

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局

香港花園道美利大廈  
九樓



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Urgent By Fax

12 December 2006

Clerk to the Panel of PLW,  
Panel on Planning, Land and Works,  
Legislative Council Secretariat,  
Legislative Council Building,  
8 Jackson Road,  
Central, Hong Kong.

(Attn: Ms Anita SIT)

Dear Ms SIT,

**Kai Tak Planning Review –  
Revised Preliminary Outline Development Plan**

At the LegCo Planning, Land and Works Panel meeting held on 14 November 2006 to discuss the above subject, the Permanent Secretary for Housing, Planning and Lands (Planning and Lands) undertook to give a written reply to the Hon. Alan Leong's question about Government's proposal of granting a 50-year lease for the operation of the Cruise Terminal. Please find attached the written reply prepared by the Administration.

Yours sincerely,

(Miss Diane Wong)  
for Secretary for Housing, Planning and Lands

c.c. Director of Administration (Attn: Ms Winnie Wong)  
AA/SHPL  
Secretary for Justice  
Secretary for Economic Development and Labour  
Director of Lands

## **Granting of Leases after 30 June 1997 with term extending beyond 30 June 2047**

In relation to the proposed 50-year land grant for the new cruise terminal, the term will extend beyond 30 June 2047. According to the 1997 HKSARG Policy Statement which was promulgated in July 1997, new leases of land granted (except for a few categories of new special purpose leases) should be for a term of 50 years from the date of grant.

2. Pursuant to Article 7 of the Basic Law, the SAR Government shall be responsible for the management, use and development of land and natural resources and for their lease or grant to individuals, legal persons or organizations for use and development. It is therefore a matter for the SAR Government to determine the term of the new grant in accordance with its land policy, provided that it is consistent with the Basic Law. It is not evident from the Basic Law that all new grants of land should expire on 30 June 2047. Since land is a precious asset in Hong Kong, if the intention is such that all the land grants or leases should carry a term no further than that date, effect on both the land value and economy of the SAR would be detrimental. It also seems illogical to assume that the SAR government could only grant leases for an excessively short term as we approach 30 June 2047.

3. Pursuant to Article 123 of the Basic Law, any lease of land without a right of renewal expiring after 1 July 1997 shall be dealt with in accordance with laws and policies formulated by the HKSAR. Such provision has not restricted the term of the lease granted after 30 June 1997 to be limited to 30 June 2047. The proposed 50-year land grant for the new cruise terminal follows the HKSARG's policy promulgated in July 1997 Policy Statement that new leases of land granted should be for a term of 50 years from the date of grant.

4. In the light of the above, the proposed land grant for the new cruise terminal with a term of 50 years which extends beyond 30 June 2047 is legally in order.<sup>1</sup>

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<sup>1</sup>The above position is supported by the comment of Professor Wang Shuwen, a former member of the Basic Law Drafting Committee, in his commentary *Introduction to the Basic Law of the HKSAR* (Eng. Ed (2000), at pp. 614-615) as set out in the Annex.

Commentary from Professor Wang Shuwen in *Introduction to the Basic Law of the HKSAR* (Eng.Ed(2000) at pp. 614-615

“One thing I should like to mention here in passing. That is, on the basis of the provision in the Sino-British Joint Declaration (second paragraph of Annex III), Article 121 of the Basic Law prescribes that the term of all the leases of land granted or renewed by the British Hong Kong Government before June 30, 1997 shall not be extended beyond June 30, 2047. With respect of the terms of the leases of land granted or renewed by the government of the Region after July 1, 1997, there is no provision in the Basic Law, and no mention is made in Article 123 of the Basic Law either. After the promulgation of the Basic Law, some people are worried about whether the term of the leases of land granted or renewed by the government of the Region after July 1, 1997 will also be limited to June 30, 2047. Such worries are groundless and unreasonable, too. If the term of the leases of land granted or renewed by the government of the Region after July 1, 1997 will, without exception, be limited to June 30, 2047, the terms of the leases of land granted or renewed earlier may be 50 years, and the terms of the ones granted or renewed later would be shorter year after year. That is certainly unreasonable, and impossible, too.

In fact, with respect to the land leases after July 1, 1997, it is already prescribed in the Basic Law that the matter will be dealt with in accordance with laws and policies formulated by the Special Administrative Region on its own. This is what is prescribed in Article 123. The persons who are worried have failed to see that the limitations prescribed in Article 121 of the Basic Law are confined to the leases of land granted or renewed by the British Hong Kong Government, and such limitation will absolutely not be imposed on those granted or renewed by the government of the Region.”