

6 July 2023

BY POST and EMAIL

Development Bureau
18/F, West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Attention: Ms. Bernadette Linn, JP, Secretary for Development

Dear Ms. Linn,

Feedback on the Legislative Proposal to Streamline the Arrangement for Extension of Land Leases

Introduction

1. On behalf of the Hong Kong REITS Association (“**HKREITA**”), its members and the H-REIT industry, we are writing to provide our views on the recent legislative proposal of the Development Bureau in order to streamline the arrangement for the extension of land leases with non-renewable terms through a statutory framework (the “**Proposal**”).
2. By way of introduction, HKREITA is an industry association of Real Estate Investment Trusts (“REITs”) in Hong Kong, with Link REIT, SF REIT and Yuexiu REIT as our co-founding corporate members. HKREITA represents the local participants of H-REIT market, with a shared aim of driving the H-REIT industry to greater prominence in Hong Kong and around the world. At the heart of each H-REIT is our unitholders and HKREITA represents the interest of both institutional investors as well as the general public with a total market capitalisation of over HKD180 billion. Irrespective of the size of each investor, our H-REITs work towards delivering long-term sustainable returns and portfolio growth for its unitholders through investments in quality property assets.
3. With Hong Kong being the primary international financial centre and also the core location of assets invested by most of the H-REITs, any form of uncertainty in the extension of land leases would bring disturbance to the property market as well as the securities market. Consequently, having clearer elaborations of the land renewal policy for Hong Kong by legislation or policy statement would allow the trading of properties and securities in an orderly and well-informed manner.

Our feedback on the Proposal

4. HKREITA supports and appreciates the efforts being made by the Government in fostering efficient and orderly arrangement for the extension of land leases. Investor protection is vital to the success of H-REIT market. One of the key principles under the Code of Real Estate Investment Trusts administered by the Securities & Futures Commission is that H-REIT shall hold good marketable legal and beneficial titles in all its real estate forming the fundamental basis for the pricing of the relevant properties and H-REITs' units. Accordingly, the certainty of tenure of such titles within the property portfolio of each H-REIT is crucial.
5. Further, foreign investors are not that familiar with the land administration system in Hong Kong and are generally less confident in the Hong Kong property markets than those local practitioners. What this means is that in order to attract major foreign investors to invest in the local REIT market or the real estate market, a clear and conscious policy statement or legislation giving a precise interpretation of the policy on land renewal would be advantageous in counteracting any scepticism that foreign investors may have in investing in Hong Kong.
6. Institutional investors in general will not invest in properties where the remaining land tenure, including the certainty of its extension, is less than 20 years. As a result, the valuation of real estate will be severely marked down towards expiry if the extension is uncertain or not eventually be extended.
7. As such, we agree that the simplified arrangement in the form of the Proposal is desirable in addressing part of the concerns of the market regarding how the general purpose land leases would be renewed upon the expiration of their original terms. This appears to be a cost-effective and uncomplicated process. We consider that the Proposal would have a positive impact on the stability of the property market in Hong Kong.

The uncertainties

8. Having said the above, we consider that there are uncertainties to the Proposal as identified below:-
 - a) the ambiguity of the terms "**general purpose leases**" and "**special purpose leases**";
 - b) the ambiguity of what constitutes "**public interest considerations**";
 - c) the ambiguity on the "**additional clauses**" that the Government intends to incorporate into the renewed lease; and
 - d) the relatively "**short notice period**" for the publication of the negative list through Gazette notice.

Our recommendations

9. In view of the uncertainties, we recommend that the Government could consider the following:-

a) Define “general purpose leases” and “special purpose leases” in a specific manner

- (i) We understand that the new legislation will apply only to all non-renewable general purpose leases (for commercial, residential or industrial uses), excluding short-term tenancies and special purpose leases (namely those for special leases that are granted on specific policy considerations for designated uses).
- (ii) We recommend that “special purpose leases” be defined in a specific and precise manner so that the general public would know what kinds of land leases would not be covered by such legislation.
- (iii) Lands were generally granted by land grants or leases to a wide range of grantees or lessees, including charitable bodies or government authorities. Most of the owners of properties, including H-REITs, in fact acquired the properties through assignments. Accordingly, we recommend that the term “general purpose leases” be defined in a specific manner by setting out all the covered general users now in use by the current general purpose land leases and disregarding the nature of grantees of such land leases.

b) Clarification on what constitutes “public interest considerations”

- (i) Under the Proposal, it would be unlikely that the Government will grant an extension to the expiring general purpose leases when there are public interest considerations. The Proposal does not provide for a clear definition of the term “public interest considerations” but rather provides an example, namely, where there is a serious breach of the terms of the current land lease that remains unpurged despite repeated warnings near the time of lease expiration.
- (ii) We consider that the breach of the current land lease should be limited to “serious and material” cases. We also suggest that the Government should clarify what are the situations which may constitute “public interest considerations” in the absence of a serious and material breach of the current land leases in order to give confidence to REIT unitholders and property investors to continue investing in the Hong Kong REIT market and property market respectively.

c) Clarification on “additional clauses” that the Government intends to incorporate into the renewed lease

- (i) As far as we understand, the Government intends to reserve statutory rights to incorporate additional clauses into the land lease upon renewal by the new legislation. The Government has indicated that the intention is to confine itself to essential clauses concerning enforcement rights of the Government and to strengthen land enforcement. Given that these clauses may or may not already be in the land leases, we suggest the Government state clearly in such legislation what these clauses are, the terminology of such clauses and how these new clauses would be interpreted if they conflict with the terms of the current land leases.

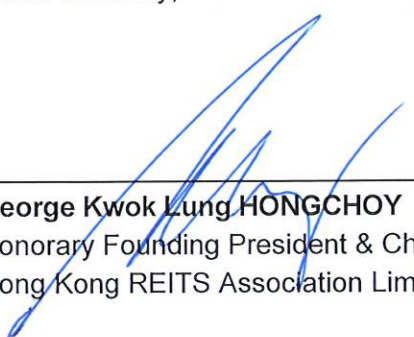
d) Gazette notice to be published earlier than 3 years before expiry of leases

- (i) As mentioned, anything that falls out of the general expectation would create financial instability in both property and securities markets.
- (ii) In the situation where the refusal of renewal of a general purpose lease remains unknown to the owner until the issue of the negative list (i.e. the proposed gazette notice) just 3 years before the expiration of the relevant land lease, it may lead to market volatility which is prejudicial to the interests of H-REIT unitholders and/or investors.
- (iii) In this regard, we propose the gazette notice be published at least 9 years prior to the expiry of each batch of leases notwithstanding that the pre-1997 land leases renewal has also been done by statute 9 years ahead of 1997. It could provide confidence to the property and securities markets and ensure that it is traded on a fair and transparent basis. It could also minimise the potential financial impact in case of non-renewal since there will be sufficient time for the market to adjust, i.e. the market price could be gradually diminished over the remaining lease period.

Conclusion

- 10. As the home of many leading real estate developers and H-REITs, investors' confidence is a vital success factor for Hong Kong. A clear and concise legislation and policy statement elaborating the treatment of land leases extension in a precise manner would provide the certainty which enables Hong Kong to maintain its global standing as an international financial hub.
- 11. We hope the above recommendations would be helpful to the Government in formulating the necessary content of the proposed legislation and your further clarifications of the arrangements of land lease renewal under the current policy. Should you have any questions, please contact our Mr. Kenneth Wong, Secretary General of HKREITA, at secretariat@hkreita.com or 2175 1383. We would also be glad to have a meeting with you for further discussion.

Yours sincerely,



George Kwok Lung HONGCHOY
Honorary Founding President & Chairman
Hong Kong REITS Association Limited