Global Corporate Real Estate Guide - Hong Kong

Planning and Environmental Issues

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# Who has authority over land development and environmental regulation?

The zoning of a land parcel is shown in the relevant outline zoning plan (different areas in Hong Kong are governed by different outline zoning plans). The Town Planning Board prepares draft outline zoning plans, which are then submitted to the Chief Executive in Council for approval. The outline zoning plans will show the use of each land parcel, such as residential, commercial, open space or government use. The government cannot approve any building works which is for a use not permitted by the relevant outline zoning plan or modify any land grant so as to permit a use inconsistent with the requirements of the relevant outline zoning plan. Generally speaking, there are two categories of permitted uses in an outline zoning plan: (i) uses which are always permitted; and (ii) uses that have to be permitted by the Town Planning Board under section 16 of the Town Planning Ordinance (Cap. 131).

Applications for re-zoning are to be made to the Town Planning Board.

The conditions of land grants for development are determined by the Lands Department in accordance with the applicable land administration policies of the government and by reference to the applicable outline zoning plan. Such conditions include:

Permitted uses (determined by reference to the applicable outline zoning plan)

Development parameters (also determined by reference to the applicable outline zoning plan but may be more restrictive)

The deadline for the completion of the development

Restrictions on alienation before fulfillment of development conditions

Requirements that deeds of mutual covenant have to be approved by the Lands Department

Public facilities to be provided (whether within or outside the lot boundary)

Parking spaces to be provided

Requirements that the design, disposition and height of the new buildings should be approved by the Lands Department

The Building Authority is responsible for approving building plans from the building safety and other regulatory angles, granting permits to commence building works and inspecting newly completed buildings to ascertain whether the requirements of statutes have been fulfilled.

For certain designated projects such as specified residential developments, roads, waterways and drainage works and certain recreational facilities (such as golf courses and marinas), a developer is required to conduct an environmental impact assessment and to obtain an environmental permit to proceed with the development. The Director of Environmental Protection has the authority to decide whether or not to issue the environmental permit.

Some land grants also impose conditions on the developer to conduct various assessments such as environmental impact assessment, noise impact assessment, sewerage impact assessment and traffic impact assessment, and to implement appropriate measures to the government’s satisfaction to minimize impact on the environment, the community as well as the future occupiers.

# What environmental laws affect the use and occupation of real estate?

The principal environmental statutes are the following:

Environmental Impact Assessment Ordinance (Cap. 499)

Air Pollution Control Ordinance (Cap. 311) (which provides for the control of activities that produce air-borne emissions, such as construction work and activities that involve the use or handling of asbestos)

Waste Disposal Ordinance (Cap. 354)

Water Pollution Control Ordinance (Cap. 358)

Noise Control Ordinance (Cap. 400)

Ozone Layer Protection Ordinance (Cap. 403)

Dumping at Sea Ordinance (Cap. 466)

# What main permits or licenses are required for building or occupying real estate?

The main permits for the development and construction of real estate projects include the following:

Planning permission from the Town Planning Board (if required)

Approval of building plans from the Building Authority

Consent to commence building works issued by the Building Authority

Approvals mentioned in the land grant concerned as requisites to the commencement of building work

Environmental permits for certain designated projects

For occupying real estate, an occupation permit or temporary occupation permit issued under the buildings ordinance is required.

# Can an environmental cleanup be required?

There is no statute in Hong Kong requiring the cleanup of existing contamination. However, the Environmental Impact Assessment Ordinance provides that the Director of Environmental Protection may, with the consent of the Secretary for the Environment, issue an order requiring persons working on a designated project to carry out works to remedy environmental damage identified by the Director. Unlike many other common law jurisdictions, in which the primary responsibility for cleaning up contaminated land falls on the person who caused or permitted the contamination (i.e., the “polluter pays” principle), the ordinance makes the person who wants to develop a contaminated site responsible for any necessary cleanup. This party will not necessarily be the person who has caused or permitted the contamination.

Since land in Hong Kong is held under government leases or subleases, the polluter pays principle may apply, not under statutes, but through the land grant. Land grants may contain clauses that make the land owner liable to the government for the contamination of the land.

Land grants for industrial sites or godowns may also contain a provision that requires the land owner to carry out all necessary works to prevent soil and groundwater contamination from occurring, to conduct soil and groundwater assessment to the satisfaction of the Director of Environmental Protection and to clean up any contamination. If the owner fails to do any of these, the government may carry out the work at the land owner’s expense.

Recent land grants have introduced provisions that require the land owner to indemnify the government against all liabilities arising from any damage or soil and groundwater contamination caused to the land by any use of the lot or any development or redevelopment on the lot carried out by the land owner (the wording of the standard clause only imposes an indemnity but does not refer to a cleanup).

Apart from the express wording of the land grant, there may also be common law doctrines that protect the government (as landlord). One such doctrine is the doctrine of “waste.” A waste is a tort based on the alteration by the tenant of the nature of the land. A tenant who has committed waste is liable to pay damages to the landlord for the diminution in value of the land.

# Are there minimum energy performance requirements for buildings?

To improve building energy efficiency, the government has enacted the Buildings Energy Efficiency Ordinance (Cap. 610), which came into effect on 21 September 2012. Under this ordinance, certain prescribed types of buildings (for example, commercial buildings, hotels and common areas of residential buildings) must comply with the Building Energy Code and/or the Energy Audit Code. Noncompliance is an offence and will subject the offender to fines.

Energy Efficiency Registration Scheme for Buildings is a voluntary scheme launched by the government in October 1998. This scheme promotes the application of Building Energy Codes which outline the energy efficiency requirements. A registration certificate will be issued to a building that meets the required standards. A registered building can use the Scheme’s “Energy Efficient Building Logo” on related documents to publicize the achievement of energy efficiency. However, registration under this voluntary scheme is not regarded as compliance with the Buildings Energy Efficiency Ordinance (Cap. 610).

Some of the recent land grants have also imposed requirements that the new buildings constructed on the land must obtain a green building certification of Provisional Gold Rating or above from the Hong Kong Green Building Council. The rating assessment will take into account the credits under different categories including integrated design and construction management, sustainable sites, materials and waste, energy use, water use, health and wellbeing and innovations and additions.  For new residential developments, information relating to the green building certification as well as the estimated energy performance will also be disclosed in the sales brochure.

# Are there other regulatory measures that aim to improve the sustainability of newly constructed and existing buildings?

The government has adopted the policy of allowing private buildings to increase floor areas (with an overall cap of 10%) to include recreational facilities and green and innovative features such as balconies, utility platforms, wider common corridors and lift lobbies to enhance living environments.

With a view to reduce electricity consumption by air-conditioning, the government has launched a voluntary scheme on fresh water cooling for non-domestic buildings in designated areas. Under the Waterworks Ordinance and Regulations (Cap. 102 and 102A, respectively), one cannot use city mains water for cooling towers without the permission of the Water Supplies Department. Such permission usually will not be granted except for industrial processes or essential purposes. However, owners of non-domestic buildings in the designated areas may now obtain the permission by applying to participate in this scheme.

©Copyright © 2025 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.