

# Legal Update

## Hong Kong's Industrial Building Revitalisation Scheme 2.0 – A Recap

### 1. Introduction

- 1.1 On 18 April 2019, the Hong Kong Lands Department issued its latest practice note<sup>1</sup> as part of the Government's reactivation of the revitalisation scheme for industrial buildings, commonly known as "Revitalisation Scheme 2.0".
- 1.2 This article introduces the background of this revitalisation scheme, tracks its implementation by Government authorities through a chronicle of practice notes since the announcement of its reactivation in the 2018 Policy Address in October 2018, and provides our observations on the development.

### 2. Background: "Revitalisation Scheme 1.0"

- 2.1 As a result of industrialisation back in the 1950s, a large number of industrial buildings

were built in Hong Kong. In 2009, private flatted factories accounted for a total floor area of 17,300,000 square metres.<sup>2</sup>

- 2.2 To cope with land and housing shortage problems, in 2009-2011, the then Chief Executive sought to release the land bank contained in industrial buildings in Hong Kong by rolling out a few new policy initiatives to incentivise owners of existing industrial buildings to provide more suitable land through redevelopment and wholesale conversion.<sup>3</sup>
- 2.3 Among such initiatives, the lowered threshold for compulsory sale application is still in place, while the revitalisation scheme in respect of the other initiatives came to an end in March 2016.<sup>4</sup> It was reported that the Lands Department had received 172 applications

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1 Lands Department Practice Note No. 7/2019 "Provision of Transitional Housing in Converted Existing Industrial Building" (18 April 2019).

2 Para. 4(a), Paper for Legislative Council Panel on Development "Background brief on revitalization of industrial buildings" (LC Paper No. CB(1)1909/10-11(07)) (15 April 2011) and Legislative Council Brief "Optimising the use of industrial buildings to meet Hong Kong's changing economic and social needs" (DEVB(DOO)7-01) (15 October 2009).

3 Para. 24, 2009-2010 Policy Address. Those initiatives (alongside the rezoning of the existing industrial lands to other uses by the Town Planning Board) included:

- (a) lowering the application threshold for compulsory sale orders from 90% to 80% for industrial buildings meeting certain prescribed requirements;
- (b) providing some favourable arrangements on payment of premium to owners of industrial lots upon applications for lease modification of relevant lots for non-industrial uses; and
- (c) granting special waiver to relevant owner(s) for change of use (non-industrial use) of an entire existing industrial building.

4 Para. 3, Paper for the Legislative Council Panel on Development "Background brief on revitalization of industrial buildings" (LC Paper No. CB(1)323/18-19(04)) (13 December 2018).

under the earlier industrial revitalisation scheme,<sup>5</sup> of which 129 were approved. This accounted for about 8 percent of the total stock of industrial buildings in Hong Kong.<sup>6</sup>

- 2.4 To further expedite the process of transforming existing industrial lands into spaces for other uses in demand, incumbent Chief Executive Carrie Lam announced the reactivation of the revitalisation scheme for industrial buildings in her Policy Address last year, which is now commonly known as “*Revitalisation Scheme 2.0*”.

### 3. “*Revitalisation Scheme 2.0*”

- 3.1 In “*Revitalisation Scheme 2.0*”, the Government decided to increase its efforts in encouraging owners of industrial buildings to redevelop and/or convert existing industrial lands into commercial or residential uses to meet the rocketing land demand in Hong Kong. These measures include:<sup>7</sup>

- (a) offering exemption of waiver fees for applications (for a period of three years commencing from early 2019) made to the Lands Department for wholesale conversion of existing industrial buildings of at least 15 years old in certain zones with a condition that 10 percent of the converted floor space shall be designated for specific uses to be prescribed by the Government;
- (b) subject to certain restrictions, allowing relaxation of the maximum permissible non-domestic plot ratio by up to 20 percent to incentivise redevelopment of pre-1987 industrial buildings for sites located outside “*Residential*” zones in main urban areas and new towns;
- (c) facilitating proposals from the community for providing transitional housing in portions or entire blocks of industrial buildings of all ages located in “*Commercial*”, “*Comprehensive Development Area*”, “*Other Specified Uses (Business)*” and “*Residential*” zones

which have already undergone or will pursue wholesale conversion into non-industrial uses;

- (d) relaxing the waiver application policy for an initial five years to permit certain uses in industrial lands for arts and cultural sectors, creative industries and innovation and technology sectors etc., provided that such uses are in Column 1 of the relevant outline zoning plans (i.e. those which are “*always permitted*”);
- (e) as part of the plan to facilitate partial conversion of lower floors of the existing industrial buildings, allowing the buffer floors in the industrial buildings to be used for telecommunications exchange centres and data processing centres; and
- (f) widening the scope of “*godown*” under the Government leases to cover “*cargo handling and forwarding facility*” and “*recyclable collection centres*”.

- 3.2 Some guidelines have been issued on the above measures in view of the Government’s commitment in a paper (LC Paper No.CB(1)323/18-19(03)) prepared by the Development Bureau (“*Bureau*”) in December 2018 for the Legislative Council Panel on Development (“*Legco Paper*”), indicating that relevant practice notes and implementation documents will be issued “*by early 2019*”<sup>8</sup>, which will be discussed in detail below.

- 3.3 Meanwhile, the Lands Department has also set up the Industrial Buildings Revitalisation Unit to facilitate relevant applications for implementation of the above measures.

### 4. Development Bureau

- 4.1 To cater for relaxation of the waiver application policy set out in paragraph 3.1(d) above, the Bureau issued an announcement on 1 February 2019 (“*Announcement*”) detailing the relaxation for a period of five years such that existing industrial buildings (which are

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5 These excluded applications withdrawn and terminated by applicants.

6 Para. 3, Paper for the Legislative Council Panel on Development “*Measures to Revitalise Industrial Buildings*” (December 2018) (LC Paper No. CB(1) 323/18-19(03)).

7 Paras. 71-73, 2018 Policy Address “*Striving Ahead Rekindling Hope*” (10 October 2018).

8 Para. 18, Paper for the Legislative Council Panel on Development “*Measures to Revitalise Industrial Buildings*” (December 2018)

restricted to industrial uses under the Government leases) could be designated for certain non-industrial uses (“Permitted Uses”) without application for temporary waivers to the Lands Department if such uses are under the “always permitted” category in the relevant zoning plan(s).

- 4.2 The Announcement provides that the Government would permit, at any time between 1 February 2019 and 31 January 2024, Permitted Uses in premises within existing industrial buildings (without the application for temporary waiver) subject to zoning requirements, and the Bureau made an effort to elaborate on the coverage of Permitted Uses. It is clear that those uses are in line with the broader Government initiatives to support and encourage the development of creative industries in Hong Kong.
- 4.3 Permitted Uses include arts studio, office for production of audio and video records, media design and production work and research, design and development centre, but exclude some similar uses such as free-standing broadcasting, television and/or film studio. However, Permitted Uses adopted in the existing industrial buildings should **not** involve activities that would “attract visiting members of the general public by providing direct services or goods, such as conducting hobby classes, exhibitions and sales activities, or providing rehearsal facilities for any party other than the operator, owner and tenant(s) of the premises”.<sup>9</sup> Before converting existing premises for Permitted Uses, the relevant owners should approach the relevant authorities (such as Fire Services Department and the Building Authority) to obtain all necessary approvals and permits, and consult with them as to whether any structural alteration is involved. Owners should also take into consideration the obligations under the relevant deed(s) of mutual covenants (if any) relating to the relevant industrial buildings.

4.4 This is a step which attempts to release the land banks to accommodate the emerging demand for creative industries without imposing excessive administration cost on the Government. Despite endeavours of the Bureau to define Permitted Uses in the Announcement, there remains uncertainty on the parameters of Permitted Uses<sup>10</sup> and whether some non-industrial uses would be classified as businesses or activities which “may attract members of the public”.

4.5 The Bureau indicated in the Legco Paper that the Lands Department would only “act on complaints” and seek advice from the relevant bureaux in respect of the occurrence of “substantiated breach of non-compliant uses”.<sup>11</sup> However, to address the potential grey areas, the Government will need to closely monitor and review the actual implementation and effectiveness of the initiative from the beginning (in particular on issues of fire and building safety), issue regular updates from time to time on what kinds of uses would fall into or outside Permitted Uses, and impose further conditions when necessary. From this perspective, the updates would be useful in setting precedents for the relevant owners, tenants and occupiers to follow.

4.6 Furthermore, interested owners should seek legal advice on whether their intended change of use would be in breach of the deed(s) of mutual covenants, if applicable, and the terms and conditions in the lease other than the user restriction, as consequential breaches of the same may trigger Government enforcement actions.

## 5. Lands Department Practice Notes

5.1 As at 25 July 2019, there are altogether five practice notes issued by the Lands Department.

9 Para. 5, Development Bureau Announcement “Relaxation of Waiver Application for Existing Industrial Buildings” (1 February 2019).

10 For example, there appears to be a very fine (and perhaps ambiguous) distinction between “small-scale production of motion pictures” which is permitted under para. 4(b) and “film production studio” which is expressly excluded under para. 4(d) of the Announcement.

11 Para. 13, Paper for the Legislative Council Panel on Development “Measures to Revitalise Industrial Buildings” (December 2018) (LC Paper No. CB(1) 323/18-19(03)).

5.2 Practice Note Issue No.1/2019 “Acceptable uses in Premises restricted to ‘Godown Purposes’ under Lease” (issued on 21 January 2019) is an effort to clarify and expand the definition of “godown” under the Government leases:

- (a) Godown premises should not only be used for storage of goods, but also for movement of goods such as transient deposit and storage for delivery purpose. Provided that there is primary storage of goods or material in godown premises and the storage has attendant consequences, “cargo handling and forwarding facility” and “recyclable collection centre” (referred to in the definitions of terms promulgated by the Town Planning Board (“TPB”)) will generally be acceptable under Government leases with “godown” user restriction (subject to certain exclusions).
- (b) When deciding whether the uses concerned are permitted, the Lands Department would consider a basket of factors including the nature of use, context of the case (including the lease in question) as well as operations details and technologies to be employed when using the premises. Without surprise, the decision made by the Director of Lands on whether a proposed use falls within the permitted uses would be final.
- (c) For the time being, no “formal” procedure has been put in place for obtaining confirmation or approval from the Lands Department on whether a proposed use falls within the expanded “godown” purpose. Interested owners should engage professionals such as land consultants to assist in seeking permission in writing from the Lands Department.

5.3 Practice Note Issue No.2/2019 “Lease Modification (or a Land Exchange) for Redevelopment of an Industrial Lot (Special time-limited arrangement for application for relaxation of development intensity)” (issued on 18 February 2019) expressly provides that a lot owner of a pre-1987 industrial building (located outside “Residential” zones) may, subject to certain restrictions, apply for a lease modification or land exchange for the

redevelopment of an industrial lot at a non-domestic plot ratio not exceeding 20 percent more than the maximum development intensity permitted under the relevant statutory town plans for three years commencing from 10 October 2018:

- (a) Before applying for relaxation of non-domestic plot ratio under a lease from the Lands Department, interested lot owners are required to obtain planning approval from the TPB to increase the maximum non-domestic plot ratio to maximum development intensity, which means at least two separate applications (to the TPB and the Lands Department respectively) have to be made.
- (b) If a lot owner successfully secures the relevant approvals from both the Lands Department and the TPB, it will be required to, *inter alia*, pay land premium and administrative fees for the lease modification as may be imposed by the Lands Department. Unless there are strong justifications to support otherwise, the lot owner will be required to execute the lease modification letter no later than three years from the date of TPB’s approval letter and will be obliged to complete the redevelopment within five years from the date of execution of the lease modification letter.
- (c) It is worth noting that, if an interested lot owner who has already submitted an application for lease modification (“Existing Application”) prior to the date of this practice note is minded to make a new lease modification application pursuant to this practice note (“New Application”), subject to the relevant approval from TPB, they may make a request to the Lands Department to defer processing the Existing Application pending the decision on the New Application (and if the New Application is rejected, the Lands Department will resume processing the Existing Application).
- (d) As there are technical issues in relation to redevelopment of industrial lots pursuant to this practice note and lease modification could be a complicated process,

interested owners should seek legal advice and engage competent professionals (such as authorised persons, surveyors and land consultants) to deal with such applications.

5.4 Practice Note Issue No.3/2019 “*Application for Waivers for Buffer Floor and Lower Floors of an Existing Industrial Building*” (issued on 21 March 2019) deals with change of use of the buffer floors and the floors immediately below those of existing industrial buildings *en bloc* under single ownership:

- (a) Telecommunications exchange centres and computer or data processing centres, which are currently in huge demand in the market, are now allowed as temporary uses for conversion of buffer floors. As the applications would be subject to ownership, zoning and fire safety requirements, this practice notice highlights the safety requirements.
- (b) Applicants have to pay an administrative fee for the relevant submission. In respect of the waiver fee(s) for using relevant floors for telecommunications exchange centres and computer or data processing centres, applicants should refer to Practice Notes Issue Nos. 5/2001, 5/2001A, 3/2012 and 1/2015. Similar to the change of use pursuant to the Announcement, for safety reasons, partial conversion of existing industrial buildings on the basis of this practice note does not allow any provision of customer services which will attract traffic from the community at large. General commercial and office uses are also expressly excluded. In ascertaining whether the uses are allowed under this practice note, the decision of the Director of Lands shall be final.
- (c) Attention should be drawn to paragraph 10 of this practice note that an owner who is enjoying an existing waiver may also apply for a waiver pursuant to this practice note. Upon execution of the relevant documents effecting the “new” waiver, the existing one will be deemed to have been cancelled and terminated, and no notice of termination is required.
- (d) Although a checklist is attached to this practice note, the Lands Department is

still expected to scrutinise the implementation of such partial conversion and issue regular notes or updates (including frequently asked questions) on the website to educate prospective applicants or relevant stakeholders on the requirements and restrictions on the relevant waiver. For example, the waiver shall be deemed to have been terminated upon change of ownership of the relevant premises; however, it is uncertain whether it covers the situation where there is change or split of shareholding in a corporate entity holding the relevant premises.

- (e) We learnt from experience that transformation of the buffer floor and the lower floors into data processing centres or telecommunications exchange centres would require adequate infrastructural support (such as temperature control system and ample electricity supply). To facilitate implementation of the scheme, it would be beneficial if relevant Government authorities (e.g. the Lands Department, the Fire Services Department and the Buildings Department) could set up a cross-departmental taskforce or working group to handle and coordinate such applications.
- (f) We are also aware from the checklist that modification of other lease conditions (other than the user restriction) may be required for the relevant application. Furthermore, for processing the application for waiver, the Lands Department will also look at the proposed compliance with the “*Green Data Centre Practice*” by the applicants. Therefore, owners will require advice from different competent professionals (such as legal advisers and environmental and other technical consultants) on this matter.

5.5 Practice Note Issue No.6/2019 “*Application for Special Waiver for Conversion of an Entire Existing Industrial Building*” (issued on 2 April 2019) deals with applications for special waivers for conversion of an entire existing industrial building situated in an area zoned “*Industrial*”, “*Commercial*” or “*Other Specified Uses (Business)*” according to statutory town plans:

- (a) An owner of an existing industrial building located in areas with the above zonings may apply for a special waiver at nil waiver fee for change of use of the entire existing industrial building, for its lifetime or until expiry or termination of the current Government lease, whichever is the earlier, provided that:
- (i) at the time of the application, the age of the existing industrial building is not less than 15 years, calculated from the date of issue of the latest occupation permit(s) for the entire industrial building;
  - (ii) the application is submitted by the sole owner or all existing owners (as the case may be) of the lot on which the existing industrial building is erected, together with the consent from all mortgagees, charges and purchasers; and
  - (iii) the proposed uses of the existing industrial building to be covered by the special waiver shall fall within either (A) the categories of uses always permitted in the respective zones under the relevant statutory town plans or (B) the categories which require planning permission from the TPB and the relevant planning permission has been obtained.
- (b) An important feature of this initiative is that, if the relevant application is approved by the Lands Department, it will be a requirement that (apart from the payment of administrative fee) not less than 10 percent of the total accountable gross floor area of the existing industrial building, after conversion, shall be redesignated, reserved and restricted as the *"designated portion"* for *"specific uses"* as may be determined, required or specified by the Government at its sole and absolute discretion.

5.6 The latest Practice Note Issue No.7/2019 *"Provision of Transitional Housing in Converted Existing Industrial Building"* issued on 18 April 2019 outlines further details on provision of transitional housing in converted industrial buildings. This practice note acts as a supplement to existing practice notes (which

includes the practice note referred to in paragraph 5.5 above) relating to special waivers for converting an existing industrial building for non-industrial purposes:

- (a) In accordance with the Government's policy of facilitating community-initiated transitional housing projects, owners may apply for a waiver for not more than five years for conversion of an existing industrial building situated in designated zones provided that:
  - (i) the transitional housing is to be run by a non-profit organisation or social enterprise (collectively "NGOs") and the waiver application is supported by the Transport and Housing Bureau; and
  - (ii) such transitional housing temporary use is permitted under the relevant statutory town plans.
- (b) If approved by the Lands Department, such transitional housing waiver will be granted at nil waiver fee, nil deposit and nil or no additional administrative fee (as the case may be). Such waiver may also be subject to terms and conditions imposed by the Lands Department e.g. restriction on letting to the NGOs as agreed by the Transport and Housing Bureau.
- (c) Similar to other practice notes, owners are once again reminded to approach relevant entities and departments e.g. TPB, Fire Services Department and the Building Authority to ensure compliance with all applicable requirements and to obtain all necessary approvals, permits, permissions or licences that may be required. It is also expressly stipulated that issuance of a transitional housing waiver is not any guarantee by the Lands Department on the feasibility of the proposed transitional housing use.

## 6. Observations and Conclusion

6.1 Soon after the announcement of the reactivation and acceleration of revitalisation for local industrial buildings in the 2018 Policy Address by the Chief Executive, the market has been quite positive about the proposed initiatives. We have recently seen an increasing number of applications for revitalisation of industrial

buildings by developers and property investors, in areas ranging from Kwun Tong in Kowloon East to Tuen Mun and Kwai Chung in the New Territories. Stakeholders appear to be confident that the revitalisation scheme could create more social and economic values as well as business opportunities, and more importantly, tackle the issue of acute shortage of commercial and residential land in Hong Kong. That being said, as only limited information has been provided so far by the Government authorities, some expressed hope that the Revitalisation Scheme 2.0 could result in more spaces and/or facilities for social welfare.

- 6.2 Under the Revitalisation Scheme 2.0, renovation, refurbishment and/or redevelopment of entire industrial buildings (or partial conversion thereof) into office spaces or buildings of other uses are supported by Government policies and hence become more incentivised. It follows that property investors may expect a generally upward trend of the prices for industrial lots or buildings in the near future.
- 6.3 In respect of the Government's support for further conversion of those already-converted industrial buildings into transitional housing, a few market players have signalled reservations on its effectiveness, as they do not expect the relevant owners to actively participate in this initiative owing to the potentially high refurbishment and compliance costs.
- 6.4 Apart from the above, in respect of the measures set out in paragraphs 3.1(a) and 5.5, some market players showed concern as to whether those use(s) to be "specified" by the Government of 10 percent of the converted floor space of converted 15-year-old or above industrial buildings (with waiver fees exempted) will be in line with the intended uses proposed by owner(s) for the rest of the relevant industrial building after conversion. To assist market players in evaluating this measure, it will be helpful if the Government could provide further clearer guidance on how the relevant use(s) are to be specified.

6.5 While the Government has been placing emphasis on the issue of public safety as regards change of use of industrial buildings,<sup>12</sup> we take the view that other relevant Government authorities (such as the Building Department and the Fire Services Department) should also issue relevant practice notes in relation to the implementation of the Revitalisation Scheme 2.0 insofar as their jurisdictions are concerned in order to assist market players in complying with the relevant requirements and to ensure safety in the conversions of industrial buildings under the Revitalisation Scheme 2.0.

6.6 Last but not least, as part and parcel of the Government's overall policy in releasing and utilising the land bank, the Government also proposed in February 2019 to use HK\$20 billion to purchase land for around 60 properties to house welfare facilities such as day childcare centres, neighbourhood elderly centres and on-site pre-school rehabilitation services. All in all, we shall take a wait-and-see approach on how Revitalisation Scheme 2.0 interacts with other Government policies and its actual impact and development in the near future.

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12 For example, in Lands Department Practice Note Issue No.3/2019, it is noted that in determining the qualifying requirements and what constitute the buffer floor and lower 3 floors of an existing industrial building, the decision of the Director of Fire Services shall be final.

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