

Temporary Protection Measures for Business Tenants (COVID-19 Pandemic) Ordinance

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 2 OF 2022



Carrie LAM
Chief Executive
29 April 2022

An Ordinance to provide for temporary protection measures for business tenants adversely affected by the COVID-19 pandemic and related measures required for the implementation of such protection measures; and to provide for related matters.

[1 May 2022]

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Temporary Protection Measures for Business Tenants (COVID-19 Pandemic) Ordinance.

2. Interpretation

In this Ordinance—

landlord (業主)—

- (a) includes a person, other than the Government, who is from time to time entitled to receive rent in respect of any premises; and
- (b) in relation to a tenant, means a person entitled to receive rent from the tenant;

loan agreement (貸款協議), in relation to a loan, means the agreement or any other document under which the loan is made;

protection period (保護期) means the period—

- (a) beginning on the commencement date of this Ordinance; and
- (b) ending on the expiry of the 3 months beginning on that commencement date;

security (抵押) means a mortgage, charge or any other types of security on any immovable property (or on any rent receivable in respect of any immovable property) for securing repayment of money or money's worth, and includes any subsequent security created on that immovable property;

security agreement (抵押協議), in relation to a security, includes the mortgage deed and any other document that creates or records the security;

specified premises (指明處所) means any premises specified in Part 2 of the Schedule;

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

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

tenant (租戶) does not include Government lessee but includes sub-tenant.

3. Application of Ordinance

Subject to section 4, this Ordinance applies despite—

- (a) the provisions of any other Ordinance;

- (b) the terms or covenants of a tenancy and any other documents in relation to a tenancy; and
- (c) the terms and conditions of a security agreement, loan agreement and any other documents in relation to a loan.

4. Contracting out

- (1) Once a written agreement is entered into during the protection period in respect of a tenancy for any premises (in relation to which section 5(4) and (5) or section 5(6) applies) and, under the agreement, any forbearance is agreed in respect of—
 - (a) the amount that is to be paid as rent; or
 - (b) the time when any rent is payable,this Ordinance ceases to apply in relation to the tenancy.
- (2) Once a written agreement is entered into during the protection period in respect of a loan (in relation to which section 7(3) and (4) applies) and, under the agreement, any forbearance is agreed in respect of—
 - (a) the repayment schedule; or
 - (b) the amount of any repayment,this Ordinance ceases to apply in relation to the loan.

5. Protection to tenants during protection period

- (1) Where a tenancy for premises commences before the day on which the protection period begins, if the premises are used wholly or primarily as specified premises on that day, subsections (4) and (5) apply in relation to the tenancy on and after that day until the earlier of the following—

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- (a) the expiry of the protection period;
 - (b) the beginning of the day on which those subsections cease to apply in relation to the tenancy under subsection (9).
 - (2) Where a tenancy for premises commences on or after the day on which the protection period begins, if the premises are used wholly or primarily as specified premises on the commencement date of the tenancy, subsection (6) applies in relation to the tenancy on and after that date until the earlier of the following—
 - (a) the expiry of the protection period;
 - (b) the beginning of the day on which that subsection ceases to apply in relation to the tenancy under subsection (9).
 - (3) If a type of premises is added under section 9 to Part 2 of the Schedule on a day, subsection (6) applies on and after that day in relation to the tenancy for any premises that are used wholly or primarily as that type of premises on that day until the earlier of the following—
 - (a) the expiry of the protection period;
 - (b) the beginning of the day on which that subsection ceases to apply in relation to the tenancy under subsection (9).
 - (4) The landlord of a tenancy is barred from taking, or continuing to take, any one or more of the actions specified in subsection (7) in respect of the tenant's failure during the period—
 - (a) beginning on 1 January 2022; and
 - (b) ending on the earlier of the following—
 - (i) the expiry of the protection period;

- (ii) the beginning of the day on which this subsection and subsection (5) cease to apply in relation to the tenancy under subsection (9),
to pay the rent in compliance with the tenancy.
- (5) Any action (or any part of an action) taken by the landlord of a tenancy in respect of the tenant's failure described in subsection (4), if pending when the protection period begins, is to be stayed until the earlier of the following—
- (a) the expiry of the protection period;
 - (b) the beginning of the day on which this subsection and subsection (4) cease to apply in relation to the tenancy under subsection (9).
- (6) The landlord of a tenancy is barred from taking, or continuing to take, any one or more of the actions specified in subsection (7) in respect of the tenant's failure during the period—
- (a) beginning on the day on which this subsection becomes applicable to the tenancy; and
 - (b) ending on the earlier of the following—
 - (i) the expiry of the protection period;
 - (ii) the beginning of the day on which this subsection ceases to apply in relation to the tenancy under subsection (9),
to pay the rent in compliance with the tenancy.
- (7) The actions are—
- (a) suspending the provision of utility services or other services in relation to the premises concerned;

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- (b) deducting from the deposit held by the landlord any amount of the rent that the tenant fails to pay in the circumstances described in subsection (4) or (6);
 - (c) if, before the beginning of the protection period, the landlord has already deducted from the deposit held by the landlord any amount in respect of the tenant's failure described in subsection (4)—demanding the tenant to pay any money or money's worth to make good any shortfall in the deposit;
 - (d) recovering interest or surcharge on the rent that the tenant fails to pay in the circumstances described in subsection (4) or (6);
 - (e) terminating the tenancy;
 - (f) exercising a right of re-entry or forfeiture;
 - (g) bringing an action in a court (including a tribunal) against the tenant;
 - (h) commencing any arbitral proceedings under the Arbitration Ordinance (Cap. 609) against the tenant;
 - (i) presenting a bankruptcy petition under the Bankruptcy Ordinance (Cap. 6) against the tenant;
 - (j) making an application under section 670 of the Companies Ordinance (Cap. 622) for a meeting of creditors to be summoned to agree to a compromise or an arrangement in relation to the tenant;
 - (k) presenting a winding-up petition under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) against the tenant;
 - (l) commencing or levying an execution, distress or other legal proceedings against the tenant's property; and

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- (m) appointing a receiver or manager over the tenant's property.
- (8) To avoid doubt, a landlord is not barred under subsection (4) or (6) from taking, or continuing to take, any action on a ground other than the tenant's failure described in subsection (4) or (6) (as the case requires).
- (9) Subsections (4), (5) and (6) cease to apply in relation to a tenancy for any premises once—
- (a) the tenancy is terminated on a ground other than the tenant's failure described in subsection (4) or (6) (as the case requires);
 - (b) the tenancy expires or otherwise comes to an end, unless the tenancy is renewed immediately afterwards either automatically or in exercise of a right of renewal under the tenancy; or
 - (c) the premises are no longer used wholly or primarily as specified premises under the tenancy, or the specified premises are removed from Part 2 of the Schedule.
- (10) A landlord who takes, or continues to take, any action in contravention of subsection (4) or (6) commits an offence and is liable on conviction on indictment to a fine—
- (a) that is equal to twice the amount of the rent claimed, in relation to the action concerned, by the landlord to be in arrears; and
 - (b) that is, in any event, not less than \$50,000, unless the court (including a magistrate) considers that imposing a lower fine is just and equitable in the circumstances of the case.

- (11) In subsection (7)(c), (g), (h), (i), (j), (k), (l) and (m)—
tenant (租戶), in relation to a tenancy, includes the guarantor or surety of the tenant who incurs liability to the landlord under any document on the tenant's failure to pay the rent in compliance with the tenancy.

6. Provisions supplementary to section 5

- (1) No conduct by or on behalf of the landlord of a tenancy, while section 5(4) and (5) or section 5(6) (as the case requires) applies in relation to the tenancy, other than giving an express waiver in writing, is to be regarded as waiving a right of the landlord under the tenancy in respect of the tenant's failure to pay the rent in compliance with the tenancy.
- (2) The landlord of a tenancy may, after the earlier of the following (*ending time*)—
- (a) the expiry of the protection period;
 - (b) the beginning of the day on which section 5(4) and (5) or section 5(6) (as the case requires) ceases to apply in relation to the tenancy under section 5(9),
- do any act that could have been done by the landlord but for the operation of section 5.
- (3) For the purposes of subsection (2), if the right of the landlord of a tenancy to take, or continue to take, any action specified in section 5(7) may, under any law or document, only be exercised within a period, that period is to be extended after the ending time by a period of time that is of the same length as the period during which the landlord's right to take, or continue to take, that action is subject to section 5.

7. Enforcement of security on certain premises

(1) Where a security is created on any premises (or on any interest in any premises or any rent receivable in respect of any premises) in favour of a lender by the landlord of the premises (*subject premises*) for a loan (*secured loan*), and section 5(4) and (5) or section 5(6) applies in relation to the tenancy for the subject premises for a period of time (*affected period*), subsections (3) and (4) apply in relation to the secured loan if—

(a) the tenant fails to pay the rent in compliance with the tenancy, but the landlord's right to take, or continue to take, any action in respect of the tenant's failure is subject to section 5; and

(b) there is a default during—

(i) if section 5(4) and (5) applies in relation to the tenancy—the period beginning on 1 January 2022 and ending on the expiry of the affected period; or

(ii) if section 5(6) applies in relation to the tenancy—the affected period,

in repayment of any amount of the secured loan (or payment of any other sum in respect of the loan) in compliance with the relevant loan agreement (*repayment default*) and, having regard to the factors specified in subsection (2), the landlord can reasonably establish that the matters described in paragraph (a) are the sole reason or a significant reason for the landlord's inability to avoid the repayment default.

(2) The factors are—

(a) the nature and magnitude of the tenant's failure and the repayment default; and

- (b) the overall financial condition of the landlord.
- (3) During the affected period, the lender of a secured loan is barred from taking, or continuing to take, any one or more of the actions specified in subsection (5) in respect of the repayment default.
- (4) Any action (or any part of an action) taken by the lender of a secured loan in respect of the repayment default described in subsection (1)(b)(i), if pending when the affected period begins, is to be stayed until the expiry of the affected period.
- (5) The actions are—
 - (a) enforcing the security created on the subject premises (or on any interest in the subject premises or any rent receivable in respect of the subject premises);
 - (b) suing for repayment of the amount in default;
 - (c) recovering interest or surcharge on the amount in default;
 - (d) exercising any of the powers mentioned in paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of the Fourth Schedule to the Conveyancing and Property Ordinance (Cap. 219);
 - (e) entering into possession of the subject premises;
 - (f) letting or selling the subject premises;
 - (g) applying for delivering the possession of the subject premises;
 - (h) enforcing other collateral securities for the secured loan;
 - (i) making demand against, or suing, the landlord under any other right of recourse as a result of the repayment default triggering any contractual cross default clause;

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- (j) bringing an action (including a foreclosure action) in a court (including a tribunal) against the landlord;
 - (k) commencing any arbitral proceedings under the Arbitration Ordinance (Cap. 609) against the landlord;
 - (l) presenting a bankruptcy petition under the Bankruptcy Ordinance (Cap. 6) against the landlord;
 - (m) making an application under section 670 of the Companies Ordinance (Cap. 622) for a meeting of creditors to be summoned to agree to a compromise or an arrangement in relation to the landlord;
 - (n) presenting a winding-up petition under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) against the landlord;
 - (o) commencing or levying an execution, distress or other legal proceedings against the landlord's property; and
 - (p) appointing a receiver or manager over the landlord's property.
- (6) To avoid doubt, a lender is not barred under subsection (3) from taking, or continuing to take, any action on a ground other than the repayment default.
- (7) A lender who takes, or continues to take, any action in contravention of subsection (3) commits an offence and is liable on conviction on indictment to a fine—
- (a) that is equal to twice the amount of the repayment default claimed, in relation to the action concerned, by the lender; and

(b) that is, in any event, not less than \$50,000, unless the court (including a magistrate) considers that imposing a lower fine is just and equitable in the circumstances of the case.

(8) In this section—

landlord (業主)—

(a) in subsections (1)(b), (2) and (5)(i), (j), (k), (l), (m), (n), (o) and (p), includes, in relation to a secured loan, any person who, under the security agreement, loan agreement or any other documents in relation to the loan, is under an obligation to repay any amount of the loan (or pay any other sum in respect of the loan); and

(b) in subsection (5)(i), (j), (k), (l), (m), (n), (o) and (p), also includes, in relation to a secured loan, the guarantor or surety of the landlord (or a person mentioned in paragraph (a)) who incurs liability to the lender under any document on a repayment default.

8. Provisions supplementary to section 7

- (1) No conduct by or on behalf of the lender of a secured loan (within the meaning of section 7(1)) (*secured loan*) during the affected period, other than giving an express waiver in writing, is to be regarded as waiving a right of the lender under the security agreement, loan agreement or any other documents in relation to the secured loan for a repayment default (within the meaning of section 7(1)).
- (2) The lender of a secured loan may, after the expiry of the affected period, do any act that could have been done by the lender but for the operation of section 7.

(3) For the purposes of subsection (2), if the right of the lender of a secured loan to take, or continue to take, any action specified in section 7(5) may, under any law or document, only be exercised within a period, that period is to be extended after the expiry of the affected period by a period of time that is of the same length as the affected period.

(4) In this section—

affected period (受影響期), in relation to a secured loan, means the period during which the right of the lender of the loan to take, or continue to take, any action specified in section 7(5) is subject to section 7.

9. **Amendment of Schedule**

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

Schedule

[ss. 2, 5 & 9]

Specified Premises

Part 1

Interpretation

1. In this Schedule—

Cap. 599F (《第599F章》) means the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599 sub. leg. F);

catering business premises (餐飲業務處所) has the meaning given by section 2 of Cap. 599F;

child care centre (幼兒中心) means a child care centre within the meaning of the Child Care Services Ordinance (Cap. 243);

cruise ship (郵輪) has the meaning given by section 1 of Part 2 of Schedule 2 to Cap. 599F;

employment agency (職業介紹所) has the meaning given by section 50(1) of the Employment Ordinance (Cap. 57);

scheduled premises (表列處所) has the meaning given by section 2 of Cap. 599F, but excludes—

- (a) a cruise ship; and
- (b) a supermarket;

supermarket (超級市場) means a self-service shop described in item 23 of Part 1 of Schedule 2 to Cap. 599F;

travel agent (旅行代理商) means a travel agent within the meaning of the Travel Agents Ordinance (Cap. 218);

tutorial school (補習學校) means an exempted school as defined by section 2 of the Education (Exemption) (Private Schools Offering Non-Formal Curriculum) Order (Cap. 279 sub. leg. F).

Part 2

Specified Premises

Column 1 Item	Column 2 Type of premises
1.	Scheduled premises
2.	Catering business premises
3.	Premises (other than supermarket) where any of the following food businesses is carried on under the Food Business Regulation (Cap. 132 sub. leg. X) (Cap. 132X), the Food Business Regulation (Exemption from Section 31(1)) Notice (Cap. 132 sub. leg. Z), the Frozen Confections Regulation (Cap. 132 sub. leg. AC) or the Milk Regulation (Cap. 132 sub. leg. AQ)— <ol style="list-style-type: none">food factory (as defined by section 31(2) of Cap. 132X);restaurant (as defined by section 31(2) of Cap. 132X);factory canteen (as defined by section 31(2) of Cap. 132X);

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Schedule—Part 2

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Column 1	Column 2
Item	Type of premises
	<ul style="list-style-type: none">(d) siu mei and lo mei shop (as defined by section 31(2) of Cap. 132X);(e) fresh provision shop (as defined by section 31(2) of Cap. 132X);(f) cold store (as defined by section 31(2) of Cap. 132X);(g) composite food shop (as defined by section 31(2) of Cap. 132X);(h) frozen confection factory (as defined by section 31(2) of Cap. 132X);(i) milk factory (as defined by section 31(2) of Cap. 132X)
4.	Child care centre
5.	Kindergarten
6.	Private primary day school and private secondary day school, including international school, private independent school, and other private primary day school and private secondary day school offering formal curriculum
7.	Retail shop, but excluding supermarket
8.	Tutorial school
9.	Premises where hobby classes are provided

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Schedule—Part 2

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Column 1	Column 2
Item	Type of premises
10.	Premises where the business of travel agents is carried on
11.	Premises where the business of cruise ships is carried on
12.	Premises where the business of employment agencies is carried on
13.	Premises where the business of organizing pop concerts is carried on
14.	Premises where the business of providing catering services for schools and post secondary education institutions is carried on
15.	Premises where the laundry trade is carried on
16.	Premises where the dishware washing trade is carried on
17.	Premises where a performing arts group in the arts and culture sector operates the business of the group
18.	Premises where the fresh food wholesale business is carried on