Unlike the higher courts, a tribunal is characterized by more simplified/informal procedures in adjudicating disputes between lay persons at relatively lower scales of legal costs. Do note however the Lands Tribunal is a Court. It is bound to act in a neutral manner and will not act as parties’ legal adviser over the merits of their cases. If the dispute is purely about a monetary claim of $75,000 or

less, then the claimant can make the claims at the Small Claims Tribunal. If the amount of the claim is higher or the relevant legal issue is more complex, then the parties can also bring the case to the District Court or the Court of First Instance of the High Court (please refer to Part III "How to recover the outstanding rent and get back the property?" for more details). 2. HOW CAN I OBTAIN TENANCY INFORMATION CONCERNING THE GOVERNMENT PROPERTIES (SUCH AS PUBLIC RENTAL HOUSING OR SHOPPING CENTRES RUN BY THE GOVERNMENT)? 2. HOW CAN I OBTAIN TENANCY INFORMATION CONCERNING THE GOVERNMENT PROPERTIES (SUCH AS PUBLIC RENTAL HOUSING OR SHOPPING CENTRES RUN BY THE GOVERNMENT)? If you want to obtain tenancy information on public rental housing, please visit the Housing Authority and the Housing Department's webpage. If you want to know more about the tenancy matters on Government shopping centres, please visit the Housing Authority and the Housing Department's webpage. It is also worth noting that most shopping centers, fresh market, cooked food stalls and carparks as formerly owned by the Government became the property of Link Real Estate Investment Trust or other private companies. 3. WHAT IS THE DIFFERENCE BETWEEN A TENANCY AND A LICENCE? 3. WHAT IS THE DIFFERENCE BETWEEN A TENANCY AND A LICENCE? A tenancy has the legal effect of passing an "interest" in land from the landlord to the tenant. It means that the tenant is given the right to possess the land during the terms of the tenancy (subject to other restrictive covenants on use). During the fixed term of the tenancy(and without any breaches or any 'break clauses' exercisable), a tenant may generally occupy the property as of right without the fear of being evicted by the landlord. In contrast, a licence creates no interest in land. The licensor only allows the licensee to use the land, not to exclusively occupy it. Subject to its terms, a license may also be terminated contractually at will or even by way of repudiation by the licensor. The licensee's remedy against the licensor's breach of the licence may lie only in claiming damages, but not in occupation of the property. Therefore, a licence is typically used for short-term occupation (e.g. for several weeks or months) or where the licensee does not have exclusive occupation of the property, e.g. a car parking space, a hotel room, a newsstand or a "kiosk" in a shopping mall. To demonstrate the concept of "interest in land", it is worth noting that there is no interest in land in the external walls of a building because a wall, being a vertical surface, is not land. Therefore, the owner who retains the rights and interests in the external walls of a building (typically in a multi-storey building) generally cannot let the walls to another party, but can only license the rights to use the walls. It should also be noted that as a licence does not transfer any interest in land, it is not liable to stamp duty. However, it would be futile to label a document as a licence just to avoid stamp duty. Whether a document creates a tenancy or a licence does not depend on the name of the document or other labels given by the parties, but on the true nature of the rights and obligations as evidenced by the agreement. A major factor in differentiating between a tenancy and a licence is to see whether the user has exclusive occupation or possession of the property. Subject to facts that will vary from case to case, the law generally accepts that a grant of exclusive occupation (the user can occupy the property solely and privately) for a term at periodic payments creates a tenancy. The above matter involves complex legal arguments. You must consult a lawyer if you have further queries. 4. CAN I CONVERT OR USE MY PROPERTY (OR ITS SUB-DIVIDED ROOMS) TO GRANT SHORT-TERM LEASES/LICENCES IN PROVIDING ROOMS OR BEDSPACES TO GUESTS (SIMILAR TO AIRBNB ACCOMMODATIONS OR 'CAPSULE HOTELS')? 4. CAN I CONVERT OR USE MY PROPERTY (OR ITS SUB-DIVIDED ROOMS) TO GRANT SHORT-TERM LEASES/LICENCES IN PROVIDING ROOMS OR BEDSPACES TO GUESTS (SIMILAR TO AIRBNB ACCOMMODATIONS OR 'CAPSULE HOTELS')? An owner needs to verify as to whether the property permits domestic or residential uses under the relevant Government Lease, the existing Outline Zoning Plan and compliance of other applicable laws/regulations withenforced by the relevant authorities (e.g. Buildings Department, Fire Services Department and/or Drainage Services Department) and to examine whether it would be legal to 'convert' and use a property as a residence in such intended manner ('capsule hotels' in particular). In this respect, this involves highly complex and technical considerations which one must consult a lawyer and other professionals. Secondly, even for "residential" premises, regardless of the intended

granting of tenancy or a licence, all domestic agreements or letting arrangements are governed and closely monitored by the Home Affairs Department under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) and the Bedspace Apartments Ordinance (Cap. 447). This is to say, any agreement or short-term letting arrangement made which may be regarded as part of an arrangement for the operation of a “hotel, motel, guesthouse, holiday flat or holiday camps” without obtaining a relevant licence or under an exemption (a short-term rental for a period of 28 continuous days with payment of a non-deductible/refundable rent) may be liable to prosecution as a criminal offence. Similarly, the operation of a “Bedspace Apartment” for a “flat” which contains 12 or more “bedspaces occupied or intended to be occupied under rental agreements” without obtaining a relevant licence, the owner/landlord of such property may be liable to prosecution as amount to a criminal offence. From past precedents, an owner must also be very careful in that any public advertisements which offers for short-term lettings or use of rooms/bedspaces (even without any successful letting) might become admissible in criminal proceedings for prosecution as evidence for proving the commission of an offence outlined above. 5. BEFORE SIGNING THE FORMAL TENANCY AGREEMENT OR LEASE, A TENANT MAY SOMETIMES BE ASKED BY A LANDLORD TO SIGN A DOCUMENT CALLED "AGREEMENT FOR LEASE" OR "PROVISIONAL TENANCY AGREEMENT". WHAT ARE THE CONSEQUENCES OF SIGNING THIS DOCUMENT? 5. BEFORE SIGNING THE FORMAL TENANCY AGREEMENT OR LEASE, A TENANT MAY SOMETIMES BE ASKED BY A LANDLORD TO SIGN A DOCUMENT CALLED "AGREEMENT FOR LEASE" OR "PROVISIONAL TENANCY AGREEMENT". WHAT ARE THE CONSEQUENCES OF SIGNING THIS DOCUMENT? An intending landlord and an intending tenant may enter into an agreement for lease prior to the execution of the lease/tenancy agreement itself. By signing this agreement, the intending landlord agrees to give, and the intending tenant agrees to take, a lease in the future. The agreement for lease/provisional tenancy agreement is a contract. It must, therefore, satisfy the requirements of a contract. There must be offer from one party, acceptance from the other party, consideration, intention to create legal relations and so forth. The terms of the agreement must be sufficiently certain, including: the name of the parties; the name and address of the premises; the commencement date of the lease; duration of the lease; the rent and its payable date(s); other considerations such as deposit, obligation to repair, restrictive covenant, termination and handover conditions. An agreement for lease/provisional tenancy agreement is legally binding upon the parties to the agreement. If such an agreement is signed and one party subsequently refuses to sign the formal lease or tenancy agreement, the other party can apply to the court for an order of specific performance. That is, to apply for a court order to compel the defaulting party to fulfil the obligations as stipulated on the agreement. Instead of signing an agreement for lease/provisional tenancy agreement, another possible scenario is that the tenant may be required to sign a document titled "offer to lease". This document will then be signed (i.e. accepted) by the landlord. In practice, the consequences of signing an offer to lease are similar to that of signing an agreement for lease. 6. CAN I LET OR OTHERWISE ALLOW OCCUPIERS TO STAY AT SUBSIDIZED HOUSING UNDER THE HOUSING ORDINANCE (E.G. PUBLIC HOUSING OR HOME OWNERSHIP SCHEMES)? 6. CAN I LET OR OTHERWISE ALLOW OCCUPIERS TO STAY AT SUBSIDIZED HOUSING UNDER THE HOUSING ORDINANCE (E.G. PUBLIC HOUSING OR HOME OWNERSHIP SCHEMES)? For public housing estate units, it is generally illegal for tenants/occupiers to sub-let (with or without rental income) to others without the consent of the Housing Authority. Doing so may result in both termination of tenancy by the Housing Department and/or criminal prosecution. Any infringement may also render the occupier to become ineligible to apply for tenancy for public housing within 2 years upon termination of the former tenancy agreement. Irrespective of whether he/she is a family member, permitting another occupier to reside or occupy a unit whose name had not been included in the original household particulars as submitted to the Housing Authority may also risk the occupier to become liable involving the making of a false declaration which is a criminal offence. In the case of ‘subsidized’ housing units (i.e. Home Ownership Scheme, Tenants Purchase Scheme, Green Form Subsidized Home Ownership Pilot Scheme and, Sandwich Class Housing Scheme), do ensure that the ‘owner’ of the property has paid the premium and obtained consent of the Housing Authority for resale/rental. A prospective tenant

should demand an owner to provide a copy of a confirmation letter issued by the Housing Authority that the premium has already been paid. Any tenancy agreement entered into may be declared as void and illegal which contravenes, amongst other provisions, section 27A of the Housing Ordinance (Cap. 283). Apart from the risk of tenancy agreement being unenforceable by the Court (e.g. any outstanding ‘rent’ or unreturned ‘deposit’ may not be recoverable and the Court may decline the grant of an order for possession in reliance of the purported ‘tenancy agreement’), both parties to such agreement may be liable to criminal prosecution and may be liable to a fine of HKD 500,000 and to imprisonment for a year. ESTATE AGENTS XVIII. ESTATE AGENTS 9. THE COVENANTS, TERMS AND CONDITIONS IN THE GOVERNMENT LEASES OF SOME PREMISES DO NOT ALLOW THE OCCUPIERS TO LET FOR RESIDENTIAL USE (EXAMPLES: REGISTERED OR UNREGISTERED SQUATTERS, ROOF-TOP UNAUTHORIZED BUILDING WORKS, INDUSTRIAL BUILDINGS, CONTAINER HOUSES, OR CARAVANS ON FARMLAND). ARE TENANCY AGREEMENTS ON SUCH PREMISES LEGALLY BINDING? 9. THE COVENANTS, TERMS AND CONDITIONS IN THE GOVERNMENT LEASES OF SOME PREMISES DO NOT ALLOW THE OCCUPIERS TO LET FOR RESIDENTIAL USE (EXAMPLES: REGISTERED OR UNREGISTERED SQUATTERS, ROOF-TOP UNAUTHORIZED BUILDING WORKS, INDUSTRIAL BUILDINGS, CONTAINER HOUSES, OR CARAVANS ON FARMLAND). ARE TENANCY AGREEMENTS ON SUCH PREMISES LEGALLY BINDING? Whilst a tenancy in non-compliance with the Government lease is not strictly forbidden, entering into such kind of tenancy arrangements is obviously not without risks and problems. Many of these premises are inherently not suitable for habitation, posing dangers and threats to the safety of the occupants. If the tenant is aware of the contravention at the time when the tenancy agreement was entered into, he cannot later use this as a ground to dispute the validity of the tenancy agreement or to refuse to pay rent to the landlord. Breach of the user restriction of the Government lease may trigger the Government exercising its right of re-entry under the Government lease, or the statutory right of re-entry or power to vest the relevant interest under the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126), in which case the landlord will cease to be the owner immediately. The landlord and the tenant should also be aware that they are most likely in breach of the deed of mutual covenant of the building, if any, and may be liable in legal action by the management company, the incorporated owners (if any) or other owners of the building. RENTING ABROAD XIX. RENTING ABROAD CASE ILLUSTRATIONS XX. CASE ILLUSTRATIONS SCENARIO: Mr. B intends to rent a commercial property from ABC Company to run a retail shop. Both parties have verbally agreed on the major terms of tenancy including the rent and the tenancy period. The landlord (ABC Company) has instructed a solicitor firm to handle the relevant tenancy documentation. Question 1: Mr. B received a Draft Tenancy Agreement that was prepared by the landlord’s solicitors. It seems that many terms are favourable to the landlord. Is this usual in tenancy dealings? What can Mr. B do to protect his interests? Answer 1 Question 2: Subsequent to the signing of the Tenancy Agreement, the parties agreed to amend certain terms of that agreement. Can they simply mark the amendments on the existing agreement or do they have to enter into a new agreement? Answer 2 Question 3: After having used the property for a certain period, Mr. B believed that the property needed substantial renovation. He asked the landlord to do the renovation but the landlord asked him to contribute to the costs. Who should be responsible for these renovation costs? Answer 3 Question 4: Mr. B did not paid rent for 2 months. What can ABC Company do to recover the outstanding rent and/or to get back the property? Answer 4 Question 5: Mr. B settled all of the rental arrears, but ABC Company told him that it intends to sell the property. The company assured Mr. B that it would inform him of any potential purchasers of the existing tenancy. However, Mr. B was told that he should allow potential purchasers to enter and view the property. Can Mr. B refuse this? Answer 5 Question 6: There were only two months left in the period of tenancy. Mr. B refused to pay the rent for the final two months and told ABC Company that it could forfeit the deposit (which is equivalent to two months of rent) as a payment of the outstanding rent. Should ABC Company accept this? Answer 6 Question 7: After the expiration of the tenancy, Mr. B stays in the property and pays rent at monthly intervals and ABC Company continues to accept that rent. Will the terms of the expired Tenancy Agreement continue to bind the parties? Answer 7 Answer 1: As the landlord’s solicitors drafted the Tenancy Agreement it is inevitably prejudicial to the

tenant's interests. The best way for Mr. B to tackle this situation is to retain a lawyer to assist him to negotiate for more favourable terms (or to strike out unfavourable terms). Anyone who has read a usual tenancy document will probably be amazed by the unbalanced proportion of obligations to be observed by the parties. The landlord must only comply with a few obligations, such as providing quiet enjoyment, repairing the roof and external walls, and paying government rent. In contrast, the tenant must comply with many dos and don'ts. However, a tenant should recognize that the situation may not be as bad as it seems. As a tenancy has the effect of passing the interests in the property to the tenant, the duty to keep the property in good repair and maintenance also passes to the tenant. Hence, it is quite normal that a tenancy document, even after negotiation between the solicitors for both parties, still seems to impose many obligations on the tenant. This apparent unfairness is actually quite reasonable because the tenant is the "person-in-charge" of the property during the period of the tenancy and for matters which the landlord does not have sufficient knowledge or control of. Answer 2: In general, the landlord and the tenant can mark the amendments on the existing Tenancy Agreement and then place their signatures next to the amendments. The parties can also enter into a supplemental agreement that incorporates all of the amendments rather than putting numerous amendments onto different parts of the existing agreement. However, if an amendment is so substantive that it alters the nature of the Tenancy Agreement, then it might be desirable for the parties to enter into a new agreement to avoid any confusion. For example, if the period of a tenancy is extended, then a new tenancy is actually created and the parties may have to enter into a new agreement and comply with the necessary legal requirements. If the rent is increased, then additional rent is also chargeable to stamp duty. The number of potential legal consequences is as infinite as the number of imaginable amendments. The parties should therefore seek legal advice before they commit themselves to any amendment. Answer 3: The word "renovation", in its ordinary sense, connotes the meaning of the improvements, decoration and adornment to be made of a property. It may not cover the repairs or maintenance that are essential to the occupation of the property, such as repairing a cracked wall or ceiling. Furthermore, a Tenancy Agreement is likely to specify that the property is let on an "as is" basis, which means that the tenant is aware of the conditions of the property when the tenancy commences. Therefore, unless the Tenancy Agreement provides otherwise, Mr. B is not entitled to request the landlord to renovate the property. Generally, it can be said that neither the landlord nor the tenant has a duty to renovate a property. As a tenant is the factual occupier of a property, it is reasonable for the tenant to bear any costs of renovation. However, the parties can negotiate between themselves on any proposal for renovation. A landlord will probably be more willing to bear the costs of renovation in cases in which the tenant has been occupied the property for a long time and has committed to continue renting the property. Answer 4: Please refer to the relevant question and answer. ABC Company, as a landlord, should also be cautioned that it should not use any illegal measures to get back the outstanding rent or the property (e.g. by breaking open the door without a court order). A ny person who unlawfully deprives a tenant of occupation of the relevant premises may commit an offence and may be liable to a fine or even imprisonment. Answer 5: A well-drafted tenancy document will invariably include a clause under which the landlord covenants to give quiet enjoyment of the property to the tenant. Quiet enjoyment, in this context, does not simply refer to freedom from noise, but extends to freedom from interruption by the landlord. Even if the tenancy document does not contain such a clause, then the tenant's right to quiet enjoyment is implied by law. Therefore, unless the tenancy document expressly provides that the tenant must allow a potential purchaser to view or inspect the property (usually at certain time before the tenancy expiration date), the tenant is fully entitled to refuse the landlord's request for viewing or inspection. In fact, the landlord should have notified the potential purchaser about the existence of the tenancy and the property should be sold "subject to tenancy". Purchasers who buy under such circumstances should understand that they are probably buying properties without the right to view and inspect them. Answer 6: A tenancy document usually specifies that the

tenant must pay a deposit to secure the performance and observance of the tenant's covenants under the tenancy document, such as to pay rent, to keep the property in good condition, to execute repair and to comply with the relevant laws. The agreement to pay rent is only one of many covenants that are made by the tenant. The landlord, in most circumstances, will not know whether the tenant has performed and observed such covenants until the recovery of the possession of the property. Upon regaining possession of the property, the landlord may find that pipes are blocked, walls are painted in weird colours, windows are broken, the refrigerator is gone, trash is left all over the property, etc., and that the tenant cannot be located anymore. The deposit may not be able to cover the aggregate of the unpaid rent and the expenses incurred to refurbish the property. It is therefore unwise to accept the tenant's proposal to substitute the payable rent with the deposit which may lead to irrecoverable losses suffered. Answer 7: Upon the expiry of a tenancy, the original Tenancy Agreement becomes obsolete. The terms and conditions specified in that agreement do not bind the parties any more. If the “tenant” continues to stay at the property and the “landlord” makes no objection, the relationship between them will evolve into a tenancy at sufferance: that is to say, the “landlord” suffers the presence of the “tenant” at the property. Strictly speaking, this is not a tenancy at all because the “landlord” has not expressly agreed to let the property. The “tenant”, in this sense, is merely an occupier or even technically a trespasser unless the landlord continues receives rent without objection. Tenancy at sufferance is ambiguous in law because both the “landlord” and the “tenant” are uncertain of their rights and liabilities. In such circumstances, the parties should as soon as possible enter into a new tenancy document that spells out clearly their respective rights and liabilities. RELATED WEBSITES XXI. RELATED WEBSITES Hong Kong Judiciary The Duty Lawyer Service Hong Kong e-Legislation The Law Society of Hong Kong The Rating and Valuation Department The Land Registry Hong Kong Housing Authority and Housing Department Estate Agents Authority