

# **Hong Kong Building Control and Land Administration e-Museum**

## **Motivations**

There are many different museums in Hong Kong, yet none of them presents the history of building control and land administration. The history of Hong Kong and the evolution of building forms in Hong Kong cannot be understood without the background knowledge of building control and land administration. Furthermore, building control and land administration in Hong Kong are very interesting and inspiring. For example, we have ample experience in granting land of leasehold interests, and in common ownership of high-rise buildings managed by covenants, etc. I have taught land administration course for more than 10 years and the following materials and cases study have been found very useful by my students. I would like to share my collected materials with those who are interested in the historical development of building and land administration in Hong Kong. Hopefully, one day a real museum can be established. For any queries, please feel free to contact me at [ecyyiu@hkucc.hku.hk](mailto:ecyyiu@hkucc.hku.hk)

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Building built in the 1900s



Housing built in the  
1960s



Housing built in the  
1990s

## LINKS:

- Buildings Department, Hong Kong Government – <http://www.bd.gov.hk/>
- Lands Department, Hong Kong Government – <http://www.landsd.gov.hk/>
- Planning Department, Hong Kong Government – <http://www.pland.gov.hk/>
- Urban Renewal Authority, Hong Kong – Preservation website at <http://www.ura.org.hk/html/c700000e1e.html>

- **Contents of Exhibits (still under-construction)**

## **1 BUILDING CONTROL**

### **1.1 The First Ordinance for Building Control**

In 1856, the first ordinance about building, The Building and Nuisances Ordinances, governing buildings and sanitation, was enacted. This was then replaced by the Buildings Ordinance in 1889 and the Public Health Ordinance in 1883. The Governor (Hennessy) put forward an Immigration Ordinance allowing local Chinese in Hong Kong to become British and was enacted in 1880. The Chinese merchants invested a lot on real estate and land properties resulting in an upsurge of land price in 1881. Unfortunately, some British merchants objected strongly on this bill because of their worries of the hygiene of Chinese. A Royal Engineer Mr Osbert Chadwick was chartered to carry out a survey and made recommendations to the hygienic situation of Chinese Tenements in Hong Kong. His survey was the first detailed examination of the Chinese housing since his research field was Taiping Shan area. The Chadwick (1882) report resulted in almost 46% plummet of land price in the end of 1882. The then Governor (Bowen) put forward an amendment to the existing Public Health Ordinance in 1883 by incorporating Chadwick report's recommendations. It has been successfully enacted though, it has not been implemented until 1903. It becomes the first Building Control on density and ventilation of buildings in Hong Kong. Sub-section 3(a) of the Ordinance stipulated the **minimum space (50 square feet) and volume of air (550 cubic feet) per occupant**. Sub-section 4(c) stipulated the minimum area of **window (1/10 of room area)**, the minimum area of **openable window (1/20 of room area)**. Section 12 also requires routine maintenance by painting and repairs.

However, the strong resistance of Chinese against this Ordinance rendered its implementation failure until after the epidemic plague from 1894 to 1904, which killed more than 2,500 lives. In 1896, for sanitary reason, the Taiping Shan area, a crowded Chinese settlement, was demolished by the government. (see Leung, 2006, pp. 68-90) The Public Health and Buildings Ordinance was enacted in 1903.

“Authorized Architect” was introduced to supervise building works. With the advancement of the new construction technologies in concrete, a new Buildings Ordinance was enacted in 1935 by stipulating higher standards of lighting, ventilation and fire safety. (Choi, 1996)

In the post-war era, new Buildings Ordinances were enacted in 1955 and 2008(?). development intensity controls by site coverage and plot ratio were introduced in 1962 to replace volume limitation. “Registered Structural Engineer” was introduced in 1974, and the “Authorized Architect” was re-titled to “Authorized Person (AP)” A new Supervision Plan system was also required in 1996 amendment. Preventive Maintenance and Mandatory Inspection schemes are under consultation in 2006.

## 1.2 The Plague and Building Control in Hong Kong

My report<sup>1</sup> on this topic got the First Prize of the Hong Kong Historical Photo Competition 2007 (in Chinese) organized by the Hong Kong Museum of History and the We Love Hong Kong Association (<http://www.welovehkhist.com/>). The following is an extract of the conclusion section and appendix 4. Please visit the Hong Kong Museum of History and take a look of the report. [The copyright has been transferred to the organizers]

“這份研究報告從5方面希望對研究香港鼠疫歷史作出貢獻：一，過往對鼠疫歷史的研究，大多集中討論1894年初次爆發的情況；而這份報告則橫跨近半個世紀，從1883年至1929年間的相關事跡，加以整理。二，很多研究只討論香港鼠疫對世界醫學的發展；而這份報告則縱向跨學科：包括建築學、中西醫學、經濟學、社會科學、氣象學及歷史學等六大領域，作出一個更全面的分析。三，研究香港歷史的多是從發掘史料為研究方法；而這份研究則兼用數量化分析方法和事項分析方法，使歷史研究更科學，對事發當時的觀點更具批判性評價。四，對鼠疫的成因，大多認

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<sup>1</sup> Yiu, C.Y. (2007) *The Plague and Building Control in Hong Kong*, First Prize in the Hong Kong Historical Photo Research Competition, organized by the Hong Kong Museum of History and the We Love Hong Kong Association, Hong Kong (Chinese, unpublished, 54 pages).

爲是華人住屋的不衛生情況所造成；而這份報告試從其他角度，綜合分析鼠疫的成因；結果清楚顯示，鼠疫的成因是多方面的，包括人口流動等。五，鼠疫圖片及資料顯示當時死者遍佈街頭，但鼠疫並非突發曝斃之症，何以屍橫遍野？而這份研究不但從1894年的報導進行分析，更眾採如1902年的善臣教授報告和1903年卜力政策試驗計劃備忘錄中發掘更真確的社會原因。”

#### 附錄四 1856至1935年的香港衛生與建築條例的制訂與修改

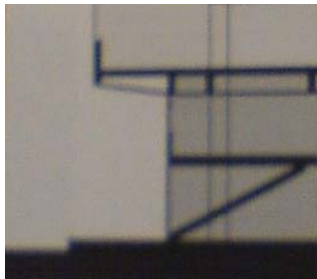
Ordinance No. and Year	Name of the Ordinance
1856	Buildings and Nuisances Ordinance
1883	Public Health Ordinance
No. 24 of 1887	Amendment of Public Health Ordinance
1889	Buildings Ordinance
No. 1 of 1890	An Ordinance to appoint an additional member on the Sanitary Board
No. 4 of 1890	Amendment of Public Health Ordinance
No. 26 of 1890	Amendment of Public Health Ordinance
No. 11 of 1891	The Latrine Ordinance
No. 12 of 1891	Amendment of Public Health Ordinance
No. 5 of 1894	An Ordinance to remove doubts as to the validity of certain Bye-laws made by the Sanitary Board, and for other purposes.
No. 15 of 1894	The Closed Houses and Insanitary Dwellings Ordinance
No. 4 of 1895	Amendment of Public Health Ordinance
No. 9 of 1895	Medical Officer of Health Ordinance
No. 11 of 1895	The Sanitary Committees Ordinance
No. 8 of 1897	The Government Latrine Ordinance
No. 16 of 1899	Amendment of Public Health Ordinance
No. 34 of 1899	Insanitary Properties Ordinance
No. 6 of 1900	Amendment of Public Health Ordinance
No. 13 of 1901	An Ordinance to consolidate and amend the laws relating to Public Health in the Colony of Hongkong
1903	Public Health and Building Ordinance
1935	Buildings Ordinance

## 1.3 Development Intensity Control

### 1.3.1 From Volume Control to Plot Ratio and Site Coverage in 1964

In 1962 the Government introduced a new set of building regulations that would change the control of building development intensity from building volume to plot ratio and site coverage. It would, in effect, reduce the developable area of most building sites. With a grace period, the new regulation was to be enforced from 1 Jan 1964. This meant that building plans submitted before 31 Dec. 1963 to the Buildings Ordinance Office (B.O.O.) were to be approved under the former regulations based on volume control. Developers rushed to submit plans of all sorts, in order to retain the benefit of plans approved under the old regulations, construction had to commence within 2 years after approval. The sudden great influx of property supply and demand of capital resulted in the 1965 bank run and bankruptcy of real estate developers. Since development intensity (site coverage, plot ratio and height) is of paramount importance to developers, it is necessary to understand the basis of its calculation and exemptions allowed.

### 1.3.2 Volume control and “Big Balcony” 大騎樓 design?



A typical form of the buildings built in the 50s and the 60s is a huge cantilevered type of reinforcement concrete as shown. It is the results of the volume based control of development intensity. .... (*More information is available*)

### 1.3.3 Why single-staircase buildings are allowed?



Since the 1970s, buildings higher than 6 storeys have been built. For the provision of means of escape, two staircases are required. Thus, a typical plan of two staircases, one at the front, one at the rear, has been very commonly used in the 1970s. Since the building plan looks like an aeroplane, it is called a 飛機則. .... (*More information is available*)

#### 1.3.4 What are plot ratio and site coverage?

Development intensity is controlled by plot ratio, site coverage and height in the Buildings Ordinance (Cap. 123) and other relevant regulations. Maximum permissible plot ratio, *PR* and site coverage, *SC* in the First Schedule of Building (Planning) Regulation depend on its use (domestic or non-domestic), class of site (A, B or C) and height of building. .... (*More information is available*)

#### 1.3.5 Why the Siu Sai Wan case got higher plot ratio without paying premium?

Audit Commissioner's Reported Case 15/10/2001

The Siu Sai Wan site was one of the most expensive sites sold by land auction. The planning objective for the site was designated at domestic plot ratio of 6.5, however, the final plot ratio developed became 8.8 simply because the change of the classification of the site. .... (*More information is available*)

#### 1.3.6 Why some buildings got BONUS development intensity?

Section 22(1) of Building (Planning) Regulation provides the basis of bonus development intensity as follows:

$$\text{Bonus site coverage (\%)} = \frac{1500 \times \text{surrendered area (m}^2\text{)}}{\text{site area (m}^2\text{)} \times \text{building height (m)}}$$

$$5 \times \text{surrendered area (m}^2\text{)}$$

$$\text{Bonus plot ratio (domestic only)} = \frac{\text{site area (m}^2\text{)}}{\text{and } < 120\%}$$

.... (More information is available)

### 1.3.7 Why some buildings got EXEMPTIONS from intensity control?

Exemptions (or more correctly concessions) are applicable for hotel developments, party walls, recreational facilities, green features .... when .... (More information is available)

### 1.3.8 Why bay windows are everywhere in Hong Kong?



Since March 1980, *projecting (bay) windows* are exempted from GFA calculations, if the following criteria can be satisfied:

- (1) the projecting window is for domestic accommodation only;
- (2) only one such projection is situated in any one room;
- (3) two adjacent projections do not form one continuous projections;
- (4) the extent of the projection is not more than 500mm from the face of external wall;
- (5) the base is not less than 500mm above finished floor level;
- (6) the top is not less than 500mm from the underside of the finish ceiling; and
- (7) the window provides protective barrier at 1100mm level.

Developers got the concession from the government, but charge the buyers. Thus, Hong Kong has become “a City of Bay Windows.”

## 1.4 What are B.O. 16(1)(g)?

What are the grounds for the Building Authority to reject building plans? Section 16(1) of Buildings Ordinance provides the grounds. Among them, there is a very old but intriguing ground in subsection (g).... (More information is available)

## 1.5 What are Unauthorized Building Works (UBWs)?

In 2000, there were an estimated 800,000 illegal structures on 60,000 private buildings in Hong Kong, and an estimated 10,000 new unauthorized building works (UBWs) were undertaken every year. This problem has already claimed 20 lives and

made 135 injuries since 1990. There are commonly three grounds in arguing whether it is UBW or not, viz. (1) whether the works are building works; (2) did / could they be authorised and (3) are they exempted works.

### **1.5.1 What is a building and what are building works?**

Unlike English Building Regulations 1972, the term ‘building’ is defined explicitly in section 2 of the Buildings Ordinance in Hong Kong. Yet, it is almost impossible to list out all objects that shall be considered as a building. Instead, “a ‘building’ is usually understood a structure of considerable size, and intended to be permanent, or at least to endure for a considerable time.” (quoted from *Stevens v Gourley* (1859) 7 CB (NS) 99).

Section 2 of the Buildings Ordinance defines building works as: “... any kind of building construction, site formation works, ground investigation in the scheduled areas, foundation works, repairs, demolition, alteration, addition and every kind of building operation, and includes drainage works.” But such a definition does not help in most of the cases. *Good Think Consultants Ltd v Attorney General and Anor* [1996] 4 HKC 782, 1994 MP No. 810 provides a test for building works: “whether a particular structure falls within the definition of building works must be a matter of circumstances and degree: (1) size, (2) manner of construction, and (3) the mode of fixation to the building.” .... (*More information is available*)

### **1.5.2 Why authorization of building works is required?**

Section 14 of the Buildings Ordinance, Chapter 123 of the Laws of Hong Kong stipulates that the Building Authority’s (BA) approval and consent is required before the commencement of any building works. Building works that are in contravention of this stipulation are regarded as UBWs. Furthermore, sub-section 42(5) explicitly states that the BA’s power of exemption does not apply to section 14 so no retrospective approval is allowed. This was upheld in **Yeung pui yee v BA** [1988] MP No. 930 in which the court held that “BA has no power to give retrospective approval or consent in respect of building works which have already been commenced, carried out or completed”. Under section 40, those who were found guilty of contravening section 14 are liable to a fine of \$100,000 and imprisonment for 2 years and a fine of \$5,000 for each day during which the offence continues. In addition, section 24 empowers the BA to serve order on the

property owners to demolish UBWs they are responsible for. .... (*More information is available*)

### 1.5.3 Why some building works can be exempted from authorization?

However, some minor works are statutorily exempted from the requirements of section 14. Sub-section 41(3) reads:

“**Building works** other than drainage works, ground investigation in the scheduled areas or site formation works not involving the **structure** of any **building** may be carried out **in** any building without application to or approval from the Building Authority:

Provided that nothing in this subsection shall permit any building works to be carried out in contravention of any regulation.” [emphasis added]

In practice, this sub-section is often interpreted simply in a way that non-structural works are exempted works. However, the story is not so straight forward in the appeal cases. It can be summarized the arguments in the precedent cases into four questions, namely,

- (1) whether the works in question is building works;
- (2) whether the works in question is a building or involve the structure of a building;
- (3) whether the works in question is carried out in a building; and
- (4) whether the works in question contravenes any other regulations.

Does it mean all building works on roof top or on external walls of a building cannot be exempted? There are some important court cases addressing these issues. Since the courts’ interpretations have far-reaching practical implications on the identification of UBWs, we have published a paper (Yiu and Yau, 2005<sup>2</sup>) attempting to examine some of these cases and put forward their principles laid down in their decisions. .... (*More information is available*)

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<sup>2</sup> **Yiu, C.Y.** and Yau, Y. (2005) Illegal Structures and Exempted Works – a Review of Cases in Hong Kong, *Journal of CIOB-HK*, 1 (Oct), 16-19.

## 2 PLANNING CONTROL

### 2.1 Planning System

The first Town Planning Ordinance (TPO) was enacted in 1939. A three-tier planning system is adopted in the planning process. The highest level is the Territorial Development Strategy (TDS) which maps out an overall land development strategy to meet the long-term social and economic needs of Hong Kong.<sup>3</sup> The second level is the Sub-regional Development Strategies which translates the TDS into more specific planning objectives for the five sub-regions of Hong Kong<sup>4</sup>, The third level is the statutory OZPs which shows the proposed land uses and major road systems of individual planning scheme areas<sup>5</sup>. All these plans are prepared under the guidance of the Hong Kong Planning Standards and Guidelines (HKPSG).

Land use categories include residential (R), commercial (C), industrial (I), industrial/office (I/O), government/institution/community (GIC), comprehensive development areas (CDA), village type development (V), open space (O), green belts (GB) and other uses as provided under s.4(1) of TPO.

Intended development within a statutory zone, shown on a map based OZP accompanied by an Explanatory Statement, and a schedule of 'Notes' which contains for each zone two columns of uses (Column 1 and Column 2), falls into four categories: The use is either one which is

- (i) Always permitted in all zones, as listed in the cover of the Notes;
- (ii) Always permitted in the zone in question, as listed in Column 1 of the Notes;
- (iii) May be permitted through s.16 planning application with or without planning conditions, as listed in Column 2 of the Notes; or
- (iv) Not permitted under the existing zoning plan, unless rezoned.

If s.16 application is not successful, applicants may apply for review and/or appeal under s.17 of TPO. .... (*More information is available*)

### 2.2 What is Comprehensive Development Areas (CDAs)?

### 2.3 What is Town Planning Board (TPB)?

### 2.4 How to apply for rezoning?

### 2.5 Why Service Apartments are disallowed?

In order to prevent the development of conventional residential flats in the name of service apartment in inappropriate areas, the category of "Service Apartment" has been

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<sup>3</sup> It aims at maximising effectiveness in the provision of housing, industry, recreation facilities and transport infrastructure, and it will take into the consideration of the economic and infrastructure developments in the Pearl River Delta Region and the deeper hinterland of China. (Government Information Services 1994).

<sup>4</sup> Metropolitan Area, Northeast, Southeast, Northwest and Southwest New Territories.

<sup>5</sup> Areas are zoned for residential, commercial, industrial, open space, government/institutional/community, green belt or other specified uses.

deleted from the Notes of OZPs since June 2000 (TPB PG-NO. 2B). .... (*More information is available*)

## **2.6 Adaptive Reuse of Industrial Land**

Industrial zones land has progressively rezoned to a new "Other Specified Uses" annotated "Business" (OU(Business)) to allow flexibility in the existing and development of industrial buildings for both commercial and industrial uses (TPB PG-NO.22B). However, the compatibility of uses renders the new zone ambiguous and tricky. It permits *non-polluting* industrial uses of *non-offensive trades* plus less fire hazard-prone office use that would not involve direct provision of customer services or goods to the general public. The enforcement of these requirements is questionable if they fall on column 1 of the user schedule. Furthermore, The permission of office use in OU(Business) zones does not imply that land modification and premium are not necessary.

Further relaxing the use of industrial buildings, the TPB considered IT and telecommunications industries compatible with industrial uses. Ancillary office is now permitted not only in I-O buildings, but also permitted as of right in the (I) zone. Commercial uses will be permitted in the purpose-designed commercial portion on the lowest three floors of an I-O building, provided that such uses are separated from the industrial use above by a buffer floor of non-hazardous occupancy. Furthermore, conversion of an industrial building in whole for public entertainment or educational institution use may be permitted on application (TPB PG-NO. 25A). However, all these relaxation may incur waiver fee for the change of user clause. So far, only IT and telecommunications industries in industrial premises have explicit rate of waiver fee. (LAO 5/2001)

### 3 LAND LEASE ADMINISTRATION

Leasehold system, if regarded as a ‘zoning by contract’ system<sup>6</sup>, has established land use zoning in Hong Kong since 1842. Each lease executed is a private transaction with appropriate contractual rights and that such transactions cannot be considered as performing an executive function. Therefore they are not susceptible to judicial review. There is no requirement of reasonableness in the exercise of its discretion as landlord whether to grant modification or not, what level of premium to be charged and any conditions included. It was reflected in *Hang Wah Chong Investment Co. Ltd v AG* [1981] HKLR 336, [1981] WLR 1141 and *Secan Ltd v AG* [1995] 2 HKLR 523 (See also *Li Sui-yuet v AG* [1970] HKLR 428, *Lok On Co. Ltd v AG* [1986] HKLR 857 (CA)). There were exceptions to the principle in the *Hong Kong & China Gas Co. Ltd v Director of Lands* [1997] HKLRD 1291. It held that Director of Lands had to balance competing interests in the context of the application of the New Territories Leases (Extension) Ordinance (Cap. 150), his decision was an exercise of his public function and therefore subject to judicial review.

However, statutory power may override the contractual agreement without compensation. Zoning and plot ratio control are good examples in the enforcement of land use and plot ratio allowed over land lease without use and plot ratio restriction. The prevalence of statutory plot ratio controls under TPO (Cap. 131) was upheld in *Crozet Ltd v AG* [MP No. 409/1973] and *AG v C C Tse (Estate) Ltd* [1982] HKLR 7 (CA). In *Lam Kwok Leung v AG* [1979] HKLR 145, it was held that planning or other statutory powers adversely affecting a lessees’ rights do not amount to any derogation of grant.

The three development control systems shall be considered as totally separated. In *Mexx Consolidated (Far East) Ltd v AG* [1987] HKLR 121 stated that no matter what approval the TPB may have given, that would not have affected or reduced the Crown’s contractual powers under the Crown lease. BO s.14(2) also says that neither the approval of any plans nor the consent to the commencement of any building works shall be deemed ... to act as a waiver of any term in any lease or licence.

#### 3.2 LEASEHOLD TENURE AND GOVERNMENT RENT

Hong Kong Government is the landlord to virtually all land in the Special Administrative Region, and the tenure system is basically leasehold with premium paid at the time of disposal. However the latest implementation of Government Rent system has

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<sup>6</sup> Lai, L.W.C. (1996), pp.46

required the tenants to pay both premium as well as a 3% annual rent.

### 3.2.1 *Tenure of old leases*

The first land auction of land in Hong Kong was held in Macau on 14.6.1841 (by Captain Charles Elliot) in offering 35 marine lots<sup>7</sup> facing Queens Road in freehold term<sup>8</sup>. However these sales were not recognized due to the sold date before the proclamation date (26.6.1843) of the territory by Britain. The tenure granted were recommended (by the then Governor, Henry Pottinger) in 1844 to re-grant at a term of 75 years only, but under the pressure of the landlord, on 3.3.1849 a Gazette Notification (GN) announced that all Crown Leases granted for a term of 75 years may be extended for a further term of 924 years. The then Governor was George Bohem, who made reference to the 999-year tenure system implemented in Singapore (another British Colony at that time), successfully convinced the British Government to allow 999-year tenure system in Hong Kong (Leung, 1989, pp.12-16).

In 1844, the first Land Registration Ordinance was enacted. Owners were required to register their land ownerships and the title deeds issued by the Ching Dynasty (清朝) were recognized. Unfortunately, this requirement did not reach owners mainly in the New Territories, almost all pieces of land on the Island become Crown Land. For example, So Kon Po Recreation Ground in Causeway Bay was originally agricultural fields owned by 文岡書院.<sup>9</sup>

From 1848 to 1898, land in Inland Lot (港島內地段) and Marine Lot (海傍地段) were sold or granted for a period of 999 years, Rural Building Lot (郊區建屋地段), Garden Lot (花園地段) and most of the Kowloon Inland Lot (九龍內地段) were granted for 75 years. Since 1898, the general tenure was divided into three categories:

- Auctions of Hong Kong Island and Kowloon land - 75 years renewable for a further period of 75 years;
- Grants of Hong Kong Island and Kowloon land - 75 years non-renewable
- New Territories (including New Kowloon) - the residue of a term of 75 years

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<sup>7</sup> Marine lots were defined as those within 200 ft from high water

<sup>8</sup> Nissim, (1998, Chapter 1)

<sup>9</sup> Leung (2006, pp.133-144)

from 1 July 1898 renewable for a further period of 24 years less 3 days. ([LOCM34, 1969, p.1 and 2](#))<sup>10</sup>

During 1900-1903, registration of land owners in Old Schedule Lots in the north of Boundary Street was conducted and the leases have been renewed in form of Block Crown Lease up to 27 June 1997.

### 3.2.2 *Re-grant of non-renewable leases*

After the Pacific War, the Government had to tackle a large volume of leases to be expired. Basically, it was the practice to grant new 75-year leases for those non-renewable leases subject to the payment of a premium based on the full market value of the land (excluding building) at the time of application, or expiry of the leases and a reassessed land rent of \$1,000 per annum. It raised public concern on the large sum of premium payable. It was then allowed to pay by not more than 21 annual instalments with 10% interest. ([CLSO, 1960, p.1 and 2](#))<sup>11</sup>

However, difficulties had also been met over these re-grants because of multi-ownership, where the owners collectively had been unable to agree with the Government's term of re-grant. The concept of undivided shares in ownership was evolved since 1956 (see section 3.2.5 for the development of undivided shares of ownership scheme). The Crown Rent and Premium (Appointment) Ordinance<sup>12</sup> was then enacted in 1970 to enable the Government to grant the new lease to the then Colonial Treasurer Incorporated, for subsequent apportionment of the interests under the Ordinance and assignment of the individual interests in form of undivided shares to the previous owners. If any owner did not accept the terms offered, the Colonial Treasurer Incorporated would take possession of the unit concerned with a view to selling the unit by public auction<sup>13</sup>.

### 3.2.3 *Renewal of renewable leases*

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<sup>10</sup> Crown Lands and Survey Office (195-, 1969)

<sup>11</sup> Crown Lands and Survey Office (1960, 1977), Government Information Services (1946-1973)

<sup>12</sup> Cap. 125, Laws of Hong Kong. New name is Government Rent and Premium (Apportionment) Ordinance

<sup>13</sup> Chan, C.D., (2000)

Similarly, a large number of the 75-year leases were due to expire from 1973 onwards. The Government originally intended to grant them new leases of 75 years, subject to a payment of a premium, calculated on current land values.<sup>14</sup> However because land values had soared to speculative heights when compared with the premium paid with the leases were first granted, the payment of a new premium would be too excessive and would affect the economy. Moreover this was also the period of a stock market slump. The Crown Leases Ordinance (Cap. 40) was therefore enacted in 1973, to give automatic renewal to all leases<sup>15</sup>, except for some in the New Territories, subject to payment of a new Crown rent (i.e. ground rent) based on 3% of the rateable value at the date of renewal.

After this incident, renewal of expired land lease with full premium was very rare. But a very famous case: *Home Restaurant Ltd. v AG* [1987] HKLR 237 required a full premium payable lease renewal as the case was held before the formalisation of the agreement on renewal of leases by the Joint Declaration.

The New Territories (Renewable Crown Leases) Ordinance (Cap. 152) renewed those leases in the New Territories which were only for a term of 75 years, together with a right of renewal for a further 24 years less 3 days without change in the land rent or in the conditions of the lease. These two new legislations prevented the market from sliding down further<sup>16</sup>.

#### 3.2.4 Termination of Land Leases

Termination of lease upon expiry is very rare (Nield 1993, p.260) unless the site is required for some public purpose (see *Hong Kong & China Gas Co Ltd v. Director of Lands*, HCAL000050/1997). A famous case of the expiry of tenure in the very early sale

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<sup>14</sup> Land Office Circular Memo No. 34 dated 4 June 1969

<sup>15</sup> s.3, Government Leases Ordinance (Cap. 40) applies to: a) leases expired before 1/7/1997, land in New Kowloon... with a term of 75 years with renewable right and lots specified in the Schedule; b) leases expired after 1/7/1997, land in Hong Kong with a term of 99 or 75 years with renewable right and land in New Kowloon... for a term of 21 years with renewable right.  
s.4 of Government Lease Ordinance (Cap. 40) also states that the right of renewal shall be deemed to have been exercised.

<sup>16</sup> Hung, (1999)

of land in Hong Kong was the then Ice House located at the Ice House Street. The land lot was granted in 1842 at 75-year tenure. In other words, it was expired in 1917. The land lease was terminated without renewal as it was granted at nil premium (Leung, 1989, pp.135-142).

However, termination of lease for short term tenancy is common and termination of lease for public purpose is vested in several statutes, such as Lands Resumption Ordinance, Roads (Works, Use and Compensation) Ordinance, Urban Renewal Authority Ordinance, etc. Furthermore, the Government Rights (Re-entry and Vesting Remedies) Ordinance, Cap. 126 empowers the right of forfeiture of Crown leases. Two cases are related with lessee's petition for relief. They are *Kun Wai-ying v AG* [1975] HKLR 1; and *Chan Hung-kay v AG* [1981] HKLR 171. For Compensation and Land Resumption, please refer to Chapter 6.

### 3.2.5 *Undivided Shares of Owning Properties (拆契)*

The development of undivided shares in owning properties can be traced back to 1931 when there were a lot of vacant flats due to the economic depression in the 1930s. Owners requested for the reduction of rates, but Government did not agree. LegCo Councillor Mr Kotewall Law counter-proposed a new charging basis of rates according rented flats instead of the whole land lot. This proposal was accepted and resulted in a building boom after 1931 (Leung, 1989, pp. 105-106).

This apartment-based rates charging system paved the road for undivided shares of property ownership after the Second World War. With the increasing land value and building height after the war, the price of a piece of land (a lot) was very expensive to be owned by one individual owner. More and more pieces of land were owned by “tenants in common” as the Hong Kong Annual Report 1957 reported: 'It is now not unusual to find a particular lot owned by more than 100 individuals as tenants in common, the individual shares varying greatly.' Government was then legalized the practice of multiple ownership by undivided shares method in the Land Office Circular Memo No. 1 ([LOCM#1, 23 Feb. 1956](#)). It stated: 'In view of the now general practice of selling individual flats in houses by assigning an undivided share in the lot together with the exclusive use of a particular flat, it has been decided to introduce a new form of Land

Registry to be known as a Sub-Division Register.' Following the implementation of the scheme, the Law of Property (Enforcement of Covenants) Ordinance (No. 56 of 1956) was also enacted to deal with the use, maintenance and management of buildings under multi-ownership. The Hong Kong Annual Report 1956 also reported: 'Convents relating to the use, maintenance, repair, insurance or management of the building as a whole are mutually enforceable by or against the owners from time to time of the various parts of the building.'

### *3.2.6 New Tenure and Land Premium*

Since 1985, lands were granted up to 30 June 2047 and then after 1997, lands were granted for 50 years tenure. Under the Annex III of the Joint Declaration and in accordance with the provision of Article 31 of the Basic Law, HKSAR:

1. Non-renewable leases expiring on or after 27 May 1985 but before 1 July 1997 might be extended to 30 June 2047 at an annual rent of 3% of the ratable value as at the date of extension and no premium would be payable for these extensions;
2. Renewable leases might continue to be renewed in terms of existing contractual and statutory provisions for renewal of leases, and all existing leases extending beyond 30 June 1997 would continue to be protected under the law of the SAR;
3. For non-renewable leases that expired after 30 June 1997, they should be dealt with in accordance with the law of the SAR; They will properly be re-granted for a further period of 50 years without payment of premium but subject to annual rent payment;
4. For new leases granted after 27 May 1985 but before 1 July 1997, they might be granted for a period expiring not later than 30 June 2047 at a premium and nominal rent until 30 June 1997. They would continue after 30 June 1997 without payment of any additional premium but at an annual rent equivalent to 3% of the ratable value of the property at that date, adjusted in step with changes in the ratable value thereafter;
5. For new leases granted after 1 July 1997, they might be granted for a period of 50 years with payment of premium as well as annual rent equivalent to 3% of the ratable value of the property at that date, adjusted in step with changes in the ratable

value thereafter;

6. The New Territories leases would be extended by the New Territories Leases (Extension) Ordinance (Cap. 150) for a period expiring not later than 30 June 2047, without payment of any additional premium but at an annual rent of 3% of the ratable value at the date of extension, adjusted in step with changes in the ratable value thereafter;
7. Any modification of leases will render the original lease terms and rent unchanged subject to the approval of the modification and payment of premium;
8. Land exchanges will be considered as new grants such that a 50-year tenure will be granted with payment of premium and annual rent. It seems to be more attractive to go for a land exchange rather than a modification because longer tenure is available.

### 3.2.7 *Vacant land, redevelopment lot and agricultural land*

In accordance with the final court decision in *Commissioner of Rating & Valuation vs Agrila Ltd and 58 others*<sup>17</sup>, these types of land require to pay government rent.

The Appeal Court held that the Commissioner of Inland Revenue shall assess the government rent on the basis of existing situation of the land (s.7 and s.7A of Rates Ordinance). Therefore, vacant land shall not incur land rent. Although s.4 and s.35 of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) require to assess redevelopment lot on the basis of monthly rental assessment before demolition, but it was held that the authority was in contradiction to Rates Ordinance. Lastly, in accordance with s.36 of the Rates Ordinance, agricultural land shall also be exempted from government rent. However the Final Court of Appeal held that though these categories of land are not required to pay rates, it does not render the land rent nil. In accordance with Rent Regulation s.2, *where any leased land has not been developed after the commencement of the term of the applicable lease under which it is leased, the rateable value of the leased land at any time before any part of it is developed shall be ascertained as if the leased land were a tenement liable for assessment to rates under the Rating Ordinance...*

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<sup>17</sup> FACV 1&2/200 Consolidated



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