

**Notes to the Template for Tenancy Agreement
(for a Regulated Tenancy to which Part IVA
of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) applies)**

Application

- A tenancy to which Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (*the Ordinance*) applies is a **regulated tenancy** (*section 120AA(1) of the Ordinance*).
- According to section 120AAB of the Ordinance, Part IVA of the Ordinance applies to a tenancy –
 - (a) that commences on or after the **material date**, i.e. the commencement date of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2021 (**22 January 2022**) (**please see further elaboration below*);
 - (b) that is a domestic tenancy;
 - (c) the subject premises of which are a subdivided unit;
 - (d) the tenant of which is a natural person;
 - (e) the purpose of which is for the tenant's own dwelling; and
 - (f) that is not a tenancy specified in Schedule 6 to the Ordinance.

*(*According to section 120AAQ(4) of the Ordinance, where a landlord and a tenant enter into a domestic tenancy for 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 other than a regulated tenancy of the second term (second term tenancy) of a regulated cycle of tenancies, if –*

- (a) *the tenancy is **a periodic tenancy commencing before and existing on the material date**, i.e. the commencement date of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2021 (**22 January 2022**); and*
 - (b) *a period of the tenancy either –*
 - (i) **commences on the material date (22 January 2022)**; or
 - (ii) **straddles the material date (22 January 2022)**,
- the tenancy is taken to be a regulated tenancy of the first term (**first term tenancy**).*

According to section 120AAQ(5) of the Ordinance, the term of such tenancy is taken to be 2 years commencing on (i) where a period of the tenancy commences on the material date, the material date; or (ii) in other cases, the date immediately after the expiry of the period that straddles the material date.)

Term

- A regulated cycle of tenancies for a subdivided unit is to comprise 2 consecutive regulated tenancies for the subdivided unit, i.e. the first term tenancy and second term tenancy (*section 120AAO of the Ordinance*).
- Pursuant to section 120AAZ of the Ordinance, if the landlord and tenant of a subdivided unit have entered into a tenancy orally for a **first term tenancy**, and **the first term tenancy** has commenced, the tenant may in writing demand the landlord to, within 30 days (*specified period*), serve on the tenant a tenancy in writing (*tenancy agreement*) reflecting the contents of the oral tenancy for signing

by the parties. If the landlord fails to serve the tenancy agreement on the tenant accordingly, the tenant may elect either (a) to withhold the payment of rent until the landlord has done so; or (b) to terminate the tenancy by, within 7 days after the specified period, giving the landlord not less than 30 days' prior notice in writing of the termination.

- Under section 120AAS of the Ordinance, a landlord of a first term tenancy for a subdivided unit must, within the offer period[#], make a second term offer to the tenant for a second term tenancy of the regulated cycle for the subdivided unit in Form AR1. The landlord must state the proposed amount of rent for the second term tenancy^{*} in Form AR1, and sign the Form. In accordance with section 120AAU of the Ordinance, if the tenant accepts the second term offer, the tenant must notify the landlord of the tenant's acceptance in the served Form AR1 containing the offer by signing the aforesaid Form and serving it on the landlord before the expiry of the first term tenancy.
- For the purposes of Part IVA of the Ordinance, "tenancy agreement" means a tenancy, or an agreement for a tenancy, in writing for a regulated tenancy, **including a Form AR1 signed by the landlord and tenant for a second term tenancy.**

([#] Offer period, in relation to a second term offer, means the period of the second calendar month immediately before the calendar month in which the purported second term tenancy commences. For example, if the second term tenancy is to commence on any date in February 2024, the relevant offer period is the entire month of December 2023.

(^{} The maximum percentage for an increase of rent for the second term tenancy must not exceed the rate of change of the territory-wide rental index for all classes of private domestic properties compiled and published by the Rating and Valuation Department in the relevant period, and is capped at 10% (section 120AAZE of the Ordinance).)*

Mandatory Terms

- According to section 120AAZF(1) of the Ordinance, the provisions in Schedule 7 to the Ordinance are to be impliedly incorporated into every regulated tenancy. The **mandatory terms in Part 2** of the template for tenancy agreement are adopted from the provisions in Schedule 7 to the Ordinance, and hence **cannot be altered or excluded by the parties from their tenancy agreement.**

Landlord's Re-entry

- Except for the circumstances specified in section 120AAZI(2), a landlord of a regulated tenancy for a subdivided unit may not terminate the tenancy before the expiry of the term. The circumstances specified in section 120AAZI(2) include the landlord's enforcing a right of re-entry or forfeiture in accordance with Part 4 of Schedule 7 to the Ordinance impliedly incorporated into the tenancy under section 120AAZF (see the mandatory terms as set out in clauses 8 to 13 in Part 2

of the template for tenancy agreement).

- Section 120AAZI(3) of the Ordinance further provides that except for **those conditions set out in Part 4 of Schedule 7 to the Ordinance (i.e. clauses 8 to 13 in Part 2 of the template for tenancy agreement), any other condition for forfeiture provided in a regulated tenancy is void and has no effect.**
- The Landlord's right of re-entry or forfeiture under the template for tenancy agreement is **subject to the relevant provisions in section 58 of the Conveyancing and Property Ordinance (Cap. 219).** For details, please refer to section 120AAZI(4) of the Ordinance.

Early Termination by Tenant

- According to section 120AAZH of the Ordinance, a tenant of a regulated tenancy for a subdivided unit may terminate the tenancy before the expiry of the term by giving the landlord prior notice in writing (*termination notice*) and the tenancy is to be terminated on the date specified in the termination notice (*date of termination*), but a termination notice must not be given less than 30 days before the date of termination and that the date of termination must not be a date earlier than the last day of the first year of the term. The tenant must, on or before the date of termination, deliver vacant possession of the subdivided unit to the landlord and settle all outstanding money payable to the landlord under the tenancy.
- Should the tenancy contain other termination provisions, section 120AAZH of the Ordinance does not limit any rights of the tenant to invoke such provisions.

Additional Terms and Conditions

- A landlord and a tenant of a regulated tenancy for a subdivided unit **may** agree on additional terms and conditions for the tenancy other than those set out in the template for tenancy agreement, but such additional terms and conditions **must not be in conflict or inconsistent with the mandatory terms in Part 2 of the template for tenancy agreement and the statutory provisions in Part IVA of the Ordinance.**
- The provisions in Schedule 7 to the Ordinance incorporated into a regulated tenancy (*incorporated provisions*) because of section 120AAZF of the Ordinance, i.e. the mandatory terms in Part 2 of the template for tenancy agreement, (a) bind the landlord and tenant of the tenancy; and (b) **prevail over any other provision of the tenancy that is in conflict and inconsistent with the incorporated provisions to the extent of the conflict or inconsistency.**

Offences

- According to section 120AAZL(1) of the Ordinance, a landlord of a regulated tenancy **commits an offence** if the landlord requires the tenant to pay, or the landlord otherwise receives from the tenant, any money in relation to the tenancy **other than** those four types of payment specified therein. Those four types of payment are –

- (a) **rents payable by a tenant under a regulated tenancy as permitted under Part IVA of the Ordinance;**
 - (b) **rental deposits payable by a tenant under a regulated tenancy as permitted under section 120AAZC of the Ordinance;**
 - (c) **reimbursement of charges for any of the “specified utilities and services” (see the first bullet point under “Others” session below) payable by a tenant under a regulated tenancy;**
 - (d) **damages for a breach of the tenancy by a tenant of a regulated tenancy.**
- Under section 120AAZN of the Ordinance, a landlord of a regulated tenancy must give **a receipt** to the tenant **for the amount of rent paid** by the tenant to the landlord **within 7 days** after receiving the amount, and the landlord must specify in the receipt (a) the name and address of the landlord; (b) the period for which the rent is paid; and (c) the date of payment. If the landlord fails to comply with the aforesaid requirement(s), the landlord **commits an offence**.

Others

- A landlord and a tenant of a regulated tenancy **may** agree on additional terms and conditions for the tenancy other than those set out in the template for tenancy agreement, but such additional terms and conditions **must not be in conflict or inconsistent with the mandatory terms in Part 2 of the template for tenancy agreement and the statutory provisions in Part IVA of the Ordinance**. Such additional terms and conditions may provide for, **for example**, the following matters, and any other matters as the landlord and the tenant consider appropriate in their case –
 - Charges for specified utilities and services
 - According to section 120AAZL(1) of the Ordinance, a landlord of a regulated tenancy **commits an offence** if the landlord requires the tenant to pay, or the landlord otherwise receives from the tenant, any money in relation to the tenancy **other than** those four types of payment specified therein, one type of which is **reimbursement of charges for any of the “specified utilities and services” payable by the tenant under the tenancy**.
 - As defined in section 120AA(1) of the Ordinance, **“specified utilities and services”** means **water, electricity, gas and communication services**, whereas **“communication services”** means services enabling any of the following to be used –
 - (a) **a telephone other than a mobile telephone;**
 - (b) **the Internet;**
 - (c) **a cable television;**
 - (d) **a satellite television.**
 - According to section 120AAZM of the Ordinance, where the charges for any of the specified utilities and services (i.e. water, electricity, gas and communication services) for a subdivided unit incurred by a tenant of a

regulated tenancy for the subdivided unit are not independently billed by the relevant authorities or service providers, the landlord of the regulated tenancy **commits an offence** if the landlord requires the tenant to pay for, or the landlord otherwise receives from the tenant, the reimbursement of the charges as **a separate payment from rent unless** –

- (a) the landlord **is the payer named in the bills** covering the charges;
- (b) **copies of the bills are produced by the landlord** to the tenant when the landlord requires payment; and
- (c) the landlord **has provided an account in writing** to the tenant showing –
 - (i) how the amounts under the bills (*billed amounts*) are apportioned for the different parts (of which the subdivided unit is one) forming the premises to which the bills relate; and
 - (ii) that **the aggregate of the apportioned amounts does not exceed the billed amounts.**

- Also, 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 mentioned above.**
- If the Landlord and the Tenant agree that the Tenant shall pay for, as a separate payment from rent, the reimbursement of the charges for any of the specified utilities and services for the Premises which are not independently billed by the relevant authorities or service providers, the parties may consider including the provision as set out in the Third Schedule of the template for tenancy agreement.

■ Rental deposit

- Pursuant to section 120AAZC of the Ordinance, if a tenant of a regulated tenancy for a subdivided unit is required to pay to the landlord a rental deposit (which is defined in section 120AA(1) of the Ordinance to mean “money intended to be held by the landlord as security for (a) the performance of any obligations of the tenant; or (b) the discharge of any liability of the tenant” under a tenancy) for the tenancy, 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.
- 2 months’ rent, in relation to a tenancy, means 2 times the amount of the monthly rent payable at the commencement of the tenancy (*section 120AAZC(6) of the Ordinance*).
- According to section 120AAZL(1) of the Ordinance, a landlord of a regulated tenancy **commits an offence** if the landlord requires the tenant to

pay, or the landlord otherwise receives from the tenant, any money in relation to the tenancy **other than** those four types of payment specified therein, one type of which is **rental deposits payable by a tenant under a regulated tenancy as permitted under section 120AAZC of the Ordinance**.

- Further, it should be noted that under section 120AAZC(4) of the Ordinance, despite any provision of the tenancy, the rental deposit paid by the tenant, if any, is to be **retained by the landlord during the term** of the tenancy and is, subject to section 120AAZC(5), to be **returned to the tenant** free of interest no later than the time specified in section 120AAZC(4).
- According to section 120AAZC(5) of the Ordinance, 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.
- If the Landlord and the Tenant agree that the Tenant shall pay a rental deposit to the Landlord, the parties may consider including a provision along the line of the following –

“(a) As security for the performance of the obligations of the Tenant and the discharge of the Tenant’s liability under this Agreement, the Tenant shall pay a sum of HK\$_____ (“rental deposit”) to the Landlord on [the signing of this Agreement / (*specify any other date if appropriate*)].

(b) The rental deposit paid by the Tenant is to be retained by the Landlord during the Term and is, subject to sub-clause (c) below, to be returned to the Tenant free of interest no later than the time specified in section 120AAZC(4) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

(c) 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 this Agreement by the Tenant.”.

■ Service of notices or documents

- The parties may consider setting out the agreed means by which they may send or serve notices or documents under the template for tenancy agreement to each other. For example, the parties may consider including a provision along the line of the following –

“(a) Any notice or document to be served on or sent to the Tenant under this Agreement may be served or sent by _____.

(b) Any notice or document to be served on or sent to the Landlord under this Agreement may be served or sent by _____.”.

Housing Bureau
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