

# Security of cadastral rights in Hong Kong

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## Abstract

The Hong Kong cadastral system is designed for efficient transactions which has remained unchanged since the enactment of the Land Registration Ordinance in 1844. In this British designed cadastral system, various land-right records are kept by different government departments. The current computerized register gives good protection of ownership rights to practically all land properties. Land use rights have been taken up by the Town Planning Ordinance and the individual detailed land rights criteria are contained in land leases or land grant documents. Land boundary rights, property management arrangement and other land rights are to be traced from the deeds. The design usage and the first alienation of land is managed by government whereas the subsequent development and the subdivision of property units in the mode of undivided shares of land are largely private deals. There are much rooms for improvement in the security of property rights. This paper introduces the cadastral arrangement in Hong Kong, points out the main successful achievement and the subsequent insufficiencies in the protection of other land rights, and discusses the conditions of institutional changes for the adoption of such improvements.

## 1 Function of cadastre and real estate property

Hong Kong adopted rudimentary deeds registration shortly after the inauguration of this British colony in 1842. Land speculation started even years before the implementation of a proper registry [Nissim, 1998]. Unlike most jurisdictions in Europe, Hong Kong has no cadastre law. Cadastral system in Hong Kong refers to the institutional settings handling and recording land rights, and legally speaking, as defined in Section 2 of the Conveyancing and Property Ordinance (Cap.219), land here basically refers to all rights over land, the ground as well as features attached to land. This paper discusses the security of land rights in the land development and recording process of these land rights.

Land development by private business sector is always a main economic activity in Hong Kong. To name a typical case – the Hong Kong Kai Tak Airport, which was used from 1925 to 1997, was a large strip of reclaimed land originally for residential housing development and later changed to an airport run-way extending onto the Victoria harbour.

From the 80's, the Hong Kong Government had adopted a “minimal intervention” principle which reflected on the land policy as to supply land for housing development and let the private developers work on the business market. Growing with prosperous land development business, land premium obtained from land sales and tax incomes generated from land property have become a significant source of government revenue.

Until 1997, real estate was a major investment tools for Hong Kong people. Buying an apartment was for the enjoyment of living and probably more importantly, for the value appreciation potential. The general public cares less about the attached land rights to the property until the land rights issue comes up to affect the value of the property. The most vocal advice to the selection of a real estate property is “location, location and location”. Location of the real estate property dictates its value. Other land rights are of very less concerns.

After the Asian financial crisis broke out in 1997, the price of the Hong Kong real properties has now plunged down 65% as compared to the peak value in 1997. And, in recent years, the government policy has changed to “proactive market enabler” [Hong Kong Trade Development Council, 2003]. The current government is busy to maintain, if not to boost, the land property market price. Other systematic improvement of land property rights are at a much slower pace. For

example, the Land Titles Bill have been brought up since 1994 and not yet enacted. The proposal of the systematic land boundary re-survey for the New Territories has been turned down by the government for there is no budget for such activity.

## 2 Cadastral functions in the land development process

Generally speaking, the government is responsible for providing land for economic development by the private sector. The recording and proof of these land rights are mainly the function of the land register, as Hong Kong does not have a cadastre law. In this paper, four stages of land rights creation and recording are introduced. The first stage, land planning, is done under a Town Planning Ordinance, and it has an overriding power on the land lease. Except the town planning zoning plans, other land rights created in the rest of the three stages: land sale, construction and occupation are recorded in the land register.

### 2.1 Planning stage

Under the authority of the Town Planning Ordinance, the Planning Department designates different land-use zones on the Outline Zoning Plan which is to be approved by the Town Planning Board. These legally authorized land-use plans are available on web [Fig.1].



**Figure 1** Index page of the Hong Kong e-Statutory Plan (Town Planning Board, 2003)

### 2.2 Land sale stage

Lands Department makes decision on the details of land control items on land parcels under designated land use zones. The land sale information of a parcel typically including the Lot Particulars, Conditions of Sales and the attached identification plan is available to the general public for auction purpose. The bidders of vacant land are usually a handful of large real estate companies, nevertheless, the land sale information is freely available on web. Figure 2 shows the first paragraph of a twenty page land tender document. Once the land is bidden, the land sale document is signed as a contract and registered in the Land Registry. And, within this document, the Conditions of grant, which exist as an agreement between the government and the purchaser, further stipulates the restrictions on the use of land.

**EXPLANATORY STATEMENT**

**New Kowloon Inland Lot No. 6409**

**Sha Tin Town Lot No. 484**

**Tung Chung Town Lot No. 9**

**Tsing Yi Town Lot No. 170**

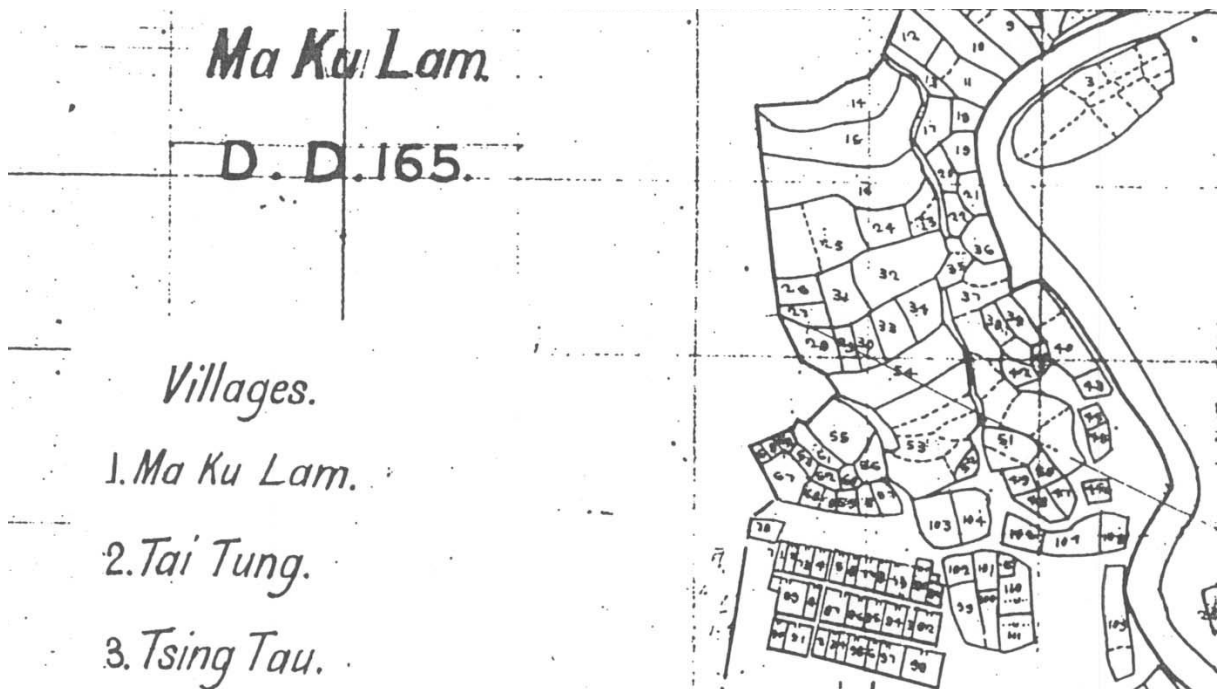
**Chai Wan Inland Lot No. 171**

This Explanatory Statement is issued for the guidance of prospective tenderers for **New Kowloon Inland Lot No. 6409, Sha Tin Town Lot No. 484, Tung Chung Town Lot No. 9, Tsing Yi Town Lot No. 170 and Chai Wan Inland Lot No. 171** (hereinafter collectively referred to as "the five lots") and shall not be deemed to be part of the Tender Notice, Forms of Tender and Conditions of Sale (hereinafter collectively referred to as "the tender documents") for any of the five lots nor any variations thereto and neither shall it be taken into consideration in the interpretation or construction thereof.

**Figure 2** Sample of Hong Kong land sale tender notice (first of twenty pages)  
(Lands Department, 2003)

Before the 1980's, the government used to grant land lease to landowner who fulfilled the development covenants as contained in the land sale document. Usually an as-built survey plan would be attached and the plan is called a lease plan. Under a deeds registration system without any specific survey law, a lease plan is thus a proper legal evidence of land boundary. After the enactment of the Conveyancing and Property Ordinance in mid 1980's, land leases are seldom granted anymore.

Tracing back to early last century, when the Hong Kong government extended the colony to the New Territories, Block Crown Leases were granted and the Demarcation District Sheets were used as grant plans. These plans are still in use as the legal reference of boundary today. Figure 3 shows a typical image of a Demarcation District Sheet.



**Figure 3** Part of the Demarcation District Sheet 165

For small sites, the government issues No Objection Letter to some redevelopment sites and Building License to permit the erection of a building on land. These documents are also found in the Land Registry.

### 2.3 Construction stage

Construction floor plans are submitted for approval by the Buildings Department. The department issues Consent to Commence Work before construction and Occupation Permit after construction. Under the Buildings Ordinance, the Buildings Department and Government's Records Management Office keep copies of approved plans and occupation permits for all private buildings. Although the Building Records Management System

has been installed, the retrieval and viewing of building records are limited to some Kowloon districts and are not yet accessible on web. These records may be viewed in the Buildings Department by person. Figure 4 shows the searching and viewing of approved building plans in the Buildings Department.

From the commencement of building works, there are a series of approvals of works including structure, fire safety, super-structure, drainage, site formation, and others seeking from various government departments. Eventually, when a completed building is inspected against the prescribed construction standard under the Buildings Ordinance, the department issues an Occupation Permit and it is also recorded in the land register.



**Figure 4** Searching and viewing of approved building plans (Buildings Department, 2003)

### 2.4 Occupation stage

Since the 1980's the government seldom grants lease. The Lands Department issues a Certificate of Compliance to the developer to declare that the land has been developed and fully complied with the prescribed conditions in the land sale agreement. With such certificate, a land lease could be deemed to be granted and thus a bank will proceed with mortgage business with private purchasers.

Land developers sell the completed flats separately to purchasers. The legal title created for each flat is an undivided share of the mother lot and an exclusive right to use the flat at certain address. In Hong Kong, a developer may sell the uncompleted real estate property with the pre-sale consent from the Lands Department. Usually, a provisional sale and purchase agreement is signed first, and then later, the formal agreement. Once a sale and purchase agreement is signed, Stamp duty, which is a transaction tax at certain percentage of the property, is payable and the purchaser becomes a landowner and free to sell the property to any other people. All these transactions are recorded in the Land Registry.

Hong Kong has no strata titles. The Deed of Mutual Covenant records the arrangement of multi-story building management. The developer indicates the allocation of shares to each flat, provide the plans showing public facilities and private exclusive use area and decide on the charge of the flat management.

The Rating and Valuation Department is responsible for the assessment of land use taxes – Rates and Government Rent – both being a percent of the estimated yearly rental value of the property. The department thus maintains database on property price, vacancy rates, number of transactions and so on. This information is available on [www.info.gov.hk/rvd/property/index.htm](http://www.info.gov.hk/rvd/property/index.htm).

### **3 Advantages and insufficiencies of the cadastral system**

Hong Kong has long been portrayed as a prosperous financial centre with high value real estate and a place with many magnificently tall and technically complex modern buildings in Asia where it shows that the government cares on the building design and safety standards. The system is also efficient in transaction where it serves well as a fiscal cadastre such that all properties are traceable by relevant government departments, and basically satisfactory as a legal cadastre in the proof of land ownership. It is recognized by the US Government that the Hong Kong “court system provides effective enforcement of contracts, disputes settlements and protection of rights, including intellectual property. Secured interests in property are recognized and enforced” [US Dept of Commerce, 1999].

Security of land rights is not the main aim of the Hong Kong cadastral system. As the system develops from a rudimentary deeds registration system, whenever there is a crisis in the system, the government then works on the loophole and fixes it. Twenty years ago, when the land lease could no longer control the designated land use in the New Territories, the government enacted the Town Planning Ordinance to control and plan the use of land. And, just weeks ago, when a land developer failed to finish the construction of uncompleted flats and there was a threat that the bank, as a first mortgagee, would take over the properties and left the purchaser, the second mortgage, with nothing but debt, the government hastily announced that there would be an amendment in the Conveyancing and Property Ordinance such that when a purchaser has paid up all the money of the uncompleted flat, one should get the title of the flat, instead of the bank. This is a traditional fire fighting approach.

There is an inherent shortcoming of a deeds registration system such that the recording of land rights other than ownership is often done inadequately, especially for those rights involving technical description [Tang, 2001]. In fact, there are a few weak items in the Hong Kong cadastral system. Inadequate land boundary description and poor property management in multiple ownership are problems of the same root.

While the majority of the developed societies have upgraded their land boundary security in law by taking advantage of the improvement of surveying technology, Hong Kong remains in the early stage of 1844. The recent Land Survey Ordinance [Cap. 473] is only a half-baked solution which takes care of new land subdivision, yet the surveys in the New Territories done under the ordinance are not even considered sufficient to apply for title registration in the current Land Titles Bill.

The boundary of a land lot is not well legally defined and protected, so does a real estate property. In Hong Kong, the approved building plans have no relationship with the claimed area in the sale of the property later. This is the so-called “Dwindled Flat” phenomenon [Tang and Lam 1998 and 1999] such that in some serious cases the carpeted area is about half of the claimed area in the sale. There is a lack of legal definition with good technical support.

The poor state of management in the buildings of private multiple ownership are well recorded [Megan & Kent, 2000]. The broke out of fires in the old buildings have ended up with tightening fire safety regulation, but, in fact, the root of the problem lies in the inadequate protection on the draft of the Deed of Mutual Covenants.

### **4 Concluding remarks**

For the security of land rights, there are not enough heats generated from the broke out of cases. Land boundary, in particular, is problematic. There are plenty of court disputes on land boundary

in local courts, but still the number is comparatively insignificant to other commercial or criminal cases. Although the land surveying industry has made its vocal call for the improvement of land boundary records in the New Territories, the government is just not eager to commit resources in tackling the problem.

Recently the Land Titles Bills Committee of the Hong Kong Legislative Council is busy working on soliciting opinions from the professional societies and fine tuning the Bill. This is certainly the time for land surveyors to contribute to the proper construction of a registration law that provides secure land boundary rights. The law must provide a means to register a recent survey, not limited to certain category of land parcels but to all. The technical matters could well be handled by correspondingly up-graded provisions in the Land Survey Ordinance. And, that could be the very necessary step to have secure land boundary rights in Hong Kong.

## 5 References

- Buildings Department (2003) Website at <http://www.info.gov.hk/bd/english/services/support.htm>, June 2003.
- Hong Kong Trade Development Council (2003). "Budget 2002-03: Restore Fiscal Balance in Four Years, Hong Kong Economics, seen at website <http://www.tdctrade.com/econforum/citi/citi020301.htm>, March 2003.
- Lands Department (2003) Website at <http://www.info.gov.hk/landsd/landsale/tender/20030627/nkil6409.pdf>, June 2003.
- Nissim, R (1998). *Land Administration and Practice in Hong Kong*, Hong Kong University Press, HK, page 3.
- Tang, C. and Lam, S. [1998]. "Solution of the dwindled flat sales in Hong Kong", Professional Forum, *Ming Po*, 3 October 1998.
- Tang, C. and Lam, S. [1999]. "Stopping dwindled flat sales is a government responsibility", Professional Forum, *Ming Po*, 16 July 1999.
- Tang, C. [2001]. "The legal environment of the Hong Kong land boundary survey system", *The Hong Kong Institute of Surveyors Journal*, Volume 12 Issue 1, pp.39-46.
- Town Planning Board (2003) Website at [http://www.info.gov.hk/tpb/index\\_e.htm](http://www.info.gov.hk/tpb/index_e.htm), June 2003.
- US Department of Commerce (1999) Country Commercial Guide Hong Kong Fiscal Year 1999.
- Walters, M & Kent, P (2000). "Informal Institutions in Multiple Ownership Property in Hong Kong", Proceeding, Pacific Rim Real Estate Society, Conference 2000, Sydney, January 2000.