

For discussion on
23 May 2023

Legislative Council Panel on Development

Legislative Proposal to Streamline the Arrangement for Extension of Land Leases

PURPOSE

The Lands Department (“LandsD”) has been handling the extension of land leases which have expired since the establishment of the Hong Kong Special Administrative Region (“HKSAR”) in accordance with the land policy promulgated in July 1997. Specifically, LandsD would execute a new land lease with the owner(s) upon mutual consent to put into effect the extension of a land lease. However, such arrangement of executing the land lease with each and every owner is a cumbersome process, and would not effectively handle the large number of land leases expiring from 2025 onwards. With reference to the arrangement for extension of the land leases in the New Territories before the establishment of the HKSAR, we propose extending expiring land leases in a streamlined and orderly manner by way of legislation. This legislative proposal will only change the way of extending a land lease (viz. extending a land lease by operation of the law and not by executing a land lease document), but not the land policy promulgated in July 1997.

2. This paper briefs Members on the relevant legislative proposal.

EXISTING POLICY AND PRACTICE FOR LEASE EXTENSION

Policy promulgated in July 1997

3. Article 123 of the Basic Law provides that where leases of land without a right of renewal expire after the establishment of the HKSAR, they shall be dealt with in accordance with laws and policies formulated by the HKSAR on its own. Accordingly, the HKSAR Government promulgated the land policy in July 1997, which states that land leases not containing a right of

renewal (“non-renewable leases”) (excluding short term tenancies¹ and special purpose leases²) may, upon expiry, be extended at the sole discretion of the Government for a term of 50 years without payment of an additional premium, but an annual rent equivalent to three per cent of the rateable value of the property shall be charged³. These leases are mainly those for commercial, residential or industrial uses, which we will refer to as “general purpose leases” in this paper.

4. Since the establishment of the HKSAR Government, LandsD has been handling the extension of expiring general purpose leases in accordance with the aforementioned policy. Under the policy, LandsD will review land leases individually to decide whether they should be extended. In general, the Government will grant extension, unless there are public interest considerations for not extending a particular lease (e.g. where there is serious lease breach that remains unpurged despite repeated warnings near the time of lease expiry). The fact that the land is required to be taken back for a public purpose after expiry of the lease is not a public interest consideration for not extending a lease. Should the land be required for a public purpose, the Government would resume the land by invoking the relevant legislation and compensate the owners in accordance with the law, instead of taking back the land by not extending the lease and without paying compensation.

5. Since the establishment of the HKSAR, a total of 25 general purpose leases have expired. Amongst which, only two were not extended as the relevant owners could not be found⁴, one involved lease modification which was not an extension on original terms, and the remaining 22 leases were all granted extension without payment of an additional premium.

¹ Short-term tenancies are tenancies of government land for a fixed term of not more than 7 years.

² Special purpose leases refer to leases that are granted on specific policy considerations for designated uses. They generally contain a total prohibition against assignment. Prominent examples include leases for public transport and public utility operators (including those operating on franchises or licenses), recreational leases, petrol filling stations, leases for educational, welfare and religious uses, and leases for special industries, etc. The Government has an established mechanism to consider the extension of special purpose leases individually from the policy angle. Under the land policy promulgated in July 1997, subject to certain exceptions as governed by respective policies, the Government may extend special purpose leases also for 50 years without payment of additional premium, but subject to payment of annual rent equivalent to three per cent of the rateable value of the property.

³ The policy of charging an annual rent equivalent to three per cent of the rateable value of the property for leases approved for extension, since July 1997, was a continuation of the relevant arrangement under the Sino-British Joint Declaration which came into force in 1985 for maintaining consistency of policy.

⁴ While the land ownership of the two lots reverted to the Government upon expiry of the lease, LandsD subsequently granted short-term tenancies for the then residential occupiers to stay on (at market rent) until they moved away. At present, the lots concerned are under LandsD’s management.

Existing practice for lease extension - a cumbersome process

6. Under the existing practice, when LandsD decides to extend a general purpose lease, LandsD will undergo lease extension execution procedures with the owner(s) to bring the extension into effect (hereafter referred to as “conventional mechanism”). The salient points are as follows -

- (a) Mutual execution of new land lease: LandsD will offer the proposed conditions of the new land lease to the owner(s) for acceptance (see item (d) for details), after which LandsD will execute a new land lease with the owner(s);
- (b) Title and encumbrances under the land lease: Prior to signing the new land lease, the owner(s) have to produce proof of title for LandsD’s verification that he/she is the true owner. The owner(s) also need to clear subsisting encumbrances under the original lease or reinstate the same under the new land lease (such as undischarged mortgages, in which case the owner(s) need to liaise with the bank on the arrangement and conditions for releasing the mortgage under the original lease and entering into a fresh mortgage);
- (c) The Financial Secretary Incorporated (“FSI”) arrangement: For land under multiple ownership (such as multi-storey residential buildings), the Government will first grant a new lease to the FSI, and then assign the undivided shares of the individual properties from FSI to the relevant original owners. Such arrangement ensures that other owners will not be affected even if there are individual owners failing to complete the assignment procedures; and
- (d) Conditions of the lease: In offering proposed conditions for the new land lease, LandsD will retain the key conditions of the original land lease (such as user and development parameters), and take the opportunity to incorporate modernised standard conditions which are commonly found in newly granted land leases for the purpose of enhancing land administration. Examples of clauses incorporated

include those related to enforcement rights⁵, as well as maintenance and use of land⁶. Besides, where the original land lease is a virtually unrestricted one (referring to archaic leases that do not contain any restriction on user and development control), LandsD will insert user restriction with the owner's consent upon lease extension to provide basic control in the land leases.

7. The past experience shows that while executing a new lease with the owner(s) individually offers an opportunity for updating the lease conditions, the procedures involved are cumbersome, especially for cases involving numerous owners where extension of the land lease has to be executed through the FSI arrangement. This is not to mention the additional costs incurred by the owners for producing documents as proof of title and making arrangements to release the original mortgage and enter into a fresh mortgage under the new lease. In addition, execution of a new land lease involves a tremendous volume of administrative work, even more so with the rise in the number of expiring land leases in the coming years.

UPCOMING EXPIRING GENERAL PURPOSE LEASES

8. As the leases granted in the early days of Hong Kong gradually come to their expiry, the number of expiring land leases to be handled will increase abruptly in the future. Although no general purpose lease will be expiring from now till before June 2025, there will be general purpose leases of about 2 400 lots⁷ expiring from June 2025 to 29 June 2047. Amongst them, the earliest batch of leases expiring in June 2025 involves about 50 lots for non-industrial use in the Yau Tsim Mong district. As for 30 June 2047, general purpose leases of around 300 000 lots will expire concurrently on the same day. With many of such leases being multi-owned and involving a vast number of owners, it would be infeasible to follow the conventional mechanism to conduct title checking and execute the new land lease with each and every

⁵ The relevant clauses empower the Government to enter and inspect the lot for any non-compliance with lease conditions, expressly stipulate the right of the Government to re-enter a lot or part of a lot in case of serious lease breaches, and require the owner(s) to comply with the Town Planning Ordinance and the Buildings Ordinance or else the Government reserves the rights to take enforcement action under the land lease for non-compliance.

⁶ The relevant clauses require the owner(s) to preserve trees, landscape the lot, and upon redevelopment provide car parking spaces to the satisfaction of the Government.

⁷ On a sub-divided lot basis.

owner. The uncertainty involved may also bring disturbance to the owners concerned and the property market. There is a compelling need for the Government to streamline the lease extension procedures through legislation.

LEGISLATIVE PROPOSAL

9. We recommend introducing a new primary legislation to establish a statutory mechanism for the Government to extend expiring general purpose leases. By drawing reference to the New Territories Leases (Extension) Ordinance (Cap. 150) enacted in 1988 for the en bloc extension of all land leases in the New Territories to 30 June 2047, the new legislation will confer legal effect on lease extension, saving owners from the procedures of executing lease documents. The new legislation will be applicable to all non-renewable⁸ general purpose leases, excluding short-term tenancies and special purpose leases. For the purpose of identification of special purpose leases, LandsD will make a note to that effect for such leases in the relevant land register kept at the Land Registry. Upon expiry of these special purpose leases, their extension will be handled under the established mechanism whereby LandsD and the owner(s) will negotiate the terms for extension and execute a new land lease.

10. As compared with the conventional mechanism, the salient points of the statutory mechanism under the proposed legislation are set out below -

- (a) Extension of lease by way of the Government publishing gazette notices: The Government will declare and effect the extension of land leases through publishing gazette notices under the proposed legislation without requiring the owner(s) to execute a new land lease. We plan to publish the gazette notice about three years before expiry of each batch of leases to declare whether they will be extended or not. As far as the format of publication is concerned, we incline to list out only those land leases which will not be extended. In other words, land leases which expire during the specified period stated in the gazette notice are extended if they are not listed in the relevant gazette notice. In view that the great majority of land leases will be

⁸ Land leases with a right of renewal are extended automatically under the Government Leases Ordinance (Cap. 40).

extended under the prevailing policy, the merit of adopting such a “negative listing” approach is being simple in promulgation and easy-to-search. It could also avoid unintentional errors of omission when listing the leases to be extended;

- (b) Term of extension: In accordance with the land policy promulgated in July 1997, land leases extended under the statutory mechanism will similarly be extended for a term of 50 years and without payment of any additional premium, but an annual rent equivalent to three per cent of the rateable value of the property will be charged. Such conditions will be expressly stated in the proposed legislation, thereby becoming new conditions in the extended lease, so as to uphold the prevailing land policy;
- (c) Other lease conditions: As the Government will unilaterally extend land leases through publishing gazette notices under the proposed statutory mechanism (as opposed to the conventional mechanism under which LandsD would agree on the lease conditions with the owners through mutual consent), we recommend preserving the conditions of the original lease upon extension, and on top of that, incorporate additional clauses that are confined to the most essential ones concerning enforcement rights of the Government (see footnote 5), in order to strengthen land enforcement. Such conditions will also be stipulated in the proposed legislation, thereby becoming new conditions in the extended lease;
- (d) Title and encumbrances under the land lease: The proposed legislation will expressly provide that a lease extended through the statutory mechanism will have all interests, encumbrances and rights under the original lease carried forward. This will obviate the need for owners to prove title and to clear or reinstate encumbrances under the original land lease as in the conventional mechanism, which will bring about significant facilitation for both the public and businesses; and
- (e) Owners may opt-out from lease extension and the Government may amend a decision of non-extension of lease: The proposed legislation will provide an option for the owner(s) to opt out if he does not wish

his land lease to be extended⁹. On the other hand, for land leases which are listed out as not extended, the proposed legislation will provide for an amendment mechanism allowing the Government to change a decision of not extending a lease to extending the same after administrative review. On the contrary, as certainty is of utmost importance to owners, we will consider making clear in the proposed legislation that the Government should not be allowed to reverse its gazetted decision of extending a lease under the amendment mechanism.

ADVICE SOUGHT

11. Members are invited to comment on the proposal in this paper. We will duly take into account Members' views in the course of drafting the bill, which will be introduced into the Legislative Council in the second half of this year.

Development Bureau
Lands Department
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⁹ A similar arrangement is provided under the New Territories Lease (Extension) Ordinance (Cap. 150). All lessees must act jointly to effect the option if the lot concerned is under multiple ownership.