

Extension of Government Leases



政府租契續期

Background

Under land law, a landlord (technically the lessor or grantor) may grant a lease to the tenant (technically the lessee or grantee) as freehold land (to hold the same for perpetuity) or as leasehold land (to hold the same for a term of years). In Hong Kong, the Government is the only landlord (or lessor or grantor) and the tenant (lessee or grantee) may be any person. In Hong Kong, only the lands where St John's Cathedral is housed and where the University of Hong Kong is situated are freehold lands. In 1920s, the University of Hong Kong has surrendered its freehold land in exchange for a leasehold land of 999 years. Currently, the St John's Cathedral land is the only freehold land in Hong Kong. All other lands were granted by the Government as leasehold lands with various tenures. Prior to the signing of the Sino-British Joint Declaration ('Joint Declaration') in 1984, generally, (a) the longest leasehold lands in Hong Kong island and in the South of Boundary Street in Kowloon were 999 years; and (b) the leasehold lands in the North of Boundary Street in Kowloon and in New Territories were all with an expiry date which was 3 days before 30 June 1997. After the Joint Declaration and before the resumption of sovereignty (and the Basic Law coming into effect) on 1 July 1997, the Government was entitled to grant leasehold lands with a term of 50 years.

After 1 July 1997 and under Article 123 of the Basic Law, it is provided that where leases of land without a right of renewal expire after the establishment of HKSAR, such leases will be dealt with in accordance with the laws and policies formulated by the HKSAR. Pursuant thereto, HKSAR Government promulgated our land policy in July 1997 (1997 Land Policy) stating that leases not containing a right of renewal (non-renewable leases), excluding short term tenancies (STTs) and special purpose leases (SPLs), may, upon expiry, be extended at the sole discretion of HKSAR Government for a term of 50 years without payment of an additional premium but that an annual rent equivalent to three per cent (3%) of the prevailing rateable value of the property at the time of assessment of annual rent will be charged.

Since July 1997, the Lands Department has handled expiring non-renewable leases in accordance with the 1997 Land Policy. Although HKSAR Government reserves the sole discretion to decide whether to extend a lease, in general HKSAR Government will normally extend a lease unless there are public interest considerations against extension of a particular lease. Out of a total of 25 leases which have expired since 1 July 1997, only three were not extended and the remaining twenty-two were all extended. The extension is by conventional mechanism of executing a new lease in place of the expired lease for every lease. The process is cumbersome and time-consuming. Currently leases of about 2,400 lots will expire from June 2025 to 29 June 2047. On 30 June 2047, leases of around 300,000 lots will all expire on the same day.

Extension of Government Leases Ordinance

In response, the Extension of Government Leases Ordinance ('Ordinance') was proposed and passed on 26 June 2024 (and effective on 5 July 2024) to provide a statutory standing mechanism for extending leases in a more streamlined and efficient manner

背景

根據土地法，業主（嚴格而言為出租人或批地人）可向租客（嚴格而言為承租人或獲批地人）批出永久業權土地（永久持有土地）或批租土地（按年期持有土地）的租約。在香港，政府是唯一業主（或出租人或批地人），而租客（承租人或獲批地人）可以是任何人。在香港，只有聖約翰座堂所在土地及香港大學所在土地是永久業權土地。香港大學於1920年代交出永久業權土地，換取為期999年的批租土地。聖約翰座堂的土地目前是香港唯一的永久業權土地。所有其他土地均由政府以不同年期的批租土地批出。於1984年簽訂《中英聯合聲明》（《聯合聲明》）之前，一般而言，（a）香港島及九龍界限街以南的批租土地年期最長為999年；及（b）九龍界限街以北及新界的批租土地均於1997年6月30日前3天屆滿。於《聯合聲明》發表後至1997年7月1日主權回歸（及《基本法》生效）前，政府有權批出年期為50年的批租土地。

1997年7月1日後，《基本法》第一百二十三條規定，香港特別行政區成立以後滿期而沒有續期權利的土地契約，由香港特別行政區自行制定法律和政策處理。據此，香港特區政府於1997年7月頒布土地政策（1997年土地政策），表明沒有續期權利的租契（不可續期租契）（不包括短期租約和特殊用途租契）在屆滿時，可由政府全權酌情決定續期50年而無須補繳地價，惟須每年繳納相當於每年評估的土地應課差餉租值百分之三（3%）的地租。

自1997年7月起，地政總署根據1997年土地政策處理即將屆滿的不可續期契約。雖然香港特區政府保留全權酌情決定是否為租契續期，但一般而言，除基於公眾利益考慮而反對某份租契續期外，香港特區政府通常會為租契續期。自1997年7月1日起屆滿的25份租契中，只有3份未獲續期，其餘22份全部獲續期。每份租契的續期均以簽署新租契取代已屆滿租契的傳統機制進行。該過程既繁瑣亦費時。目前約2,400個地段的租契將於2025年6月至2047年6月29日屆滿。於2047年6月30日，約300,000個地段的租契將於同日全部屆滿。

《政府租契續期條例》

為此，《政府租契續期條例》（「條例」）的草案於2024年6月26日獲提交通過（並於2024年7月5日生效），在不改變1997年土地政策骨幹的情況下，以更精簡及高效的方式為租契續期提供法定常設機制。根據條例，租契續期將透過於憲報刊登續期公告的方式依法批出，而非根據合約與業主簽署個別新租契。條例適用於在2024年7月5日或之後屆滿的所有不可續期租契，但不適用於（a）短期租約及（b）特殊用途租契，該等租契在傳統機制下按個別情況處理。

條例要點

為協助會員了解條例要點，現扼要重述條例的以下要點。

條例適用於在2024年7月5日或之後屆滿的不可續期的一般租契，但不適用於（a）短期租約及（b）特殊用

without changing the backbone of the 1997 Land Policy. Pursuant to the Ordinance, extension of leases will be granted by operation of law through publication of Extension Notices in Gazette, instead of execution of individual new leases under contract. The Ordinance is applicable to all non-renewable leases expiring on or after 5 July 2024 and is not applicable to (a) short term tenancies and (b) special purpose leases which are dealt with on a case by case basis under the conventional mechanism.

Salient Features of the Ordinance

In order to assist our members to understand the gist of the Ordinance, the following salient features of the Ordinance are recapped.

The Ordinance applies to non-renewable general leases expiring on or after 5 July 2024 and does not apply to (a) short term tenancies and (b) special purpose leases. The Director of Lands ('Director') will identify special purpose leases by making identification notes in the Land Registry.

For those leases that will be extended, the Director will publish Extension Notices in the Gazette and those leases will be extended by operation of law without the owners executing new leases. Upon extension, those leases will be extended for a term of 50 years with no additional premium and with payment of annual government rent payable at 3% of rateable value. For those leases that will not be extended, the Director will publish a Non-Extension List specifying the leases that will not be extended in accordance with the Ordinance and will expire in accordance with their respective terms. The Extension Notices and the Non-Extension Lists will be published at least six years before the expiry of those leases.

Under the Ordinance, a lessee may opt-out from extension under the Extension Notice by registering an Opt-Out Memorandum with the Land Registry whereupon such lease will not be extended and will expire in accordance with its terms.

For leases where foreign-related entities are involved, prior approval to extend such leases must be obtained from the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in Hong Kong.

To appeal or amend any lease that (a) is identified as a special purpose lease under the identification note or (b) is listed in the Non-Extension List, the Director will publish administrative guidelines setting out the arrangement and procedure for such appeal. Apart from the administrative guidelines, the Chief Executive in Council may make further regulations under the Ordinance.

途租契。地政總署署長（「署長」）將在土地註冊處作出識別摘記，以識別特殊用途租契。

對於將續期的租契，署長將在憲報刊登續期公告，而該等租契將依法續期，業主無需簽署新租契。一經續期，該等租契將續期50年，無須繳付額外補地價，並須每年繳付應課差餉租值3%的地租。對於不獲續期的租契，署長將公布一份不予續期列表，列明根據條例不獲續期的租契，並按其各自的條款屆滿。續期公告及不予續期列表將在該等租契屆滿前至少六年公布。

根據條例，承租人可向土地註冊處註冊一份選不續期備忘錄，選擇不根據續期公告續期，屆時該租契將不予續期，並將按照其條款屆滿。

對於涉及外國關連實體的租契，須事先取得中華人民共和國外交部駐香港特派員公署批准方可續期。

若要對（a）識別摘記中識別為特殊用途租契或（b）被列入不予續期列表的租契提出上訴或作出修訂，署長將公布行政指引，列明上訴的安排及程序。除行政指引外，行政長官會同行政會議可根據條例訂立進一步的規例。





Conclusions

The first batch of Extension Notices and Non-Extension Lists have been published in the Gazette on 5 July 2024 covering applicable leases with expiry dates between 5 July 2024 and 31 December 2030. Subsequent Extension Notices and Non-Extension Lists will be published at least six years before the expiry dates of the relevant leases. For special purpose leases, the first batch (with expiry dates between 5 July 2024 and 31 December 2030) has also been identified and published on 5 July 2024. The remaining special purpose leases will be identified and published by 27 December 2024.

Members holding lands are advised to review the expiry dates of their leases and to take appropriate actions when their leases are not extended or when their leases are identified as special purpose leases (but which are not special purpose leases as originally granted). If their leases are included in the Extension Notices, nothing is required to be done as their leases will be extended for another 50 years upon expiry automatically and by operation of law unless the lessees do not intend to extend in which event an Opt-Out Memorandum is required to be filed and registered in the Land Registry. Members are advised to consult their legal advisers if they are in doubt.

Last but not least, our Chamber welcomes the enactment of the Ordinance to provide for a statutory regime whereby applicable non-renewable leases are renewed and extended automatically by operation of law for 50 years without the owners executing new leases which is more efficient and cost effective than the previous conventional mechanism of executing individual lease with each owner for extension. **M**

— Vincent P C Kwan

Solicitor/Certified Public Accountant (Fellow) (Non-Practising)
Member (Formerly Chairman), FRA Committee
The Chamber of Hong Kong Listed Companies

結語

首批續期公告及不予續期列表已於2024年7月5日刊憲，涵蓋期滿日介乎2024年7月5日至2030年12月31日之間的適用租契。後續續期公告及不予續期列表將於相關租契期滿日前至少六年公布。首批（期滿日介乎2024年7月5日至2030年12月31日之間）特殊用途租契亦已確定，並於2024年7月5日公布。餘下特殊用途租契將於2024年12月27日前確定及公布。

我們建議持有土地的成員應檢視其租契期滿日，並在其租契未獲續期或其租契被識別為特殊用途租契（但最初批出時並非特殊用途租契）時，採取適當行動。若其租契被納入續期公告，則無需採取任何行動，因其租契於屆滿時將自動依法續期50年，除非承租人無意續期，在此情況下，承租人須提交選不續期備忘錄並於土地註冊處註冊。如有疑問，會員應諮詢法律顧問。

最後，本商會歡迎頒布條例，以提供法定制度，令適用的不可續期租契可依法自動續期50年，而無需業主簽署新租契，較以往與每位業主簽署個別續期租契的傳統機制，更具效率及成本效益。 **M**

— 關保銓

律師 / 資深會計師（非執業）
香港上市公司商會
財經事務及監管政策委員會委員（及前任主席）