

Temporary Protection Measures for Business Tenants (COVID-19 Pandemic) Ordinance to take effect tomorrow

The Temporary Protection Measures for Business Tenants (COVID-19 Pandemic) Ordinance (the Ordinance) will come into effect upon gazettal tomorrow (May 1). The three-month "protection period" under the Ordinance will start tomorrow and run until July 31 this year.

Under the Ordinance, when the "protection period" begins (or on the day when the tenancy becomes effective if it takes effect within the "protection period"), in respect of any premises that are wholly or primarily used as specified premises and the tenants concerned have defaulted in rent payment between January 1, 2022, and the end of the "protection period", the landlords will be barred from taking certain rental enforcement actions during the "protection period". Actions taken before the start of the "protection period", if still pending, shall be stayed.

A Government spokesman stated that the main purpose of the Ordinance is to provide a short buffer period for business tenants who are in distress due to the COVID-19 epidemic, so that they will not be forced out of business as a result of legal or other rental enforcement actions taken by their landlords for their inability to pay rent immediately, while providing room and opportunity for landlords and tenants to negotiate on the restructuring of rental arrangements.

The rental enforcement actions that landlords are barred from taking include: terminating the tenancy, suspending the provision of utility services, deducting rent from the deposit held by the landlord, exercising a right of re-entry or forfeiture, bringing an action in court or presenting a bankruptcy or winding-up petition against the tenant concerned, etc.

The Schedule to the Ordinance sets out the types of specified premises covered by the rental enforcement moratorium. These premises include most of the scheduled premises under the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) (save for cruise ships and supermarkets), food and catering business premises, retail shops (excluding supermarkets), education-related premises, and premises used for the business of travel agents, employment agencies and laundry trade, etc.

To assist landlord-borrowers who are affected by the rental enforcement moratorium and fail to repay their secured loans, the Ordinance also stipulates that if the landlord-borrowers can establish that the tenants' inability to pay rent and the rental enforcement moratorium are the sole reason or a significant reason for their default in repayment, the lenders concerned cannot take certain enforcement actions against such landlord-

borrowers during the affected period; actions taken before the beginning of the affected period, if still pending, shall be stayed.

Landlords or lenders taking actions prohibited under the Ordinance against their tenants or landlord-borrowers commit an offence and are liable on conviction on indictment to a fine that is equal to twice the amount of rent in arrears claimed by the landlord, or twice the amount of the repayment default claimed by the lender, and in any event not less than \$50,000, unless the court considers it just and equitable to impose a lower fine.

For any alleged breach of the Ordinance, a tenant can lodge a complaint to the Rating and Valuation Department, while a landlord-borrower can lodge a complaint to the Hong Kong Monetary Authority (if the lender is a bank) or to the Companies Registry (if the lender is a licensed money lender). The relevant department/authority will handle the case and will, having regard to the circumstances, refer the case to the Department of Justice for consideration of prosecution. If civil litigation is involved, the tenant or landlord-borrower concerned can explain to the court the relevant situation, so that the court can make appropriate arrangements or instructions regarding the concerned civil litigation.

For details of the Ordinance, please visit the following webpage:
www.budget.gov.hk/2022/eng/rental/index.html.