



Information Technology and Telecommunications Industries in Industrial Premises

Premises held under industrial leases may only be used, legally, for manufacturing purposes. Following the agreement of the Town Planning Board to amend the Column 1 uses of the User Schedule for “Industrial” zones, to provide for the inclusion of information technology and telecommunications industries, the Administration has now decided that, a streamlined procedure will be introduced for processing applications from owners of industrial premises for the issue of waivers for uses specified in paragraph 4 below.

.....
2. The waiver shall be subject to such terms and conditions as may be determined. In this regard, a sample waiver letter is set out at **Appendix I**. (The sample letter is for reference only and my department will have the absolute discretion to add to, vary or omit any of the terms as contained in this sample letter for each individual case).

.....
3. A waiver fee will be charged in accordance with the standard rates set out at Part I of **Appendix II** and our aim is that such waiver may be issued not more than two months from the date of receipt of a valid application (the requirements of a valid application are set out at Part II of **Appendix II**).

.....
4. The uses, to which the above-mentioned streamlined procedure will apply, are information technology and telecommunications industries for the manufacture, design, development, production, operation, processing or assembly of, or research into, any of the following (together with office and storage facilities ancillary and directly related thereto) : -

- (i) electronic and micro-electronic systems, goods and components;
- (ii) information technology products and services including any computer hardware and software, contents and applications; and

- (iii) telecommunications facilities and telecommunications services, “telecommunications” and “telecommunications service” having the same definitions as defined in the Telecommunications Ordinance (Cap. 106).

Provided always that the provision of customer services and retail services, which involve the physical attendance of the customers or the public at the premises concerned will not be permitted.

5. By way of illustration, the uses specified in paragraph 4 above would include those operations commonly known as gateways, exchanges, switching centres, radio base stations, paging centres, computer centres, data centres, data processing centres, telesites or carrier hotels.

6. For the avoidance of doubt, general commercial/office uses are excluded notwithstanding that these uses may adopt, in their process of working or operation, equipment or facilities that fall within those set out in sub-paragraphs 4(i) to (iii) above (i.e. such as the operation of computer hardware or application of computer software). Examples of these uses being excluded are trading firms, accounting firms, architectural firms, engineering consultancy firms, travel agencies, estate agents, employment agencies, financial consultants, brokerage firms etc.

7. In any event, it must be pointed out that, for the purpose of this special procedure, my department's determination as to whether a particular user of the premises or any part thereof does fall within the uses specified in paragraph 4 above shall be final.

8. It should be noted that the waiver letters to be issued by my department under the streamlined procedure stipulated above will only cover the user aspect of premises held under industrial leases. Owners of industrial premises should separately approach the other concerned departments and authorities, including the Fire Services Department and the Building Authority regarding any other approval that may be required and the compliance with any ordinances, bye-laws or regulations that are currently in force whether or not their proposed uses would involve any alteration, structural or otherwise to the existing buildings erected in accordance with the current approved building plans.

9. Please note that this Practice Note is issued for the purpose of general reference only. It shall not constitute any representation on the part of the Government or give rise to any expectation whatsoever and shall not be relied on as such. Each application for waiver will be considered on its own merits having regard to all factors and circumstances which the Government at its absolute discretion considers applicable. The standard rates of waiver fees as set out at Appendix II are subject to review from time to time as the Government shall at its absolute discretion consider appropriate. Government's right to add to, amend or delete the whole or any part of this Practice Note is hereby reserved.

(J.S. Corrigan)
Director of Lands (Atg.)
17 July 2001

Appendix I

[Sample Waiver Letter for Information Technology and Telecommunications Industries]

BY RECORDED DELIVERY

Dear Sirs,

No. of Undivided shares of and in
(Lot No. and address)

I have to inform you that in consideration of your payment to the Government of the Hong Kong Special Administrative Region (hereinafter referred to as "the Government") of an annual waiver fee in the manner as mentioned hereinafter and an administrative fee and Land Registry Registration fee amounting to \$_ and \$ respectively (the receipt whereof are hereby acknowledged), the Government has approved and I hereby grant on behalf of the Chief Executive a temporary waiver (hereinafter referred to as "the waiver"), subject to the terms and conditions set out below, of the restriction contained in the *[Lease/Special Condition No. Δ of Conditions of] as varied or modified by a letter dated the day of (hereinafter referred to as "[the Lease/the Conditions]") under which the above-mentioned lot is held, so as to permit the use of the abovementioned premises (hereinafter referred to as "the Premises") for the purpose of information technology and telecommunications industries (hereinafter referred to as "the Information Technology and Telecommunications Industries").

* Delete as appropriate

Δ (Insert user conditions)

For the purpose of this waiver, the expression "the Information Technology and Telecommunications Industries" shall mean use of the Premises for the manufacture, design, development, production, operation, processing or assembly of, or research into, any of the following (together with office and storage facilities ancillary and directly related thereto): -

- (i) electronic and micro-electronic systems, goods and components;
- (ii) information technology products and services including any computer hardware and software, contents and applications;
- (iii) telecommunications facilities and telecommunications services, "telecommunications" and "telecommunications service" having the same definitions as in section 2(1) of the Telecommunications Ordinance (Cap. 106).

Excluding any user which involves:

- (a) any process or manufacture that is now or may hereafter be declared to be an offensive trade under the Public Health and Municipal Services Ordinance, or any enactment amending the same or substituted therefore; or
- (b) the provision of customer services and retail services involving the physical attendance of the customers or the public at the Premises.

Provided always that the determination of the Director of Lands (hereinafter referred to as “the Director”) as to whether a particular user of the Premises or any part thereof falls within the uses specified under the above definition of “the Information Technology and Telecommunications Industries” shall be final and binding on you. In such determination, the Director may have regard to the Notes (including the Schedule of uses) attached to the Outline Zoning Plan covering the abovementioned lot which is in force at the time, the Definitions of Terms used in Statutory Plans as revised by the Planning Department from time to time or other relevant guidelines or practice notes published from time to time by the Town Planning Board or the Government.

The waiver is granted subject to the following terms and conditions: -

(1) Subject to paragraph Nos. 1(8), 1(9) and 1(10) hereof, the waiver shall be for a fixed term of @[] years commencing on the ____ day of _____ *[and _____ thereafter annually], subject to payment of the appropriate annual waiver fee stipulated below.

@ [] Insert fix term
 *[] Insert if appropriate

(2) You shall pay to the Government annually in advance on the ____ day of _____ the following annual waiver fee:

(a) \$_____ for the period from _____ to _____ (the receipt of the first annual payment being hereby acknowledged);

*(Insert a date three years from the date of waiver letter)

(b) In the event of this waiver not being terminated on * , the annual waiver fee for the period from _____ shall be determined in accordance with paragraph No. 1(6) hereof.

- (3) You shall indemnify and keep indemnified the Government, its officers and servants, from and against all actions, costs, claims and demands arising directly or indirectly out of or in connection with the use of the Premises or any part thereof for the purpose of the Information Technology and Telecommunications Industries.
- (4) You have deposited with the Director the deposit of \$ as security for the due performance and observance of the terms and conditions hereof. Such deposit may be used to offset any monetary loss or damage sustained by the Government in respect of any breach by you of the terms and conditions herein contained, but without prejudice to the Government's right to claim for any further or additional damages which it shall have sustained or may sustain as a result of your breach should the deposit be insufficient to offset the loss. *[Subject to paragraph No. 1(7) hereof, the deposit shall remain deposited with the Director throughout the term of the waiver and shall upon the expiration or sooner determination of the period in respect of which the waiver is granted and upon your duly observing and performing your obligations under the waiver, be refunded to you in whole or in part, but without interest.]
- (5) That in the event of the waiver fee hereby reserved or any increase of deposit pursuant to terms and conditions herein or any part thereof not being paid on the due date for payment thereof (whether formally demanded or not) you shall pay interest to the Government on such amount of the waiver fee reserved or increase in deposit (as the case may be) as is unpaid on the due date or dates calculated from the day immediately following the due date or dates until payment of all fee or increase in deposit (as the case may be) due and the interest thereon has been paid by you to the Government, such interest to be at a rate which is equivalent to two per cent per annum above the prevailing Best Lending Rate of The Hongkong and Shanghai Banking Corporation Limited.

*[] Insert if appropriate

* Insert if appropriate

*(6) That in the event of the waiver hereby granted not being terminated within three years from the commencement thereof the fee hereby reserved may be revised by the Government at its sole discretion on or after the expiry of every third year of the term of the waiver by the Government giving to you not less than three calendar month's prior notice to that effect. As from the date being the effective date as stipulated in such notice such increase shall take effect whereupon the revised fee shall be deemed to be substituted for the fee previously in force under the waiver PROVIDED that no such revision shall take effect within three years of the immediately preceding revision and PROVIDED FURTHER that the parties hereto expressly agree that nothing herein contained shall imply an intention on the part of either party that the waiver shall not be terminated in accordance with the provisions of the waiver.

(7) That in the event of the fee hereby reserved being revised under paragraph No. 1(6) hereof the deposit deposited with the Director in accordance with paragraph No. 1(4) of the waiver may be revised by the Government at its sole discretion upon the Government giving to you not less than [three*] calendar months' prior notice to that effect. As from the date being the effective date as stipulated in such notice such revision shall take effect and in this connection, you shall pay to the Director or the Director shall refund to you, as the case may be, on or before the said effective date a sum equivalent to the difference between the deposit previously deposited with the Director under the waiver and the deposit as so revised whereupon the deposit as so revised shall be deemed to be substituted for the said deposit previously deposited with the Director under the waiver PROVIDED that the parties hereto expressly agree that nothing herein contained shall imply an intention on the part of either party that the waiver shall not be terminated in accordance with the provisions of the waiver.

* Insert appropriate period

* Insert appropriate period

(8) The waiver hereby granted may be terminated by the Government for whatsoever reason(s) on giving to you [three*] calendar months' prior notice in writing to that effect to expire at any time after the expiry of the fixed term stipulated in paragraph No. 1(1) hereof. In the event of such termination, no compensation whatsoever shall be paid to you by the Government but subject to all terms and conditions herein contained having been observed and performed by you, there shall be refunded to you due proportion of the waiver fee, but without any interest thereon, for the unexpired portion of the waiver period which has been paid by you pursuant to paragraph No. 1(2) hereof.

* Insert as appropriate

*(9) Notwithstanding anything herein contained, in the event (i) of any breach, non-performance or non-observance of any of the terms and conditions herein contained or (ii) that for any duration of time, you use or permit or suffer any part of the Premises to be used for any illegal or immoral purposes or any purposes in breach of any ordinances, bye-laws, regulations and rules in force in Hong Kong, the Government shall be entitled to revoke forthwith the waiver hereby granted upon notice. In the event of such revocation, the Premises shall cease to be used for the purpose of the Information Technology and Telecommunications Industries and shall in all respects be subject to all the *[provisions, covenants, stipulations, exceptions, reservations, powers and conditions/General and Special Conditions] contained in the *[Lease/Conditions] and no part of the waiver fee already paid shall be refunded nor any compensation whatsoever be paid to you by the Government. The determination of the Director as to whether there is any breach, non-performance or non-observance of the terms and conditions herein contained or the Premises are or have been used for any illegal or immoral purposes or any purposes in breach of any ordinances, bye-laws, regulations and rules in force in Hong Kong shall be final and binding on you.

* Insert as appropriate

*(10) That in the event permission under section 16 of Town Planning Ordinance is required for the use of the Premises for the purpose of the Information Technology and Telecommunications Industries you shall prior to or within three calendar months or such extended period as the Director may approve from the commencement date of the waiver obtain the said permission. In the event that the said permission has not been obtained within the stipulated period, the Government shall be entitled to revoke forthwith the waiver hereby granted upon notice. In the event of such revocation, the Premises shall cease to be used for the purpose of the Information Technology and Telecommunications Industries and shall in all respects be subject to all the *[provisions, covenants, stipulations, exceptions, reservations, powers and conditions/General and Special Conditions] contained in the *[Lease/Conditions] and no part of the waiver fee already paid shall be refunded nor any compensation whatsoever be paid to you by the Government.

*[] Delete as appropriate

(11) Except as hereby temporarily waived all the *[provisions, covenants, stipulations, exceptions, reservations, powers and conditions/General and Special Conditions] contained in the *[Lease/Conditions] shall remain in full force and effect.

(12) Nothing contained in this letter shall prejudice any of the rights and remedies of you or your co-owners under the Deed of Mutual Covenant dated the _____ day of _____ and registered in the Land Registry/ _____ New Territories Land Registry by Memorial No. _____ .

(13) Nothing contained in this letter shall give rise to exemption from any ordinances, bye-laws, regulations and rules in force in Hong Kong governing the use of the Premises or any part thereof for the purpose of the Information Technology and Telecommunications Industries. If any building work involving structural alterations to the Premises is required for the use of the Premises or any part thereof for the purpose of carrying on the Information Technology and Telecommunications Industries, you shall engage an Authorized Person (as defined in the Buildings Ordinance) who shall prepare suitable plans for submission to the Building Authority and the other relevant Government departments or Authority for their approval. You shall at your own expense obtain all requisite licences and approvals from relevant Government departments or Authority prior to the operation of the Premises or any part thereof for the purpose of the Information Technology and Telecommunications Industries and you shall maintain and operate the Premises in all respects in compliance with the ordinances, bye-laws, regulations and rules in force and the terms and conditions of this waiver.

(Delete if there is no mortgage)

(14) Nothing contained in this letter shall prejudice any of the rights and remedies of your Chargee/Mortgagee, _____, under the Legal Charge/Mortgage dated the _____ day of _____ and registered in the Land Registry/ _____ New Territories Land Registry by Memorial No. _____.

2. If the foregoing terms and conditions are acceptable to you, please signify your acceptance thereof by signing the docket on both copies of the waiver. Your signature must be duly witnessed. [I note that the Premises _____ are _____ charged/mortgaged to the _____. It is essential the written consent of your Chargee/Mortgagee be obtained, at your own expense, to the foregoing terms and conditions by having the consent endorsed in the manner indicated below, on both copies of the waiver.] After you have signed [and the consent of the Chargee/Mortgagee has been duly endorsed,] please return both copies of the waiver to me, whereupon the waiver will be registered by Memorial at the Land Registry/ _____ New Territories Land Registry. After registration the original of the waiver will be returned to you for retention with the documents of title in your possession and the duplicate will be retained for my records.

[] Delete if there is no mortgage

3. If on the expiration of 28 days from the date of the waiver your acceptance of the above terms has not been formally signified in accordance with paragraph 2 above, the Government's approval of the waiver on these terms shall be deemed to have been automatically withdrawn.

Yours faithfully,

(
District Lands Officer,)

c.c. LACO (District)

I hereby agree to and accept the foregoing terms and conditions.

Witness : _____
(Signature and name in block letters) (Signature of _____)

H.K.I.D. Card No. :

H.K.I.D. Card No. :

Address :

OR
Seal of

and signatures and names in block letters of its attesting officers and description of their offices.)

Date :

(Delete if there is no mortgage)

I/We,
being the registered chargee/mortgagee of the Premises hereby consent to the issue of the waiver on the above terms and conditions to [Insert name of the owner] and formally acknowledge that I/we have no objection to the acceptance of such terms and conditions by [Insert name of the owner].

Dated the _____ day
of _____ .

Signed for and on behalf of

Part I : Standard Rates for Assessing Waiver Fees for Information Technology and Telecommunications Industries

Location of Premises	Standard Rates⁽¹⁾ of Annual Waiver Fee based on Internal Floor Area⁽²⁾ of the concerned premises	Standard Rates⁽¹⁾ (based on Internal Floor Area⁽²⁾) of lump sum fee payable upfront for waiver for the lifetime of the concerned building
For those premises within the district boundary of District Lands Office (Hong Kong West), District Lands Office (Hong Kong East), District Lands Office (Hong Kong South), District Lands Office (Kowloon East), District Lands Office (Kowloon West), District Lands office (Kwai Tsing) and District Lands Office (Tsuen Wan).	\$55/m ²	\$500/m ²
For those premises within the district boundary of District Lands Office (Tuen Mun), District Lands Office (Yuen Long), District Lands Office (North), District Lands Office (Tai Po), District Lands Office (Shatin), District Lands Office (Sai Kung) and District Lands Office (Islands).	\$36/m ²	\$330/m ²

Note (1) These standard rates are subject to review from time to time as the Government shall at its sole discretion consider appropriate.

(2) The Internal Floor Area of a unit comprises the enclosed internal space of the unit for the exclusive use of the occupier including balconies, toilets and lift lobbies forming part of that unit. It shall be the area contained within the enclosing walls of that unit measured to the interior face of the external wall or separating wall. All internal partitions and columns within the unit shall be included.

Appendix II

Part II : Requirements of a Valid Application

Applications should be submitted by the legal owner of the industrial premises concerned.

2. In situations where the application is submitted by an agent or parties other than the legal owner, a copy of the relevant authorization letter should also be submitted.

3. Information to be provided in an application should include the following : -

- (a) A clear identification of the premises concerned accompanied by a floor plan indicating the internal floor area involved.
- (b) A clear description of the proposed operation to be carried out in the concerned premises.
- (c) Duration of the term for which the waiver is applied for.

4. Other documents also to be submitted together with the application shall include the following : -

- (a) A computer printout containing the historical and current ownership particulars of the subject property; and
- (b) a complete copy of the Government Land Grant (including all modifications and attachments thereto) affecting the subject property.

It is necessary for both sets of these documents to be certified either by the Land Registry or by the solicitor acting for the applicant.