

Legal 500

Country Comparative Guides 2025

Hong Kong

Real Estate

Contributor



ZHONG LUN LAW FIRM LLP

中倫律師事務所有限法律責任合夥

Zhong Lun Law Firm
LLP

Iris Choi

Partner | irischoi@zhonglun.com

Christy Ip

Partner | christyip@zhonglun.com

Kelly Law

Associate | kellylaw@zhonglun.com

This country-specific Q&A provides an overview of real estate laws and regulations applicable in Hong Kong.

For a full list of jurisdictional Q&As visit legal500.com/guides

Hong Kong: Real Estate

1. What is the main legislation relating to real estate ownership?

1.1. The Conveyancing and Property Ordinance (Cap. 219) (the "CPO") serves as a cornerstone legislation that provides the fundamental legal framework for conveyancing law in Hong Kong. The CPO regulates a broad range of issues concerning real estate ownership in Hong Kong, including but not limited to the contractual requirements for the creation and transfer of interest in land, modes of ownership, requirements for proving and giving title to properties, mortgages and receivers, land covenants and the benefits and burdens thereof, court powers, and forfeiture, voidable dispositions and protection against fraud, among others. Below are some key highlights:-

1.2. First of all, it mandates that any contract for the sale of land must be in writing. This formality is crucial for providing clear evidence of the agreement and preventing disputes. For the legal ownership to actually change hands, the transaction must be effected by a deed, which is a formal legal document with specific execution requirements that are laid out in the CPO. To support this, the CPO also defines the standards for proving good title, which is a cornerstone of every conveyancing transaction.

1.3. Under the CPO, the vendor in a property transaction must prove title going back at least 15 years by producing relevant title deeds or documents. The vendor may provide original or certified copies depending on whether the document relates exclusively to the subject property (in which case original shall be produced). Recitals in documents older than 15 years are presumed valid unless disproved. The purchaser has the right to inspect these documents and raise any title-related requisitions. These underlying principles ensure the purchaser's confidence in the vendor's ownership and the validity of the transaction.

1.4. Further, the CPO implies certain standard covenants into contracts and deeds, creating a baseline of obligations without needing to state them explicitly every time. The CPO also regulates the mode of real estate ownership, such as the different forms of co-ownership (joint tenancy versus tenancy in common), the creation and operation of mortgages, and the appointment of receivers and their powers.

1.5. In the perspective of property owners, a noteworthy feature of the CPO is how it governs ongoing obligations. It allows for the enforcement of certain positive land covenants, such as the duty to pay management fees, against subsequent owners. This concept, often described as the covenant "running with the land", means that the responsibility is tied to the property itself and is automatically passed on to the new owner upon purchase.

2. Have any significant new laws which materially impact real estate investors and lenders come into force in the past year or are there any major anticipated new laws which are expected to materially impact them in the near future?

The Land (Compulsory Sale for Redevelopment) (Amendment) Ordinance 2024

1. The Land (Compulsory Sale for Redevelopment) (Amendment) Ordinance 2024 came into force on 6 December 2024. The amendments are designed to expedite the redevelopment of aging buildings by making it easier for majority owners to acquire the remaining interests in a property lot. The ownership percentage required to apply for a compulsory sale has been significantly reduced, dropping from a general 80% to as low as 65%. The new thresholds vary based on the building's age and its location within newly established "designated areas" that have a more pressing need for redevelopment. For private buildings aged 70 years or more, the threshold is now 65% regardless of location. For buildings aged 60-69, the threshold is 65% in designated areas and 70% in non-designated areas. The "designated areas" include parts of Cheung Sha Wan, Ma Tau Kok, Mong Kok, Yau Ma Tei, Tsuen Wan, Sai Ying Pun, Sheung Wan, and Wan Chai.

2. The ordinance now allows developers to combine adjoining lots for a single compulsory sale application, even if the buildings are not connected by a common staircase. This facilitates larger, more efficient redevelopment projects instead of small "pencil-like buildings".

3. A fast-track procedure has been introduced for the Lands Tribunal. If a building is at least 50 years old and all minority owners agree to the sale, the tribunal can

grant the order without needing to justify the redevelopment based on the building's age or condition.

4. To balance the new powers for developers, the government has established a dedicated office (DOSS) and a support service centre (SMOCS) to provide assistance to minority owners. Additionally, owner-occupiers may be permitted to stay in their property for up to six months after the sale by paying rent to the new owner.

5. For real estate investors, the amendments lower the barrier and cost of entry for initiating redevelopment projects, unlocking sites that were previously difficult to acquire. The ability to amalgamate lots encourages more ambitious and comprehensive redevelopment plans. This is expected to boost the number of compulsory sale applications and stimulate private sector investment in urban renewal.

6. For lenders, the changes make financing redevelopment projects more attractive. The accelerated and more certain timeline for site acquisition reduces project risk. Financial institutions are expected to show an increased appetite for providing bridging loans to help investors reach the required ownership thresholds, as well as subsequent project development financing.

The Building Management (Amendment) Ordinance 2024

1. The Building Management (Amendment) Ordinance 2024, gazetted on 12 July 2024, came into effect on 13 July 2025. This ordinance aims to improve the transparency, accountability, and overall governance of Owners' Corporations (OCs).

2. The ordinance introduces more rigorous tendering requirements for high-value procurement by OCs. The basis for calculating procurement thresholds has been changed from the "annual budget" to the "average annual expenditure in the last three financial years" to better reflect actual spending patterns.

3. For large-scale maintenance projects, a resolution can only be passed if at least 5% of owners (or 100 owners, whichever is less) vote in person.

4. The requirement for a mandatory audit of an OC's financial statements is now based on its annual income or expenditure (exceeding HK\$500,000), rather than the number of flats in the building. It is now a criminal offense for an OC to fail to keep certain essential documents. The ordinance also extends personal liability protection to secretaries and treasurers who are not members of the management committee but act in good

faith.

5. From the perspective of landlords, the law imposes a greater administrative and compliance burden on OCs, which could translate to higher but more transparent management costs. For investors holding units in a building, this provides greater oversight and protection against financial mismanagement by the OC, thereby safeguarding the value of their asset.

6. For lenders, the impact is indirect but positive. Enhanced governance and financial transparency within OCs reduce the risk of building mismanagement, major disputes, or the levying of unexpected and poorly managed maintenance fees. A well-managed building is a less risky asset to hold as collateral, which strengthens the lender's security over the property.

Registration of Titles and Land (Miscellaneous Amendments) Ordinance 2025

1. The Registration of Titles and Land (Miscellaneous Amendments) Bill 2025 was gazetted on 3 October 2025. The government's goal is to implement the new system for "new land" in 2027.

2. Hong Kong currently uses a deeds registration system, where registration only governs the priority of legal documents and does not guarantee ownership. The new title registration system will mean the title register itself becomes conclusive proof of ownership. The reform will initially apply only to "new land" (land granted by the government on or after the ordinance's commencement date). The vast majority of existing properties (around 2.9 million) will remain under the old deeds system for the time being.

3. For new land, a person registered as the owner will have an "indefeasible title," providing absolute certainty of ownership. This will eliminate the need for costly and time-consuming checks of historical title documents for every transaction involving new land.

4. The concept of acquiring "squatter's rights" through adverse possession will not apply to land registered under the new title system.

5. To protect owners, an indemnity fund will be established to compensate anyone who loses their property due to fraud within the new system. The bill proposes abolishing the rule that allows a court to restore a title to an innocent former owner in cases of fraud, instead providing them with financial compensation.

6. For transactions involving new land, the reform will be highly beneficial. It will significantly reduce legal costs,

streamline due diligence, and shorten transaction times. The certainty of title eliminates the risk of historical title defects. However, investors dealing with existing properties will still face the complexities of the old deeds system.

7. Moreover, this is a major de-risking event for mortgages on new land. The indefeasibility of title makes the lender's collateral far more secure, as the risk of the borrower's title being challenged is virtually eliminated. This will simplify the process of taking and perfecting security interests, making lending against new properties safer and more efficient. In the medium term, lenders will need to operate within a dual system, applying different procedures for new and existing land.

3. How is ownership of real estate proved and are ownership records available for public inspection?

How Ownership of Real Estate is Proved in Hong Kong

1. Hong Kong currently operates under a deeds registration system governed by the Land Registration Ordinance (Cap. 128) (the "LRO"). This is fundamentally different from a title registration system (as discussed in paragraph 2 above), which is planned for the future but not yet in effect.

2. The core principle of the current system is that it registers instruments affecting land (like deeds, conveyances, and judgments) rather than the title to the land itself. A critical point is that registration of deeds does not guarantee the validity of the owner's title. It merely provides evidence of transactions and establishes priority among competing registered documents. The purpose of the LRO is to facilitate the tracing of title not to give title itself.

3. Because the register does not guarantee ownership, a prospective purchaser cannot simply rely on the register to confirm the vendor is the true owner. Instead, proving ownership requires a process of tracing the vendor's good root of title by examining the title deeds (as discussed in paragraph 1 above). This investigation must be conducted by the purchaser's solicitors, who will also perform a land search at the Land Registry. The purpose of the land search is twofold: to verify the vendor has a good title and to check for any existing encumbrances on the property (such as mortgages, charging orders, or building orders).

4. The standard for proving title is prescribed by Section 13 of the Conveyancing and Property Ordinance (Cap. 219) ("CPO"). A vendor must show a good root of title by

producing title deeds that establish an unbroken chain of ownership extending back at least 15 years before the contract of sale, in addition to the Government lease relating to the land sold. This chain must commence with an intermediate root, which can be an assignment, mortgage, or legal charge that deals with the whole estate and interest in the land.

5. To make this historical investigation practical, the CPO also establishes certain important presumptions. For example, recitals, statements, and descriptions of facts contained in title documents dated 15 years or more before the contract of sale are, unless the contrary is proved, considered sufficient evidence of their truth, and due execution of deeds by corporations will be presumed so long as certain criteria are met.

6. Once the purchaser's solicitors are satisfied with the vendor's title following this investigation, the transfer of land is carried out by an assignment or conveyance which takes the form of a deed. It is this valid deed that transfers ownership. The subsequent registration of that deed in the Land Registry is done to protect that ownership interest by giving it priority against later competing interests.

Ownership Records for Public Inspection

1. The LRO states that its purpose is to provide means whereby the title to real and immovable property may be easily traced and ascertained. Section 2(1) of the LRO establishes that the Land Registry shall be a public office for the registration of deeds, conveyances, judgements and other instruments in writing.

2. The system is designed to give notice to potential buyers and lenders. The registration of a document like a lis pendens (a notice of a pending lawsuit affecting the property) serves as a statement to the public at large, and in particular to anyone who chooses to search the titles.

4. Are there any restrictions on who can own real estate, including ownership by any foreign entities?

In a recent development, the Hong Kong Government has leveled the playing field for all investors. As of 28 February 2024, all additional stamp duties for foreign and corporate buyers were abolished. This major policy shift means that overseas/corporate investors are now subject to the same Ad Valorem Stamp Duty (AVD) as local permanent residents, substantially reducing the cost of entry into the property market. Previously, foreign/corporate buyers faced significantly higher taxes,

which could amount to a substantial portion of the property's value.

The general rule is that anyone, regardless of nationality, can own real estate in Hong Kong, including shares in property-holding companies. The process for a foreign/corporate buyer is similar (if not identical) to that for a local resident. Foreign companies can also purchase property. The process involves providing corporate documentation to prove the company's legal standing in its place of incorporation and its authorization for the acquisition.

However, Government-subsidized housing schemes, managed primarily by the Hong Kong Housing Authority (HA) and the Hong Kong Housing Society (HS), are exclusively for eligible Hong Kong permanent residents. These schemes, such as the Home Ownership Scheme (HOS) and the Green Form Subsidised Home Ownership Scheme (GSH), offer flats at discounts to specific groups, including tenants of public rental housing (also known as "Green Form" applicants) and other residents who meet strict income and asset criteria and have resided in Hong Kong for at least seven years (also known as "White Form" applicants). These properties, in general, are not available on the open market and cannot be purchased by foreign investors.

Additionally, under the "Hong Kong Property for Hong Kong People" (HKPHKP) scheme, the Government adds conditions to the land leases of selected residential sites, restricting the sale of flats to Hong Kong permanent residents only. This restriction is binding for 30 years from the date of the land grant and applies to both the initial sale and any subsequent resales within that period. However, the impact of the HKPHKP scheme on the broader market is minimal, as it has only been applied to two residential sites in the Kai Tak area.

In principle, foreign governmental entities may also be permitted to acquire and hold land by lease. However, recent precedent suggests that such transactions are generally not treated as ordinary commercial activities. It is understood that any purchase or sale of real estate by a foreign mission could require a formal application to the Chinese Government for its written consent.

5. What types of proprietary interests in real estate can be created?

In the context of Hong Kong conveyancing law, proprietary interests in real estate represent the legally recognized rights that individuals or entities may hold in land or property, encompassing both ownership and

lesser rights of enjoyment or use. The most complete and enduring form of proprietary interest is the legal estate in fee simple absolute in possession, which confers indefinite ownership subject only to statutory restrictions and overriding interests under the Land Registration Ordinance (Cap. 128). Another significant interest is the leasehold estate, commonly granted for fixed terms and often forming the basis of most landholdings in Hong Kong due to the Government's leasehold system. In addition to these legal estates, equitable interests can arise under trusts or informal agreements that do not satisfy the formal requirements for legal title transfer but are nonetheless enforceable in equity. Other proprietary rights include easements (such as rights of way or drainage), restrictive covenants that limit the use of land for particular purposes, and mortgages, which provide security for debt repayment and may be created by legal charge or equitable agreement. Furthermore, interests such as profits à prendre—the right to remove natural resources from another's land—and options to purchase or rights of pre-emption also constitute recognized proprietary interests capable of binding successors in title if properly protected. These interests may be either legal or equitable, and under Hong Kong's deeds registration system, their enforceability against third parties depends largely on registration, though certain overriding interests may bind purchasers even without registration. Understanding the nature, creation, and enforceability of these proprietary interests is fundamental in conveyancing practice, particularly in advising clients, drafting instruments, and ensuring effective title investigation and registration procedures.

In Hong Kong conveyancing law, proprietary interests refer to legal or equitable rights in land that are capable of binding third parties and surviving changes in ownership. These interests are central to land law because they determine who has control, use, or benefit from a piece of land or property. Unlike personal agreements, proprietary interests "attach to the land" and may affect future purchasers.

6. Is ownership of real estate and the buildings on it separate?

The concept of selling individual units in a building arose in the 1940s to meet housing demand. Crucially, a strata title system, which would allow for the separate ownership of a physical apartment space, did not exist at the time. To solve the problem of multiple ownership without strata titles, legal professionals used the common law concept of co-ownership. When you buy a flat, you are buying a share of the entire property. All the unit owners collectively own the entire building and the

land it sits on. Your ownership is represented as a fraction or a certain number of shares out of a total.

Simple co-ownership would be unworkable. Under common law, every co-owner has the right to use every part of the property. The Deed of Mutual Covenant (DMC) of a development/a building is the agreement that makes the system functional. It is a contract that all co-owners (and their successors) are bound by. The DMC does not separate ownership of the land and the building(s) erected thereon. Instead, it separates the rights of use. It carves out specific areas (like a flat) from the shared property and grants you the exclusive right to use them, while designating other areas (e.g. lobbies, lifts, external walls) as "common parts."

7. What are common ownership structures for ownership of commercial real estate?

A prevalent strategy for holding commercial real estate is to use a corporate entity. The primary driver for this approach is the substantial difference in stamp duty levied on a direct property sale versus a sale of company shares, thereby rendering the latter more advantageous and appealing to prospective purchasers. This distinction is central to asset holding structure planning for real estate investors. A direct sale of a commercial property is classified as an asset transfer. Such a transaction incurs Ad Valorem Stamp Duty (AVD) on the property's price or market value, whichever is higher. The AVD rates for non-residential property are progressive and can reach up to 4.25%. In stark contrast, if the property is owned by a Hong Kong company, an investor can sell the property held thereunder by transferring all the shares in the company. This type of transaction attracts a much lower rate of stamp duty. Currently, the rate is 0.2% of the shares' value or the consideration.

To optimize this strategy, real estate investors may also use an offshore company to hold the property or employ a two-tier (or multiple-tier) structure (i.e., with a private limited company incorporated in Hong Kong holding the property directly and an offshore company holding the shares in it). When the owner decides to sell the underlying real estate asset, the transaction is structured as a sale of the shares of such offshore company (be it the company that holds the property directly or its holding company). As this sale involves the transfer of shares of a non-Hong Kong corporation, it falls completely outside the jurisdiction of the Hong Kong stamp duty regime. This represents a more efficient structure from a stamp duty avoidance perspective.

While corporate structures offer significant stamp duty

benefits, some purchasers may opt for direct ownership, where an individual(s) hold(s) the leasehold interest in his/her/their own name(s). This can be structured in 3 ways.

1. In sole ownership, an individual owns 100% of the property, which offers simplicity in decision-making but also concentrates all risks and liabilities on that single owner.
2. Another structure is joint tenancy, where two or more parties own the property together. The defining characteristic is the right of survivorship. If one joint tenant passes away, their interest in the property automatically and immediately transfers to the surviving joint tenant(s), bypassing the deceased's will or estate.
3. A third option is tenancy in common, where two or more parties co-own the property, but each holds a distinct, divisible share (e.g., 60/40, 50/50). These shares can be transferred, mortgaged, or sold independently. Crucially, there is no right of survivorship. Upon the death of a tenant in common, their share is passed on to their heirs or beneficiaries according to their will or the rules of intestacy. This structure provides greater flexibility and is often preferred by business partners or unrelated investors.

8. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

The usual legal due diligence process undertaken when acquiring real estate is an investigation governed by the principle of caveat emptor, or "let the buyer beware." This principle places the responsibility on the buyer to discover any potential issues with the property before the transaction is completed. The goal of due diligence is to uncover information about the property's physical condition, legal title, and any encumbrances or third-party rights that could affect its value or use.

The due diligence process usually begins at the pre-contract stage. A prudent buyer, or his/her solicitors, should conduct several key investigations. This includes performing a land search to reveal any registered encumbrances on the property, such as mortgages or other legal claims. If the seller is a company, a company search is also necessary to check for any fixed or floating charges over the land. A crucial component is the physical inspection of the property. This is done to identify any patent defects (visible issues like rights of way or obvious structural problems), which the seller is not obligated to disclose. The inspection also serves to

determine if anyone other than the seller is occupying the property, as these individuals may have unwritten interests (like an oral lease) that could be binding on the new owner. It is also advisable for the buyer to commission a structural survey to check for physical defects, illegal structures, or any discrepancies with the Government lease. While the seller has a duty to disclose latent defects (those not discoverable by a reasonable inspection, such as underground pipelines or certain legal notices), the buyer's own enquiries and inspections are the main safeguard against unforeseen problems.

After a formal contract is signed, the due diligence process continues and intensifies in the period leading up to completion. At this stage, the focus shifts to investigating the title. The seller is obligated to prove they have a good title by providing the relevant title deeds. This obligation is governed by Section 13 of the Conveyancing and Property Ordinance (Cap. 219) (as discussed in the preceding paragraphs). A seller is required to produce the Government lease and prove title for a period of at least 15 years prior to the contract of sale. This chain of title must commence with an intermediate root, such as an assignment or a legal charge dealing with the entire interest in the property. Furthermore, Section 13A clarifies which original documents the buyer is entitled to receive upon completion. A buyer can only demand the original title deeds that relate exclusively to the property being sold. If a document also pertains to other properties (e.g., a deed of mutual covenant for an entire estate), the vendor is not required to deliver the original; a certified copy will suffice, and this does not negatively impact the buyer's title.

The buyer's solicitors will examine these documents and raise requisitions (formal queries) about any potential defects or ambiguities they find. Furthermore, it is important to repeat the searches just before completion. A final land search is necessary to ensure no new encumbrances have been registered against the property since the contract was signed. A final inspection, though not always performed in practice, is recommended to confirm the physical state of the property and to check again for any third-party interests that may have arisen. This comprehensive investigation ensures the buyer is fully aware of what they are acquiring and protects them from inheriting unexpected liabilities.

9. What legal issues (if any) are outside the scope of the usual legal due diligence process on an acquisition of real estate?

A lawyer's due diligence does not typically extend to a

physical inspection of the property. Issues such as the structural integrity of the building, the condition of electrical and plumbing systems, the presence of asbestos, or the operational state of machinery and equipment are not covered. Similarly, identifying unauthorized building works (UBW) and assessing compliance with fire safety regulations require specialized expertise. For these aspects, a separate technical due diligence or building survey conducted by qualified surveyors or engineers is necessary. Such a survey would uncover building defects, the need for renovations, potential future maintenance liabilities, and non-compliance with building and safety codes.

While a legal due diligence might touch upon compliance with basic environmental ordinances in some complex real estate transactions that concern industrial properties/factories, etc., it will not involve a detailed scientific assessment of the property. A specialized environmental due diligence (including Phase I Environmental Site Assessment (ESA) and Phase II ESA) is required to identify potential liabilities such as soil and groundwater contamination. Similarly, given Hong Kong's hilly terrain, a geotechnical survey may be necessary to assess slope stability and other geological risks, which are not part of a standard legal review.

Moreover, the legal due diligence process is distinct from financial and commercial due diligence. A lawyer will not provide an opinion on the market value of the property or the purchaser's own financial capacity to fund the acquisition. These assessments require the expertise of valuers, accountants, and business consultants.

While a lawyer can identify the applicable property-related taxes, detailed advice on taxation, such as structuring the acquisition for tax efficiency or comprehensive analysis of tax implications, falls under the purview of specialized tax advisors.

10. What is the usual process for transfer of real estate, and when does liability pass to the buyer?

The process typically begins when the buyer and seller sign a preliminary agreement, which is a legally binding contract. This initial agreement outlines the core terms of the deal, such as the subject property, the price, the payment terms, and the completion date. Following this, solicitors are instructed to draft a more detailed formal contract.

Next, the parties exchange formal sale and purchase agreements. At this point, the buyer typically pays a further deposit, bringing the total deposit to 10% of the

purchase price. After a specifically enforceable contract is signed, equity law views the buyer as having a proprietary interest in the land, known as an "estate contract".

After the formal agreement is signed, the buyer's solicitor undertakes a critical investigation of the seller's legal title to the property. This involves conducting searches at the Land Registry and reviewing title documents. If any potential legal issues or defects in the title are discovered, the buyer's solicitor will raise formal questions, known as requisitions, which the seller is obligated to answer.

Completion is the final and most crucial stage where the legal ownership of the property is formally transferred. On the agreed-upon completion date, the buyer pays the remaining balance of the purchase price, and in exchange, the seller executes a deed of transfer, known as the assignment. Following completion, the assignment is stamped and registered at the Land Registry. Registration secures priority and gives notice of the interest to anyone who conducts a land search. This act protects the new owner's title against most subsequent claims.

The general rule is that liability, in the sense of risk of damage to the property, passes to the buyer as soon as a binding contract is formed. While the risk of accidental damage passes to the buyer, this does not mean the seller is free from all liability regarding the property's condition between contract and completion. During this period, the seller is considered a qualified constructive trustee for the buyer. This status imposes a duty of care on the seller to maintain the property. This trustee-like relationship means the seller must take reasonable care of the property. If the property is damaged due to the seller's negligence, the seller will be liable for that damage.

11. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

It is common in Hong Kong for real estate transfers to be effected by way of either share transfer or the more traditional asset transfer.

An asset transfer, the conventional method of buying and selling property, involves the direct conveyance of the real estate from the seller to the buyer. An increasingly popular alternative, especially for high-value properties, is the share transfer method. In this scenario, the property is owned by a corporate vehicle. Instead of buying the

property itself, the purchaser acquires the shares of the company that holds the property.

The primary driver for this method is the significant stamp duty saving. This topic has been comprehensively discussed in paragraph 7 above.

While the stamp duty benefits are alluring, the share transfer method introduces a layer of complexity and risk that is not present in an asset transfer. When a buyer acquires a company, they inherit not only its assets (the property) but also all of its liabilities, which may include outstanding loans, tax liabilities, litigation claims, or other undisclosed debts.

To mitigate these risks, a thorough and often costly due diligence process is essential. This involves a detailed examination of the company's financial and legal standing, going beyond the standard property title check. Legal and other professional fees for a share transfer can be higher than those for a straightforward asset purchase.

12. On the sale of freehold interests in land does the benefit of any occupational leases and income derived from such lettings automatically transfer to the buyer?

Hong Kong's land tenure system is almost entirely leasehold, meaning individuals and entities hold land on long-term leases from the Government rather than owning it outright as freehold.

The only tenure in Hong Kong was leasehold tenure (except the piece of land on which St. John's Cathedral stands which was granted as freehold). No freehold estate has ever been granted in Hong Kong, except the conditional fee simple to St. John's Cathedral and the fee simple granted to the University of Hong Kong which was later exchanged for a long lease of 999 years.

Assuming a rare sale of a freehold interest did occur, the transfer of associated rights, such as those from an occupational lease, is governed by statute. Under Section 16 of the Conveyancing and Property Ordinance (Cap. 219), "[u]nless the contrary intention is expressed in the assignment, an assignment shall operate to assign, with the land, all rights, interests, privileges, easements or appurtenances in, over, belonging or appertaining to that land or at the time of the assignment used, held, occupied or enjoyed with that land and things attached to the land or permanently fastened to anything attached to the land."

An existing occupational lease is an "interest" in the land. The rights held by the landlord under that lease are rights, interests, and privileges belonging or appertaining to that land. The right to receive rent from a tenant is a "right" and a "privilege" that is enjoyed with that land at the time of the sale.

Therefore, according to this provision, the benefit of the occupational lease (the landlord's rights) and the income stream (the rent) would automatically pass to the buyer as part of the assignment of the land. This happens by operation of law unless the sale and purchase agreement explicitly provides otherwise.

13. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

In Hong Kong, all rights, interests and burdens originate from the Government grant of a land, which sets out and outlines the fundamental rights conferred and restrictions imposed on the lessee in relation to the land, including user restrictions that define whether the land is for residential, commercial, or industrial use; building covenants that specify building obligations, maximum gross floor area, and height; and the lease term, which is the duration of the right to hold the land. Any additional rights, interests and/or burdens are often created under the subsequent title documents, such as deed of mutual covenant, or the law.

Common examples of rights over real estate include leasehold interests, easements, rights of a mortgagee or chargee under a mortgage or charge, rights of a plaintiff or applicant over the property under a court judgment. It is also possible to create equitable interests over real estate, which will be elaborated upon in detail in paragraph 14 below.

Common examples of burdens over real estate include restrictive covenants that limit how a property can be used – for example, a clause in the Government lease restricting a building's height, or obligations imposed on the lessee to maintain nearby slopes. Additionally, government orders, such as those requiring the demolition of illegal structures or mandating repairs, can be registered against a property, thereby creating a significant burden.

There are certain commonly used instruments which expressly impose obligations or grant rights over land. One of such instruments is the Government lease. Under a Government lease, certain burdens are often imposed on the lessee, such as the liability to pay rates. An

easement, such as a right of way permitting adjacent land users' access across the land, is also commonly found in a Government lease.

Another prime example of such instruments is a deed of mutual covenant which governs the rights and burdens of all co-owners in a multi-storey building. This includes granting the sole and exclusive right to hold, use, occupy and enjoy the owner's flat, while restrictive covenants such as obligations to contribute towards management expenses and to maintain and repair each owner's own unit are imposed on the owners.

Given the various interests and encumbrances that can affect a property, Hong Kong has a robust system for their protection.

Hong Kong utilizes a deeds registration system, which differs from a title registration system. The Land Registry records legal documents, or instruments, that affect land, such as assignments, mortgages, and charging orders. Our system governs the priority of competing interests rather than guaranteeing the owner's title. Consequently, a registered instrument will have priority over one registered at later date or one that remains unregistered. The deeds registration system enables everyone, especially solicitors to conduct public land search in the Land Register before clients enter into a transaction to identify registered instruments and check for encumbrances. The deeds registration system is more comprehensively discussed in paragraph 3 above.

Ultimately, protection is achieved through the incentives created by the Land Registration Ordinance. This statute encourages the prompt registration of any instrument affecting land by stipulating severe consequences for failure to do so. A registrable document that is left unregistered, such as a mortgage or a long-term lease, is deemed void against a subsequent bona fide purchaser or mortgagee who provides valuable consideration and registers their interest. This principle makes timely registration essential for securing one's rights and interests against potential later-in-time claims from third parties.

14. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised?

The English rules of equity, including the concept of trusts, are part of Hong Kong's legal framework. Hong Kong law fully recognises and operates on the basis that legal and beneficial ownership of real estate can be held by different parties.

This separation of ownership can be created in several ways, most directly through an express trust. This occurs when a property owner deliberately creates a trust, appointing a trustee to hold the property for a beneficiary. For real estate, this intention must be properly documented pursuant to section 5(1)(b) of the Conveyancing and Property Ordinance.

Beyond express declarations, Hong Kong law also recognises trusts that arise by operation of law to resolve disputes over beneficial ownership, particularly where formal documentation is absent. These are known as implied trusts – namely, resulting and constructive trusts.

A resulting trust typically arises when one individual provides the funds to purchase a property, but the legal title is registered in another person's name. In such cases, equity presumes that the legal owner holds the property on trust for the person who supplied the money. This presumption can, however, be rebutted by the presumption of advancement, which applies in specific relationships, such as between a husband and wife or a parent and child.

On the other hand, a constructive trust serves as a powerful equitable tool imposed by courts to prevent a legal owner from unconscionably denying another person's beneficial interest. The most common form in property disputes is the "common intention" constructive trust. This arises where the parties shared a common intention that the beneficial interest would be shared, and the claimant acted to their detriment in reliance on that intention. The classic formulation cited in the text is from *Gissing v Gissing* [1971] AC 886: "... he [the trustee] will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land". Hong Kong courts have embraced the modern "holistic approach" to determine this common intention, looking at the entire course of the parties' conduct, including discussions, financial arrangements, and the nature of the relationship, to deduce the parties' shared intentions regarding ownership.

15. Is public disclosure of the ultimate beneficial owners of real estate required?

Hong Kong does not require the public disclosure of the ultimate beneficial owners of real estate. While the legal owner of a property is publicly accessible through the Land Registry, the identity of the ultimate individual who owns or controls that property can remain confidential, particularly if the property is held through a corporation

(which can include foreign entities).

As outlined in paragraph 3 above, information on the legal ownership of a property is publicly accessible by conducting a land search at the Land Registry. Anyone can conduct a search at the Land Registry to find out the name of the individual or the company that is registered as the legal owner of a property. However, the public records at the Land Registry do not extend to revealing the beneficial owners. If an express declaration of trust is created over a property, such written instrument will usually be registered with the Land Registry to gain priority over unregistered documents and subsequent registrations. Once registered, such document is accessible to the public. However, as discussed in paragraph 14 above, Hong Kong law recognises implied trusts, such as resulting and constructive trusts. These implied trusts are not created by instruments in writing, not registrable in the Land Registry, and therefore are not publicly recorded.

In cases where the owner is a company, the public can conduct a search against the company at the Companies Registry and obtain corporate documents that disclose its shareholders and directors. However, the publicly available information at the Companies Registry also does not reveal the ultimate beneficial owner or controller of that corporation. Since March 2018, most companies incorporated in Hong Kong are mandated to identify their significant controllers and maintain this information in a Significant Controllers Register. However, the Significant Controllers Register is not publicly disclosed, access to which is restricted to law enforcement agencies and regulatory bodies in Hong Kong.

16. What are the main taxes associated with real estate ownership and transfer of real estate?

In Hong Kong, the primary taxes associated with real estate ownership and transfer are a combination of ongoing charges for holding property and transactional taxes when it is sold or leased. Apart from the stamp duty incurred in a transfer of property as comprehensively discussed in paragraph 7 above, the principal taxes are chiefly Property Tax and Profits Tax.

For those who own property, there are recurring taxes to consider. Property Tax is levied on owners who generate rental income from their real estate in Hong Kong. This tax is charged at a standard rate of 15% on the property's net assessable value. Net assessable value is determined by taking the rental income and subtracting any irrecoverable rent and rates paid by the owner, followed by a standard 20% allowance for repairs and outgoings. If

a property is owner-occupied and generates no rental income, no Property Tax is due. Furthermore, corporations that include rental income in their profits tax calculations can often get an exemption from Property Tax to prevent being taxed twice.

For rental agreements, or leases, a different scale of stamp duty applies, based on the duration of the lease. A lease for one year or less is subject to a stamp duty of 0.25% of the total rent. For leases longer than one year but not exceeding three years, the rate is 0.5% of the average annual rent, and for leases over three years, it is 1% of the average annual rent.

It is also important to note that Hong Kong does not impose a capital gains tax. Therefore, profits from the sale of a property are generally not taxed, unless the seller is considered to be in the business of property trading, in which case the profits would be subject to Profits Tax.

17. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

In terms of common provisions found within these commercial leases, the duration, or "term," is a fundamental element. Commercial leases in Hong Kong commonly run for two to three years. A prevalent feature in Hong Kong's commercial leasing landscape is the inclusion of a Sale and Redevelopment Clause, which allows the landlord to terminate the lease with prior notice (usually six months' notice) if they intend to sell, redevelop or demolish the property.

The terms surrounding rent are also critical and subject to the principle of certainty. For a lease to be valid, the rent payable must be a specific amount, or at least be ascertainable at the time it falls due. An agreement where the rent is simply "to be agreed" at a future date would be void for its lack of certainty. However, this does not prevent the inclusion of rent review clauses, which allow the rent to fluctuate during the lease term, so long as the mechanism for determining the new rent is clear and unambiguous. Beyond duration and rent, leases are defined by their covenants, which set out the obligations and restrictions on the parties. A common restriction is a prohibition preventing the tenant from assigning the lease or subletting the premises to another party, a measure landlords often use to maintain control over the identity of the occupant.

The terms of commercial leases are not left entirely to private negotiation; they are shaped by a framework of

statutory regulations. Historically, the most significant of these was the Landlord and Tenant (Consolidation) Ordinance (Cap 7). Its Part V applied to business tenancies and provided a crucial form of security of tenure. Under this past regime, a landlord wishing to terminate a business lease of less than three years had to provide six months' notice. However, a change occurred which altered the regulatory environment for commercial tenancies. As of 9 July 2004, these security of tenure provisions for business tenancies were removed, and the common law position was restored. This means that for commercial leases, the statutory protection of tenure no longer exists, and termination is governed by the terms of the lease agreement or, in its absence, by common law principles.

More recently, the government has introduced new regulations under Part IVA of the same ordinance, which took effect in January 2022. These provide significant protections, including a mandatory "2+2" year term and rent control for certain tenants. It is crucial to understand, however, that these robust protections are explicitly limited and apply exclusively to domestic tenancies of sub-divided units. They have no bearing on commercial or business leases, which remain subject to the post-2004 deregulated environment regarding tenure.

While direct security of tenure regulations for commercial leases has been removed, significant control remains through the formal requirements stipulated in the Conveyancing and Property Ordinance (Cap. 219). This ordinance mandates that any lease for a term exceeding three years must be created by a formal document known as a deed to be considered a legal lease. If this formality is not observed, the agreement may only be recognized as an equitable lease. The same requirement for a deed applies to the assignment of any lease with more than three years remaining on its term.

18. What remedies are commonly available for landlords in the event of a tenant breach of a commercial lease?

One of the remedies available to a landlord is forfeiture. This is the right to terminate the lease prematurely and reclaim possession of the premises following a tenant's breach of a covenant. Where the determining event is breach of covenant, the landlord shall serve a notice under section 58 of the Conveyancing and Property Ordinance (Cap. 219) (except in limited scenario such as non-payment of rent for a certain period). This notice shall specify the breach, request that the tenant remedy it if possible, and demand compensation, giving the tenant a reasonable time to comply. A breach of a covenant

prohibiting the tenant from assigning or subletting the lease is a common trigger for forfeiture. While an unauthorized assignment may be effective between the tenant and the new party, it provides the landlord with the right to terminate the original lease.

In addition to ending the lease, a landlord can pursue monetary compensation. If the tenant's breach is the failure to pay rent, the landlord can initiate a straightforward court action to recover the outstanding sum as a debt. A historic remedy specific to the non-payment of rent is distress for rent. This is a form of self-help that allows a landlord, acting under a court warrant, to enter the commercial premises, seize the tenant's goods, and sell them to cover the rent arrears.

19. How are use, planning and zoning restrictions on real estate regulated?

In Hong Kong, the regulation of land use and development is governed by a combination of three key legal frameworks: government leases, Outline Zoning Plans (OZPs), and the Buildings Ordinance (Cap. 123).

Government leases serve as a contractual tool through which the Government imposes legally binding restrictions on land use and development. These leases often include user covenants that limit the use of land to specific purposes such as residential, commercial, or industrial activities. They may also regulate the type and form of buildings through clauses like the Design, Disposition and Height (DDH) clause, which allows the Director of Lands to approve building design and impose height restrictions. Leases can also specify plot ratio, site coverage, non-building areas, and environmental obligations. In some cases, a Master Layout Plan (MLP) must be submitted for approval, ensuring developments align with evolving government policies. Any deviation from lease conditions requires a lease modification or waiver, typically involving a premium or fee.

Outline Zoning Plans, made under the Town Planning Ordinance (Cap. 131), are statutory plans that divide land into different zones (e.g., residential, commercial, green belt) and set out permitted uses. Column 1 uses are always allowed, while Column 2 uses require planning permission from the Town Planning Board. OZPs also provide enforcement mechanisms, such as stop and reinstatement notices, to prevent unauthorised development.

Complementing these frameworks is the Buildings Ordinance (Cap. 123), which regulates the planning, structure, design, and construction of buildings. While its

primary focus is on building safety and construction standards, it also has planning implications. The Ordinance helps control building volume and density by imposing restrictions on plot ratio and site coverage. The Building Authority has the discretion to reject building plans that violate OZPs or other planning regulations, thereby integrating planning policies into building control. Certain exemptions apply, such as to Government buildings or specific structures in the New Territories, but in general, the Buildings Ordinance requires authorised persons and registered contractors to oversee building works, and mandates Government approval for commencement and occupation of new buildings.

Together, government leases, OZPs, and the Buildings Ordinance form a comprehensive and interconnected system that regulates land use, controls development intensity, ensures building safety, and enforces planning objectives across Hong Kong.

20. Who can be liable for environmental contamination on real estate?

A feature of Hong Kong's system, distinguishing it from many other common law jurisdictions, is that the responsibility is placed on the party intending to redevelop a site. Under the Environmental Impact Assessment Ordinance (EIAO), a developer undertaking a "designated project" may be required to assess and remedy any environmental damage. This means the obligation for cleanup often falls to the developer, who may not be the party that caused the contamination. The Director of Environmental Protection has the authority to issue an order for remedial works based on this ordinance.

The government has increasingly used its position as landlord to enforce environmental responsibilities through lease conditions. Since the early 2000s, new leases for sites with potential for contamination, such as industrial or petrol station lots, often include specific decontamination clauses. These clauses can require the lessee to conduct environmental assessments, clean up any contamination to the satisfaction of the Environmental Protection Department, and indemnify the government against liabilities from contamination caused by the use or development of the lot. If a lessee fails to comply, the government can perform the remediation work at the lessee's expense.

The liability can also extend to lenders under certain circumstances. A lender holding a security interest in a property is generally not liable for environmental damage, provided they do not take possession of the land or

participate in its management. However, if a lender enforces its security on a defaulted loan and takes possession of a contaminated property, it can become liable for environmental damage, even if it did not cause it. This makes careful consideration of potential environmental liabilities crucial for lenders before going into possession of a property of specific uses.

The legal framework is further supported by various ordinances, including the Waste Disposal Ordinance and the Water Pollution Control Ordinance, which criminalize improper waste disposal and the discharge of pollutants into water bodies, respectively. The Environmental Protection Department also provides guidance on assessment and remediation. Prospective buyers are advised to conduct due diligence, including environmental surveys, to identify and apportion any potential liabilities before purchase of special use properties.

21. Are buildings legally required to have their energy performance assessed and in what (if any) situations do minimum energy performance levels need to be met?

Energy performance for certain types of buildings is governed by Buildings Energy Efficiency Ordinance (BEO), which aims to improve energy efficiency in buildings.

The BEO stipulates several key requirements that necessitate the assessment of a building's energy performance and adherence to minimum standards. These are primarily enforced through the Building Energy Code (BEC) and the Energy Audit Code (EAC).

For newly constructed buildings of prescribed types, developers or owners shall ensure that the building's services installations comply with the energy efficiency standards laid out in the Building Energy Code (BEC). These installations include air-conditioning systems, lighting installations, electrical installations, and lift and escalator installations. To certify compliance, a Certificate of Compliance Registration (COCR) shall be obtained by submitting to the Director of Electrical and Mechanical Services a declaration certified by a Registered Energy Assessor (REA). This certificate essentially confirms that the building's design and construction meet the minimum energy performance levels stipulated by the BEO. The COCR shall be renewed every 10 years, ensuring ongoing compliance.

The BEO also applies to existing buildings when they undergo major retrofitting works, defined as renovation

projects affecting an area of over 500 square meters. Upon completion of the retrofitting, a Form of Compliance (FOC) must be obtained from an REA within two months to certify adherence to the energy efficiency requirements.

Owners of commercial buildings shall conduct energy audits for the four key types of central building services installations every 10 years. These audits shall be carried out in accordance with the Energy Audit Code (EAC).

22. Is expropriation of real estate possible?

Expropriation of real estate may be carried out in Hong Kong through a legal process known as "land resumption". The Government has the authority to resume land for public purposes, including the implementation of public projects, such as construction of roads, public housing developments, urban renewal initiatives, drainage works, or other items under the Public Works Programme. Depending on the nature and purpose of the project, land resumption may be conducted under various statutory frameworks, including the following Ordinances:

1. Lands Resumption Ordinance (Cap. 124);
2. Land Acquisition (Possessory Title) Ordinance (Cap. 130);
3. Roads (Works, Use and Compensation) Ordinance (Cap. 370);
4. Railways Ordinance (Cap. 519);
5. Land Drainage Ordinance (Cap. 446);
6. Urban Renewal Authority Ordinance (Cap. 563); and
7. Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276).

For a land resumption to be lawful, it shall be for a "public purpose". This is a broad term that includes projects such as public housing, urban renewal, new town development, and infrastructure like roads and railways. While it is theoretically possible to challenge the "public purpose" of a project through a judicial review, this is exceedingly difficult since it is provided under the Lands Resumption Ordinance that the resumption notice is considered "conclusive evidence" of its public purpose. Upon expiry of the period specified in the resumption notice published in the gazette, the land reverts to the Government and all the rights of the Government lessee in the land and interests deriving thereunder extinguish.

Under the Lands Resumption Ordinance, the government is legally obligated to make compensation to former owner and to any person having an estate or interest in the land immediately before reversion. The statutory compensation is calculated based on the property's open market value, defined as the amount the property would be expected to realize if sold by a willing seller. The government may also offer other ex-gratia payments, which are not required by law but can assist with matters like rehousing or business disruption. Should property owners disagree with the compensation amount, the case can be referred to the Lands Tribunal to determine on the compensation value.

23. Is it possible to create mortgages over real estate and how are these protected and enforced?

A mortgage is a fundamental tool in the Hong Kong property market, enabling both home ownership and commercial financing. It is an interest in land granted by a landowner (the mortgagor) to a creditor (the mortgagee) as security for a loan. The core function of a mortgage is to provide the creditor with security. If the debtor defaults on the loan, the creditor can enforce the security, typically by selling the property to recover the money owed. This makes the mortgagee a secured creditor, giving them priority over unsecured creditors in the event of the debtor's bankruptcy or insolvency.

There is a technical distinction between a mortgage and a charge. A mortgage involves the conveyance of a legal or equitable interest in the land to the mortgagee, whereas a charge does not convey an interest but grants the chargee certain rights, such as the right to sell the property. However, since the enactment of the Conveyancing and Property Ordinance (Cap. 219) (the "CPO"), modern legal mortgages are created by way of a legal charge, which grants the mortgagee the same rights and remedies as the old form of mortgage. Therefore, in practice nowadays, the distinction is immaterial.

Mortgages in Hong Kong can be either legal or equitable. The method of creation depends on the nature of the property interest being mortgaged and the formality of the transaction.

Since 1 November 1984, the only way to create a legal mortgage over a legal estate in land is by way of a legal charge. To be a legal mortgage, the charge shall be created by a deed, as stipulated by section 4 of the CPO. The legal owner of the property executes a deed in which they charge their legal estate to the mortgagee as security for the repayment of the loan. The deed will

explicitly state that the mortgagor charges the property by way of a legal charge. Although this process does not transfer the legal title to the mortgagee (unlike the pre-1984 method), section 44(2) of the CPO grants the legal chargee the same protections, powers, and remedies as if the legal estate had been assigned to them. This includes the right to take possession (though only after default) and the power of sale. All pre-1984 legal mortgages, which were created by assigning the leasehold interest to the mortgagee, were automatically converted into legal charges by section 44(3) of the CPO.

An equitable mortgage arises in two main scenarios: when the formality of a deed is not used, or when the interest being mortgaged is itself equitable.

If a landowner agrees to create a mortgage but does not use a deed, it cannot be a legal mortgage. However, equity may recognize it as an equitable mortgage if it is in writing or supported by a sufficient act of part performance. A common example of part performance is the deposit of title deeds with the lender.

Alternatively, a person who only holds an equitable interest in land (e.g., a beneficial interest under a trust, or an equitable government lease before compliance with all conditions) can only create an equitable mortgage. This is typically done by assigning the entire equitable interest to the mortgagee, subject to a provision for reassignment upon redemption. Under section 5(1)(a) of the CPO, this disposition of an equitable interest shall be made in writing and signed by the person disposing of it.

A mortgagee's primary concern is ensuring their security takes priority over other claims on the property. Protection is achieved through a combination of registration and common law rules.

The first method of protection is through registration at the Land Registry. Any instrument creating a mortgage, whether legal or equitable, is registrable. Under section 3(2) of the Land Registration Ordinance, any registrable mortgage that is not registered is void as against any subsequent bona fide purchaser or mortgagee for valuable consideration. A registered mortgage gains priority based on its date of registration. This system provides notice to the world of the mortgage's existence, preventing a fraudulent mortgagor from selling or re-mortgaging the property as if it were unencumbered. In addition to registration at the Land Registry for property law priority, charges created by companies shall also be registered with the Registrar of Companies within one month under the Companies Ordinance (Cap. 622). Failure to do so renders the charge void against a liquidator or other creditors in an insolvency situation.

The second method is by possession of title deeds. The first legal mortgagee has a right to possess the title deeds of the mortgaged property. While registration is the ultimate form of protection, holding the deeds serves two practical purposes: it prevents the mortgagor from fraudulently attempting to sell or create another mortgage by pretending to have a clean title, and it facilitates the process if the mortgagee later needs to exercise their power of sale.

A mortgagee's interest is subject to prior interests that are either properly registered or are unwritten interests of which the mortgagee has actual or constructive notice. However, in cases where a mortgage is granted to fund the purchase of the property itself, the mortgage is generally held to have priority over any beneficial interest of a person who knew of and consented to the mortgage being taken out to enable the purchase. A properly registered mortgage will have priority over subsequent interests. For example, if a mortgagor grants an unauthorized lease after the mortgage, that lease is void against the mortgagee, who can treat the tenant as a trespasser.

"Tacking" allows a mortgagee to make further advances on the same security and have those new advances enjoy the same priority as the original mortgage, even over an intervening second mortgage. Under section 45(1) of the CPO, this is permitted if the subsequent mortgagee consents, if the prior mortgage specifies a maximum amount to be secured and the total debt does not exceed this amount, or if the prior mortgage is an 'all monies' mortgage in favour of an authorized financial institution (e.g., a bank).

When a mortgagor defaults, the mortgagee has several remedies to enforce the security. The first remedy is an action on the covenant to repay. This is the mortgagee's basic contractual right to sue the mortgagor personally for the debt owed. In addition, a mortgagee has a right to take possession of the property. Possession is usually taken to obtain vacant possession to facilitate a sale.

A mortgagee can appoint a receiver to manage the property and collect income to service the debt. The receiver is legally deemed to be the agent of the mortgagor, not the mortgagee. This means the mortgagor is responsible for the receiver's acts and defaults, shielding the mortgagee from the strict liability that comes with taking possession themselves. The receiver has powers to manage the property, collect income, and use it to pay outgoings, their own fees, and the loans and interests owed under the mortgage, with any surplus being paid to the mortgagor.

The power of sale is the most common and effective remedy. The mortgagee can sell the mortgaged property to recover the outstanding debt. Mortgagees owe a duty to the mortgagor (and any subsequent mortgagees or guarantors) to act in good faith and to take reasonable steps to obtain the best marketable price reasonably obtainable. This may involve getting proper valuations and marketing the property appropriately. A sale to the mortgagee themselves or a closely connected party will be heavily scrutinized by the courts. A proper sale passes legal estate to the purchaser, free from the subject mortgage and subsequent mortgages, but subject to prior mortgages.

Lastly, foreclosure is a remedy where the mortgagee applies to the court for an order to extinguish the mortgagor's right of redemption entirely, making the mortgagee the absolute owner of the property. It involves a two-stage court order: a foreclosure nisi (giving the mortgagor a final chance to repay) followed by a foreclosure absolute. Courts are reluctant to grant foreclosure, especially if the property's value significantly exceeds the debt. They prefer ordering a sale, which allows any surplus to be returned to the mortgagor. The court also retains a discretion to reopen a foreclosure even after it has become absolute.

24. Are there material registration costs associated with the creation of mortgages over real estate?

Registration is a legal necessity for a lender to protect their security. The cost of registering mortgages payable to the Land Registry is HK\$520, and to the Companies Registry (in the event the mortgagor is a company registered in Hong Kong) is HK\$340 – which however is exclusive of the professional legal fees charged by solicitors assisting with the registration applications.

25. Is it possible to create a trust structure for mortgage security over real estate?

This is extremely rare in Hong Kong. Where a loan is secured by Hong Kong real estate, the borrower would grant a legal charge over the property to the lender. The borrower retain legal title to the property (subject however to the charge). The lender does not hold the property on trust for borrowers.

Instead, the lender's security would take the form of a legal interest, or charge, which is registered against the property's title at the Land Registry. This registration serves as public notice of the lender's claim and

establishes its priority over subsequent creditors.

Contributors

Iris Choi
Partner irischoi@zhonglun.com



Christy Ip
Partner christyip@zhonglun.com



Kelly Law
Associate kellylaw@zhonglun.com

