



# 香港地產建設商會

## THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

香港中環德輔道中19號環球大廈1403室  
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### **Extension of Government Leases Bill**

#### **- Submissions of The Real Estate Developers Association of Hong Kong**

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#### **Body making submissions**

1. These submissions are made by **The Real Estate Developers Association of Hong Kong (“REDA”)**, in response to the invitation of the Bills Committee on Extension of Government Leases Bill (the **“Bill”**).

#### **Summary of REDA’s submissions**

2. **In relation to timeframe for extension, REDA submits that :-**
  - (a) **All leases in the New Territories expiring on 30 June 2047 should be extended *now*.**
  - (b) **All other leases should be extended as early as possible, and not later than at least 20 years before their expiry.**
3. **In relation to special purpose leases (“SPL”) REDA submits that :-**
  - (a) **All SPL should be extended by the proposed legislation, with the exception of the SPL or categories of SPL listed in a schedule (the “Excepted SPL”)**
  - (b) **Excepted SPL should be limited to the 4 Exceptions under the 1997 Land Policy (namely, leases for recreational purposes, leases for petrol filling stations, easements covered by franchises or operating licences and short term tenancies).**
  - (c) **Leases for educational, welfare and religious uses, and leases for special industries should not be Excepted SPL**



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### Guiding principle for land policy

4. On 15 July 1997, the then Secretary for Planning, Environment and Lands, Mr Bowen Leung, announced that the Executive Council had on the same day approved a land policy to deal with, among other things, non-renewal Government leases which would expire after 1 July 1997 (the “**1997 Land Policy**”). **Annex 1** is a copy of the announcement and the text of the 1997 Land Policy.

5. In the Announcement, the then Secretary for Planning, Environment and Lands stated that the 1997 Land Policy had been worked out under the basic guiding principle of *continuity, simplicity and certainty* and specifically :-

*“Clarity, consistency and certainty in the land lease terms are essential for the effective functioning of the property sector, especially in regard to undertaking property development and investment.”* (the “**guiding principle**”)

6. REDA submits that the Bill should follow the guiding principle and, to the extent that it does not, appropriate amendments at the committee stage should be introduced to make the Bill conform to the guiding principle.

### Areas in which Bill fails to follow guiding principle

7. There are two areas in which the Bill fails to follow the guiding principle :-

(a) It is proposed that leases will only be extended by an Extension Notice published not less than **6 years** before expiry of the relevant leases.

(b) It is also proposed that special purpose leases (“**SPL**”) will not be extended under the proposed legislation, and extension of SPL will be dealt with on a case-by-case basis.



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### Timeframe for extension – 6 years too short

8. As the then Secretary for Planning, Environment and Lands pointed out when the 1997 Land Policy was announced, clarity, consistency and *certainty in the land lease terms* are essential for the effective functioning of the property sector, especially in regard to undertaking property development and investment.
9. Certainty in the extension of leases will affect not only developers, big or small, but also owners of some 2 million domestic units in the housing market. Members of the public, including owners, developers, banks and investors (whether they be local, mainland or international) need to have the certainty, well in advance of the relevant lease expiry dates, that their leases will be extended in accordance with the Bill for 50 years without payment of a premium.
10. *The timeframe of 6 years is clearly not long enough to provide certainty.* Owners cannot reasonably be expected to buy a new home<sup>1</sup>, developers cannot be reasonably be expected to acquire land and undertake development, banks cannot reasonably be expected to lend on the security of a property, and investors cannot reasonably be expected to invest in a property<sup>2</sup>, on the assumption that the lease of the property, due to expire in, say, less than 20 years' time, will be extended for 50 years without payment of a premium, *unless there is certainty in the extension.*

<sup>1</sup> The tenor of mortgage these days is about 22 years. A home buyer seeking a mortgage to finance his purchase of a property will face difficulties in obtaining finance if the unexpired term of the lease of the property is substantially less than the tenor of the mortgage and there is no certainty of a lease extension.

<sup>2</sup> From the perspective of maintaining Hong Kong's attractiveness to international investors, it is important to provide certainty to the life of a lease in order to preserve the capital value of a property as a vehicle of investment. It is a common practice for international investors and financiers to refer to the unexpired term of the lease of a property in their assessment of the capital value of an investment product, and the general market conception is that an unexpired lease term of 12 years *at least* is required to give certainty to the capital value.



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11. The Administration has not provided any convincing reason why a time frame of only 6 years, but not a longer period, is proposed.
  - (a) In the case of the New Territories Leases (Extension) Ordinance (“**Cap 150**”), the ordinance was enacted in 1988 for the extension of leases in the New Territories expiring in 1997, about 9 years in advance. But that was not because 9 years was a sufficiently long period of time to create certainty and inspire confidence.
  - (b) Cap 150 was enacted only on 26 February 1988 because agreement for the Sino British Joint Declaration was not reached until 19 December 1984. It took 3 years 2 months from the Joint Declaration to the enactment of Cap 150.
  - (c) One would expect that if the Joint Declaration had been agreed earlier than 1984, then Cap 150 would have been enacted much earlier than 1988, and not merely 9 years before the expiry of the leases in 1997.
12. All leases in the New Territories (save for those granted after the announcement of the 1997 Land Policy) will expire on 30 June 2047. REDA can see no good reason why all these leases should not be extended *now*. For other leases, they should be extended as early as possible, and not later than at least 20 years before their expiry.
13. **REDA therefore submits that :-**
  - (a) **All leases in the New Territories expiring on 30 June 2047 should be extended *now*.**
  - (b) **All other leases should be extended as early as possible, and not later than at least 20 years before their expiry.**



### Special Purpose Leases (“SPL”)

#### *The Administration’s proposal*

14. It is proposed that :-

- (a) Special purpose leases (“SPL”) will not be extended under the proposed legislation, and extension of SPL will be dealt with on a case-by-case basis<sup>3</sup>.
- (b) Whether a lease is a SPL will be determined by the Director of Lands administratively and is not to be provided in the legislation<sup>4</sup>.

#### *Statement of “no change in backbone of 1997 Land Policy” not correct*

15. The Administration, in the LegCo Brief, states that ***“the new legislation will not change the backbone of the 1997 Land Policy, and what is changed by the legislative exercise is the means through which leases will be extended – extension will be granted by operation of law through publication of Extension Notices in the Gazette, instead of execution of individual leases”***<sup>5</sup>.

16. ***This statement is not correct, in so far as SPL are concerned.*** Under the 1997 Land Policy, all leases are to be extended for 50 years without payment of a premium, and the only exceptions are the following 4 classes of leases (collectively the “4 Exceptions”), but ***SPL do not fall under the 4 Exceptions*** :-

- (a) leases for recreational purposes;
- (b) leases for petrol filling stations;
- (c) new leases covered by franchises or operating licences; and
- (d) short term tenancies (“STT”).

<sup>3</sup> Paragraph 3 of LegCo Brief.

<sup>4</sup> Paragraph 9 of LegCo Brief.

<sup>5</sup> Paragraph 7 of LegCo Brief.



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17. In other words, under the 1997 Land Policy all leases, ***including SPL***, will be extended for 50 years, save for the 4 Exceptions. The Administration's proposal amounts to a departure from the 1997 Land Policy, in so far as SPL are concerned.

*What is a special purpose lease (SPL)?*

18. In footnote 10 of the LegCo Brief, it is suggested that :-

*“10 In the light of the experience of the New Territories Leases (Extension) Ordinance (Cap. 150), it is not possible to define SPL in a fool-proof manner in the proposed legislation, as there is no lease feature unique to SPLs that can clearly differentiate SPLs from non-SPLs. However, LandsD will publish on its website by a date that is six months from the appointed date or by 31 December 2024 (whichever is earlier) the full list of SPLs then prevailing. We will also set out the more common features of SPLs for general information.”*

19. In another footnote 2 of the LegCo Brief, it is stated that :-

*“2 Special purpose leases refer to leases granted, disposed of or modified on specific policy considerations for designated uses, such as leases for public transport and public utility operators (including those operating on franchises or licenses), recreational leases, leases for petrol filling stations, leases for educational, welfare and religious uses, and leases for special industries, etc.”*

20. The suggestion that *“in the light of the New Territories Leases (Extension) Ordinance (Cap. 150), it is not possible to define SPL in a fool-proof manner”* is difficult to understand, as Cap 150 has a clear definition in section 3 of “lease for special purpose”. In effect, it means :-

- (a) a lease with an absolute restriction against alienation;
- (b) a STT;
- (c) a lease granted to the Hong Kong Housing Authority, MTRC, KCRC, or the Hong Kong Housing Society;
- (d) a lease specified in Part II of the Schedule (there were only 3 lots);



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- (e) a lease specified in Part I of the Schedule (there were only 28 lots many of which are piers).
21. The Administration has stated in footnote 10 of the LegCo Brief that the Lands Department will publish on its website by a date that is 6 months from the appointed date or by 31 December 2024 (whichever is earlier) the full list of SPLs then prevailing and that will also set out the more common features of SPLs for general information.
22. Accordingly, there should be no difficulties in defining a SPL, or specific categories of SPL, for which extension is to be granted only on a case-by-case basis.
23. As pointed out earlier, clarity, consistency and certainty in the land lease terms are essential for the effective functioning of the property sector, especially in regard to undertaking property development and investment.
- (a) This guiding principle equally applies to the *educational, welfare, religious* and *special industries* sectors, as these sectors play very important roles in maintaining a sustainable environment for the stability and prosperity of Hong Kong.
- (b) Certainty in extension of leases of these sectors will strengthen the confidence not only of the people in Hong Kong, but also the confidence of the international community.
24. **REDA therefore submits that :-**
- (a) **All SPL should be extended by the proposed legislation, with the exception of the SPL or categories of SPL listed in a schedule (the “Excepted SPL”)**



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- (b) Excepted SPL should be limited to the 4 Exceptions under the 1997 Land Policy (namely, leases for recreational purposes, leases for petrol filling stations, eases covered by franchises or operating licences and STT).
- (c) Leases for educational, welfare and religious uses, and leases for special industries should not be Excepted SPL

The Real Estate Developers Association of Hong Kong

January 2024



## **LAND LEASES AND RELATED MATTERS**

### **INTRODUCTION**

At the meeting of the Executive Council on 15 July 1997, the Council ADVISED and the Chief Executive ORDERED that -

- (a) **new leases** of land granted (except new special purpose leases for recreational purposes and petrol filling stations, the term of which should be 21 years; except new special purpose leases covered by franchises or operating licences, the term of which should normally be the same as that of the franchise or licence; and except short term tenancies which are normally for periods of not more than seven years) should be for a term of 50 years from the date of grant at a premium, and subject to payment from the date of the land grant of an annual rent equivalent to three per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter, as explained in paragraphs 4 and 5 below. The exemptions from the liability to pay such rent in respect of certain rural holdings as provided for under the land policy prevailing before 1 July 1997 should continue;
- (b) **modifications of lease conditions** granted should be dealt with as set out in paragraph 7 below;
- (c) leases not containing a right of renewal (**non-renewable leases**), upon expiry, should, at the sole discretion of the Hong Kong Special Administrative Region Government (HKSARG), be extended for a term of 50 years without payment of an additional premium, but an annual rent shall be charged from the date of extension equivalent to three per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter, as explained in paragraph 9 below; and

- (d) **special purpose leases**, upon expiry, should, at the HKSARG's sole discretion, be extended in accordance with the principles set out in paragraph 10 below.

## **BACKGROUND**

### **General Background**

2. In determining the arrangements for the HKSARG to grant and modify land leases, we believe that the basic guiding principles should be continuity in the arrangements, simplicity in procedures which makes it easier for both the HKSARG to administer and for the lessees to comply with, and certainty in the tenure of leases in general to encourage property development.

### **New leases of Land**

3 In accordance with Annex III to the Joint Declaration (JD), between 27 May 1985 when the JD entered into force and 30 June 1997, new leases of land were granted by the Hong Kong Government (HKG) for a term expiring not later than 30 June 2047. Such leases were granted at a premium and nominal rental until 30 June 1997, after which date they did not need to pay an additional premium but were required to pay an annual rent equivalent to three per cent of the rateable value of the property at that date, adjusted in step with changes in the rateable value thereafter.

4 We consider it appropriate to grant new leases for 50 years from the date of the grant. The only exceptions to this, having regard to the land policy prevailing before 1 July 1997, are special purpose leases for recreational purposes and petrol filling stations, the term of which should be 21 years; special purpose leases covered by franchises or operating licences, the term of which should normally be the same as that of the franchise or licence; and short term tenancies which are normally for periods of not more than seven years.

5 We also consider it appropriate to grant such new leases at a premium and subject to payment from the date of the land grant of an annual rent equivalent to three per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter, except that the exemptions from the liability to pay Government rent in respect of certain rural

holdings as provided for under the land policy<sup>1</sup> prevailing before 1 July 1997 should continue. The charging of the annual rent follows the land policy prevailing before 1 July 1997, and is retained to ensure consistency in the treatment of such leases and those granted before 1 July 1997.

### **Modification of Lease Conditions**

6 Annex III to the JD provided that modifications of the conditions specified in leases granted by the HKG might continue to be granted before 1 July 1997 at a premium equivalent to the difference between the value of the land under the previous conditions and its value under the modified conditions.

7 We consider it appropriate that the above arrangements for dealing with modification cases before 1 July 1997 should continue to prevail. In modification cases which do not involve any realignment of the boundaries of the lot(s) covered by the lease concerned and are conducted by a modification letter, all the conditions previously applicable to the lease, including the lease term and the rent, will remain unchanged, with the exception of the conditions being modified. In all other modification cases conducted by surrender/regrant, the new term will be 50 years from the date of regrant, subject to an annual rent equivalent to three per cent of the rateable value of the property at the date, adjusted in step with changes in the rateable value thereafter, and payable from the date of regrant.

### **Extension of Non-renewable Leases**

8 Annex III to the JD provided that non-renewable leases expiring before 30 June 1997, except short term tenancies and special purpose leases, might be extended if the lessee so wished, for a period expiring not later than 30 June 2047 without payment of an additional premium. An annual rent was charged from the date of extension equivalent to three per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter.

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<sup>1</sup> Annex III to the JD and Article 122 of the Basic Law provide for the exemptions from the liability to pay Government rent in respect of certain rural holdings. Details of the exemptions are set out in the Government Rent (Assessment and Collection) Ordinance (Ordinance No. 53 of 1997).

9 We consider it appropriate that non-renewable leases may, upon expiry and at the HKSARG's sole discretion, be extended for a term of 50 years without payment of an additional premium, but an annual rent shall be charged from the date of extension equivalent to three per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter. The extension of such leases should be at the HKSARG's sole discretion, so that it may decide not to extend certain leases, thereby making clear that the lessees do not have the right of renewal of their leases.

### **Extension of Special Purpose Leases**

10 Largely on the basis of the arrangements prevailing before 1 July 1997, we consider it appropriate that that special purpose leases, other than those specified below, may, upon expiry and at the HKSARG's sole discretion, be extended for a term of 50 years, without payment of a premium, but an annual rent shall be charged from the date of extension equivalent to three per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter. The exceptions to the arrangements, which follow the land policy prevailing before 1 July 1997, are as follows -

- (a) leases for recreational purposes may not be extended for a term exceeding 15 years;
- (b) leases covered by franchises or operating licences should normally be extended for a term to be the same as that of the franchise or licence;
- (c) leases for petrol filling stations may not be extended; new leases for a term of not more than 21 years may, however, be granted to the existing owner on payment of a premium; and
- (d) leases for kerosene stores may not be extended; however, short term tenancies at full market rental may be offered to the existing owner for an initial term of three years.

**Planning, Environment and Lands Bureau**

**15 July 1997**

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## HKSARG Land Policy and First Land Disposal Programme Announced

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The Executive Council approved today (Tuesday) the manner in which the Government of the Hong Kong Special Administrative Region should deal with land leases and related matters in exercise of its authority under Articles 7 and 123 of the Basic Law.

Announcing the details at a press conference, the Secretary for Planning, Environment and Lands, Mr Bowen Leung, said the arrangements had been worked out under the basic guiding principles of continuity, simplicity and certainty.

"Clarity, consistency and certainty in the land lease terms are essential for the effective functioning of the property sector, especially in regard to undertaking property development and investment," said Mr Leung.

Mr Leung explained that the new land policy is basically the same as those prevailing before July 1, 1997, except for changes that were justified under present circumstances.

He said that the arrangements can be grouped into four categories, namely, new leases, modification of lease conditions, extension of non-renewable leases, and extension of special purpose leases. The details are :

New leases will be granted -

- (a) at a term of 50 years from the date of grant at a premium; and
- (b) subject to payment from the date of the land grant of an annual rent equivalent to 3% of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter.

The exceptions to this arrangement are special purpose leases for recreational purposes and petrol filling stations will be for 21 instead of 50 years; special purpose leases covered by franchises or operating licences will normally be the same as those of the franchises or licences; and short term tenancies are normally for periods of not more than seven years.

"The charging of the annual rent follows the past arrangements, for consistency in the treatment of leases.

Mr Leung added that the exemptions from the liability to pay Government rent in respect of certain rural holdings could continue.

Modifications of the conditions specified in leases will be granted at a premium equivalent to the difference between the value of the land under the previous conditions and its value under the modified conditions.

In modification cases which do not involve any realignment of the boundaries of the lot(s) covered by the lease concerned and are conducted by a modification letter, all the conditions previously applicable to the lease, including the lease term and the rent, will remain unchanged, with the exception of the conditions being modified.

In all other modification cases conducted by surrender/regrant, the new term will be 50 years from the date of regrant. An annual Government rent of 3% of the rateable value will be charged from the date of regrant to be adjusted in step with changes in the rateable value.

Non-renewable leases will, upon expiry and at the Government's sole discretion, be extended for a term of 50 years without payment of an additional premium. However, an annual Government rent of 3% of the rateable value will be charged from the date of extension to be adjusted in step with changes in the rateable value.

"It is also important to emphasise that the lessees do not have an automatic right of renewal of their non-renewable leases. Such extension of non-renewable leases will be at the Government's sole discretion, i.e. the Government may, if circumstances require in the public interest, decide not to extend certain leases."

"We expect however that most of the non-renewal leases will be renewed," Mr. Leung said.

Special purpose leases will, upon expiry and at the Government's sole discretion, be extended for a term of 50 years, without payment of a premium, but an annual Government rent of 3% of the rateable value will be charged from the date of extension to be adjusted in accordance with the rateable value.

The exceptions to this are -

- (a) leases for recreational purposes may not be extended for a term exceeding 15 years;
- (b) leases for petrol filling stations may not be extended. New leases for a term of not more than 21 years may, however, be granted to the existing owner on payment of a premium;
- (c) leases covered by franchises or operating licences should normally be extended for a term to be the same as that of the franchises or licences; and
- (d) leases for kerosene stores may not be extended. However, short term tenancies at full market rental may be offered to the existing owner for an initial term of three years.

These arrangements follow the past arrangements except for the lease term.

Mr Leung also announced a 5-year Land Disposal Programme which he said was targeted towards the Chief Executive's objective of producing around 85,000 flats per annum from both the private and public sector.

He said that part of the programme was aimed at making available sites to increase the supply of low density larger units to meet the demand in that sector and to help Hong Kong maintain its place as a business centre and attract investments.

In the 5-year Land Sales Programme, land would be disposed of to produce around 146,000 flats of which around 15,000 would be aimed at the low density larger units residential market, and 50,000 flats would be for Private Sector Participation Scheme.

"The Government is determined to deliver the housing production programme," Mr Leung said.

End/Tuesday, July 15, 1997

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