The Real Estate Law Review

Tenth Edition

Editor
John Nevin

The LawReviews

THE REAL ESTATE LAW REVIEW

TENTH EDITION

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PREFACE

Just as the ninth edition of *The Real Estate Law Review* was being published, the world was thrown into total confusion by the rapid spread of a deadly new disease. Covid-19 has affected the global economy like nothing this generation has experienced, with every major jurisdiction forced into a series of lockdowns. However, it must not be forgotten that the pandemic is primarily a human tragedy with more than 93 million cases globally and 2 million deaths. As we begin to see light at the end of the tunnel, the global health crisis will undoubtedly complete its transition into an economic one, with significant global debt and widespread unemployment. Covid-19 will leave its mark on all aspects of how we live and work, including each and every sector of the global real estate market.

A great deal has happened since the first edition of *The Real Estate Law Review* appeared in 2012, but nothing more significant than the covid-19 pandemic, a truly global crisis. This tenth edition of *The Real Estate Law Review* will continue to prove its worth by providing readers with an invaluable overview of how key markets across the globe operate and how they react to major world events. Covid-19 has served as a stark reminder that it is no longer possible to look at domestic markets in isolation. Investors and their advisers need to understand real estate assets in the context of global events, and *The Real Estate Law Review* continues to help its readers to do just that.

This edition extends to 27 key jurisdictions around the world, and I am very grateful to all the distinguished practitioners for their insightful contributions. Each chapter has been updated to highlight key developments and their effect on the relevant domestic market. Together, the chapters offer a helpful and accessible overview of the global real estate market. Overseas investors are key influencers in most markets, and it is vital that practitioners are able to advise on a particular deal in the light of an understanding of their client's own jurisdiction.

In the year that the UK finally left the EU and Joe Biden became president of the United States, the significance of Brexit and American politics have been put into perspective by the covid-19 pandemic. Covid-19 is a truly global issue affecting every jurisdiction and, of course, its real estate market. In the background, and almost forgotten, Brexit and the associated economic and political fallout has continued to be a concern for the UK economy and its real estate markets. Although investment volumes fell off a cliff in the first half of the year, we have started to see interest from both overseas and domestic investors, underlining the continued importance of UK real estate as an investment asset. The world's cache of investment capital is likely to prompt a surge in investment activity once some degree of confidence returns. The UK, and London in particular, seem certain to remain attractive to overseas investors looking for a safe haven for their funds. The next few years will undoubtedly be challenging as we begin the road to recovery, but opportunities will arise, and real estate will remain a key part of investment strategies.

Once again, I wish to express my deep and sincere thanks to all my fellow contributors to this tenth edition of *The Real Estate Law Review*. I would also like to thank the members of the Law Review team for their sterling efforts in coordinating the contributions and compiling this edition. Finally, I wish everyone the very best of health for 2021 and beyond.

John Nevin
Slaughter and May
London
February 2021

Chapter 13

HONG KONG

Dennis Li[1]

I INTRODUCTION TO THE LEGAL FRAMEWORK

i Ownership of real estate

In Hong Kong, land grants are made on a leasehold basis. The 'ownership' of the leasehold land is granted by way of a government lease or a government grant. The government grant will contain conditions, which, when satisfied, will lead to a government lease being deemed to be issued (the practice is that the government will not issue an actual government lease). The government lease or grant will usually specify the government rent, term duration, building covenants and user restrictions, the breach of any of which entitles the government to re-enter the land and determine the government lease or grant.

For multi-storey buildings, government leases are granted for the piece of land on which the building is erected. There are no separate government leases for the ownership of units in that building and all unit owners are 'co-owners'. A deed of mutual covenant governs ownership of each individual unit in a building by notionally dividing the combined land and building into a number of undivided shares and allocating a certain number of these undivided shares to each unit in the building. These undivided shares have attached to them the right to exclusive use and possession, and the purchase of a unit in a building is effected by way of an assignment of all the rights attached to those undivided shares for the remainder of the term of the government lease.

Following the change of sovereignty on 1 July 1997, all land in Hong Kong has become property of the People's Republic of China, and the responsibility for the management, use and development rests with the government of the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong). The Basic Law of Hong Kong provides that government leases granted prior to 1 July 1997 will continue to be recognised and protected under the laws of Hong Kong. All government lease terms are either granted or entitled to an extension for another 50 years or until 2047.

ii System of registration

Hong Kong operates on a system of document registration (as opposed to title registration) where instruments affecting real properties are lodged for registration with the Land Registry. The registered particulars and relevant documents are open to public inspection. Registration in the Land Registry confers priority on registered documents and serves as notice of registered instruments to anyone dealing with the particular property.

1 Dennis Li is the head of property at Slaughter and May in Hong Kong.

However, the document registration system in Hong Kong only determines the priority of registrable interests in real property. Under Section 2(1) of the Land Registration Ordinance, 'deeds, conveyances, and other instruments in writing, and judgments' affecting land are capable of being registered with the Land Registry. Consequently, a registered interest holder may be in competition with an unregistered interest holder of an unregistrable interest in real property. In these circumstances, priority is determined in accordance with common law principles.

All registrable instruments registered within one month after the date of execution will take priority from their execution date. All registrable instruments registered more than one month after the date of execution will take priority from the registration date.

Although the register maintained by the Land Registry does not establish title to the property, it does act as a record of transactions that can be relied upon in establishing the details of the title to a particular property.

The Land Titles Ordinance was passed by the Legislative Council on 7 July 2004, which provides for the gradual conversion from the existing deeds registration system to a title registration system. However, the Land Titles Ordinance is not yet in force, and it is unclear when preparatory work will be completed to enable the commencement of the Land Titles Ordinance for a title registration system in Hong Kong.

iii Choice of law

A contract may have a clause expressly providing the governing law applicable, which will generally be upheld by the courts, but formalities, including conveyance and securitisation of the property and registration of instruments in the Land Registry, will usually be governed by Hong Kong law.

II OVERVIEW OF REAL ESTATE ACTIVITY

i Activity levels in real estate market

Hong Kong's real estate market remained subdued in 2020. The total volume of real estate investment transactions in the first three quarters of 2020 decreased significantly year-on-year, and investment volume for commercial properties worth over HK$20 million dropped over 20 per cent year-on-year, reaching the lowest level since the global financial crisis. The retail leasing market is stressed by the covid-19 pandemic. High street rents fell by double digits year-on-year in the first three quarters of 2020, and the overall vacancy rate in tier 1 streets in core districts climbed noticeably in the third quarter of 2020, the highest in four years. Office leasing demand remained weak with a low net absorption in the first three quarters of 2020. Grade A office rent in Central fell from its peak, and the vacancy rate in the overall office market is notably rising to the highest level since 2004. Only the residential property market remained resilient with the total number of transactions and the total consideration recorded in 2020 staying largely unchanged as compared to government data in 2019.

In the 2020 Policy Address, the Chief Executive of Hong Kong announced the abolition of the double *ad valorem* stamp duty (Double AVD) on non-residential property transactions in a bid to revitalise the real estate market in the commercial property sector. The abolition of the Double AVD will reduce commercial property transaction costs and is aimed at facilitating sales of commercial properties by businesses that are in financial predicaments or liquidity needs due to the economic downturn, caused by a number of factors in the previous two years and several waves of the covid-19 pandemic.

In addition, the Chief Executive proposed various initiatives relating to the real estate industry, including the introduction of a pilot scheme for charging land premiums for industrial buildings, accelerating the redevelopment of industrial buildings in Wong Chuk Hang as part of the 'invigorating Island South' initiatives, streamlining approval processes for land development and private residential site lease modification applications, pushing ahead with the Lantau Tomorrow Vision housing project, continuing the feasibility study on the potential development of Tuen Mun coastal area, redeveloping Siu Ho Wan Depot Site into a residential cluster, releasing more land at Lok Ma Chau Control Point, increasing land supply for the construction of public housing units and supporting urban development and renewal in various sites across Hong Kong.

ii Availability of finance

Regarding residential mortgage lending in Hong Kong, banks must comply with a 30 to 60 per cent loan-to-value (LTV) ratio guideline. Banks can only approve mortgage loans for over 60 per cent of the value of the property without incurring additional credit risk by joining a mortgage insurance plan provided by HKMC Insurance Limited (HKMCI). Under the mortgage insurance plan, banks can grant mortgage loans of up to 80 per cent LTV ratio for property valued below HK$6 million and up to 90 per cent LTV ratio for property valued below HK$4 million to eligible applicants. On 16 October 2019, HKMCI announced that, subject to an additional 15 per cent premium, the maximum property value eligible for mortgage loans of up to 80 per cent LTV ratio is increased to HK$10 million and eligible first-time homebuyers can take mortgage loans of up to 90 per cent LTV ratio for property valued below HK$8 million. The maximum debt servicing ratio of mortgage loans of a mortgage applicant who has more than one property ranges from 30 to 50 per cent, depending on the location from which the applicant's income is mainly derived. First-time homebuyers will still be eligible for mortgage loans of up to 80 or 90 per cent LTV ratio even if they cannot meet the stressed debt servicing ratio, subject to an additional adjustment to the premium based on relevant risk factors.

The Hong Kong Monetary Authority released a number of requirements on mortgage lending for properties transacted after 19 May 2017. First, the risk-weight floor (the lowest level of capital reserve that a bank has to maintain) has been raised from 15 to 25 per cent for new residential mortgage loans approved. Second, the applicable LTV cap will be lowered by 10 per cent for property mortgage loans involving borrowers or guarantors with one or more pre-existing mortgage loans, in addition to the existing requirement of lowering the applicable debt servicing ratio limit by 10 percentage points for these loans (i.e., a 20 per cent reduction in the LTV cap for borrowers or guarantors with one or more pre-existing mortgage loans). Third, the applicable debt servicing ratio will be limited by 10 percentage points for property mortgage loans extended to borrowers whose income is mainly derived from outside Hong Kong.

In August 2020, the Hong Kong Monetary Authority relaxed its LTV rules on mortgage lending for non-residential properties (i.e., commercial and industrial properties or car parks), raising the LTV caps by 10 per cent across all property security transactions. As a result, the current LTV caps range from 30 to 50 per cent, depending on the conditions of the underlying transaction, including, for example, whether the applicant's income is mainly derived in or outside Hong Kong.

III FOREIGN INVESTMENT

While there are generally no legal restrictions on foreign investors owning, selling, leasing and developing real estate in Hong Kong, it may be more difficult for foreign investors to obtain a mortgage in Hong Kong. In addition to the aforementioned new requirement by the Hong Kong Monetary Authority, mortgage insurance plans are generally unavailable to applicants whose income is mainly derived from outside Hong Kong, unless these applicants can demonstrate a close connection with Hong Kong. Further, legal opinions may be required to confirm that the foreign corporate investor has legal power to enter into the transaction, to deal with and to execute the relevant documents involving the Hong Kong property; this may impact transaction costs.

IV STRUCTURING THE INVESTMENT

The structuring of an investment in real estate in Hong Kong will likely be based on tax and accounting considerations of the investor. It is therefore prudent to obtain advice on tax and accounting implications for the investor in both the investor's own jurisdiction and in Hong Kong when investing in Hong Kong property. The availability of financing (and the LTV ratio) may also be a factor when determining the structure of the investment.

i Corporate entity

In Hong Kong, a company is a separate legal entity that can hold real estate assets and mortgage and charge the property it holds. It is not unusual for corporate special purpose vehicles (SPVs) to be set up to hold one or a portfolio of properties. Subject to the administrative requirements under Hong Kong company law, the investor may enjoy advantages of limited liability and tax advantages when realising the value and disposing of the real estate asset through a transfer in ownership of the SPV instead of through assignment of the property.

An investor may also make use of a corporate offshore SPV, depending on regulatory and tax considerations. Popular jurisdictions for setting up offshore SPVs include the British Virgin Islands, the Cayman Islands and Bermuda.

ii Partnership structures

When there is co-ownership and joint management of the real estate asset, a general partnership may be formed if the relation between parties is to carry on a business in common with a view of profit. When deciding whether the parties are partners, the law will look at the substance of the relationship. Partners in a general partnership are liable for each other's debts and liabilities.

The Limited Partnerships Ordinance provides for limited partners who would only be liable up to the amount of their investment. However, limited partners are subject to the restrictions specified in the Ordinance, including the limitation that limited partners are not allowed to participate in the active management of the partnership and the real estate assets held, which must be left to the general partners to manage.

iii Real estate investment trusts (REITs)

REITs are collective investment schemes constituted as unit trusts that invest primarily (at least 75 per cent of its gross asset value) in income-producing real estate assets and are listed on the Hong Kong Stock Exchange. The goal of REITs is to provide returns to investors derived from recurrent rental income. The Hong Kong Securities and Futures Commission has issued a 'Code on Real Estate Investment Trusts' (REIT Code) together with other guidance on the authorisation and operation of REITs. The REIT Code prohibits REITs from investing in vacant land other than in specific circumstances or engaging in property development activities unless certain conditions are satisfied and REITs are subject to a maximum borrowing limit of 50 per cent of their gross asset value. REITs have to distribute annually an amount not less than 90 per cent of their audited net income after tax to their investors as dividend.

iv Listed property company

In addition to investing in a REIT, investors may also indirectly invest in Hong Kong real estate by acquiring shares in a Hong Kong listed property company. Many of the major developers and owners of residential, office, retail, industrial and hotel properties in Hong Kong are listed on the Hong Kong Stock Exchange. This method offers a ready and liquid form of investment as well as the regulated governance of a publicly listed company. Conversely, however, a listed company will be subject to regulatory and disclosure requirements that may hinder the company's strategies in property investment.

V REAL ESTATE OWNERSHIP

i Planning

The Town Planning Board is a statutory body established under the Town Planning Ordinance tasked with guiding and controlling the development and use of land and types of buildings suitable for erection, preparing new draft zoning plans, exhibiting draft plans for public comment, considering applications for planning permission, and submitting draft plans for approval by the Chief Executive in Council. Its executive functions are carried out by the Planning Department, which is responsible for creating plans on behalf of the Town Planning Board, providing technical services and enforcing zoning restrictions. The Town Planning Appeal Board hears appeals against the Board's decisions to reject planning applications.

ii Environment

The environment is an issue of significance for town planning and land development in Hong Kong. Governmental supervision is generally by way of proper land use planning, along with appropriate controls at the source through licensing and enforcement of environmental protection ordinances. Environmental planning is an early consideration when the government scrutinises and considers approving land use plans. The government review focuses on the impact of the development on air, noise, water and waste pollution levels.

Development projects that have the potential to cause significant damage to the environment may be classified as Designated Projects under the Environmental Impact Assessment Ordinance and are required to follow the statutory environmental impact assessment process to obtain the requisite environmental permits before construction and operation commence.

iii Tax

Stamp duty on disposition of immovable property

There are three types of stamp duty that may be applicable to the sale of property in Hong Kong. The *ad valorem* stamp duty (AVD) is applicable to all dispositions of immovable property. The government has also introduced a special stamp duty (SSD) and a buyers' stamp duty (BSD) with effect from 20 November 2010 and 27 October 2012 respectively for the sale of residential properties. The SSD and the BSD were introduced with the aim of cooling the overheating residential property market.

The parties legally liable to pay AVD, BSD or SSD are defined under the laws of Hong Kong. However, it is customary for a contract for sale to stipulate that the purchaser will pay the AVD and BSD and the vendor will pay the SSD.

Effective from 27 October 2012, BSD is payable on a contract for sale or a conveyance on sale of any residential property. BSD is charged at 15 per cent on the consideration or the market value of the property (whichever is higher). The BSD is subject to specific exemptions, including the sale of the property to a Hong Kong permanent resident. Any residential property acquired and resold within certain holding periods, up to 36 months, will be subject to the SSD ranging between 10 to 20 per cent of the value and consideration of the property, depending on the timing of resale.

AVD for residential properties has been increased to a flat rate of 15 per cent on the consideration or the market value of the property (whichever is higher). Persons who qualify for a lower rate of AVD must satisfy certain exemption criteria stipulated by the Hong Kong government. Examples of this exemption are when the buyer is a Hong Kong permanent resident and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition of the residential property or the buyer has divested himself or herself of ownership of all other residential property in Hong Kong within six months.

On 11 April 2017, the Hong Kong government tightened up measures on the existing exemptions to the effect that, unless specifically exempted or otherwise provided in the law, acquisition of more than one residential property under a single instrument executed on or after 12 April 2017 will be subject to the proposed new AVD flat rate at 15 per cent. As mentioned in Part II section i above, the Hong Kong government abolished the Double AVD on non-residential property transactions effective from 26 November 2020, which means that non-residential property transactions will attract the same stamp duty rates as those residential property transactions who qualify for lower rates of AVD thereafter. The rates of AVD range from 1.5 per cent to 4.25 per cent, depending on the value of the non-residential property.

Stamp duty on transfer of Hong Kong stock

The acquisition or transfer of shares in a property holding company is not subject to the AVD, SSD or BSD. However, parties will still have to pay stamp duty at the following rates if the transfer directly involves Hong Kong stock:

Document	Rate
Contract note for sale or purchase of Hong Kong stock	0.1 per cent of the amount of the consideration or of its value on every sold note and every bought note
Transfer operating as a voluntary disposition inter vivos	HK$5 + 0.2 per cent of the value of the stock
Transfer of any other kind	HK$5

The parties legally liable to pay stamp duty on the transfer of Hong Kong stock are defined under the laws of Hong Kong. Customarily, the stamp duty is borne by the buyer and the seller in equal shares.

Rates and government rent

Owners of Hong Kong properties will also have to pay rates and government rent on their real estate assets.

Rates are a tax on the occupation/use/holding of property. They are charged at a percentage of the rateable value being the estimated annual rental value of a property at a designated valuation reference date, assuming that the property was vacant and to be let out. The rates percentage charge is determined by Hong Kong's legislature, the Legislative Council. For the 2019–2020 financial year, the rates percentage charge is 5 per cent.

The basis of the government rent is derived from the government lease or grant that provides that rent is payable to the government. The government rent is calculated at 3 per cent of the rateable value of the property situated on the land leased and is adjusted with any subsequent changes in rateable value.

Property tax (levied on rental income)

Property tax is levied on property owners on the rental income derived from Hong Kong property. The tax is assessed on the net assessable value of the rental income. The current property tax rate is 15 per cent.

iv Finance and security

The financing of a real estate asset acquisition will usually involve the lender taking security over the property by way of a mortgage or a charge. The distinction between a mortgage and a charge is historical whereby the mortgagee has legal and equitable interest in the land subject to the mortgagor's right of redemption as compared to charge having certain rights, such as the right to sell, but legal and equitable interest still belongs to the chargor. Since 1984, a legal mortgage can only be created by way of a legal charge and the Conveyancing and Property Ordinance grants the holder of a mortgage by legal charge the same rights as a historical mortgagee.[2] Other securities that are common include an assignment of sale proceeds, assignment of rental income and assignment of insurance proceeds. The security documents that effect property will constitute a registrable encumbrance on the property and should be registered with the Land Registry to establish the chargee's priority interest.

VI LEASES OF BUSINESS PREMISES

The parties to a commercial lease are generally free to agree to the terms and there is no specified form. With relatively few restrictions on lease agreements with all rules on security of tenure abolished, the law in Hong Kong is generally viewed as being more favourable to the landlord.

2 Conveyancing and Property Ordinance (Cap. 219) Section 44.

i Term

Subject to the remaining term of the government lease or grant, there is no limit on the term of the lease. In practice, the actual length of the term depends on the negotiations between landlord and tenant, taking into account a variety of factors including location, price, use, their respective bargaining power and market conditions. Generally, the lease term for a residential property may be negotiated in ranges between one and three years, whereas lease terms for a commercial property range between two and six years and may be extended with option terms open to negotiation between the commercial lessee or lessor.

ii Registration

A lease or tenancy agreement for a term exceeding three years must be executed as a deed to create a legal estate in land. Furthermore, all leases, save for bona fide leases at market rent for any term not exceeding three years that are exempted,[3] are required to be registered with the Land Registry to establish notice (against a bona fide purchaser) and the lessee's priority interest in the property. An option to renew should be registered at the Land Registry even if the original term of the agreement does not exceed three years.[4]

iii Rent review

Rent is usually fixed during the fixed term of the lease. Any provision or mechanism for rent adjustment is negotiable between the lessee and the lessor, and would usually be agreed before entering into the binding agreement. A typical provision for rent review in the lease is for the rent to be determined in accordance with prevailing market rent. Generally, an option to renew or extend the term of the lease usually triggers rent review in accordance with prevailing market rent.

iv Lessee's right to sell and change of control

The general practice is for leases to contain an anti-alienation provision prohibiting the lessee from transferring, assigning or subletting the lease or possession of the premises to others whether directly or indirectly. Although this may be subject to negotiation between the parties, it is quite unlikely that the lessor would concede this prohibition or control.

v Lessee liability and security for payment of rent and performance of covenants

A lease or tenancy agreement is a contract and constitutes an interest in land.

Under privity of contract principles, the original contracting parties to the agreement remain liable for the performance of the covenants, terms and conditions that are binding on them. Therefore, the lessor or lessee remains liable to each other, even if the lease is assigned by one party. If the intention is to safeguard the assignor from future liabilities arising from the contract, all parties to the original contract and the assignee should enter into a novation of the lease. If a novation is not signed, then the assignor may consider procuring an indemnity

3 It is also possible, but not required for priority, to register bona fide leases at market rent for any term not exceeding three years. In practice, it is not uncommon to see leases for less than three years being registered at the Land Registry.

4 *Markfaith Investment Ltd v. Chiap Hua Flashlights Ltd* [1991] 2 AC 43.

from the assignee. However, that does not affect the assignor's contractual obligations (as the lessor) towards the lessee under the lease, which includes the lessor's obligation to repay the lease security deposit at the end of the lease term.

Under privity of estate principles, covenants that touch and concern the land will bind third parties. Therefore, assignees are only bound by covenants in the lease if they touch and concern the land. Such covenants include repairing covenants, user covenants and covenants for quiet enjoyment. This is beneficial from a lessor's perspective, because the lessor's assignee (in becoming the new owner of the property) would be obliged to perform or observe the covenants that touch and concern the land under the privity of estate principles, thus, releasing the lessor from his or her obligations.

vi Repair and insurance

Unless the parties agree otherwise, the lessee is obliged to maintain the premises in a good and tenantable condition and the lessor is usually responsible for structural repairs such as concealed wires and pipes drainages. While there is no statutory or regulatory requirement to procure property insurance, it is prudent and advisable for both the lessor and lessee to ensure that there is adequate insurance coverage for the property. Some commercial leases stipulate that insurance coverage must be procured by the lessee for a minimum threshold on any single claim.

vii Termination

There are a number of ways in which a lease may be terminated, including expiry of term, by notice or through an express condition, power or option provided in the lease. A breach of a condition or a covenant with a proviso for re-entry will allow the lessor to terminate the agreement by forfeiture; however, the lessee may be able to apply for relief from the court. A lessee can also repudiate the lease and if the repudiation is accepted by the lessor, the lease will immediately terminate and the lessor will be entitled to sue for damages.

viii Security of tenure

In 2004, several sections of the Landlord and Tenant (Consolidation) Ordinance were amended with the effect of abolishing security of tenure of residential tenancies and leases created after 9 July 2004.

VII DEVELOPMENTS IN PRACTICE

i The Residential Properties (First-hand Sales) Ordinance

The Residential Properties (First-hand Sales) Ordinance came into effect in April 2013 and sets out detailed requirements in relation to the conduct and materials used for selling first-hand residential properties concerning, inter alia, sales brochures, price lists, show flats, disclosure of transaction information, advertisements, sales arrangements and mandatory provisions for preliminary sale and purchase agreements and formal sale and purchase agreements.

So far, 11 land developers have been fined for violating the Residential Properties (First-hand Sales) Ordinance for lack of information in and transparency of the sales brochures, failure to include certain mandatory provisions in preliminary sale and purchase agreements and general malpractice. The total fine exceeds HK$2.5 million.

ii Lantau Tomorrow Vision

In the 2018 Policy Address, the Chief Executive of Hong Kong proposed building artificial islands for the development of Lantau. In addition to building 260,000 to 400,000 residential units, it was proposed that new major transport infrastructures will link up the coastal areas of Tuen Mun, North Lantau, the artificial islands and the traditional business centre in Hong Kong Island North. The project has stirred concerns about the development of the artificial islands; thus the government will establish a platform for professionals and young people to take part in the process, and to explore how to link up the housing development plans on the artificial islands with the housing needs of Hong Kong. In December 2020, the Hong Kong Legislative Council approved initial funding of HK$550 million to kick-start a feasibility study for the development, which would take 42 months to finish.

iii The Lands Resumption Ordinance

In the 2019 Policy Address, the Chief Executive of Hong Kong proposed to invoke the Lands Resumption Ordinance to resume three types of private land for developing public housing and starter homes. These include: privately owned brownfield sites in the New Territories that may have development potential, private land that has been zoned for high-density housing development in statutory outline zoning plans but without any development plans yet and the urban private land located in three areas in Kowloon East. The government's approach of resuming land will require support from various sectors of the community, particularly developers. In this regard, the property development industry previously expressed that developers will not oppose such an approach.

VIII OUTLOOK AND CONCLUSIONS

2020 has been a challenging year for Hong Kong's real estate market. The covid-19 pandemic with several recurring spikes in Hong Kong, continuing Sino-US trade disputes, the political saga around the city's national security law and the economic recession following the social unrest in 2019 dominated the landscape of Hong Kong's property market in 2020.

In the commercial and industrial property markets, trading activities stayed at low levels by historical standards in the first three quarters of 2020. There were some signs of rebound towards the end of the third quarter after the Hong Kong Monetary Authority relaxed its LTV rules for mortgage loans on non-residential properties in August. However, no major improvement could be expected in the fourth quarter with the fourth wave and by far the most severe wave of local epidemic hitting the already troubled economy. The abolition of the Double AVD on non-residential property transactions in late November may provide some momentum to investment activities, and we are seeing some large cap transactions at the start of 2021 in this sector. While local investors and foreign funds are expected to stay cautious towards property acquisitions of most types over the next six to 12 months, Mainland Chinese buyers are likely to remain relatively active in the market with the Chinese economy on the track of recovering. Looking ahead to 2021, transaction volume is expected to pick up compared to the low base of 2020, provided that the pandemic stabilises.

In the residential property market, home prices in Hong Kong remained stable in the first 11 months of 2020 and were expected to drop about 1 per cent on an annual basis for the first time in 12 years. Increasing emigration and the shrinking headcounts at multinational corporations in the city could lead to a buyers' market. Emigrants who were rushing to sell their properties were willing to negotiate discounts with buyers. According to government data, the total number of sale and purchase agreements (SPAs) for residential building units recorded in the second half of 2020 increased by 20 per cent compared to the data in the first half of 2020, which also represents a 29 per cent increase compared to the figure in the first half of 2019. December 2020 data recorded a 90.5 per cent surge and an 87.9 per cent increase in the number of SPAs for residential building units and the total consideration respectively, as compared to the 2019 December data. In 2021, the residential property market is expected to stay resilient with home prices falling slightly by up to 5 per cent, due to the pent-up demand in the city and low interest rates. However, sustainability of demand in the residential property market will certainly depend on the impact of the covid-19 pandemic on the job market.

In terms of the retail leasing market, border control has virtually put the city's inbound tourism to a complete standstill with visitor arrivals falling by 92 per cent year-on-year in the first 10 months in 2020. In the fourth quarter of 2020, the retail leasing market remained frozen with more tourist-targeted retailers exiting and only a handful of food and beverage operators and mass-market retailers targeting the local market and taking up the spaces. The retail market is expected to rely on local consumption in the short run. However, the prevalence of online shopping caused by the pandemic and the narrowing price gap between Hong Kong and Mainland China on luxury goods may accelerate a structural change of the retail spending profile. The retail market is expected to bottom out in 2021 with a possible rebound of a single digit percentile on the assumption of a modest economic recovery and some travel bubbles put in place.

The office leasing market experienced an overall yearly rental fall of around 15 per cent in 2020, the largest drop in over 10 years. Some property valuers observed that the rate of decline in overall rents increased in the fourth quarter of 2020. Meanwhile, vacancy rates across all major areas continued to increase towards the end of 2020. However, cooling of the rental market can render Hong Kong more attractive for PRC companies and financial institutions to set up offices in 2021, as the homecoming listings of US-listed PRC companies are expected to remain hot and the implementation of the Greater Bay Area Wealth Management Connect scheme (a policy initiative by the central government to allow residents in Guangdong province to invest in wealth management products distributed by banks in Hong Kong and Macao) may have potential for significant growth opportunities for financial institutions in 2021.

Appendix 1

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Dennis Li is the head of property at Slaughter and May, Hong Kong. He has over 20 years' experience in Hong Kong real estate law and practice and has acted for major developers, financiers, banks, funds and private investors on a broad range of local and offshore real estate projects, including acquisitions and disposals, financing, strata sales and leases of multi-user complexes.

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