

Insights

HONG KONG'S NEW EXTENSION OF GOVERNMENT LEASES ORDINANCE

A MORE STREAMLINED AND EFFICIENT MECHANISM FOR GOVERNMENT LEASE EXTENSIONS

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SUMMARY

The new Extension of Government Leases Ordinance (the “**Ordinance**”) will take effect this Friday, 5 July 2024. In consideration of the significant number of owners affected by the expiration of Government leases from 2025 onwards^[1], this new legislation aims at providing a more streamlined and efficient mechanism for extending Government leases. The market has been looking for clarity on this significant topic for some time. This is therefore a much welcomed initiative especially for international investors seeking comfort on what happens on the expiry of Government Leases in the Hong Kong Special Administrative Region of the PRC (“**Hong Kong**”).

Below is a high-level summary of the scope of application, the new mechanism and some specific points-to-note in relation to the new Ordinance.

INTRODUCTION

The new Extension of Government Leases Ordinance (the “Ordinance”) will take effect this Friday, 5 July 2024. In consideration of the significant number of owners affected by the expiration of Government leases from 2025 onwards^[1], this new legislation aims at providing a more streamlined and efficient mechanism for extending Government leases. The market has been looking for clarity on this significant topic for some time. This is therefore a much welcomed initiative especially for international investors seeking comfort on what happens on the expiry of Government Leases in the Hong Kong Special Administrative Region of the PRC (“Hong Kong”).

Below is a high-level summary of the scope of application, the new mechanism and some specific points-to-note in relation to the new Ordinance.

SCOPE OF APPLICATION

The Ordinance applies to Government leases in Hong Kong which expire on or after 5 July 2024 except:

- Government leases with an unexercised right of renewal;
- a short term tenancy; and
- a special purpose lease (“SPL”)^[2].

SPLs will be identified by a special purpose lease identification note (“**SPL Identification Note**”) in the relevant register kept at the Land Registry (the “**Register**”). Such SPL Identification Notes are to be added by the Director of Lands and, may subsequently be cancelled by the Director, by making a SPL cancellation note in the Register.

- SPL Identification Notes will be made in batches, according to the expiry date of the relevant leases:
- For leases expiring on or before 31 December 2030: to be made on or before 5 July 2024.
- For leases expiring on or after 1 January 2031: to be made not later than 31 December 2024.
- For leases executed or modified on or after the Ordinance comes into effect: to be made on the same date when the newly executed lease or modification instrument is registered at the Land Registry.

NEW MECHANISM – EXTENSION NOTICES AND NON-EXTENSION LIST

Under the new Ordinance, extension of Government leases will be granted in batches through publication of **Extension Notices** in the Gazette:

- For each Extension Notice, a **specific expiry period** will be specified – leases with expiry dates falling within such period will be extended unless it is specified in the relevant Non-extension List.
- The lease will be extended for a further 50-year term without payment of any additional premium, which shall begin from the day following the original expiry date. However, an annual Government rent^[3] will still be charged.
- All interests, encumbrances and rights under the original lease as applied immediately before the period of extension will be carried forward during the extended term.

A **Non-extension List** is gazetted together with each Extension Notice. It lists out all leases which are covered by the Extension Notice, but noting that their terms are not to be extended.

- In relation to each lease in the Non-extension List, a Non-extension List (Inclusion) Notice will also be simultaneously gazetted, registered at the Lands Registry and published on the website of the Lands Department.
- If the lease is subsequently excluded from the Non-extension List, a Non-extension List (Exclusion) Notice will be gazetted, registered and published on the Lands Department Website accordingly. In effect, the relevant lease shall then be regarded as if it had not been specified in the relevant Non-extension List i.e. its term shall be extended accordingly.

Extension Notices (and the relevant Non-extension List) will be published not later than 6 years before the start date of the relevant specific expiry period. The first Extension Notice and relevant Non-extension List will be gazetted on the same date as the Ordinance comes into operation, i.e. 5 July 2024, to deal with extension of leases expiring on or before 31 December 2030.

OPT-OUT MECHANISM

The Ordinance provides for an option by any lessee of applicable leases covered by a published Extension Notice to opt out from the new extension mechanism. Any lessee that wishes to exercise this option shall register with the Land Registry an **Opt-out Memorandum** in the specified form within the applicable period:

- For leases expiring on or before 31 December 2030: on or before 31 December 2024.
- For leases expiring after 31 December 2030: within 1 year after the date of publication of the Extension Notice.

The Opt-out Memorandum must be signed by all persons who (i) are the registered owner of the land, or (ii) have an interest in the land under a registered subsisting sale agreement, mortgage or charge.

EXTRA APPROVAL REQUIREMENT FOR LEASES INVOLVING FOREIGN-RELATED ENTITIES

If the Government lease covered by an Extension Notice concerns a piece of land:

- owned (or co-owned) by a foreign state government or an international organization^[4], or any persons in the name of an office of the same (each a “**Foreign-related entity**”); and
- the land is used for a consular post or representative office, or the staff residence of such consular post or representative office (“**specified purpose**”); or
- the Foreign-related entity must obtain written approval from the OCMFA^[5] before expiry of the current lease before the term can be extended.

Similarly, where a Foreign-related entity is a registered owner of any relevant interest in the land subject to the Government lease covered by an Extension Notice, and part of the building on that land is used for a specified purpose, the Foreign-related entity's interests as a registered owner stays unaffected only if written approval from the OCMFA is obtained before the expiry date of the relevant lease.

CONCLUSION

As opposed to the conventional way of executing new individual leases between the Government and all owners, the new Ordinance sets out a more time- and cost-effective way for the parties to renew the significant number of leases. More importantly, by introducing a regulated framework for extension of leases, it gives more certainty and confidence to the lessees, investors and society in general to engage in long-term leasing activities. Lessees and investors are recommended to keep an eye on any further details that may be supplemented by regulations or subsidiary legislations made under the Ordinance. Lessees who find themselves on the Non-extension List may of course have preferred a longer notice period than 6 years. However, this period was extended from the original proposal of 3 years when this concept was first floated for discussion.

[Read the gazetted Extension of Government Leases Bill >](#)

This article was authored by Andrew MacGeoch and Tiffany Tam, with the support from trainee solicitor Judy Lam.

FOOTNOTES

[1] With reference to the Legislative Council Brief in respect of the Extension of Government Leases Bill dated 7 December 2023 (the "**LegCo Brief**") (at para 6), leases of about 2,400 lots will expire from June 2025 to 29 June 2047, and leases of around 300,000 lots will all expire on 30 June 2047, involving over 1.4 million owners in total.

[2] With reference to the LegCo Brief (at footnote 2), SPLs refer to leases granted, disposed of or modified on specific policy considerations for designated uses, e.g. leases for public transport and public utility operators, recreational leases, leases for educational, welfare and religious uses etc.

[3] The annual rent is equivalent to 3% of the rateable value of the property at the time of annual assessment, pursuant to the Government Rent (Assessment and Collection) Ordinance (Cap. 515).

[4] "International organization" is defined under the Ordinance to include an organization (a) to which section 2 of the International Organizations and Diplomatic Privileges Ordinance (Cap. 190) applies; or (b) as defined by section 2 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558). In short, this is intended to cover diplomatic/consular type situations rather

than premises operated by international commercial enterprises providing normal trading and other commercial activities.

[5] i.e. the Office of the Commissioner of the Ministry of Foreign Affairs, HKSAR

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