



PROPERTY RATES IN HONG KONG

Assessment, Collection and Administration



Rating and Valuation Department
The Government of the Hong Kong
Special Administrative Region

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Rating and Valuation Department
The Government of Hong Kong Special Administrative Region
Hong Kong, China

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Assessment, Collection and Administration

Third Edition

By

LY CHOI, JP

Commissioner of Rating and Valuation

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FOREWORD

(Third Edition)

*H*ere comes the third edition of the Property Rates in Hong Kong.

In the long history of over 175 years, property rates in Hong Kong are well recognised both locally and internationally as a simple, equitable and broad-based tax on landed property.

This book gives readers not only the basic concepts of the rating system in Hong Kong but also a glimpse of the similarities in the basis of assessment for Government rent purposes. Apart from the up-to-date statistics and latest developments in the rating regime, this edition contains court decisions over the past few years that have firmed up the legal bases of rating assessment.

To embrace the changes in the advent of the era of e-Service, the Rating and Valuation Department continues to seek opportunities in the application of information technology and improvements in computer-assisted mass appraisal techniques. The Department also strives to promote wider use of e-Services for the public including but not limited to those for the billing and payment of rates and Government rent, the dissemination of property market statistics as well as the tracking of case progress.

Let's embark on a new journey, learning from the past to the present of the rating system in Hong Kong!

LY CHOI, JP

Commissioner of Rating and Valuation

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Introduction

Chapter 1

Introduction

Property rates, commonly known as property tax in many other tax jurisdictions, are one of the important taxes chargeable on landed properties in Hong Kong. They provide a steady and reliable source of government revenue to finance public expenditure and services.

Introduced in 1845, the rating system in Hong Kong has a history of over 175 years. Property rates were originally levied in the form of the Police Rate to pay the expenses for upholding and maintaining the police force in Hong Kong. The Chinese term for rates 差餉 (“Chai Heung”), literally meaning “Police Pay”, shows its historical origin. Subsequently rates were used to fund other municipal services such as street lighting, water and fire brigade. Since 1931, income from rates has become part of government’s general revenue.

All properties in Hong Kong are liable to rating assessment (except for certain specific exemptions) and rates are charged at a specified percentage of the assessed rateable value of the property. Basically, the rateable value is the estimated market rental value of the property at a designated date. As at 1 April 2020, the number of rating assessments was about 2.57 million. The total estimated revenue from rates was \$19.5 billion¹ for the financial year 2020-21, representing about 4.4% of total government revenue.

The Rating and Valuation Department (the Department) of the Hong Kong Special Administrative Region Government is responsible for the assessment, collection and administration of rates under the provisions of the Rating Ordinance, Cap. 116. Since 1999, general revaluations of rateable values have been conducted on an annual basis in order to ensure a fair distribution of the rates liability among ratepayers of different properties and of different property categories.

Apart from forming the basis for charging rates, rateable values have also been used for other property-related purposes as required by laws. In particular they are used as a basis for charging Government rent under the Government Rent (Assessment and Collection) Ordinance, Cap. 515, and the Government Leases Ordinance, Cap. 40. Rateable values are also used to determine the level of court that has jurisdiction over applications relating to the

¹ Net of rates concession of \$16.5 billion.

recovery of land or the determination of the title of land. Furthermore, rateable values are used to determine the compensation ordered by the Tribunal for hearing applications for repossession of leased premises and the application of various provisions of the Landlord and Tenant (Consolidation) Ordinance, Cap. 7.

This book is intended to provide comprehensive information on all aspects of the rating system in Hong Kong. Topics relating to the assessment, collection and administration of rates are covered in Chapters 2 to 11. Chapter 12 discusses the application of rating principles and practice to the assessment and collection of Government rent. A summary of important rating and Government rent case law covering major local and overseas rating appeal cases is provided in Chapter 13 of this book.

Over the years, constant economic and social changes, coupled with technological advancement, have presented many challenges and opportunities. Moving with the times, the Department has met these challenges through extensive and innovative application of information technology in property rates assessment, collection and administration to continuously improve the efficiency of the rating system in Hong Kong.



History of Rates in Hong Kong

Chapter 2

History of Rates in Hong Kong

The publication “The History of Rates in Hong Kong”¹ traces the introduction of rates and the early and on-going developments of the rating system in Hong Kong over 175 years. Copies of this book are available from the Publications Sales Unit of the Information Services Department, Hong Kong, or from the Department’s website: www.rvd.gov.hk. A brief summary of the history of rates is provided in this chapter.

The Origin

The first Rating Ordinance, Ordinance No. 2 of 1845, was one of the oldest pieces of legislation in Hong Kong. It was enacted to “*raise an assessed Rate on Lands, Houses, and Premises, ...for the upholding of the requisite Police Force...*”. Known as the “Police Rate” (差餉 “Chai Heung” in Chinese), it introduced the concept of levying a tax on landed property which was charged at a percentage of the annual value of each parcel of ground, house or building, being payable by the owner and occupier. In the early days, the percentage charge was determined by the Governor with the advice of the Executive Council, but the total revenue from the Police Rate was not to exceed the expenses of the police establishment.

Following the Police Rate, other kinds of rates including the “Lighting Rate”, “Water Rate” and “Fire Brigade Rate” were subsequently introduced over the period from 1856 to 1875.

Until 1875, the different rates were separately assessed, although levied as one tax. In that year, Ordinance No. 12 of 1875, which introduced the Fire Brigade Rate, also consolidated the various rates into one tax. The determination of the percentage charges continued to rest with the Governor in Council who could levy rates to meet the cost of the police, lighting, water and fire brigade.

¹ “The History of Rates in Hong Kong”, third edition by Mrs Mimi Brown, former Commissioner, Rating and Valuation Department, the Government of the Hong Kong Special Administrative Region, 2013.

The position changed in 1885 when the percentage charges were specified by statute and a further change was implemented with the Rating Ordinance 1888, which provided that charges for rates and the districts to which they applied could be altered by resolution of the Legislative Council. Rates for separate services would no longer be shown, and the percentage charge could vary between districts with the proviso that 2% of the valuation of properties in the City of Victoria could be disposed of to defray the expenses of the water supply.

Consolidation of Rates

A major consolidating measure of the rating law was carried out in 1901. The Rating Ordinance 1901 (No. 6 of 1901) re-enacted the earlier provisions by stipulating the percentage charges for rates in relation to districts. Provision was again made to apply 2% of the valuation in any district supplied with fresh water by the Water Authority to the credit of the “Water Account”, and this provided the background to a provision which has survived into current rating practice in Hong Kong in respect of water supply or the lack of it.

In 1931 the Government recognised the unsatisfactory nature of the large number of different rates of charge. It was noted that the absence or presence in certain localities of amenities such as police patrols, street lighting, educational facilities and the like was already sufficiently reflected in the rateable value of the premises themselves and that any attempt to further reflect this position by applying different rates percentages was illogical. A uniform percentage charge of 17% of the rateable value was proposed to be levied in all rated areas for the services provided by the Government. However, water was still seen to justify separate treatment and the percentage would be reduced to 16% where the supply of government water was unfiltered and 15% where there was no water supply.

The percentage charges remained unaltered for many years thereafter², except for a short period after the Pacific War when 16% was charged pending resumption of a normal water supply.

² A new water concession formula was introduced in 1984. For details, please refer to the section on “Water Concessions” in this Chapter.

Urban and Regional Council Rates

Following the reconstitution of the Urban Council in 1973, rates in the Urban Areas³ were split into two parts, i.e. “General Rates” to be paid into general revenue and “Urban Council Rates” to be paid to the Urban Council. All rates payable in the New Territories were “General Rates” and paid into general revenue until 1986 when the Regional Council was established.

With effect from 1 April 1986 “Regional Council Rates” replaced the General Rates to provide the main source of finance for the newly established Regional Council and were payable for properties in the Regional Council area (i.e. the New Territories).

The Provision of Municipal Services (Reorganisation) Ordinance abolished the two municipal councils as from 1 January 2000, and since then all rates revenue has become part of the general revenue of the Government.

Annual Revaluations

The earliest Rating Ordinance, in 1845, provided that “*the said Governor and Council may cause a new valuation to be made annually*”. However, resource constraints made annual revaluations difficult and an amending Ordinance in 1851 introduced the concept of “adoption” of an existing valuation list, thus avoiding the need for annual revaluations⁴. The “adoption” provision remained a feature in the rating system in Hong Kong until 1973, when the requirement for annual valuations was removed. Henceforth a valuation list would remain in force until a new one was declared. The “adoption” provision reflected the practical difficulty in carrying out annual revaluations for some time before 1973.

³ For district administration purposes, Urban Areas were divided into 10 districts, viz. Western, Central, Wan Chai, Eastern, Yau Ma Tei, Mong Kok, Sham Shui Po, Kowloon City, Wong Tai Sin and Kwun Tong – Hong Kong 1974. Urban Council’s responsibilities were restricted to these areas. These corresponded to Rating Areas A (Hong Kong Island), B (Kowloon) and C (New Kowloon) specified under the then Rating Ordinance.

⁴ The annual exercise was in fact carried out until the outbreak of the Second World War and thereafter until the early 1950s although not all parts of Hong Kong were re-assessed simultaneously. Subsequently in view of the growth of the valuation list and other major commitments such as extension of rating to the New Territories and the administration of rent control, revaluations were undertaken irregularly at one to seven-year intervals, or for part of the territory.

However, the long lapse of time between revaluations can result in large increases in rateable values. A problem occurred in the 1984 revaluation when rateable values were increased by an average of 260% as the previous revaluation was undertaken some seven years back. The Financial Secretary announced that revaluations in future would be carried out at three-yearly intervals and new valuation lists were subsequently prepared to take effect from 1 April 1988⁵, 1991, 1994 and 1997.

In November 1998, the Government announced that new valuation lists would be prepared to take effect from 1 April 1999 and revaluations would thereafter be conducted on an annual basis. The primary purpose of annual revaluations is to update the rateable values so as to distribute the rates burden equitably according to up-to-date market rental levels of properties.

Extension of Rating to the New Territories

Modified Rating System for the New Territories

Rates were not levied on properties in the New Territories until 1935. By that time, certain areas had been provided with public services such as street lighting and maintenance, drainage, water supply and scavenging and it was considered reasonable that some form of rates should be charged.

Accordingly, a modified form of rating based on the capital value of the buildings was introduced in Yuen Long and Tai Po from 1935 and Tsuen Wan from 1937.

This modified rating system for the New Territories was replaced in 1955 by the extension of the urban rating system. The Rating (Amendment) Ordinance 1954, through which this change was effected, introduced a lower rate percentage charge for the New Territories to reflect the lesser services provided to the region and exempted agricultural land and buildings.

⁵ It took four years to complete the first triennial revaluation following the announcement of the policy by the Financial Secretary in 1984.

However, the new valuation lists, which incorporated Tsuen Wan, Kwai Chung and a strip along Castle Peak Road were not declared until 1956. Because the former special rating system applicable to Tai Po, Yuen Long and Tsuen Wan ceased to operate with effect from 1 April 1955, no rates were paid for any properties in the New Territories for the year 1955-56.

The 1956-57 valuation list was intended to be the first stage of a phased programme which would fairly rapidly extend the urban rating system to other areas of the New Territories. However, no further extension took place until 1974, primarily due to the difficulties arising from Government's earlier undertaking not to assess traditional village houses and the fact that no satisfactory definition of a village house could be agreed. The programme to extend rating to the New Territories resumed in 1974 with the declaration of the valuation list for Area E, a coastal strip around Tsing Yi Island comprising mainly factories, boat-yards and a power station. However it was not until 1976 that legal provisions for exempting village houses became effective and the pace of extending rating to New Territories could be stepped up, with an amending Ordinance passed in 1975, providing exemption from rates for agricultural dwellings and village houses⁶ in the New Territories effective from 1 April 1976.

At the same time a new "phasing-in" system was established for new Rating Areas. In the first year, rates would be charged at 50% of the standard rate charge for the New Territories, and then raised annually by 10% until 100% was payable in the sixth year.

The valuation list effective from 1 April 1976 included Yuen Long, Tai Po and Sha Tin districts and new valuation lists for the New Territories were subsequently declared in 1977, 1978 and 1980 for new Rating Areas and extensions to the existing areas.

The Rating (Areas of Hong Kong) (Amendment) Order 1987 finally extended rating to all remaining areas of the territory with effect from 1 April 1988. Since then, the whole territory of Hong Kong has been subject to rates.

⁶ Village houses were to be exempted only if they were within certain areas designated by the Governor and satisfied certain building specifications. Please refer to Chapter 8 on Rates Exemptions.

Following a subsequent legislative amendment in 1990, valuation lists were prepared only for Urban Council and Regional Council areas instead of separate valuation lists for the previous 47 Rating Areas⁷.

Major Revisions to the Rating Ordinance

Definition of “Tenement”

The unit of rating assessment in Hong Kong is the “tenement”. The term was introduced in the Police and Lighting Rate Ordinance (No. 5 of 1863) and was defined in very similar terms to that used in the present day. The original definition of “tenement” and the subsequent modifications to that definition are set out below:

(1) Ordinance No. 5 of 1863:

“the word ‘tenement’ in this Ordinance shall be construed to include any house, cottage, shed, apartment, ground or building, or house together with land annexed thereto and ordinarily occupied therewith as garden or pleasure-ground, all outbuildings, stables, warehouses, yards and offices belonging or contiguous to any house and occupied therewith by one and the same person or his servants as one entire concern or undivided tenancy or holding, or not so belonging contiguous or occupied.”

(2) Ordinance No. 12 of 1875:

“means any land, with or without buildings, which is held or occupied as a distinct holding or tenancy; and includes piers and wharves erected in the harbour.”

This definition remained basically unchanged until 1973 when the current definition of tenement was adopted. Nevertheless, the current definition still retains a marked similarity to the 1875 version.

⁷ Rating (Amendment) Ordinance 1990, Ordinance No. 54 of 1990, replaced “specified” areas by “Urban Council” and “Regional Council” areas. Henceforth, for rating purposes, the whole territory of Hong Kong was divided into Urban Council area and Regional Council area. Reference to specified areas was no longer required.

(3) Ordinance No. 11 of 1973:

“means any land (including land covered with water) or any building, structure, or part thereof which is held or occupied as a distinct or separate tenancy or holding or under any licence.”

The word “tenement” is analogous with “hereditament” in England, Wales and Northern Ireland and with “heritage” in Scotland.

Tone of the List (1973)

Section 7(3) of the Rating Ordinance 1973 introduced the “tone of the list” provisions, whereby the level of the rateable value of a tenement first assessed to rates was *not to exceed* the level of similar tenements already assessed and included in the valuation list. The Rating (Amendment) Ordinance 1975 added a new section 7(4) to extend the provisions to rateable values of tenements in a specified area assessed to rates for the first time on the direction of the Governor. The provisions however might create inequity in time of a falling market where the rateable value of a firstly assessed tenement *could be lower* than that of a comparable tenement in the valuation list. Although the Rating (Amendment) Ordinance 1981 sought to replace the “tone of the list” with the “common valuation reference date”, it was not until 1984 that the 1981 Ordinance was amended to the effect that the level of rateable value ascribed to a tenement for the first time “shall be the value” instead of the previous provision of “shall not exceed the value” of comparable tenements already in the valuation list. It was not until 1987 that section 7(3) concerning the general “tone of the list” provisions was repealed. The “common valuation reference date” approach, being still in place in the present rating system, is considered a more equitable basis of assessment.

Proposals, Objections and Appeals (1973)

When the rating system was first introduced in 1845, provisions were made for appeals to the Supreme Court against assessment or demand of rates. The mechanism was simplified in 1851 by providing the ratepayer with an initial right of objection to the Assessor and then a further right of appeal to the Supreme Court against the valuation within specified periods. Minor changes to the appeal procedures were made over the years, and prior to 1973 appeals could be lodged with the District Court on specified grounds against an entry in the valuation list or an interim valuation.

The Rating Ordinance 1973 introduced a substantial revision of the objection system whereby before making an appeal to the District Court, an aggrieved person should apply to the Commissioner for a review (by means of proposals or objections).

This was followed in 1974 by the establishment of the Hong Kong Lands Tribunal (the Tribunal) and from that time rating appeals were referred to the Tribunal instead of the District Court. The Tribunal was modelled on the UK system, which is an independent and specialist judiciary body, to deal with appeals quickly and inexpensively. The Tribunal consists of a President, who is the judicial head, and members from the legal and valuation professions.

Rates Relief (1977)

Temporary rates relief was introduced in 1977 to cushion the impact of increased rates payable in respect of certain tenements due to the general revaluation. Details of the various rates relief schemes are further discussed in Chapter 3.

Valuation Reference Date (1981)

The Rating (Amendment) Ordinance 1981 introduced a new concept for the basis of assessment by giving the Governor the power to designate a common reference date for valuation purposes at time of directing the Commissioner to prepare a new valuation list. This requires that the rateable values of all tenements included in the new list and interim valuations made subsequently are to be determined by reference to prevailing market rental levels at a common date. The 1984-85 revaluation taking effect on 1 April 1984 was the first occasion on which a prior Valuation Reference Date of 1 July 1983 was employed. The Valuation Reference Date is further discussed in Chapter 5.

Water Concessions (1984)

The Rating (Amendment) Ordinance 1984 stipulated that the amount of rates payable for tenements having an unfiltered water supply or no water supply were to be reduced by such percentage as prescribed by resolution of the Legislative Council. Accordingly, from 1 April 1984, these reductions have been set at 7.5% for unfiltered water supply and 15% for no water supply.

Collector of Rates (1995)

To streamline the assessment and collection of rates, the Rating (Amendment) Ordinance 1995 was enacted to transfer the functions of billing and accounting for rates payment from the Collector of Rates (Director of Accounting Services) to the Commissioner of Rating and Valuation from 1 July 1995.

Rates Rebate and Concessions (1998-2020)

Hong Kong suffered from economic recession during the period 1998-2003 and was badly hit by the outbreak of the Severe Acute Respiratory Syndrome (SARS) in 2003. To alleviate the resulting hardship, the Government, empowered under the Rating Ordinance, granted rebates and concessions to ratepayers. Rebate of the second quarterly rates in 1998 was made under the refund provision of the Rating Ordinance while various exemptions and concessions of rates were granted in 1999 and thereafter through exemption orders made under the Ordinance. From 2007, rates concession providing timely relief to ratepayers was implemented as a budgetary measure. Chapter 3 provides details of the rebate and concession schemes.

Further Developments of the Rating System

Hong Kong's rating system has undergone significant changes over the years to meet the changing environment and public expectations. The system is relatively mature and is unlikely to require fundamental changes in the legislation in the foreseeable future. The existing legislative framework provides sufficient flexibility to meet emerging and unexpected demands. The rates rebate and concession arrangements during the period 1998 to 2020 are good examples.

In recent years, much effort has been spent on enhancing the efficiency and effectiveness of the administration of the rating system with a particular focus on customer service. A more in-depth discussion on improvements in rating administration and service delivery is provided in Chapter 11.



Liability for Rates

Chapter 3

Liability for Rates

Definition of Tenement

Rates are a form of tax levied on occupation of landed property. In Hong Kong, the unit of assessment for rating purposes is a “tenement”, defined in section 2 of the Rating Ordinance as:

“any land (including land covered with water) or any building, structure, or part thereof which is held or occupied as a distinct or separate tenancy or holding or under any licence”

The definition of “tenement” was considered in detail by the Lands Tribunal in the rating appeal *Yiu Lian Machinery Repairing Works Ltd & Others v Commissioner of Rating and Valuation* [1982] HKDCLR 32. The Tribunal observed that the definition consists of two limbs, stating that –

- (a) *“The first limb concerns the subject matter to be rated, namely, land, buildings and structures”* and
- (b) *“The second limb only makes even those three species of property rateable, if they are held or occupied as a distinct or separate tenancy, holding or licence.”*

“Occupied” carries its literal meaning of somebody or something physically using or occupying the land. “Held” implies ownership.¹ “Distinct or separate” defines the conditions under which a tenement can be constituted.² “Tenancy” in the definition includes lease and short term tenancy. Occupation under any licence is also rateable.

¹ The words “held or occupied” in the definition recognises the dual liability for the owner and the occupier of the tenement to pay rates. This is also expressly provided in section 21(1) of the Rating Ordinance.

² It is not uncommon to have lettings of parts of a building unit, such as bed-spaces, subdivided units and cubicles in a flat. Whilst these lettings may be tenancies, they are not distinct or separate in the sense that the leased premises and the right to use common parts are not well defined. Therefore, the general practice is to regard a self-contained unit as the smallest unit of assessment.

The above interpretation of “tenement” indicates that, unlike UK’s rating law, mere occupation of a property is not sufficient to be rateable in Hong Kong. The ratepayer has to hold or occupy the property under a separate tenancy, holding or licence. In other words, freehold land *per se* would not constitute a tenement.

The Tribunal addressed this matter in the above rating appeal by referring to the “four commonly applied tests of rateability” in England, i.e.:

1. There must be actual occupation;
2. The occupation must be exclusive for the particular purpose of the possessor;
3. The occupation must be of some value or benefit to the possessor; and
4. The possession must not be for too transient a period.

The Tribunal noted that in England these four tests are complete and decisive criteria as to liability for rates, but the satisfaction of the four tests in Hong Kong would only give rise to liability for rates if, in addition, the land was occupied under one of the three limited forms of tenure set out in the “second limb” of section 2 of the Ordinance, as referred to above.

The Tribunal’s decision in this case, and the Court of Appeal’s subsequent decision on further appeal, also cast doubt on the rateability of telecommunication and electricity transmission cables at the time, where, under the provisions of the repealed Telephone Ordinance, Cap. 269, for example, the person laying the cables did not acquire any right in the land other than that of “user”. Within the Tribunal’s “two limbs” approach, this was unlikely to meet the requirements of the second limb. Legislative amendments subsequently clarified the rateability of such cables.

Looking back, the first Rating Ordinance, which was enacted in 1845³, did not use the term “tenement” or “unit of assessment”. The term was first introduced in 1863⁴ and in 1875 was re-defined in a more modern form as:

“any land, with or without buildings, which is held or occupied as a distinct holding or tenancy; and includes piers and wharves erected in the harbour.”

The present definition of “tenement” stems from the 1973 Ordinance which incorporated “structure” in the definition and henceforth treated whatever was put on the land as an item rateable in its own right.

Rateability of Plant and Machinery

Section 8 of the Rating Ordinance stipulates that:

“For the purpose of ascertaining the rateable value of a tenement...

- (a) subject to paragraph (b), all machinery (including lifts) used as adjuncts to the tenement shall be regarded as part of the tenement, but the reasonable expenses incurred in working such machinery shall be allowed for in arriving at the rateable value of the tenement;*
- (b) no account shall be taken of the value of any machinery in or on the tenement for the purpose of manufacturing operations or trade processes.”*

³ The 1845 Ordinance merely required the appointment of two or more persons to estimate “the annual value of the lands, houses, and premises, within the said Island, or within any particular district thereof, which shall be in the tenure or occupation of any person or persons”.

⁴ “Tenement” in the 1863 Ordinance was construed to include “any house, cottage, shed, apartment, ground or building, or house together with land annexed thereto and ordinarily occupied therewith as garden or pleasure-ground, all outbuildings, stables, warehouses, yards and offices belonging or contiguous to any house and occupied therewith by one and the same person or his servants as one entire concern or undivided tenancy or holding, or not so belonging contiguous or occupied”.

In Hong Kong rating law, it was not until 1863 that the issue of whether the value of machinery should be included in an assessment was first addressed and it was decided that the rateable value of a tenement should not include the value of any machinery contained therein. This was incorporated into the definition of “rateable value” in the 1888 Ordinance.

Then in 1899 an amending ordinance was enacted to provide that lifts and machinery used as adjuncts to any tenement were rateable but the expenses of working such lifts and machinery, if paid by the landlord, should be allowed for in the assessment. This amendment arose from a decision in a rating appeal against the assessment of a new building containing lifts, where it was ruled that lifts were “machinery” for the purposes of the Rating Ordinance and therefore, under the provisions then in force, not rateable. The present section 8 of the Rating Ordinance, regarding “tenements containing machinery”, was introduced in 1973.

The assumptions with regard to the valuation of plant and machinery were also challenged as a result of the decision in *Commissioner of Rating and Valuation v Yiu Lian Machinery Repairing Works Ltd & Others* [1986] HKLR 93, where the Court of Appeal held that having regard to the history of the rating legislation in Hong Kong, the English rule that chattels enjoyed with the land should be valued together with the land, could not be applied in Hong Kong. This decision had broader implications than for the floating docks which were the subject of the appeal, as it also cast doubt on the rateability of plant, such as cables and ducts, transmission lines, etc., which had previously been treated as chattels enjoyed with the land. The alternative of regarding them as structures was becoming more questionable as technology advanced, particularly in telecommunications, and a new section 8A was added into the Rating Ordinance in 1991 to deem certain plant items rateable in their own right.

The new section 8A provided that where any land, building or structure was occupied by any person by means of any plant, such land, building or structure shall be deemed for rating purposes to be a separate tenement, whether or not such land, building or structure is otherwise a tenement. “Plant”, as specified under section 8A, included cables, ducts, pipelines, railway lines, tramway lines, oil tanks, settings and supports for plant or machinery.

At the same time as section 8A was added, related amendments were made to section 10, specifically to give the Commissioner discretion, where tenements are used in connection with one another, to value the tenements together as a single tenement. This amendment particularly addressed concerns relating to the cumulo assessment of telecommunication and electricity undertakings which included substantial cable systems.

The position in the UK is much clearer, where the meaning of “plant” was first clearly set out in the decision of *Yarmouth v France CA* [1887] 19 QBD⁵. The rateability of plant and machinery was subsequently specifically provided in the statutes, previously in the Plant and Machinery (Rating) Order and then in the Valuation for Rating (Plant and Machinery) Regulations. These Regulations specify, in considerable detail, the classes of plant and machinery which are statutorily deemed to be part of the “hereditament”, the unit of assessment in UK, and thus rateable. The Regulations help remove any ambiguity or uncertainty as to the rateability of plant and machinery.

In Hong Kong, in the absence of such detailed regulations, the more general statutory provisions have to be relied upon. In this connection, the construction of section 8A and its relationship with section 8 were considered in *CLP Power Hong Kong Limited v Commissioner of Rating and Valuation* [2017] FACV No. 7 of 2016, which affirmed the rateability of certain fixed equipment, such as boiler supports, cooling water circuits, pipework and electrical cables. The Court of Final Appeal held that section 8A is to apply to any equipment which is plant by means of which any land, building or structure is occupied by a person “whether or not such land, building or structure is otherwise a tenement”. In addition, section 8 must be taken to remain in force unless and except so far as section 8A necessarily alters its effect. The inclusive definition of “plant” in section 8A(3) could be treated as limited to ancillary equipment which is not adjunct machinery falling within section 8(a).

Rateability of Advertising Signs

Prior to 1973, the Rating Ordinance did not clearly spell out the rateability of advertising signs. The Rating Ordinance 1973 added a new section (section 9) providing for the rating of advertising stations, taking into account the value of the right to exhibit an advertisement and the value of the advertising structure. Section 9 basically follows the provisions of section 28 of the now repealed General Rate Act 1967 of the UK.

The gist of section 9 is to regard the right to use land for exhibiting advertisements as a separate tenement (and thus rateable) and to include the value of the advertising station in the assessed rateable value of the land. “Land” is defined in subsection (7) as including any structure, hoarding, frame, post or wall.

⁵ It was held that “... in its ordinary sense, [plant] includes whatever apparatus is used by a business man for carrying on his business – not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed and movable, live or dead, which he keeps for the permanent employment in his business ...”

Where the right to exhibit advertisements is let, reserved or otherwise granted to a person other than the occupier of the land, or, where the land is vacant, to any person other than the owner of the land, that right is deemed to be a separate tenement occupied by the person for the time being entitled to the right. Thus, a vacant advertising station is still rateable if the advertising right is let, reserved or otherwise granted.

The rateable value of the advertising station so ascertained should include the value of the structure or sign regardless of who erected it. As a safeguard against double counting, no account should be taken of any increased value of the land for its suitability as a site for exhibiting advertisements if the advertising station is separately assessed.

The advertising tenement is treated as coming into existence at the earliest time at which either:

- (a) any structure or sign is erected in exercise of the advertising right; or
- (b) any advertisement is exhibited in pursuance of the right.

The erection, dismantling or alteration of any structure or sign is treated as a structural alteration of the tenement for the purpose of section 24 of the Rating Ordinance. However, the substitution of the poster of an advertising light box or frame, or the white-wash of an advertisement on a flank wall does not amount to structural alteration.

Where the otherwise vacant land is used for exhibiting advertisements (i.e. the advertising right is not let or reserved), it will be assessed to rates and the person who permitted the use, or, if he cannot be identified, the owner of the land, will be liable to pay the rates.

Where an advertisement is displayed but is not let or reserved (i.e. it is erected by the occupier), the rateable value of the tenement on which it is erected will include the increased value due to the advertisement. A typical example is a sign erected on the external wall or the top roof of a factory building to advertise the brand name of the products manufactured by the factory.

Where an advertisement is exhibited on any land but it does not fall into any of the above categories, the advertisement is deemed under section 9(6) to be a separate tenement and valued as if it were a separate tenement under subsection (1). In *Sogo Hong Kong Company Limited v Commissioner of Rating and Valuation* [2019] HKLDT 68, the Tribunal affirmed that:

“...We consider that the enactment of section 9 as a whole is to strengthen the Commissioner’s position in respect of charging rates for advertisements exhibited on any land... if section 9(1) does not apply for whatever reason, we find that section 9(6) applies and the said Signs are still rateable.”

To sum up, all advertising signs are rateable either as separate tenements or by adding their value to the “host” tenements at which they are situated. Advertising signs have a wide variety of sizes, shapes, designs, constructions and modes of attachment. The majorities are small, exhibiting the name, type of business carried on, or merchandise sold, at the premises to which the advertising signs refer. It is now common to have video advertising signs and screens erected on the external walls of shopping malls and office towers. There are also many prominent, high value signs erected on the top roofs of buildings fronting the harbour in areas including Central, Wan Chai, Causeway Bay and Tsim Sha Tsui. These signs, many of which advertise renowned international brand names and institutions, have become famous backdrops to the picturesque harbour views of Hong Kong.

Liability for Payment

Rates are primarily a tax on occupation of a tenement. The Rating Ordinance provides that the owner and occupier of a tenement shall both be liable for payment of the rates, but clarifies that it is deemed to be an occupier’s liability, and, in the absence of any agreement to the contrary, shall be paid by the occupier.

If the owner has paid the rates, he can take action to recover the amount paid from the occupier. On the other hand, if the agreement states that the owner is to bear the rates of the tenement and the occupier has made the payment, the occupier can recover from the owner the amount paid.

Where the occupier is the ratepayer and is in default of payment, action may be taken by the Commissioner to recover the amount due from the owner, and vice versa. This dual liability is a special feature in the Hong Kong rating system.

Apportionment of Rateable Value and Rates Payable

The Commissioner is authorised in certain circumstances to value two or more tenements as a single tenement subject to the provisions of section 10 of the Rating Ordinance. Where tenements held by separate owners are valued together in this way, the person liable for payment of the rates may be either the occupier of the single tenement if he is the sole occupier, or any of the owners or occupiers of the individual tenements which have been valued together as a single tenement.

An owner or occupier may apply to the Commissioner for an apportionment of the rateable value of a single tenement which comprises several tenements valued together under section 10 and the Commissioner shall give notice of the apportionment in the specified form. This provision for apportionment may assist the ratepayers or owners in determining the respective share of rates for each of the owners or occupiers of the single tenement. Notwithstanding the apportionment, the Commissioner will continue to issue one quarterly demand note for the single tenement.

The apportionment of the rateable value does not constitute a separate rating assessment made under the Rating Ordinance. The single tenement and its rateable value remain as entries in the valuation list. Thus, an objection can be made only to the rateable value of the single tenement. There is no provision for objection to an apportionment of the rateable value in such cases.

Computation of Rates Payable

Rates are payable at a percentage of the rateable value for each tenement included in the valuation list and such percentage is prescribed by resolution of the Legislative Council. As the amount of rates payable is determined by the amount of rateable value and the rates percentage charge together, an increase in rateable value as a result of a general revaluation would not necessarily result in an increase in the amount of rates payable, and vice versa.

In the past, the rates percentage charges have varied from 4.5% to 18% and since 1999 have been set at 5%. The various rates percentage charges since 1931 are shown in **Table 1**.

The only allowance for adjustment to the rates payable relates to the supply of government water to the tenement. If the supply of fresh water is unfiltered, the amount of rates payable will be reduced by 7.5%. If there is no supply of fresh water at all, the amount of rates payable will be reduced by 15%. These percentages of reduction in the amount of rates payable are prescribed by resolution of the Legislative Council. The existing percentages have been in effect since 1 April 1984.

It should be noted that a supply of fresh or unfiltered water shall be deemed to be available to a tenement if it is situated within 180 meters of the government water-main, irrespective of the fact that the tenement is not connected to the government water-main. There are very few tenements without the supply of fresh or unfiltered water in Hong Kong.

Table 1

Rates Percentage Charges Since 1931						
Effective From	Urban Areas			New Territories		
	General Rates %	Urban Council Rates %	Total %	General Rates %	Regional Council Rates %	Total %
1.7.1931	17 ⁽¹⁾	-	17	-	-	-(²)
1.4.1956	17	-	17	11	-	11 ⁽³⁾
1.4.1973	9	6 ⁽⁴⁾	15	11	-	11
1.4.1974	9	6	15	15	-	15
1.4.1975	11	6	17	17	-	17
1.4.1976	12	6	18	18	-	18
1.4.1977	7.5	4	11.5	11	-	11
1.4.1982	3.5	8	11.5	11	-	11
1.4.1983	5.5	8	13.5	13.5	-	13.5
1.4.1984	3	2.5	5.5	5.5	-	5.5
1.4.1986	2.5	3.5	6	-	6 ⁽⁵⁾	6
1.4.1990	4	3.5	7.5	1.5	6	7.5
1.4.1991	2.5	3	5.5	1.75	3.75	5.5
1.4.1994	2.7	2.8	5.5	1.1	4.4	5.5
1.4.1997	2.4	2.6	5	0.8	4.2	5
1.4.1998	1.9	2.6	4.5	0.3	4.2	4.5
1.4.1999	2.4	2.6	5	0.8	4.2	5
1.1.2000	5 ⁽⁶⁾	-	5	5 ⁽⁶⁾	-	5
1.4.2000 to 1.4.2020	General Rates @ 5% for all areas since abolition of the Urban and Regional Councils from 1.1.2000					

Notes:

- (1) In 1931, various rates for municipal services were consolidated into a uniform percentage charge of 17%. Rates collected become general revenue of the Government, hence General Rates.
- (2) A special form of rates was charged in Yuen Long, Tai Po and Tsuen Wan in the New Territories from 1935-1954.
- (3) In 1956, the urban rating system was first introduced to Tsuen Wan, Kwai Chung and the Castle Peak Road area in the New Territories. Further areas were subsequently assessed to rates on a phased programme which was completed in 1988. Rates for the newly assessed areas were initially charged at lower percentages but all areas were subject to a uniform percentage charge from 1.4.1985.
- (4) Urban Council Rates were introduced from 1.4.1973.
- (5) Regional Council Rates were introduced from 1.4.1986.
- (6) The Rating Ordinance added a new section 56(3) which came into operation on 1.1.2000 in conjunction with the Provision of Municipal Services (Reorganisation) Ordinance, Cap. 552.

Rates Relief and Concessions

Rates concession schemes were introduced in the past to cushion the short-term impact of increases in rates payment whilst preserving the long-term equity and integrity of the rating system. For example, prior to the implementation of annual revaluations in 1999, long periods between general revaluations had resulted in large increases in rateable values, giving rise to a very significant increase in the rates burden and causing hardship to ratepayers.

In the 1977-78 revaluation, rateable values increased on average by 80%. Although the rates percentage charge was reduced from 18% for 1976-77 to 11.5% for 1977-78, the increase in the amount of rates payable in respect of a number of tenement categories was still very substantial. To soften the impact of these increases, a Public Revenue Protection (Rating) Order was made in March 1977 to limit the increases in the amount of rates payable for the years 1977-78 and 1978-79 to not more than one third of the amount of rates payable for the preceding year. This measure was also known as the “Rates Relief Scheme”.

The same situation arose in the following revaluation, carried out some seven years later in 1984. Based on the rationale of the previous relief scheme, section 19 of the Ordinance was amended to provide a mechanism to phase in the effect of infrequent revaluation. The amount of increase in rates payable in any year was limited to not more than a certain percentage, as prescribed by resolution of the Legislative Council, of the amount of rates payable in the preceding year. The increases were limited to not more than 20% for each of the years 1984-85, 1985-86 and 1986-87 in respect of the 1984-85 revaluation.

Section 19 was repealed in 1987 but re-introduced in 1991, when the 1991-92 revaluation was to take effect. The increase in rates payable was capped at 25% for the year 1991-92 and 20% for each of the years 1994-95, 1995-96, 1997-98 and 1998-99 in respect of the 1994-95 and the 1997-98 revaluations.

The relief measure under section 19 has not been re-employed since the commencement of annual revaluations in 1999, although it remains in the Ordinance.

An alternative to the provisions in section 19 is provided through the refund and exemption powers in sections 35 and 36 respectively. These powers had been used to provide

one-off rebates and concessions on a number of occasions under special circumstances in recent years.

- In 1998, the rates paid for the April to June quarter were refunded to ratepayers as one of the special relief measures to address the general economic downturn at that time.
- As part of the 1999-00 budget proposals, the rates percentage charge was increased from 4.5% to 5% and the rates payments for all tenements for the July to September quarter were reduced by half.
- To provide some immediate relief for the community in times of economic difficulty, ratepayers were given rates concession up to \$2,000 per assessment, for the period 1 January 2002 to 31 December 2002. This ceiling was subsequently raised to \$5,000 per assessment, effective from 1 April 2002, as announced in the 2002-03 Budget.
- In 2003, a similar rates concession was offered for the July to September quarter, subject to a maximum amount of \$1,250 for each residential tenement and \$5,000 for each non-residential tenement. On this occasion the concession was part of a package of relief measures to help the community to tide over the difficulties caused by the outbreak of the Severe Acute Respiratory Syndrome (SARS) in that year.
- In 2007, the rates concession was re-introduced more or less as a budgetary measure. The amount of concessions accorded to ratepayers for 2007-08 to 2020-21 are summarised in **Table 2**.

Table 2
Rates Concession from 2007-08 to 2020-21

Financial Year	Rates Concession		
	Quarters waived	Ceiling per quarter	
2007-08	3 quarters (1 st , 2 nd & 4 th quarters)	\$5,000	
2008-09	4 quarters	\$5,000	
2009-10	4 quarters	\$1,500	
2010-11	4 quarters	\$1,500	
2011-12	4 quarters	\$1,500	
2012-13	4 quarters	\$2,500	
2013-14	4 quarters	\$1,500	
2014-15	2 quarters (1 st & 2 nd quarters)	\$1,500	
2015-16	2 quarters (1 st & 2 nd quarters)	\$2,500	
2016-17	4 quarters	\$1,000	
2017-18	4 quarters	\$1,000	
2018-19	4 quarters	\$2,500	
2019-20	4 quarters	1 st – 3 rd quarters	\$1,500
		4 th quarter	\$1,500 for domestic tenement \$5,000 for non-domestic tenement
2020-21	4 quarters	\$1,500 for domestic tenement \$5,000 for non-domestic tenement	

During the deliberations of the Rating (Exemption) Order 2012 at the Legislative Council (LegCo), some LegCo members considered that the proposed rates concession was a form of “transfer of benefits” to private consortia. A motion to restrict the rates concession entitlement to each ratepayer of up to three tenements was proposed but was ruled by the President of the LegCo as having a charging effect⁶.

⁶ Under Rule 31(1) of LegCo’s Rules of Procedure, the Chief Executive’s written consent is required before member’s motion can be moved if such motion may be to dispose of or charge any part of the revenue or other public moneys of Hong Kong.

In response, the Administration stated that the proposal would change fundamentally the concept of granting rates concession from one which was based on the tenements to the one which was based on the owners or occupiers. Moreover, the proposal could not clearly and precisely define in law the criteria of the scope of exemption on the one hand, and might involve significant resources and practical difficulties in implementation on the other. Apart from causing inconveniences to ratepayers, it was not cost-effective.

Nevertheless, the concern about a more equitable distribution of the rates concession amount was echoed in subsequent years when similar fiscal measures were implemented. Addressing some members' views at the LegCo's Subcommittee established for scrutinising the Rating (Exemption) Order 2018, the Administration issued a paper in December 2018 to consult the Panel on Financial Affairs on the possible modifications to the mechanism for providing rates concession.

One of the proposed options would be to grant rates concession to one rateable property, which could be a domestic or non-domestic, for each owner. To achieve this, substantial capital investment would be required by the Department in establishing a property ownership database. After examining the options submitted, most Panel members expressed reservation on the proposed modification and passed a motion at the Panel meeting advocating that the proposed new property ownership database may not be in line with the 'value for money' principle, and that the Government should shelve the proposal. The review on the rates concession mechanism was not proceeded further.

Differential Rating

From time to time, there have been calls for the introduction of differential rating in Hong Kong, whereby different rates percentages would be applied to different classes of properties or higher rates percentage charges to properties of higher value.

However, such a system is likely to be divisive and inequitable. If targeted at commercial and industrial sectors, for example, it would increase the cost of doing business and could eventually cause hardship to certain sectors, such as small and medium enterprises. In addition to the equity issues, differential rating, if applied to residential properties, would result in numerous objections relating to the determination of the primary use of properties from the rating viewpoint, particularly in respect of properties of mixed or converted use.

In the alternative scenario of charging higher rates percentages on properties of higher value, the dividing lines in rateable value and differential rates percentages would be highly subjective and difficult to justify to the public. They are also bound to be controversial.

Arguably, the existing rating system already has a progressive element as it is *ad valorem*. The higher the rateable value of a property, the higher will be the amount of rates payable, with the higher value ostensibly reflecting an ability to pay.

Examples of differential rating can be found in a number of countries. Property rates in Singapore are based on the rental value of properties and a lower rate is charged for owner-occupied properties. Australia imposes a land tax with tax rates varying in accordance with the assessed value of land. Canada's property tax system is based on the assessed capital value of properties and the tax rates may vary with different classes of properties. The UK imposes a council tax on residential properties based on the assessed capital value with properties separated into valuation bands. The council tax is levied at a fixed amount for each valuation band and higher amounts are levied on higher bands. If the tax amount for each band is expressed as a rate chargeable on the assessed capital value, the tax rate for properties at the higher limit of each band is lower than that for properties at the lower limit of the band.

The purpose of levying rates in Hong Kong is to contribute to the Government's general revenue to finance public expenditure and services. It is difficult to argue that the use and enjoyment of the broad range of services and benefits provided by the Government are different for an owner-occupier from for a tenant-occupier.

Hong Kong's simple rating system, based on annual rental values and a single rates percentage charge, is well established and well understood by ratepayers. The leasing market is active and rental evidence is abundant. Past statistics indicate that rental values in Hong Kong are generally less volatile than capital values across most sectors of the property market. Excessive volatility in the taxation base will cause difficulties for both ratepayers and the Government and should be avoided if possible.

Similarly, a system of applying capital value bands would seem inappropriate in the Hong Kong context. Apart from the arguments against a capital valuation basis, the banding system, combined with the charging of a fixed amount of rates for each valuation band, renders tax regressive, particularly in respect of those properties at the lower end of the band.

The Hong Kong rating system is simple, equitable and broad-based. All occupiers pay rates, either directly or indirectly, with the exception of the exempted few. The introduction of differential rates would have wide implications on certain sectors of the community.



Basis of Rating Assessment

Chapter 4

Basis of Rating Assessment

Principle of Assessment

Rateable value, the basis of assessment, is defined in section 7(2) of the Rating Ordinance as:

“... an amount equal to the rent at which the tenement might reasonably be expected to let, from year to year, if –

- (a) the tenant undertook to pay all usual tenant’s rates and taxes; and*
- (b) the landlord undertook to pay the Government rent, the costs of repairs and insurance and any other expenses necessary to maintain the tenement in a state to command that rent.”*

Rateable value is in effect the estimated annual rental value in the open market. As rents in Hong Kong are usually quoted on a monthly basis, it is normal rating practice to value tenements on this basis and multiply the result by 12 to arrive at the annual rental value.

The rent to be estimated is such a rent as might reasonably be expected for the tenement if let “from year to year”. The law is well settled that a yearly tenancy implies a reasonable expectation of its continuance. Judge Cruden said:

“A yearly tenancy, as a matter of law, is of indefinite duration but liable to be determined at any time upon one party giving one half-year’s notice to the other. The hypothetical tenancy is therefore of indefinite duration and not a finite tenancy for a fixed duration. In the language of property law, it is a periodic yearly tenancy and not a fixed tenancy for merely 1 year. A yearly tenant can expect to enjoy the tenancy for an indefinite duration. The tenant is reasonably entitled to make

calculations on the basis of a degree of continuing occupation in the future. In the case of a yearly tenancy, it is therefore reasonable for the tenant to expect the tenancy to continue for more than its initial 12 months.”¹

The Court of Appeal endorsed that, for rating purposes, a yearly tenancy may be of indefinite duration, and it is a question of fact in each case how long the yearly tenancy is likely to be.²

It is common practice to assume a hypothetical tenancy, and the rateable value is an estimated annual rent which would have been agreed between a hypothetical landlord and a hypothetical tenant, on the assumption that the property in its actual physical state was vacant and to let. The landlord’s obligation to bear “the costs of repairs and other expenses necessary to maintain the tenement in a state to command that rent” implies that ordinary and remediable disrepair is disregarded in ascertaining the rateable value.³ However, serious disrepair which cannot be remedied or can only be remedied at an uneconomic cost should be taken into account.⁴

The fact that a property or structure is unauthorised does not affect its liability for assessment to rates.⁵ However, the assessment to and/or the payment of rates for these unauthorised or illegal structures does not imply that these structures have legal status, nor does it confer any legal sanction or authorisation on them.

Tone of the List

“Tone of the list” was introduced into rating law in Hong Kong in 1973. Similar provisions were first found in section 17 of the Local Government Act 1966 which was later incorporated into section 20 of the General Rates Act 1967 in the UK. Before the introduction of these provisions, Hong Kong rating practice had been based on a strict interpretation of the law in accordance with the rule established in the UK case *Ladies Hosiery and Underwear Ltd. v West Middlesex Assessment Committee* [1932] which was that correctness of assessment

¹ *China Light & Power Co. Ltd. v Commissioner of Rating and Valuation* [1994/95] CPR 618, 626.

² *Best Origin v CRV* Civil Appeal No. 67 of 2008.

³ *Warren Chow v Commissioner of Rating and Valuation* [1977] HKLTLR 277.

⁴ *Wong Tak Woon v Commissioner of Rating and Valuation* CA 127/86.

⁵ In the case *Cheung Man Yee v CRV* (RA 41/84), the Lands Tribunal held that it was correct to include the value of illegal (unauthorised) extension in the assessment of rateable value, but the value must reflect the calculated risks in renting the property with illegal extension.

must not be sacrificed to uniformity. However the original intention of rating was to apportion fairly the burden of rates amongst ratepayers in accordance with the value of their properties. Until the “tone of the list” provision was introduced some ratepayers were bearing an unfair proportion of the rates burden in Hong Kong due to interim valuations of newly assessed properties being valued at a current date, rather than a common date, and thus in a rising market being much above the “tone of the list”, i.e. the general level of value prevailing at the date when the existing valuation list was prepared.

The 1973 legislation was based on the concept that the rateable value resulting from an interim valuation shall not exceed the level of rateable value in the valuation list. This concept allowed a rateable value to be determined at a level below the “tone” if there was a decline in rental levels during the period from the date the valuation list came into force to the time of the interim valuation.

Valuation Reference Date

The “tone of the list” provision was amended in 1981 to provide that the rateable value was to be ascertained by reference to the value as at a designated date known as the “relevant date”. General changes in value after the relevant date are not material, so any increase or reduction in value since that date would not affect the rateable values. In recent years, the relevant date has been fixed at 1 October for the Valuation List to take effect on 1 April in the following year, e.g. the relevant date for the 2020-21 Valuation List is 1 October 2019.

The Rebus Sic Stantibus Principle

In addition to the requirement for a single Valuation Reference Date, Hong Kong has adopted one of the main principles in UK rating law, the rule of *rebus sic stantibus*, a Latin phrase meaning “as things stand”. It is embodied in section 7A(2) and (3) of the Rating Ordinance. This requires that the tenement must be valued on the assumption that at the relevant date,

- the physical state and the actual use of the tenement,
- any relevant factors affecting the mode or character of occupation, and

- the occupation and use of other premises in the locality, the transport services and other facilities and amenities in the locality

were the same as they were at a second statutory date, i.e.:

- (a) for the purposes of a general revaluation, the date at which the valuation list comes into force (1 April in that year);
- (b) for the purposes of an interim valuation, the date of service of Notice of Interim Valuation.

The effect of the provision is to ensure that the tenement is valued on the basis of its physical state and its mode or category of occupation. In this respect the impact of any restrictions imposed on or affecting the use of the premises by any contract or agreement, including the Government lease, should be ignored in the valuation, but statutory restrictions must be considered. In the *Lai Kit Lau* case⁶, the Lands Tribunal confirmed this situation, holding that “*statutory restrictions which affect the use of the premises must be taken into account, as must possibilities of waiver by the Crown or of the willingness of potential occupiers to risk breaking the law.*”

Examples exist in Hong Kong where domestic units on the lower floors of residential buildings in the older districts of the urban areas had been converted to commercial use. Such premises are valued taking into account their physical state as well as their mode or category of occupation, even though they were certified for domestic use under the Occupation Permit issued by the Building Authority or under the Government lease.

Methods of Valuation

There is no statutory requirement to use any particular method of valuation in arriving at the rateable value of a tenement. The choice depends upon the nature of the tenement and the availability of rental evidence. For nearly all classes of tenement there is general agreement as to which method is the most appropriate. The following three valuation approaches, which have gained clear judicial recognition, are normally employed to value properties for rating purposes.

⁶ *Commissioner of Rating and Valuation v Lai Kit Lau Mutual Aid Committee and Another* [1986] HKLR 93.

Valuation by Reference to Rents (Comparison Method)

The great majority of properties are valued by reference to rents. Where open market rental evidence exists for the subject property or similar properties, and that evidence conforms to the statutory definition of rateable value, or can be made to do so without such substantial adjustments that its reliability is affected, a valuation based upon such evidence will always be the preferred method.

Direct rental evidence will normally be available for residential properties, offices, shops, flatted factories and godowns. Only rarely, however, do the terms on which actual rents have been agreed entirely accord with the definition of rateable value. For this and other reasons, adjustments will normally have to be made to the rental evidence before it can be used to determine the rateable value of a property.

Valuation by Reference to Receipts and Expenditure (Receipts & Expenditure Method)

In the absence of rental evidence, recourse may be had to trading receipts and expenditure as an indication of the rent which the occupier might reasonably be expected to pay if he were to rent the property.

Normally, properties to which this basis is applied enjoy an element of monopoly, whether it be statutory, locational or business monopoly. The monopoly element is not essential, but there must be a profit motive on the part of the occupier of the premises being valued and there is an assumption that such business cannot be carried out in alternative premises. If the generation of revenue or profits is not the occupier's prime motive, his receipts are unlikely to provide a true indication of the rental he might reasonably be expected to pay. This valuation method may be applicable to properties such as public utilities, hotels, cinemas, etc. Care must be taken to ensure that it is the property (the tenement) which is valued, and not the business itself.

An explanation of this method was summarised by Lord Cave LC in the case of *Kingston Union AC v Metropolitan Water Board*⁷:

“From the gross receipts of the undertakers for the preceding year they deducted working expenses, an allowance for tenant’s profit and the cost of repairs and other statutory deductions and treated the balance remaining (which should presumably represent the rent which a tenant would be willing to pay for the undertaking) as the rateable value of the entire concern.”

In short, this method comprises taking the gross receipts, which should be determined by taking into account the fair maintainable receipts to be derived from occupation of the property, and deducting the proper cost of purchases to arrive at the gross profit. From the gross profit the working expenses should be deducted to determine the divisible balance. The divisible balance is the sum available to be shared between the landlord and the tenant. It comprises two main elements: the tenant’s share and the landlord’s share i.e. the rent payable for the property. Under this approach, the tenant’s share may be regarded as the first claim upon the divisible balance, although the position of both the landlord and the tenant must be considered. This share has to be sufficient to induce the tenant to take a tenancy of the property and to provide a proper reward to achieve profit, an allowance for risk and a return upon the tenant’s capital.

There are four recognised approaches to estimating the tenant’s share:

- (a) a percentage return on tenant’s capital;
- (b) a percentage on gross receipts;
- (c) a proportion of the divisible balance; or
- (d) a spot figure.

⁷ [1926] AC 331.

There is no fixed method for particular categories of tenement and the most appropriate method in each case will depend on the nature of the tenement and the hypothetical tenancy. In all cases it is necessary to stand back and look at the final figure to test its reasonableness against the hypothetical tenant's capital, the gross receipts and the net profit of the business.

In the *China Light & Power* case⁸, the tenant's share was determined by means of a return on capital, which was based upon the relevant Weighted Average Cost of Capital (WACC) at the valuation date. This took account of the company's amount of equity, the cost of the equity, the amount of debt and the cost of that debt. The cost of equity was determined by reference to the Capital Asset Pricing Model (CAPM) where the rate of return is based upon the return for a risk-free investment plus a premium to reflect the risk associated with the particular operation of the ratepayer. Yet, it is worth mentioning that the Tribunal commented that WACC was not definitive, but required adjustment by standing back and looking at the whole evidence. The Tribunal said:

“Further, even the adjusted 27% WACC calculation, remains at best, merely an indicator of rates of return. It does not pretend to be definitive. It is therefore desirable to stand back and look at the whole of the evidence broadly and to a degree pragmatically... We also remind ourselves of both parties' warnings of the danger of striving to achieve ... spurious accuracy. After reviewing the whole of the evidence on this basis, we find the rate of return on tenant's capital to be 25%.”

However, in *The Hongkong Electric* case⁹, the Court of Final Appeal set aside the Court of Appeal's decision that the relevant WACC be applied to estimate the tenant's share on grounds that the WACC did not represent the economic value of contribution which the hypothetical tenant's assets made to the profits of the undertaking viewed as a whole. Instead, the Court of Final Appeal restored the Tribunal's decision that the return reasonably expected by the hypothetical tenant in this case was the rate of return permitted under the extra-statutory Scheme of Control entered into between the Company and the Government to regulate the Company's running of its electricity business. As the Company's actual return was premised on the prospect of achieving this permitted return on all the Company's assets, the tenant's share was held to be arrived at by splitting the divisible balance between the hypothetical landlord and the hypothetical tenant proportional to the values of their assets in the Company's asset register. However, it is noteworthy of the Tribunal's decision to reject the Company's

⁸ *China Light & Power Co. Ltd. v Commissioner of Rating and Valuation* [1994/95] CPR 618, 648.

⁹ *The Hongkong Electric Co. Ltd. v Commissioner of Rating and Valuation* [2010] RA 123, [2011] 1 HKC 165, 4 HKC 509.

contention (which was not challenged in upper courts) that the hypothetical tenant should be further awarded a prior allocation of 25% of the divisible balance for the risk and enterprise in running the business.

Following rejection of the WACC approach by the Court of Final Appeal, in the *CLP Power* case, the Lands Tribunal also approved and adopted the approach of splitting the divisible balance by the values of assets in determining the tenant's share when using the Receipts and Expenditure method to assess the rateable value concerned.

The general format of the receipts and expenditure method of valuation is as follows:

		\$
	Receipts	A
<u>Less</u>	Operating Costs	(B)
	Divisible Balance	<hr/> C
<u>Less</u>	Tenant's Share	(D)
	Rent and Rates	E
<u>Less</u>	Rates	(F)
	Rent (i.e. Rateable Value)	<hr/> G

Valuation by Reference to Costs (Contractor's Method)

This method of valuation can be adopted for tenements which are rarely let, hence rental evidence is normally not available, and in respect of which the receipts and expenditure method is considered inappropriate. It can also be used for the valuation of part of a tenement for which other parts are valued on a comparison basis, such as a certain recreational facility or for rateable plant and machinery.

The contractor's method assumes the construction of a hypothetical alternative equivalent to the tenement being valued with all costs, including land acquisition costs and fees, taken as at the valuation reference date with appropriate adjustments for age and obsolescence. It assumes that a hypothetical tenant would be willing to pay in rent the decapitalised equivalent cost of providing this hypothetical alternative. This valuation method is used in Hong Kong for rating assessments of oil depots, golf courses, recreation clubs and other similar tenements.

In Hong Kong, the practice in the application of the Contractor's Basis is to use the financial market rate or the property market yield to decapitalise the effective capital value to arrive at the annual value as defined in section 7(2) of the Rating Ordinance.

In *Royal Hong Kong Yacht Club v Commissioner of Rating and Valuation*¹⁰, the Tribunal determined the decapitalisation rate by reference to the financial market rate as it found that the subject recreation club was difficult to relate to the property market.

However, in *Mobil Oil Hong Kong Ltd. v Commissioner of Rating and Valuation*¹¹, it was held that:

“... On principle and on the actual evidence adduced, we are satisfied that the decapitalisation rate should be based on property yields and not bank interest rates. We are satisfied that property market yields will usually have already eliminated those ownership benefits, which a Cardiff reduction, seeks to remove...”

The Tribunal remarked also in the *Mobil* case that:

“... However, as well as ownership benefits there are, even in times of economic buoyancy, also ownership risks. In Aberdeen University v Grampian Regional Assessor, these were recorded as including risk in rent recovery and voids while real capital value may fall due to depreciation and obsolescence. There is also illiquidity in property investment which makes realisation times longer as well as much higher transaction costs. Property market prices are more volatile and can, as dramatically shown in the United Kingdom in recent years, depreciate as well as appreciate in value. We would also add that rent and premia are deductible by a tenant for tax purposes, while for a landlord they have to be returned as taxable income.”

¹⁰ [1987] HKLTLR 1.

¹¹ [1993] HKDCLR 77, 105. The contractor's method attempts to arrive at a figure beyond which a potential tenant, rather than rent, would purchase land and construct his own premises. However, as an owner-occupier he would obtain security of tenure, appreciation of value and other benefits not enjoyed by a yearly tenant. In *Cardiff City Council v Williams (VO)* [1973] RA 46, the Court of Appeal held that, the decapitalisation rate in the contractor's method, based on bank interest rates, had to be further reduced by a deduction for these ownership benefits. Thereafter, this adjustment became known as the Cardiff deduction, or Cardiff reduction.

Furthermore, the following extract from Rost and Collins "*Land Valuation and Compensation in Australia (3rd Ed.)*" was referenced in p.95 of the *Mobil* judgement –

"Any estimate of replacement cost should include not only the costs directly concerned with construction. Carrying costs are also a proper charge. According to the type of improvement, these may include interest on land value and on progress payments, rates, land tax and various incidental charges, all to the time when work is completed and ready for use."

In calculating the finance charges or decapitalisation rate, the credit rating of a particular ratepayer is to be ignored. The Tribunal affirmed that:

"... rateable values for the actual tenements have to be objectively determined, as at a common relevant date, in relation to the statutory terms of the hypothetical tenancy. This principle is the foundation of fairness and relativity in rating. It would be seriously eroded if weight could be given to an ability of a particular ratepayer to obtain preferential interest rates or if it had to reflect the varying strength of an individual tenant's covenant."

In the *Mobil* case, the Tribunal noted that the English practice gave particular importance to the position of the hypothetical tenant but the Scottish cases emphasised the need to consider the matter from both the hypothetical landlord's and tenant's viewpoint and concluded that:

"In Hong Kong our Section 7 gives primacy to neither party. We assume both landlord and tenant have equal bargaining power."

An approach to rateable value by reference to cost is also often adopted in determining the value of rateable plant and machinery. The Commissioner applied this elemental approach of valuation in *Kwong Fat Loong Shipyard v Commissioner of Rating and Valuation*¹² and it was endorsed by the Tribunal. In that case, the Commissioner divided the tenement

¹² [1990] HKDCLR 5.

into four elements, valuing the land, seabed and buildings by the rental comparison method and the slipway by the contractor's basis. Judge Cruden said:

"I am satisfied that provided the comparables for each element are adequate, there is nothing wrong with an elemental approach. An elemental approach is frequently adopted and has been expressly referred to and approved in a number of cases of which George v South Western Electricity Board [1985] R & VR 70 is an example."

The general format of a contractor's basis valuation is as follows:

		\$
	Estimated adjusted cost of buildings and rateable improvements as at the valuation date, including fee	A
<u>Add</u>	Finance charges	B
<u>Add</u>	Land value	C
<u>Add</u>	Carrying costs for land ¹³	D
	Total adjusted costs	<hr style="width: 100%; border: 0.5px solid black;"/> E
	x Decapitalisation rate (%)	Rateable Value

Choice of Valuation Method

The choice of valuation method will not always be clear and it is often the case that a second method will be used to test the results of the initial valuation where appropriate data is available for this purpose. However, where a valuation method is unable to take into account all the factors affecting the value of occupation of a tenement, it may not be appropriate to adopt the method or use it as a check against the results arrived at in the primary valuation. Based on the facts of the case, the Tribunal ruled in *The Hongkong Electric*:

"The tenement bears the special features of synergy value and monopoly of place. These features would drive up the value of occupation... The Contractor's Method would not be able to reflect and capture these enhanced values of occupation... We do not find it either useful or appropriate to use and adopt the Contractor's Method for any purpose in the present case."

¹³ Carrying costs for land will include interest on land value and other costs during the construction period.

As discussed in the preceding paragraphs, it is also common practice with certain types of tenement to adopt an elemental approach, applying different methods of valuation to different parts of the tenement. However, in such cases, care must be taken to arrive at the value of the tenement as a whole, bearing in mind the mode and character of occupation, and not just as a summation of its individual parts.

In adopting the Receipts and Expenditure Method or the Contractor's Method, the important final valuation step for the valuer must always be to stand back and examine the outcome to ensure it is reasonable as a value for the tenement as it stands, having considered the viewpoints of both the hypothetical landlord and the hypothetical tenant.

The above methods of valuation may be modified where this is justified by the circumstances. An example of this is where a formula might be applied to the gross receipts or an adjusted revenue figure to arrive at the rateable value. However, unless such a formula has a statutory basis, and no such basis exists in Hong Kong, it must be able to be demonstrated that the rateable value derived by such short form is supported by a full receipts and expenditure valuation. Examples of a formula approach also exist in other rating jurisdictions.



Annual Revaluations

Chapter 5

Annual Revaluations

Purpose of Revaluation

If the rating system is to provide a sound and equitable tax base, it is important that the rateable values, on which rates are charged, are updated regularly to reflect changes in market rental values. Rental levels for different types of property and for properties in different locations change over time by varying amounts due to many factors, including economic, social and demographic changes which affect property values. The purpose of a general revaluation of all properties is to redistribute the total rates liability fairly amongst ratepayers according to the prevailing rental levels of the properties they occupy. It is not intended to increase rates revenue.

Frequency of Revaluations

The frequency of general revaluations in Hong Kong is not specified in the Rating Ordinance. Under section 11 of the Ordinance, the Chief Executive of the Hong Kong Special Administrative Region may at any time direct the Commissioner of Rating and Valuation to prepare a new list of rateable values, and at the same time designate a date by reference to which the rateable values of the tenements shall be ascertained for the purpose of that revaluation.

Prior to 1999, revaluations were normally carried out every three years or longer. Since 1999, general revaluations have been conducted on an annual basis to ensure that all rateable values in the valuation list are up-to-date and rates are charged equitably according to prevailing market rentals. In fact, the concept of “annual revaluation” was introduced in the first Rating Ordinance in 1845 to provide for the annual review of rateable values.

The frequency of revaluations over the past 44 years and the average change in rateable values in each revaluation are summarised in the following **Table**.

Revaluation Year	Revaluation Interval (No. of years since last revaluation)	Average Increase (+) or Decrease (-) in Rateable Values
1977-78	4	+80%
1984-85	7	+260%
1988-89	4	+17%
1991-92	3	+85%
1994-95	3	+33%
1997-98	3	+16%
1999-00	2	-17%
2000-01	Revaluation on annual basis since 1999	-7%
2001-02		-1%
2002-03		-6%
2003-04		-8%
2004-05		-8%
2005-06		+7%
2006-07		+9%
2007-08		+7%
2008-09		+8%
2009-10		-1%
2010-11		+1%
2011-12		+9%
2012-13		+10%
2013-14		+8%
2014-15		+5%
2015-16		+6%
2016-17		+4%
2017-18		+1%
2018-19		+4%
2019-20		+5%
2020-21		-2%

Designated Valuation Reference Date

When the Chief Executive directs the Commissioner to prepare a new valuation list under section 11, he may designate a date by reference to which the rateable values of all tenements in the new list should be ascertained.¹ All tenements in that list, including those subsequently assessed by interim valuation², will be assessed by reference to that common valuation date to ensure uniformity in assessment levels and fairness to all ratepayers. This concept of designating a prior valuation reference date for general revaluations was introduced through the Rating (Amendment) Ordinance 1981 and was first applied to the valuation list which came into force on 1 April 1984, which had a valuation reference date of 1 July 1983.

Prior to the introduction of a valuation reference date in the 1981 Ordinance, valuers carrying out a general revaluation had to project rental values to a date several months into the future in order to assess the rateable values as at the date of declaration of the valuation list. This was necessary because of the time required for undertaking the massive revaluation exercise, but such projections were difficult due to volatility of the property market. Following the 1981 amendment, valuers could review rateable values based on the analysis of actual rental information as at the valuation reference date.

The practice since 1999 has been to designate the valuation reference date as 1 October in the year preceding the date on which a new valuation list is to take effect. The valuation list which took effect on 1 April 2020 had a valuation reference date of 1 October 2019.

It would of course be desirable to set the valuation reference date as close as possible to the coming into force of the new valuation list. However, there are practical limitations to reducing the 6-month period, including the size of the valuation list and the time required to collect and analyse the rental information and to review and update the rateable values.

¹ There are similar provisions in the United Kingdom. The 2017 revaluation in England and Wales came into effect on 1 April 2017. The valuation date of 1 April 2015 is two years before the new rating list came into effect.

² An interim valuation is made whenever it is necessary to assess a new tenement or any tenement which is not already included in the valuation list.

Preparation of a New Valuation List

There are four main stages in conducting a general revaluation:

- Stage 1: Collection of rental information
- Stage 2: Analysis of rental information
- Stage 3: Review and update of rateable values
- Stage 4: Declaration and public inspection of the valuation list

(1) *Collection of Rental Information*

Collection of rental information is an essential and indispensable part of the revaluation exercise. The Commissioner is given powers under section 5(1)(a) and (b) of the Rating Ordinance to require owners and occupiers of any tenement to provide him with rental particulars and such other information as he might specify. Any person who knowingly makes a false statement or refuses to furnish the particulars requested is guilty of an offence and may be liable for prosecution³. Enforcement actions are undertaken to ensure that ratepayers meet their obligations to provide the information in a timely manner.

For revaluation purposes, a large number of requisition forms (Forms R1A) are sent to ratepayers to collect rental information for all types of properties around the designated valuation reference date. Ratepayers are required to complete and return these forms to the Department within 21 days. These requisition forms are specified by the Commissioner under section 54 and different forms are specified for different types of properties.

Since July 2005, ratepayers have also been able to complete and submit these forms electronically (Form e-R1A). The electronic submission of forms provides an efficient, convenient and user-friendly service as an alternative to the conventional method of submitting a form by post or in person.

³ Any person who knowingly makes a false statement or refuses to furnish any of the particulars specified in a requisition form shall be guilty of an offence and shall be liable on conviction to a maximum fine of \$25,000 or \$10,000 respectively. A person convicted of any of the above offences shall be liable to an additional fine equivalent to three times the amount of rates undercharged.

(2) *Analysis of Rental Information*

All rental information received is entered into the Department's computerised Rental Information System. The rents reported by ratepayers must be adjusted to accord with the basis of ascertaining the rateable value. Section 7(2) of the Rating Ordinance provides that:

“the rateable value of a tenement shall be an amount equal to the rent at which the tenement might reasonably be expected to let, from year to year, if

- (a) the tenant undertook to pay all usual tenant's rates and taxes; and*
- (b) the landlord undertook to pay the Government rent, the costs of repairs and insurance and any other expenses necessary to maintain the tenement in a state to command that rent.”*

The reported rents are analysed and adjusted in accordance with these assumptions. The net rent so derived should be exclusive of rates, management fees and air-conditioning charges. Rent will also be adjusted to account for the difference in time between the rent commencement date and the valuation reference date, to reflect any rent-free periods and to deduct any other charges such as for the hire of furniture during the lease term.

The adjusted rental information will be scrutinised by valuation staff and rents which are not agreed on an arm's length basis (e.g. those between related parties), or which are substantially below or above market levels, will be excluded from the analysis as outliers.

(3) *Review and Update of Rateable Values*

In addition to the requirement of valuing tenements as at the valuation reference date, the Rating Ordinance provides that the rateable value be ascertained on the assumptions that –

- (a) the tenement was in the same state as at the time the list comes into force;
- (b) any relevant factors affecting the mode or character of occupation were those subsisting at the time the list comes into force; and

- (c) the locality in which the tenement is situated was in the same state, with regard to other premises situated in the locality, the occupation and use of those premises, the transport services and other facilities available in the locality and other matters affecting the amenities of the locality, as at the time the list comes into force.

Based on current practice, the valuation reference date is 1 October and the date the list comes into force is 1 April of the following year. The valuer is therefore required to assess the rateable value with reference to the rental level as at 1 October assuming the same physical state of the tenement and the same environment of the locality in which the tenement is situated as at the next 1 April. General changes in rental values after the designated valuation reference date will not be taken into account.

A general revaluation is basically a mass review exercise to update rateable values in the valuation list within a relatively short period of time. The majority of tenements such as residential units, offices and flatted factories are valued by the rental comparison method, for which computer assistance is extensively used. Certain types of tenements, such as hotels, cinemas, schools, public utilities, etc. which are special in nature, are reviewed and assessed manually by other methods of valuation.

When the Computer-assisted Mass Appraisal (CAMA) techniques⁴ are applied for revaluation purposes, new rateable values are generated by the computer using regression models. These provisional assessments are scrutinised and verified by valuers who play an important role in ensuring that the final valuations are reasonable and correct. The accuracy and consistency of new rateable values generated by CAMA techniques depends on the accuracy of valuation characteristics of individual tenements, such as saleable area, view, aspect, nuisance, etc., as well as the validity of their adjustments relative to the reference assessment input into the computer system. Certain valuation characteristics and their adjustments may need to be revised due to a change in the environment or market preference, e.g. the unobstructed sea view enjoyed by a tenement may be blocked following the erection of a new building at the front. To enhance the accuracy and consistency of valuations, the Department has an on-going Rolling Programme to constantly review and update the valuation characteristics and the relativity of assessments within the same building as well as between buildings.

⁴ CAMA techniques – Applications and details are explained in Chapter 9.

(4) Declaration and Public Inspection of the Valuation List

Upon completion of the revaluation exercise, a valuation list containing the descriptions and new rateable values of all assessed tenements will be prepared by the Commissioner. The Rating Ordinance provides that the valuation list may be prepared and maintained in legible or non-legible form, or partly in legible and partly in non-legible form. These provisions empower the preparation and maintenance of the valuation list in digital format, enabling electronic access and inspection.

Having prepared a new valuation list, the Commissioner is required to sign a declaration that, to the best of his knowledge and belief, the list contains a true account of the address, description and rateable value of every tenement included therein. The declaration is usually done in March for the new list to take effect on 1 April. The valuation list, as amended from time to time, remains in force until a new list comes into effect.

Following its declaration, the valuation list is made available for public inspection until the end of May of the year in which it comes into force. From 2005 onwards, the valuation list has been prepared in digital format only. The public can view the entries in both English and Chinese formats in the new valuation list at the website of the Department's Property Information Online (www.rvdpi.gov.hk) during the period of public inspection. The adoption of a digital valuation list is not only environmentally friendly but also user-friendly, providing a high level of convenience to the general public through wide accessibility.

Post-revaluation Statistical Audit

After completion of each general revaluation, a statistical audit is conducted at macro level to confirm that the new rateable values are reasonable, correct, and consistent as at the valuation reference date, and that the required standard of relative equity both between and within groups of assessments has been achieved.

This audit is conducted by reference to the valuation accuracy standards published by the US-based International Association of Assessing Officers (IAAO) which has considerable experience in CAMA with well-developed statistical standards for judging system accuracy. The assessment standards set by the IAAO represent a consensus in the valuation profession

with the objective of providing a systematic means by which assessing authorities can improve and standardise their operations.

The statistical audit is basically the evaluation of appraisal performance by reference to a set of ratio studies⁵ to provide a means for evaluating the accuracy of the appraisal. All rating assessments are grouped into different property types for analysis. The following are examples of areas audited to monitor quality standards:

- the rateable values should be within the acceptable limits in terms of mean rateable value/rent ratio, median rateable value/rent ratio and weighted mean rateable value/rent ratio. All acceptable ratios should be within 0.9 - 1.1 and any ratio below or above this range implies that the rateable values in the property group are under-valued or over-valued;
- relativity equity between different property groups should be maintained within 5% of the overall ratios. Any result outside this range implies that a particular property group may be under-valued or over-valued;
- the dispersion ratios should be within an acceptable range; and
- there should be no bias within property groups. For example, low value assessments are over-valued or high value assessments are under-valued.

Revaluations are carried out to re-establish relative fairness between assessments. The post-revaluation statistical audit, by comparing all available market rents and assessed rateable values, checks whether the revaluation exercise has produced accurate and supportable valuations. It establishes for all district and property groups, the degree to which the assessed rateable values are supported by available market rents and enables continuous improvements to be made.

⁵ According to the “Standard on Ratio Studies” issued by the International Association of Assessing Officers, ratio study is used as a generic term for sales-based studies designed to evaluate appraisal performance. Ratios are obtained by dividing the appraised value by the sale price. Various ratios are computed so as to evaluate the level and uniformity of mass appraisal models. In the Rating and Valuation Department, rental values instead of capital values are used in the ratio studies.

Compliance Check during Revaluation

While the Post-revaluation statistical audit can provide quality assurance to the whole revaluation exercise, any improvements identified from the audit can only be considered in the next revaluation. In order to bring immediate benefits to the revaluation being undertaken, the Department implemented the Automated Property Valuation System in December 2009 to enable online checking of valuation levels of tenements as against available rental evidence in any group on property or district basis as defined by users. Ratio studies can be conveniently conducted at any time during the revaluation. Various analysis reports and rental listings can be generated from the system to further assist valuation staff in the review and fine-tuning of preliminary assessments.



Maintenance of the Valuation List

Chapter 6

Maintenance of the Valuation List

Updating the Valuation List

The valuation list contains the descriptions and rateable values of all tenements that have been assessed to rates. The Commissioner of Rating and Valuation has the duty to maintain and update the list by means of deletions, interim valuations and corrections.

Deletions

The Commissioner may at any time delete from a valuation list any tenement on the following grounds:

- (a) there has been structural alteration¹ to the tenement;
- (b) the tenement comprises two or more tenements that –
 - (i) were previously valued together as a single tenement; and
 - (ii) in the opinion of the Commissioner should be valued as separate tenements;
- (c) the tenement –
 - (i) was previously valued as a separate tenement; and
 - (ii) in the opinion of the Commissioner should be valued together with another tenement as a single tenement; or
- (d) the tenement or part of it ceases to be liable for assessment to rates.

¹ In *Kinco Investment Holding Limited v Commissioner of Rating and Valuation* [2006] LDRA 33-36/2006, the Lands Tribunal held that “structural alteration” in section 24 of the Rating Ordinance should be construed to mean any alteration made to the structure of a tenement so as to change its mode or character of occupation, and it should not depend on whether the stability or safety of the structure has been affected in the context of the Buildings Ordinance.

Interim Valuations

Likewise, the Commissioner may at any time make an interim valuation of a tenement which is not included in a valuation list and is liable for assessment to rates. This applies mainly to tenements in newly completed building or tenements which have undergone structural alterations.

Corrections

The Commissioner may alter a valuation list in force by way of correction of:

- (a) a misdescription or clerical or arithmetical error; or
- (b) a misdescription resulting from a change of building number or street name notified in the Gazette or from the allocation of building numbers under section 32 of the Buildings Ordinance.

Notices of Deletion, Interim Valuation and Correction

The Commissioner will serve a notice in the specified form on the owner or the occupier of the tenement subject to a deletion, an interim valuation or a correction. For the purpose of serving the notice of interim valuation, the “owner or occupier” means the owner or occupier at the time that the Commissioner serves the notice of interim valuation. In the case of an interim valuation or a correction, no rates shall be recoverable by the Commissioner in respect of the tenement until a notice of interim valuation or a notice of correction has been served. Where a correction is made to correct a misdescription resulting from a change of building number or street name, or allocation of building number under the Buildings Ordinance, there is no right of objection against the correction and rates remain payable.

Effective Dates

The notices of deletion, interim valuation or correction must also specify the date on which the respective action becomes effective. The effective date of deletion is the date from which rates shall cease to be chargeable e.g. the date of demolition of the building. For interim valuations, there are provisions governing determination of the effective date. The effective date of an interim valuation of a tenement is:

- (a) where the tenement falls within the application of the Rating (Effective Date of Interim Valuation) Regulation, the date so specified in the Regulation;
- (b) in the case of any other tenement, the date on which the tenement was first occupied; or
- (c) such other date as the Commissioner may, in any particular case, determine.

The Rating (Effective Date of Interim Valuation) Regulation was made in 1995 under sections 28 and 53 of the Rating Ordinance. It applies to tenements in newly constructed buildings by reference to the relevant documents which allow the tenements to be occupied or alienated. If the tenement is used wholly or primarily for domestic purposes, the effective date is 90 days from the date of issue of the relevant document. If the tenement is used for non-domestic purposes, the effective date is 180 days from the date of issue of the document, or the date on which the tenement was first occupied, whichever is the earlier. However, if the non-domestic tenement was occupied before the issue of the relevant document, the effective date is the date of occupation. For the purposes of the Regulation, a relevant document means an Occupation Permit issued by the Building Authority, a Certificate of Compliance or Letter of No Objection issued by the Director of Lands in respect of village-type houses, a Completion Certificate signed by the Director of Housing certifying completion of a building erected by the Hong Kong Housing Authority, or a Consent to Lease, Consent to Assign or Certificate of Compliance issued by the Director of Lands in respect of newly constructed buildings.

The effective date of a correction shall, in the case of a correction of misdescription or clerical or arithmetical error, be the date specified in the notice and in the case of a correction resulting from a change of building number or street name, shall be the effective date of the change.

Objections against Deletion, Interim Valuation and Correction

An owner or occupier who is aggrieved by a deletion, interim valuation or correction may serve on the Commissioner a notice of objection stating fully the grounds of objection. Details are provided in Chapter 7.



Proposals, Objections and Appeals

Chapter 7

Proposals, Objections and Appeals

Legislation

When the first Rating Ordinance was enacted in 1845, provisions were included in this early legislation to enable aggrieved ratepayers to object and appeal against rating assessments on the ground of over-valuation or other grounds.

Under the current provisions of the Rating Ordinance, any aggrieved person may serve on the Commissioner of Rating and Valuation a “proposal” to alter an entry in a new valuation list or an “objection” against a correction, deletion or insertion to an existing valuation list. If that person is not satisfied with the Commissioner’s decision on the proposal or objection, he may lodge an appeal with the Lands Tribunal. The judgment of the Tribunal on facts and valuation matters shall be final but further appeal on any points of law can be made to the higher courts.

Proposals

Following a general revaluation¹, a new valuation list is declared by the Commissioner in the month of March and is made available for public inspection during the months of April and May of the year the list comes into force. The new rateable values take effect on 1 April of the year in which the valuation list is declared.

Section 37 of the Ordinance provides for any person who is aggrieved by an entry in the valuation list to serve a proposal in the specified form on the Commissioner for alteration of the valuation list from 1 April of that year. Although section 37(1) requires that the proposal must be served within the months of April and May, section 37(1A) permits the Commissioner to accept proposals served on him at any time after the declaration of the list in March and before 1 June in the year where a new list is prepared on the direction of the Chief Executive.

¹ A general revaluation is the reassessment of the rateable values of all properties based on prevailing market rentals. (See Chapter 5).

The person making the proposal must be aggrieved on one of the following grounds:

- (a) that a tenement for which he is liable to pay rates has been valued above its proper rateable value;
- (b) that a tenement included in a valuation list ought to be omitted therefrom;
- (c) that a tenement which ought to be included in a valuation list has been omitted therefrom; or
- (d) that a tenement included in a valuation list has been valued below its proper rateable value.

If the person serving the proposal is neither the owner nor the occupier of the tenement, he must also serve copies of the proposal on both the owner and occupier, and must notify the Commissioner of such service within the months of April and May of that year. Within 14 days of service, the owner or occupier may send comments on the proposal to the Commissioner and the person serving the proposal.

The person making the proposal must be “aggrieved”. There appears to be little difficulty for an owner or occupier to demonstrate that they are aggrieved. If a person other than the owner or occupier makes a proposal on grounds (c) or (d), he may be taken as “aggrieved” provided that he is a ratepayer for some other property in Hong Kong.²

In Hong Kong, there is no provision in the Rating Ordinance for the Commissioner to make a proposal for alteration of the valuation list.

Upon receiving a valid proposal, the Commissioner will review the assessment and may confirm or alter the entry in the valuation list. The decision must be issued before 1 December of the year in which a new list comes into force and before 1 September in other years.

² *Arsenal Football Club Ltd. and Smith (Valuation Officer) v Ende* [1976] RA 126. The UK Court of Appeal held that every ratepayer who considered the hereditament of any other ratepayer in the same rating area was under-assessed was a person “who is aggrieved...by any value ascribed” in the valuation list and was entitled to make a proposal for alteration. This decision was subsequently upheld by the House of Lords.

Objections

Whenever the Commissioner issues a notice of alteration to a valuation list by way of a correction, a deletion or an interim valuation³, an aggrieved owner or occupier may, within 28 days, serve on the Commissioner a notice of objection in the specified form in accordance with section 40 of the Ordinance, stating fully the grounds of objection, i.e.:

- (a) the proposed correction is wrong; or
- (b) the tenement to be deleted ought not to be deleted; or
- (c) the tenement which is subject to an interim valuation is valued above its proper rateable value or is not liable for assessment to rates.

After considering a valid objection, the Commissioner shall confirm, vary or set aside the interim valuation, the deletion or the correction to the valuation list. The Commissioner is required to issue his decision on the objection within six months after the expiration of the 28-day objection period.

The specified forms for making proposal and objection are available free of charge from the Department and District Offices. They can also be obtained by facsimile through the Department's 24-hour interactive telephone enquiry system or downloaded from its website. Service of these forms on the Commissioner may be either in person or by post, but service by facsimile is not acceptable. A certificate of posting issued by the Post Office can be taken as evidence of service. Proposals and objections can also be submitted electronically through the E-form service at the Department's website. The Commissioner has the discretion to accept proposals and objections that are not in the specified form.

Withdrawal and Agreement

At any time before the Commissioner issues a notice of decision, the person making a proposal or objection may withdraw it in writing. Alternatively, such person and any person served with a copy of the proposal may agree with the Commissioner to alter the valuation list

³ An interim valuation is made whenever it is necessary to assess a new tenement or any tenement which is not already included in the valuation list.

or to confirm, vary or set aside the interim valuation, deletion or correction. The agreement or notice of decision issued by the Commissioner in such cases shall be in the specified form.

The Commissioner does not have the power to alter the assessment of a tenement which is not subject to a valid proposal or objection. Therefore, it might arise that similar assessments in a building which are not contested may be valued at different levels after review of proposals or objections in respect of other assessments in the same building. Such inconsistencies will be rectified in the following revaluation.

Under the Hong Kong rating system, the proposal or objection process provides ratepayers with a simple and low cost means of challenging the Commissioner's assessment and provides the Commissioner with an opportunity to review his assessment in the light of any representations or new information submitted by a ratepayer. It is only after this step that the case can be appealed and referred to the more costly and time-consuming process of the Tribunal⁴.

Appeals

A person who is dissatisfied with the Commissioner's decision in respect of a proposal or objection may appeal to the Tribunal. The appeal must be lodged with the Tribunal within 28 days of service of the notice of decision. A copy of the notice of the appeal must also be served on the Commissioner within the same period. If the appellant is neither the owner nor the occupier of the tenement, he must also serve copies of the notice of appeal on the owner and occupier, both of whom may be heard on the hearing of the appeal.

Grounds of appeal are confined to those stated in the proposal or objection⁵. However, the Tribunal may allow new facts to be raised at the hearing provided they fall within the stated

⁴ Prior to 1974 the only redress was to appeal to the District Court. An amendment introduced by the Rating Ordinance 1973 provided for proposals and objections to be first made to the Commissioner. If the person on whom the decision had been served was not satisfied with the decision, he could then lodge an appeal to the District Court, replaced by the Lands Tribunal from 1974 onwards.

⁵ Section 42(2), Rating Ordinance. In *Geoffery Holdings Ltd. v Commissioner of Rating and Valuation* LDRA 38/1999, the Tribunal rejected a new ground but allowed amendments of the Notice of Appeal to tie in with the ground stated in the original objection.

grounds of the proposal or objection.⁶ The onus of proof is rested with the appellant to show that the rateable value is incorrect.⁷

Within 21 days of service of a notice of appeal, the Commissioner is required to file a notice of opposition with the Registrar of the Tribunal and serve a copy of the notice on the appellant. The Commissioner must state in the notice the grounds of opposition and his intention to be heard.

The appellant must, within 14 days of service of the Commissioner's notice of opposition, apply to the Registrar to fix a date for hearing the appeal. At the same time, the appellant must also serve a copy of the application on the Commissioner. If the appellant fails to file an application for hearing within the time limit, the appeal shall lapse. However, the Tribunal has wide discretionary powers to extend the time limit for filing or lodging any document in any proceedings.

The Registrar will notify the appellant and the Commissioner of the date of the hearing. Where the appellant is neither the owner nor the occupier of the affected tenement, he must within seven days of this notification serve a copy of the notice of hearing on both the owner and occupier.

At any time after filing but before determination of an appeal, the appellant may serve a notice on the Commissioner to discontinue the proceedings or withdraw the appeal. The Commissioner may apply to the Tribunal within 14 days of such service for an order of costs.

Alternatively, the appellant and the Commissioner may negotiate on settlement of the appeal. If the parties can agree on the revised rateable value and other terms of settlement prior to the hearing, they can file a consent application with the Tribunal for issue of a Consent Order. The Tribunal may issue a Consent Order in accordance with such terms. Normally attendance of the parties is not required unless for special reasons the Tribunal directs otherwise.

⁶ *Cheung Fat-fan and Fu Ah-kum v Commissioner of Rating and Valuation* [1977] HKLTLR 218. The Tribunal found that "no new ground was raised in the appeal... The appellant raised new facts in the appeal but there does not appear to be anything in the Rating Ordinance to prevent him from so doing". A new Section 10(6) was added in 1982 to the Lands Tribunal Ordinance to empower the Tribunal to admit any evidence, whether or not it would otherwise be admissible, and attach such weight to it as may be appropriate in the circumstances.

⁷ *Kader Industrial Co. Ltd. v Commissioner of Rating and Valuation* [1958] DCLR 207.

With a view to saving the costs of litigation, the appellant or the Commissioner may prior to the hearing advise the other party in writing of the valuation he is prepared to accept as being the proper rateable value of the tenement. The appellant or the Commissioner is at liberty to consider whether or not the offer by the other party is acceptable. A copy of the offer enclosed in a sealed envelope may be lodged with the Tribunal. It will be opened only after the Tribunal has handed down its decision. If the valuation determined by the Tribunal is not higher than the appellant's offer, the Commissioner will be ordered to bear his own costs and to pay the costs incurred by the appellant after making the offer. By the same token, if the Tribunal's valuation is equal to or exceeds the Commissioner's offer, the appellant will be ordered to bear his own costs and to pay the costs incurred by the Commissioner after the Commissioner so advised.

Rates Payable

Notwithstanding any outstanding proposal, objection or appeal, rates must be paid as demanded. Any overpayment resulting from a reduction of the rateable value will be adjusted in subsequent rates demands. In very exceptional circumstances, the Commissioner may order to withhold payment of all or part of the rates due, pending a decision on the appeal to the Tribunal. The Commissioner may require the ratepayer to provide a banker's undertaking or other appropriate security for the payment of rates being held over.

Lands Tribunal

The Lands Tribunal in Hong Kong was established by statute in December 1974⁸ to determine disputes between claimants and the Government concerning land matters. It was modelled on the UK Lands Tribunal.

The Rating Ordinance provides for lodging of rating appeals to the Tribunal and for application of the Lands Tribunal Ordinance to such appeals⁹. In *Yiu Lian Machinery Repairing Works Ltd. and Others v Attorney General* HC MP 179-181/80, the High Court held

⁸ The Lands Tribunal Ordinance, Cap. 17.

⁹ Sections 33, 42(1) & (4), Rating Ordinance. Application of the Lands Tribunal Ordinance and Rules to rating appeal procedures was added by section 22 of the Rating (Amendment) Ordinance 1995 in order to avoid ambiguity.

that the Tribunal had jurisdiction to decide on rating appeals. An attempt to take such an appeal directly to the High Court failed.

Amended in 2002, under section 10(2)(d)(i) of the Lands Tribunal Ordinance, the Tribunal also has the power to extend time for the submission of proposals and objections under the Rating Ordinance. Section 10(2)(d)(i) reads: “*Without prejudice to the generality of the powers vested in it under subsection (1), the Tribunal may – ... for good cause, enlarge the time, whether or not that time has already expired, fixed by any Ordinance – ... for the giving of any notice (and whether or not the notice relates to any proceedings).*” It must however be emphasised that a good cause must be demonstrated before the Tribunal should exercise its discretion under the section¹⁰.

The Tribunal membership comprises both legal and valuation experts. It is viewed by the public as a forum where lay people may contest a professional valuation without necessarily being involved in costly legal expenses. Over the years, the Tribunal has established useful precedents on rating and valuation matters. Appeal cases can be dealt with quickly and inexpensively.

In addition to hearing and determining rating appeals, the Tribunal may:

- (a) make such order as it thinks proper;
- (b) award costs to any party¹¹;
- (c) direct the Commissioner to amend the valuation list in any manner; and
- (d) make such other direction as to the payment of rates as may be necessary.

The decision of the Tribunal is final on issues of valuation and findings of fact. Further appeals can only be on points of law to the Court of Appeal and eventually to the Court

¹⁰ The Tribunal’s power to extend time for the submission of proposal under section 37 of the Rating Ordinance was challenged in *Towerich Limited v Commissioner of Rating and Valuation* LDMP 3/2009. The Tribunal ruled that under section 10(2)(d)(i) of the Lands Tribunal Ordinance it did have jurisdiction to enlarge the time for serving a proposal. Tribunal’s decision was upheld by the Court of Appeal in *Towerich Limited v Commissioner of Rating and Valuation* CACV 177/2009.

¹¹ The Lands Tribunal cannot award interest on the difference between the rates paid and the amount determined by the Tribunal. However, the Commissioner has the power under section 42A(1) of the Rating Ordinance to order holding over of rates payment pending the outcome of an appeal.

of Final Appeal. Justice of Appeal D. Cons said in a case stated from the Tribunal for determination by the Court of Appeal that¹²:

“Methods of valuation are matters that we apprehend ought to be left to the Commissioner and that the courts should only interfere if the method adopted in any particular instance is wrong in principle or excluded upon a proper construction of the statute.”

However, the Tribunal may, and on application by a party shall, reserve any question of law for consideration by the Court of Appeal which will hear and send its opinion to the Tribunal. In addition, the Tribunal may within one month of issuing any decision, review it either on its own motion or upon application by any party.

The requirements and processes of making proposals or objections and further appeals to the Tribunal are illustrated in the **Flow Chart** at the end of this chapter.

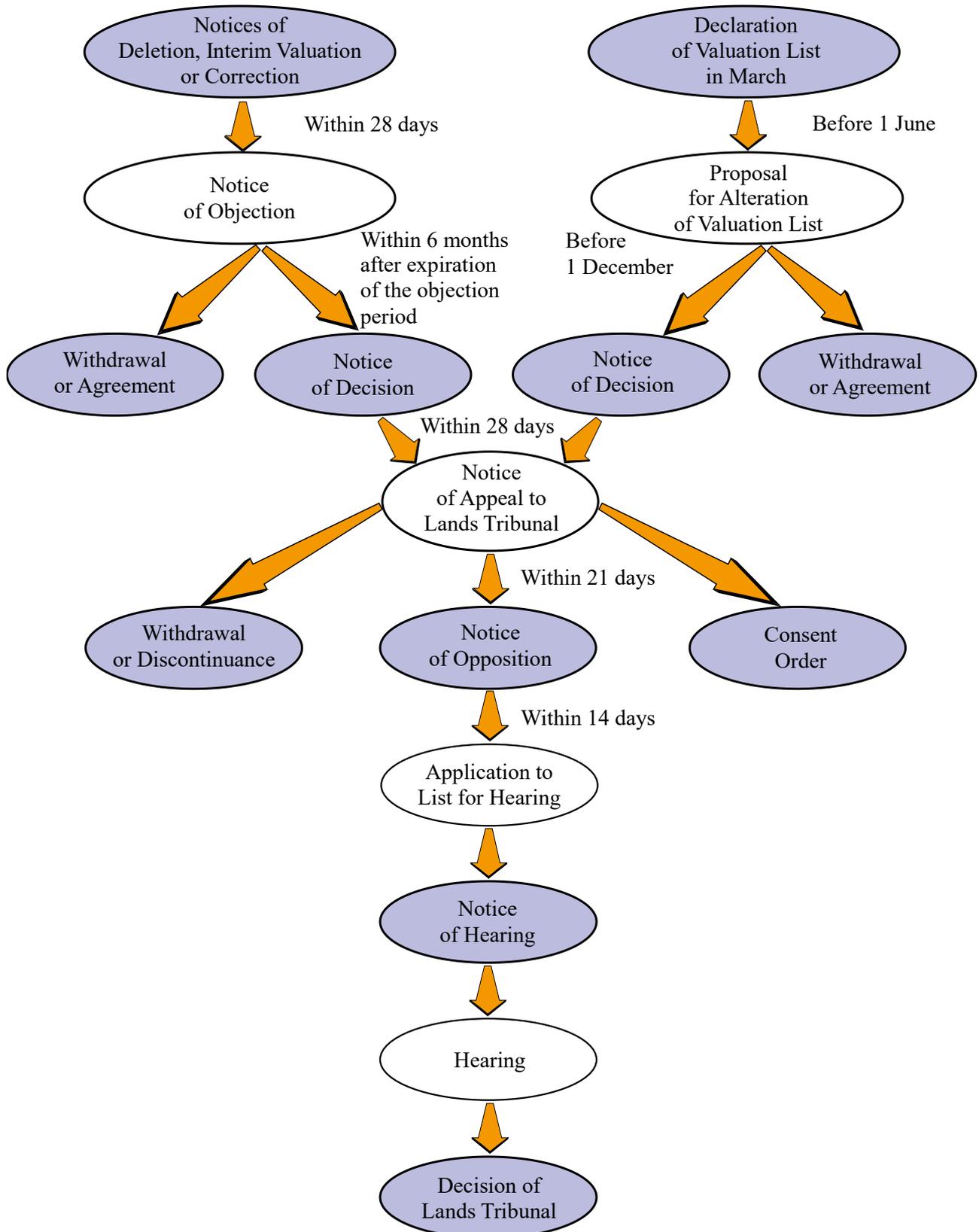
Fairness and Equity

It is apparent that the objection and appeal procedures of a well-established rating system should be open, transparent, fair and accessible. In Hong Kong, a ratepayer has free access and ample opportunities to discuss the valuation and the basis of assessment with valuers of the Department before considering making any formal objection or appeal. If he is not satisfied with the explanation, he can lodge with the Commissioner an objection or a proposal against the assessment. The procedures are simple and the lodgement has historically been free of charge. The Commissioner will consider any representations and will review the assessment before issuing a notice of decision. If the ratepayer is still not satisfied, he can appeal to the Tribunal where he may contest the valuation without incurring substantial legal costs. On the rare occasions when there are disputes on points of law, a ratepayer may further appeal to the law courts. Such accessible and inexpensive objection and appeal practices are fundamental elements in Hong Kong’s rating system. They have been conducive to the successful application of property rates as an equitable and effective indirect tax, well recognised as such by ratepayers and by the Government.

¹² *Commissioner of Rating and Valuation v Yiu Lian Machinery Repairing Works Ltd.* CA 85/84.

Flow Chart

Processes of making proposals or objections to the Commissioner and further appeals to the Lands Tribunal





Rates Exemptions

Chapter 8

Rates Exemptions

Exemption from Liability for Rates

Rates are an indirect tax on the occupation of property and are levied on all rateable tenements without regard to the occupier's ability to pay. The underlying philosophy is that the occupier of every property should share the rates burden in proportion to the rental value of his property. Exemption from rates is only granted in limited and specific circumstances.

The history of rates exemption dates back to 1909 where Ordinance No. 24 of 1909 first empowered the Legislative Council by resolution to exempt any village or area in Hong Kong from assessment to rates.

The current provisions for exemption from liability for rates take two forms. One is exemption from assessment to rates, whereby no assessment will appear in the valuation list. The other is exemption from payment of rates, where an assessment is included in the valuation list but exemption from payment of the rates is granted by administrative means.

The general rationale for granting rates exemptions can be divided into a number of broad categories: social (e.g. cemeteries and crematoria), administrative (e.g. premises below a prescribed rateable value), political (e.g. premises occupied by consulates and the military) and historical (e.g. certain village houses in the New Territories).

Exemption from Assessment

The statutory provisions under which tenements are exempted from assessment to rates are contained in section 36(1) of the Rating Ordinance.

The tenements which are exempt from assessment to rates are:

- agricultural land and buildings;
- New Territories dwelling houses occupied in connection with agricultural land or agricultural operations;
- New Territories village houses within designated areas, complying with the prescribed size, height and type criteria;
- tenements built for the purpose of public religious worship and used wholly or mainly for such purpose;
- cemeteries and crematoria;
- properties owned and occupied for public purposes by the Government, the Legislative Council Commission or the Financial Secretary Incorporated;
- properties owned by the Government and occupied as dwellings by public officers by virtue of their employment;
- properties owned by the Housing Authority and occupied for public purposes by the Government;
- military land;
- certain resited village houses in the New Territories;
- properties occupied for domestic purposes in cottage areas or temporary housing areas; and
- properties of which the rateable value would not exceed the prescribed amount (currently at \$3,000).

Exemption from Payment

Exemption from payment of rates is provided for in the Rating (Miscellaneous Exemptions) Order made under section 36(2) and (3) of the Rating Ordinance.

Section 36(2) gives the Chief Executive in Council the power to declare any class of tenement or area to be exempted from payment of rates. To date, the Rating (Miscellaneous Exemptions) Order 1981 is the major order promulgated under this provision. This Order supplemented the scope of exemption already provided under section 36(1) of the principal Ordinance, by exempting the following classes of tenements from payment of rates:

- (a) all tenements, or parts thereof, used wholly or mainly for public religious worship, other than those exempt from assessment under section 36(1). (This provision gives exemption to non-purpose-built premises.)
- (b) all tenements, or parts thereof, occupied for public purposes by or on behalf of the Government or the Financial Secretary Incorporated (FSI) other than those exempt from assessment under section 36(1). (This provision gives exemption to premises which are occupied but not owned by the Government or the FSI.)
- (c) all tenements, or parts thereof, held by the Government and occupied or to be occupied as dwellings by public officers by virtue of their employment other than those exempt from assessment under section 36(1). (This provision gives exemption to non-Government owned premises.)

Section 36(3) authorises the Chief Executive to exempt any tenement or part of any tenement from the payment of rates, wholly or in part. This exemption provision is limited to particular tenements, and not classes of tenements. For example, this provision is used for the exemption of consular premises and residences of accredited consular officers, as well as certain village houses situated outside of designated village areas in the New Territories and occupied by an indigenous villager¹. In practice, the Chief Executive has delegated his authority under this provision to different public officers and this provides a simple administrative means of according exemption where the policy is clearly determined.

It can be seen that the exemption provisions under section 36 are clearly separated into those tenements likely to be exempt permanently and those for which exemption might be granted temporarily, the latter in most cases depending on the nature of the occupation. Tenements likely to be exempt permanently are generally provided with exemption from assessment under section 36(1) and there will be no entry of them in the valuation list. Other tenements are granted exemption from payment under section 36(2) or 36(3), thus allowing

¹ An indigenous villager is a person descended through the male line from a person who was in 1898 a resident of an established village or town in the New Territories.

closer monitoring of the exemption position for these tenements as each one of them has been assessed and entered in the valuation list.

As at 1 April 2020, about 29 800 tenements in the valuation list were exempted from payment of rates. This represented slightly more than 1% of the total number of assessments in the valuation list and a majority of these exempted tenements were New Territories village houses.

Exempted Properties

As noted above, the types of property entitled to exemption from assessment to rates are specific and limited, and are specified in section 36(1) of the Rating Ordinance. Further elaboration on some of these different property types is set out below.

Agricultural Land and Buildings (Section 36(1)(a))

Agricultural land is defined in the Ordinance as “*land used as farm land, a fish pond, a market garden, a nursery ground, an orchard or for animal husbandry*”. For practical purposes, this definition is taken to include all normal agricultural purposes, including, for example, oyster beds and land used for flower and tree blossom growing (whether on the land or in pots). Nevertheless, where land is used primarily for the sale of an agricultural product rather than growing, so that the activity is mainly of a retailing nature, the tenement would not be exempted. For example, if plants are not grown on site, but are brought in at their mature stage from elsewhere for direct sale to consumers, no exemption would be granted as the use does not meet the requirements for exemption. Agricultural buildings include any structures other than a dwelling house, situated on, or adjacent to agricultural land used wholly or mainly in connection with such land. Dwelling houses are separately exempted under section 36(1)(b) if occupied in connection with agricultural land.

New Territories Village Houses (Section 36(1)(c))

Under section 36(1)(c), village houses are exempted from assessment to rates provided they meet the specified size, height and type criteria² and are within the boundaries of areas designated by the Chief Executive for this purpose. Such areas are called Designated Village Areas (DVAs). For village houses inside a DVA, the exemption applies irrespective of whether or not they are occupied or owned by indigenous villagers. The exemption runs with the tenement and is not personal to the owner or occupier.

The exemption of village houses inside DVAs was first implemented through the Rating (Amendment)(No.2) Ordinance 1975. The first designation exercise was completed in January 1976 and involved some 40 village areas. Several hundred DVAs were added in subsequent years as rating was extended to the whole of the New Territories. With the redevelopment of many older village houses and the urbanisation of traditional village environs, the nature of many of the DVAs began to change. The new village type houses were in many cases quite luxurious and many were sold to or occupied by persons who had no connection with indigenous villagers. Consequently, by the mid-1980's, it was not uncommon to find substantial numbers of non-indigenous villagers enjoying exemption benefits not intended for them.

In 1992, the Executive Council endorsed the policy that DVAs should be restricted to village areas which retained the essential character of New Territories villages. Following this clarification of policy, a series of reviews resulted in the de-designation of 227 DVAs and the amendment of boundaries of 18 DVAs up to 1 April 2020, leaving 105 DVAs still existing at that date, approximately half of which were in the Yuen Long District. Village houses excluded from a DVA will be assessed to rates.

De-designation has become an on-going programme to review all DVAs and to amend or cancel the boundaries of those areas which no longer meet the “essential character”

² Any building situated within a DVA is exempt from assessment to rates under section 36(1)(c) if

- (a) it has a roofed area not exceeding 65.03m² and does not exceed 8.23m in height; or
- (b) it has a roofed over area not exceeding 92.90m², does not exceed 7.62m in height and complies with certain standard plans; or
- (c) it is a pre-war dwelling house, irrespective of size and height, which is of the type normally built for New Territories residents.

requirements. In reviewing each DVA, consideration is given to its character and location and to any re-development taking place.

Village houses situated outside a DVA may be eligible for exemption from payment of rates under section 36(3), provided they are occupied (or are vacant and intended to be occupied) by indigenous villagers or their immediate family members for domestic purposes and they satisfy the prescribed size, height and type criteria. The spirit is to provide exemption to genuine indigenous villagers residing in the New Territories in traditional village houses. These building requirements are essential for village houses occupied by indigenous villagers or their immediate family members to be entitled to exemption from payment of rates.³ Application for exemption on these grounds has to be made by the indigenous villagers concerned to the Director of Home Affairs who administers exemption from payment relating to village houses and is the approving authority for this purpose.

Premises Used for Public Religious Worship (Section 36(1)(d))

Section 36(1)(d) provides exemption for tenements which are built for public religious worship and used wholly or mainly for such purpose. This exemption requires not only that the premises are built and used for religious worship but also that they must be open to the public for such purpose.⁴ Hence purpose-built churches and temples are exempt. Purpose-built Chi Tongs in the New Territories used wholly or mainly for villagers' ancestral worship are also eligible for exemption from assessment under this provision. For such cases, advice may be sought from the District Officers of the Home Affairs Department who are familiar with traditional New Territories matters.

³ *Secretary for Justice v Liu Wing Kwong* HCA 5120/2001. In the subject case, while occupied by an indigenous villager, the village house, being situated in a village area de-designated on 29 July 1994, was found to be of three and half storey high with a building height exceeding 7.62m. Hence, it was not eligible for exemption from payment of rates under section 36(3). Exemption of village houses occupied by indigenous villagers was also held not a customary right and assessing village houses outside a DVA was not considered a breach of Article 40 of the Basic Law. Besides, it was ruled that de-designation did not contravene the Hong Kong Bill of Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights as well as the Basic Law. The defendant has filed an appeal to the Court of Appeal.

⁴ In *Gallagher (Valuation Officer) (Respondent) v Church of Jesus Christ of Latter-day Saints (Appellant)* [2008] UKHL 56, the judgment of the House of Lords read "...The Temple is not a place of 'public religious worship' because it is not open to the public. It is not even open to Mormons. The right of entry is reserved to members who have acquired a 'recommend' from the bishop after demonstrating belief in Mormon doctrine, an appropriate way of life and payment of the required contribution to church funds. Such members are called Patrons and the rituals which take place in the Temple are exclusive to them..." and thus it was held that the Temple should not be exempted. In light of this UK's judgment, the Department had taken action to cancel existing exemptions in respect of those parts of tenements occupied as the "Temple".

Where premises being used wholly or mainly for public religious worship are not purpose-built, but are merely adapted for that use, they will be eligible for exemption from payment of rates under the Rating (Miscellaneous Exemption) Order 1981. For the purpose of exemption, such religious worship occupation may cover all commonly accepted religious activities related with the church or temple, including prayer rooms, libraries for religious books, ancillary administrative/pastor's office occupied by the congregations responsible for organising religious activities in the premises for public attendance, etc. The 1981 Order provides for exemption of parts of a tenement where only those parts are used for public religious worship. Exemption may be refused where the premises are used for religious purposes only on an occasional basis. Periodic inspections are carried out on non-purpose-built premises which are exempted from payment on religious worship grounds to check on any change of use and to determine whether exemption should continue to be granted.

Premises Owned and Occupied for Public Purposes (Section 36(1)(f))

Properties owned and occupied for public purposes by the Government, the Legislative Council Commission or the Financial Secretary Incorporated are exempted from assessment to rates. Examples include public libraries, cultural centres and swimming pools, but where premises within these buildings are let out, such as restaurants or refreshment kiosks, these parts will not be exempt, as they do not meet the exemption criteria.

Resited Village Houses (Section 36(1)(j))

Houses made available by the Government within resited villages in exchange for land resumed by the Government from the former owners of such land are granted exemption from assessment. Such resumptions have typically resulted from village removal schemes for construction of reservoirs, new towns or other development projects in the New Territories. The resited village houses may have been built either by the Government or by private individuals with government financial assistance. Such resited village houses are exempted from assessment to rates regardless of occupation and ownership status until redeveloped.

Minimum Rateable Value (Section 36(1)(l))

Any tenement for which the estimated rateable value does not exceed an amount prescribed by resolution of the Legislative Council is exempted from assessment to rates. The prescribed amount is reviewed annually following each general revaluation and for the financial year 2020-21 remained at \$3,000, to which it had been raised in 1997. The purpose of this exemption is primarily to avoid administrative cost where the rates revenue is likely to be less than the cost of maintaining the assessment and collecting the rates revenue. It is not intended as a measure of exemption for small tenements on social or other grounds.

Exemption vs Subvention

The types of properties which are eligible for exemption from assessment or payment of rates are limited. There has been resistance in the past when proposals were made to extend the classes of property benefiting from exemption. Prior to 1954, properties occupied by charitable institutions and certain other community-type or non-profit organisations were exempt from assessment to rates. In 1954, the Government implemented a policy of no hidden subsidies, and the legislation was amended to remove many of these existing exemptions. Following the removal of exemption for such tenements, the Government provided for the cost of rates payments in its subventions to eligible charitable and welfare organisations. This meant that tenements occupied by non-profit charitable organisations and voluntary welfare organisations were assessed to rates, but rates paid were reimbursed by the Government. This arrangement was introduced to avoid hidden subsidies but at the same time allowed for a much stricter exemption policy and has avoided many potential challenges regarding eligibility for exemption which might otherwise have arisen.

This process of initial liability for rates payment and subsequent subvention is seen by some to be cumbersome and an uneconomic use of resources, in that rates are demanded and paid to the Government with money which has either been allocated to the ratepayer in advance for that purpose, or which is subsequently reimbursed. However, if exemption is granted to one organisation, other bodies will also expect similar concessions. To find a clear dividing line without allowing a continuous enlargement of such criteria can be difficult in terms of statutory provision, and the integrity of the rating system can be threatened in such circumstances. In addition, it is difficult to retract exemption once it is given and the subvention approach allows the Government a higher level of flexibility to meet policy objectives in changing circumstances.



Computer-assisted Mass Appraisal

Chapter 9

Computer-assisted Mass Appraisal

The Rating and Valuation Department first introduced computer-assisted mass appraisal (CAMA) techniques in assessing properties to rates in the mid-1980s. CAMA has since been extensively applied to the Department's work, enabling valuation staff to systematically assess large numbers of properties within a short time-frame and to produce more accurate and consistent valuations. Hong Kong's rating system of conducting massive general revaluations on a yearly basis makes the use of such techniques indispensable.

The International Association of Assessing Officers (IAAO) has defined mass appraisal¹ as the systematic appraisal of various groups of properties as at a given date using standardised procedures and statistical testing. CAMA techniques involve the development of mathematical equations, schedules and tables, collectively known as valuation models, which can be used to analyse huge quantities of data and predict the values of properties over large areas.

This chapter outlines the historical development of CAMA in the Department, its main applications and the methodology and valuation approaches. It also discusses how mass appraisal techniques can be enhanced through integration with digital spatial maps in Geographic Information Systems (GIS).

Historical Development of CAMA for Rating in Hong Kong

Prior to the introduction of CAMA to the Department in the mid-1980's, valuations were carried out manually. The Department had experienced a substantial increase in workload since the 1970s, with the construction of more and more high-rise buildings, the development of new towns and the extension of rating to the New Territories. There was a recognised need to adopt a systematic and sustainable approach by making full use of computers to enhance the efficiency and consistency of rating assessment work.

¹ Gloudemans, Robert J & International Association of Assessing Officers (1999). *Mass Appraisal of Real Property*. International Association of Assessing Officers, Chicago, Ill. p12.

The comprehensive use of computers in valuation work began with the installation of the Department's first micro-computer in 1986, accompanied by a comprehensive exercise to input property data into the computer system. The 1988-89 general revaluation saw the successful completion of the first CAMA exercise for residential, office and industrial premises.

Since its move to computerisation, the Department has been committed to adopting international best practices, exploiting information technology in all aspects of its business operations and providing the required levels of training to staff to apply advanced mass appraisal techniques. Substantial resources have also been invested to develop new computer systems and upgrade existing ones to support various departmental functions. Since 2000, all staff have been provided with their own dedicated personal computers and by 2020, over 35 computer systems were in operation, supported by a network of mid-range servers manned by operators 24 hours a day.

The major computer systems are fully integrated with one another, serving the operational and administrative needs of internal staff, as well as providing public services to external customers. The property and valuation data are stored in a central repository called the Property Master System (PMS) complemented by the GIS-supported Integrated Property Database (IPDB), which provides textual and graphical database and map-based valuation functions to facilitate property valuation. Other important systems include the Rental Information System (RIS) which maintains all rental information, the General Revaluation System (GRS) which facilitates the reassessment of properties and feeds in the reassessed values to the PMS upon completion of the revaluation, and the Interim Valuation System (IVS) which facilitates the assessment of newly completed properties.

CAMA Applications

General Revaluations have been conducted annually in Hong Kong since 1999. The period between the valuation reference date (1 October) and the effective date of the new valuation list (1 April of the following year) means that each exercise has to be completed within a few months. This formidable task requires the review of some 3.35 million properties which comprised about 2.57 million assessments in the valuation list as at 1 April 2020. It is apparent that extensive computer assistance is needed to complete the revaluation exercise on time and with the resources available.

CAMA applications to annual revaluations include the assessment of residential, office, industrial and retail premises. Since 2004, advanced CAMA techniques using GIS graphic maps stored in the Department's IPDB have been developed to further facilitate the assessment of shops, retail premises, village houses, advertising signs and various other types of properties. User-friendly map-based as well as spreadsheet functions are provided in the IPDB platform.

CAMA techniques, using multiple regression analysis, are also applied to scrutinise the adequacy of the stated consideration in property sale transactions for stamp duty purposes.

Methodology and Valuation Approach

In applying CAMA techniques, emphasis is placed on valuation models, standardised practices and statistical quality control of uniformity and consistency. The techniques/applications employed comprise:

- (1) Reference Assessment Approach (RAA),
- (2) Multiple Regression Analysis (MRA),
- (3) Indexation Approach, and
- (4) Integrated Property Database (IPDB).

Before applying any of the above techniques/applications, analyses of rents and/or sales transactions are required to understand the characteristics of different types of properties in different locations and examine the factors affecting property values.

To illustrate how the above approaches are applied, the following sections discuss the use of rental analyses and a combination of the CAMA techniques in assessing rateable values during the annual revaluation exercise.

Rental Analysis and Adjustments

All available rental information is entered and stored in the RIS. The rental records are scrutinised by valuation staff and rents which are regarded as being far outside the normal range of market levels, or “outliers”, are excluded from analysis.

To enable meaningful analyses of the remaining rents, appropriate adjustments are needed to conform to the basis of the rating hypothesis, and the reported rents are accordingly adjusted where necessary to arrive at the net rent, exclusive of rates, management fees and air-conditioning charges. Rents are also adjusted to reflect other factors, such as any rent free period in the lease term, time difference between the date of tenancy agreement and the valuation reference date, etc.

CAMA Techniques/Applications: (1) Reference Assessment Approach (RAA)

This method is applicable for assessing properties that are more homogeneous in property attributes and valuation characteristics. Properties that are valued using the RAA include residential flats, offices, flatted factories and industrial/office premises. Groups of detached, semi-detached or terraced houses are also assessed by the RAA.

Under the RAA, a typical property unit within a building is selected as the “reference assessment”. Mathematical relationships between the reference assessment and each of the other units selected in the building, known as the “member assessments”, are then established with regard to the attributes affecting the unit’s rental value. Once the basic rate, i.e. dollar value per square metre per month ($\$/m^2$) for the reference assessment is determined based on the result of sophisticated rental and multiple regression analyses, the rateable values of the member assessments can be generated automatically by the computer, with reference to the unit’s floor area and other pre-determined adjustments relative to the reference assessment.

There are three important steps involved in the RAA:

- (i) selection of the reference assessment and the coverage of its associated member assessments;

- (ii) determination of the mathematical formula to compute the rateable values of the member assessments by way of setting adjustments between the reference assessment and each of the member assessments; and
- (iii) estimation of the basic rate ($\$/m^2$) for the reference assessment.

(I) *Reference Assessment and Coverage of its Member Assessments*

Generally, the RAA is applicable to a group of properties comprising three or more assessments of the same type.

The selected **Reference Assessment** for a building should:

- (a) be a typical unit in the building, having the most common attributes or with similar units occurring most frequently within the building; and
- (b) have no Composite Adjustment and if possible, no Ancillary Value component. *(These two terms will be explained in the following pages).*

“**Member Assessments**” are defined as the group of assessments to which a particular reference assessment refers. They are usually other tenements in the building with a property type(s) same as or similar to that of the reference assessment. For example, in a residential building having shops on the ground floor and residential flats of various sizes on upper floors, a flat will be selected as the reference assessment to cover all residential units (excluding the shops) as its member assessments.

In a large development consisting of a few blocks or towers, usually each block/tower will have its own reference assessment, with all assessments of the same property type in that block/tower being its member assessments. However, the RAA allows the setting up of more than one reference assessment in a building as well as linking member assessments of similar units, e.g. duplex units, across different buildings.

As the RAA works on the relationship built between the reference assessment and member assessments, to address the issue of having to create a new set of relativity every time

when there is a change to or replacement of the reference assessment arising from structural alterations, etc., the Department has since July 2014 adopted a refined approach of designating a “virtual” reference assessment that is not in actual existence as the reference assessment. Though the virtual reference assessment is a notional property unit, it inherits the same set of valuation characteristics as a typical property unit within a building and serves as if it is the reference assessment of the building. This approach minimises the work of re-establishing the data relativity between the reference assessment and associated member assessments arising from subsequent changes in the physical attributes of that typical property unit.

In April 2020, there were about 22 600 virtual reference assessments, covering about 1 950 000 related member assessments.

(II) *Formula to Compute the Rateable Values*

Similar to the traditional single-property valuation approach, the RAA adopts the process of multiplying the floor areas by the unit rate (\$/m²), with adjustments applied to this unit rate based on market analysis. These adjustments reflect the relationships between the reference assessment and each of its member assessments. To capture the applied adjustments, a set of general variables is used, which comprises the Composite Adjustments (CA) %, Quantity Allowance (QA) %, Floor Level (FL) % and Ancillary Value (AV) %.

With reference to the captured percentages, the rateable value of a tenement is computed by the following formula:

$$\text{Rateable Value} = \text{Base Value} \times (1 \pm \text{CA}\% \pm \text{QA}\% \pm \text{FL}\% + \text{AV}\%) + \text{Parking Value}$$

where **Base Value** = Floor area of subject tenement x basic rate \$/m²

Parking Value is the value of any car parking spaces assessed together with the unit proper. The parking value, if applicable, is assessed in a separate exercise, prior to the assessment of the base value.

*Notes**Composite Adjustments % (CA%)*

This is a qualitative factor summing up all positive or negative % adjustments for the subject tenement relative to the reference assessment. These adjustments will reflect factors such as view, aspect, nuisance, layout, loading capacity, etc. and are determined in accordance with the effect of such factors on the values of the concerned tenements.

As explained earlier, the reference assessment is normally the most typical unit in the building. For example, office assessments on a particular floor with low headroom may normally be given, say, a 10% reduction. However, if the majority of floors in that office building are of similar low headroom, then one with low headroom might well be selected as the reference assessment. The basic rate (\$/m²) applied to this reference assessment at a later stage should then reflect the disadvantage of having low headroom. Those units with normal headroom in such a building would be the exceptions and be given positive (+) CA%.

Moreover, the CA% is a strictly additive summation of all relevant qualitative adjustments applied to the base value. For example, if there are more than one type of qualitative adjustments, all the concerned adjustment percentages will be summed up into an overall CA%, with details of each qualitative adjustment captured accordingly in the computer.

Example:

View	+5%
Headroom	-3%
Overall CA%	+2%

Quantity Allowance % (QA%)

Quantity allowance % is an adjustment acknowledging the variations in unit rates (\$/m²) associated with the size of tenements. Generally, the unit rate (\$/m²) for a larger-sized property tends to be lower when compared to that of a similar smaller-sized one, and vice versa. QA adjustments on a district basis² are therefore adopted for the valuation of offices and industrial premises. Regression models are specified to establish such relationship and

² There are 14 districts adopted for the purpose of valuing offices and flatted factories using QA regression models.

formulate the equations for computing the discounts for floor area. The QA% formula may take the following form:

$$\text{QA \% for subject tenement} = \left(\frac{\text{Floor Area of Subject Tenement}}{\text{Floor Area of Reference Assessment}} \right)^b \times 100\%$$

where b = coefficient for size variable (floor area) in the QA regression model

For example, if the b was -0.09 for Grade A office in a particular district, and the floor areas of the subject tenement and its reference assessment are 300m² and 100m² respectively, the QA% for the subject tenement will be computed as follows:

$$\begin{aligned} \text{QA \% for subject tenement} &= \left(\frac{300 \text{ m}^2}{100 \text{ m}^2} \right)^{-0.09} \times 100\% \\ &= 90.6\% \end{aligned}$$

This represents a 9.4% discount on the basic rate (\$/m²) of the subject tenement relative to the reference assessment. The valuer may also specify the lower bound and upper bound (the minimum/maximum allowable adjustments) at appropriate levels.

Based on various regression models developed, the QA% for each individual office or industrial assessment could be determined and updated in the computer automatically. The QA% for residential assessments will be individually determined and updated to the system following the analysis of rental evidence by valuation staff.

Floor Level % (FL%)

Rental evidence of residential premises with lift service generally suggests that a unit on a higher floor level would fetch a higher rent than that of an identical unit on a lower level. Similar to QA%, FL% is also analysed by regression models of available rents. The FL% applied normally follows a straight-line approach, e.g. a specific positive adjustment for every 10 storeys above the reference assessment. The FL% is updated automatically by the computer during each general revaluation.

For residential buildings without lift service, FL% is not applicable. Instead, a negative CA% would be made to account for the disadvantage of having no lift access to those flats that are above the reference assessments.

Ancillary Value % (AV%)

The ancillary value refers to the value of additional floor area of lower quality not included in the main floor area, such as cockloft, roof, yard, etc. The ancillary value is expressed as a % of the base value, i.e. before the application of CA% or other adjustments to the base value.

For example, a 100m² flat with an open side roof, and a monthly basic rate of \$200/m²:

<i>Base Value (e.g. 100m² x \$200/m²)</i>	=	\$20,000
<i>Composite Adjustment</i>		
<i>(e.g. low floor nuisance -5%)</i>	=	- \$1,000
<i>Open Side Roof Value, say,</i>	=	\$1,500
<i>Rateable Value of the tenement (per month)</i>	=	\$20,500

$$AV\% = \frac{\$1,500}{\$20,000} \times 100\% = 7.5\%$$

All the above four types of adjustments need to be reviewed from time to time. Amendments to these pre-recorded adjustments may be required when there have been changes in market preferences or changes to the physical or environmental characteristics of the tenement. The Department has an on-going Rolling Programme to constantly review and update the valuation characteristics and the relativity of rating assessments within the same building as well as between buildings.

(III) Determination of Basic Rate \$/m² for the Reference Assessment

During the course of the revaluation, the basic rates of “reference assessments” are estimated through valuation models specified in multiple regression analysis (MRA) which will be discussed in detail in the following section. In addition, valuation staff may also review and determine otherwise the basic rates (\$/m²) of the reference assessments after completing detailed rental analyses of concerned buildings or developments.

CAMA Techniques/Applications: (2) Multiple Regression Analysis (MRA)

This is a statistical technique that emphasises the specification of valuation models to predict rateable values by analysing the effects of property attributes and characteristics on property values. A powerful statistical software package called SAS (Statistical Analysis System) is used.

Regression models³ are built for property types valued by the Reference Assessment Approach, i.e. residential, office and industrial premises, provided that there is sufficient rental evidence. Value estimates of the basic rates (\$/m²) will be produced for the reference assessments in bulk.

The objective of model building⁴ is to establish a relationship between rental values and the valuation characteristics in a systematic and objective way. The property attributes or valuation characteristics being analysed may include the floor area, location, building age, grade, lift access, time, etc. Such relationship is normally expressed in a mathematical equation, with the basic rate (\$/m²) as the dependent variable and the property attributes and characteristics as the independent variables, which are also called predictor variables, significant in explaining the values of properties.

Based on the sample of rents captured, the resultant equation illustrates how the \$/m² rate will change as the valuation characteristics vary. When the equation is applied to predict rateable values, the model derives a specific \$/m² for each reference assessment in accordance with its associated set of valuation characteristics, together with a measure of reliability for the prediction.

³ Various regression models are built for specific districts and types of property. For the 2020-21 general revaluation, there were altogether 36 residential and 28 non-residential modelling combinations of districts and property types. The number of models is dynamically determined by valuation staff based on similarity of characteristics of properties in the model.

⁴ Model building requires good theory, data analysis and research methods, such that the best valuation model so built will be accurate, rational and explainable (*Property Appraisal and Assessment Administration, IAAO (1990)*).

The equation from the regression analysis takes the following additive form:

$$Y = b_0 + b_1X_1 + b_2X_2 + \dots + b_nX_n$$

where Y is the dependent variable, and in this case, the basic rate $\$/m^2$

X_1, X_2, \dots, X_n are the independent variables, e.g. X_1 may be the floor area, X_2 = the building age, X_3 = grade, etc.

b_0 is the constant or intercept

b_1, b_2, \dots, b_n are the coefficients of the independent variables, i.e. the weight to be given to each predictor variable

Rental data and their corresponding valuation characteristics are extracted from the computer systems maintained by the Department. A program containing SAS commands will then be executed to select the significant variables in predicting the basic rate ($\$/m^2$) and compute their corresponding coefficients to produce an equation that best fits the data sample.

If rental evidence in a district is scarce, regression models will not be specified and rental analyses or valuations will be carried out manually by valuation staff.

Regression-based Indexation

Several regression models are normally specified for each district, each having a different functional form and/or a different set of significant variables. There are normally two types of models in each district. The first type is the Objective Model, which includes only the physical characteristics or attributes as independent variables, such as floor area, building age, location, etc. The second type is the Subjective Model, in which the current rateable value is also one of the independent variables, together with other physical characteristics. As the current rateable value is the end product of a previous valuation of the same tenement (whether assessed with computer assistance or manually), it is already a value judgement. The model that includes it as one of the independent variables is thus called a "Subjective Model".

In a subjective model, the current rateable value is often the most significant variable to predict the provisional \$/m². From past experiences in MRA, subjective models are most likely to give better results than the objective ones. This may be because the current rateable value has already reflected many factors, especially the building quality and the location. The latter two valuation factors are important, but are difficult to quantify and hence may not be explicitly captured as valuation characteristics in the objective model.

The derived provisional \$/m² in a subjective model may thus be considered as a function of the current rateable value, time difference and the marginal effects of the valuation characteristics. The fact that other independent variables are also entered into the model as well could be the result of changes in market preference, bias in the current rateable values, or other definitional differences. This subjective model may therefore be interpreted as regression-based indexing on the current rateable values, with varying degrees of indexation depending on each tenement's own set of valuation characteristics.

By comparing the actual rents with the estimates derived from different regression models, a decision has to be made as to which model should be adopted for the district/type of properties. Unless there are systematic or widespread problems with the current rateable values in a district, the subjective model should be more reliable than the objective one.

Workflow of Multiple Regression Analysis (MRA)

The work processes of the MRA during a general revaluation exercise entail the following major steps.

Step 1: Data Collection, Compilation and Input to the Computer System

Step 2: Preliminary Rental Listing and Descriptive Reports

These lists and reports are produced to enable valuation staff to have a preliminary understanding of the sample of rental data. Exploratory data analyses are normally also carried out.

Step 3: Scrutinise Rental Listing and Exclude “Outliers” from MRA

Step 4: Establish the New QA% and FL% Patterns

As explained in previous sections, rents are analysed to determine the new quantity allowance (QA) and floor level (FL) adjustments during the general revaluation exercise. The new QA% and FL% for the concerned tenements will then be applied and updated automatically by the computer.

Step 5: Set Independent Variables

Valuation staff consider the various attributes and physical characteristics that may affect property values and set the independent variables accordingly.

Step 6: Run Multiple Regression Analysis

Both objective and subjective models are run respectively using standard statistical procedures provided by the SAS software package.

Step 7: Interpret Regression Results and Statistical Measures

The regression results have to be accurate, rational and explainable. It is often necessary to take different data transformations of the variables and re-run the regression models.

Step 8: Select Best Model and Apply It to Predict the \$/m² of Reference Assessments in Each District

Compute the new rateable values to member assessments using the reference assessment formula.

Step 9: Review Results

The computer-generated \$/m² and the new rateable values are reviewed by professional valuation staff to confirm that they can be supported by the rental evidence. In case more up-to-date rents have subsequently been reported, the preliminary new rateable values may need to be revised.

In addition, the adjustments used in the reference assessment formula should also be reviewed to account for changes in market preferences and/or physical and environmental changes.

Step 10: Statistical Audit

With reference to the valuation standards published by the IAAO, the accuracy of the derived rateable values is evaluated based on a set of ratio studies. The statistical audit compares all available market rents with the assessed rateable values to check the revaluation level, the relativity equity between property groups and the bias within property groups. This compliance check can be done any time during the revaluation, with the aid of the Automated Property Valuation System (APVS).

CAMA Techniques/Applications: (3) Indexation Approach

The “Indexation Approach” is considered appropriate if the new rateable values are to be generated or adjusted in bulk and on a uniform basis. It is often applied to reassess car parking spaces and commercial properties, such as arcade shops. This approach can be used to:

- (a) set the new rateable values of the tenements, by applying an adjustment factor (index) on the current rateable values; or
- (b) update the new rateable values, by indexing on the existing preliminary new rateable values (as there may be cases requiring an amendment of the new rateable values that have already been provided).

The adjustment factors may be applied across the board to a particular type of tenement in a building, or in a selected area, e.g. by district or street block. The indexation approach is a powerful tool which can update new rateable values of a large number of tenements within a short span of time. As such, great care is required to correctly define and specify the selection criteria for such indexation to avoid inadvertent updates of other assessments.

CAMA Techniques/Applications: (4) Integrated Property Database (IPDB)

The IPDB developed in-house by the Department is a GIS platform incorporating textual data. It provides a very effective spatial analytical and valuation tool.

The IPDB is made up of a comprehensive spatial system comprising parcel maps, zoning and building plans, and is integrated with the textual property data, e.g. valuation characteristics, rental and sales records, etc. stored in other computer systems such as the PMS, RIS and GRS. The spatial tools of the IPDB also enable staff to define the location and shape of a particular tenement on the maps and upload the building plans for calculating the floor area of concerned tenements using AutoCAD functions. In addition, a document management system is also available in the IPDB for storage of photographs, valuation papers and other electronic documents including digitised sales brochures, hand-drawn plans and written notes.

With the seamless integration of digital maps and related property characteristics in the IPDB, valuation staff can easily locate a particular tenement or building or group of buildings on the map and retrieve the related property data, photos and plans, etc. at the same time. Staff may also select to display on the map these tenements with specific characteristics or tenements with rental records. The IPDB will then facilitate value and rental analyses by automatically generating value maps and indicating the various ranges of rent/rateable value factors in different colours on the maps.

In its initial application to the 2006-07 general revaluation, the IPDB was primarily employed to reassess commercial properties such as street shops and arcade shops. Valuation staff could apply an indexation approach on the maps to a group of shops within a district or street block or value shops individually. Advanced CAMA techniques are also incorporated into the IPDB to assist shop valuations with a “Standardised Shop” concept, which is explained below.

Further enhancements to the IPDB applications in recent years extended the functionalities of the IPDB to cover other types of properties such as village houses, advertising signs and other types of premises. Spreadsheet functions have been developed on the platform to support mass valuation.

“Standardised Shop” Approach

Shops are heterogeneous in nature, because they come in different sizes, frontages, headrooms, shapes, etc. The actual location of a shop also greatly affects its value.

The concept of the “Standardised Shop” approach is to assign a notional “standard shop” as a proxy. This standard shop may be defined as the one having the most commonly occurring characteristics. For example, a standard shop in a district may be one of size 50m², 3.5m frontage and 3.0m headroom. These characteristics can be adjusted according to location. A relationship could be established between each shop in the district and the notional standard shop by quantifying the differences in attributes or physical characteristics between the two.

During a general revaluation, the rent of a subject shop (with characteristics likely to be different from the standard shop) is adjusted to bring it in line with the qualities of the proxy. The adjustments may include size, frontage, headroom, age, shape, corner influence, etc. The adjusted \$/m² of the subject shop will represent the value of the notional standard shop as if it is located in the precise location of the subject shop. This adjusted \$/m², in turn, suggests the location value of the subject shop. An example of how to convert the rents of various shops on a street block to the standard shop basis is given in the upper portion of **Figure**.

By analysing all the adjusted \$/m² rents, an opinion may be formed of how the shop values change along sections of the streets or the whole district. With reasoned judgement, the valuer can then assign different provisional \$/m² for the notional standard shop along various street sections, and the computer will automatically estimate the new rateable values for all the shops concerned by applying the respective adjustments between the standard shop and each shop in its actual state. The lower portion of **Figure** shows the computations of rateable values.

Figure : Illustration of “Standardised Shop” Approach**Rental Analysis:**

Shop	Standard Shop	1	2	3	4	5
Rent (per month)	-	\$19,000	\$20,000	Owner occupied	Vacant	\$42,000
Size	50m ²	62m ²	80m ²	28m ²	58m ²	140m ²
Rent (\$/m ²)	-	\$306	\$250	N/A	N/A	\$300
Adjustments:						
Size	50m ²	62m ² -4%	80m ² -8%	28m ² +15%	58m ² -2%	140m ² -18%
Frontage	3.5m	3.4m -1%	3.0m -4%	3.0m -4%	4.5m +6%	7.0m +15%
Headroom	3.0m	5.0m +20%	4.4m +15%	3.7m +7%	3.7m +7%	3.0m -
Age	1985	1985 -	1990 +2%	1979 -4%	2003 +6%	1967 -8%
Shape	Rectangle	-	-10%	-	-5%	-
Column	No	-	-	-	-5%	-
Corner	No	-	-	-	-	+25%
Total Adjustments		+15%	-5%	+14%	+7%	+14%
Adjusted Rent (\$/m²)		\$266	\$263	N/A	N/A	\$263

Valuation:

Basic Rate (\$/m ²) adopted by Valuer	\$266	\$260	\$260	\$260	\$260
Basic Rate (\$/m ²) x Adjustment %	\$299	\$247	\$296	\$278	\$296
Rateable Value per month (Rounded figure)	\$18,538 (\$18,500)	\$19,760 (\$19,800)	\$8,288 (\$8,300)	\$16,124 (\$16,100)	\$41,440 (\$41,500)
Rent/Rateable Value Factor	1.03*	1.01*	-	-	1.01*

* Valuations are supported by rents

Note: All figures and percentages shown in the above table and throughout this chapter are for illustration purposes only

The Role of Valuers in CAMA Applications

The extensive use of CAMA techniques has greatly enhanced the efficiency and effectiveness of valuation work as well as the productivity of the general revaluation exercise.

CAMA provides an extremely useful and sophisticated tool in analysing rental or value patterns and formulating consistent value estimates. However, the responsibility of determining assessment levels and ensuring valuation accuracy remains with the valuers. They must exercise their professional skills and judgement throughout the entire CAMA process, particularly in the decision-making process of selecting the best valuation model and scrutinising the end results to confirm the assessments. CAMA greatly streamlines the task of the valuer but it is the valuer who is responsible for ensuring that the output of individual rateable values complies with the requirements of the Rating Ordinance.



Collection and Recovery of Rates

Chapter 10

Collection and Recovery of Rates

Collector of Rates

On 1 July 1995, the Commissioner of Rating and Valuation took over from the Director of Accounting Services (Head of the Treasury) the responsibilities of Collector of Rates in order to provide an improved one-stop service to ratepayers. The Collector of Rates' functions include issuing demands for rates, maintaining rates accounts and ratepayers' details, and recovering rates arrears. Despite the transfer of these functions, the Director of Accounting Services continues to spearhead the provision of a centralised collection service for rates and other Government's fees and charges through various means.

There is no conflict of interest in the Commissioner assuming the dual role of assessor and collector of rates as all revenue collected goes to the Government as general revenue. The Department's funding allocation from the Government is based on the activities to be undertaken by the Department and bears no relationship to the amount of rates revenue collected each year.

Despite the transfer of rates billing and accounting responsibilities in 1995, the Treasury continued to undertake the physical collection of rates via their Treasury sub-offices located throughout Hong Kong until 2001. These collection services were outsourced in October 2001 to the Hongkong Post as were all rates payments by postal remittance from April 2003. Since August 2012, ratepayers can also pay rates at convenience stores. The Department is directly responsible for the administration of the various electronic payment methods available to ratepayers.

Demands and Payments

Rates are payable quarterly in advance in the first month of each quarter, i.e. January, April, July and October of every year. The Rating Ordinance also provides for payment at such other frequency as may be determined by the Commissioner. In issuing quarterly demands for rates to all ratepayers, the Commissioner also places notice in the Government Gazette and major public media, notifying the due date and the manner in which the payment

of rates is to be made. The printing and enveloping of quarterly rates demands are outsourced to a private contractor.

For tenements that are assessed to rates by interim valuation, rates are payable from the date when the assessment became effective or 24 months before the date of issue of the first demand for rates, whichever is the later. This means that rates can be recovered retrospectively for a maximum period of up to two years. The Commissioner is required to serve a notice of interim valuation on the owner and/or occupier before rates can be recovered and to issue a demand note which shall allow a period of not less than 28 days for settlement of the demand in such cases.

Demand notes are issued in bilingual format. Ratepayers can also choose to receive demand notes in the Chinese language. Braille rates demands can be arranged for the visually-impaired.

A Consolidated Billing and Payment Service was introduced in January 2004 to facilitate billing, payment and collection of rates in respect of multiple tenements held by individual ratepayers. Ratepayers with multiple properties¹ may apply to have one consolidated quarterly demand which lists the rates payable for all their properties. This service provides a convenient and cost-saving means of handling one simple demand, instead of receiving and paying individual bills for a number of properties every quarter.

A variety of payment methods are now available to ratepayers, including autopay banking service, Payment by Phone Service (PPS), Automated Teller Machine (ATM), Internet, by post, and in person at post offices or convenience stores. In 2019-20, some 63% of rates payments were made by electronic means (including autopay), 35% paid in person and 2% settled by post.

The Department has been constantly promoting the use of electronic means in service delivery. In December 2010, the Department first launched the e-billing service enabling subscribers to receive their quarterly demands for rates and/or Government rent through the Internet. They can also settle the electronic demands on the same e-bill platform since July 2011. Starting from December 2018, ratepayers can use mobile devices to obtain a unique “payment

¹ As at April 2020, about 2 067 ratepayers with some 147 390 properties had registered for this customer-friendly and efficient Consolidated Billing and Payment Service.

QR code” from the Department’s website for making payment at post offices and convenience stores. Since January 2020, ratepayers can settle their quarterly rates and Government rent through the Faster Payment System. More details of the Department’s electronic services on billing and payment are provided in Chapter 11.

Apportionment and Set-off

The requirement for apportionment and set-off for rates payments arises in a number of circumstances, and the Commissioner is empowered to make such arrangements for the efficient collection of rates and the convenience of ratepayers. Some examples of such arrangements are set out in the following paragraphs.

Whilst conveyancing solicitors may apportion the rates liability between the vendor and the purchaser of a property, any party to the sale transaction may apply to the Commissioner for an apportionment of rates between the vendor and the purchaser according to the period of their ownership. The application has to be made before the last day of payment as specified on the demand to avoid the imposition of surcharges.

The Rating Ordinance enables the Commissioner to provide an apportionment, upon application of the ratepayer, of the rateable value of a tenement which is valued together with other tenements under section 10 of the Ordinance.

If there are structural alterations or any split or amalgamation of existing tenements, it will require the deletion of the existing assessments and the raising of new assessments (i.e. deletion and interim valuation). If such actions are to take retrospective effect, they will involve refund of rates already paid for any period subsequent to the effective date of deletion of the old assessment, and demand for payment of rates from the effective date of interim valuation of the new assessment. In general, the amount to be refunded will be set off against the amount demanded on the new assessment when the ratepayers of the old and the new assessments are the same so as to avoid the complications of payment and refund procedures.

Surcharges and Recovery of Arrears

Rates are payable by the specified due date notwithstanding any notice of appeal or objection. Any rates not paid by the due date may be subject to a 5% surcharge. If rates are still unpaid after six months from the date when they were deemed to be in default, a further 10% surcharge on the total amount outstanding may be added. Section 22(3) of the Ordinance provides that any rates in default together with any surcharges thereon are recoverable as a debt due to the Government. In proceedings for recovery of arrears of rates, the court shall not entertain any plea that the rates assessed are excessive, incorrect, subject to a proposal or an objection or under appeal.

Before taking any legal action to recover arrears of rates, a warning letter will be issued to the defaulter to demand immediate payment. As the owner and occupier of a tenement shall both be liable for payment of rates assessed thereon, the Department will ascertain the identities of the owner of the property and the mortgagee, if any, from records held by the Land Registry. If the ratepayer is not the registered owner, or the property has been mortgaged, rates in default may be recovered from the registered owner as well as the mortgagee since “owner” in the Ordinance includes “mortgagee”. In such case, a replacement demand note will be issued to the registered owner and the mortgagee for immediate settlement and, if payment is not made, a warning letter will then be issued before initiating legal action.

Legal action for recovery of rates is taken in the Small Claims Tribunal if the amount of rates arrears does not exceed \$75,000 or in the District Court if the arrears exceed \$75,000. If the outstanding rates remain unsettled after the court’s judgment, the Commissioner may enter a charge against the property. However, there are no stringent measures in the Rating Ordinance to help enforce payment, such as allowing distress and sale of goods as provided in similar statutes of UK and Singapore.

Rates Refund due to Vacancy

Prior to 1973, unoccupied properties were entitled to a full refund of the rates paid. The Rating Ordinance 1973 reduced this to a refund of half the rates on vacant properties, on the following reasons –

- (a) rates were a charge for municipal services, and whether occupied or not, properties continued to enjoy these services;

- (b) rates revenue was to be raised to balance in some measure the concession consequent upon the reduction of the rates percentage charge from 17% to 15% for the year 1973-74 and the introduction in the 1973 Ordinance of a “rates holiday” of six months for units in newly constructed buildings if they remained unoccupied during that period; and
- (c) owners should be deterred from keeping their properties idle for any length of time, when they could otherwise be made available in the property market to help meet the demand at that time for accommodation in all sectors of the market.

Some of the provisions in the 1973 Ordinance relating to domestic properties could not last long. By virtue of an amending ordinance enacted in late 1973, the half refund of rates for residential properties was abolished and the rates holiday for newly built vacant residential properties was reduced to three months from 1 January 1974. There was at that time a tendency to hoard new flats in anticipation of capital appreciation, and the amendment aimed to increase the holding cost so as to discourage people from keeping residential properties unoccupied.

The rates holiday for newly built vacant non-domestic properties remained at six months due to the generally longer time required for fitting out. The anomaly of according vacancy refunds to non-domestic properties only was eventually removed on 1 July 1995 by virtue of the Rating (Amendment) Ordinance 1995.

However, vacant open land not previously used or not intended to be used for the parking of motor vehicles continues to be eligible for a full refund of rates. To claim a refund of rates for vacant land, the owner or occupier is required to serve a notice in writing on the Commissioner within the first 15 days of the vacant period. In the case of a newly assessed tenement, the notice of vacancy must be served not later than the last day of payment as specified on the first demand for rates. A person claiming the refund is required, not later than 24 months after the last day on which rates were payable, to apply to the Commissioner in the specified form for a refund. Where the Commissioner is satisfied that the whole of the tenement was unoccupied during the period claimed, the full amount of rates already paid will be refunded.

Refund of Overpayment of Rates

The Commissioner shall refund any amount paid in respect of rates including surcharges if he is satisfied that –

- (a) the rates were charged otherwise than in accordance with the valuation list, e.g. the rateable value of a tenement was reduced as a result of a review of objection or proposal;
- (b) the tenement was exempted during any period;
- (c) the tenement has become unoccupied or incapable of occupation, as a result of any order made by a court on the application of the Government, e.g. a Closure Order issued by the District Court on the application of the Building Authority;
- (d) rates were paid in respect of a period subsequent to the effective date of deletion of an assessment; or
- (e) the person who made a payment in respect of rates was not liable to make that payment.

Rates Refund Ordered by the Chief Executive

The Chief Executive may order a refund of any amount of rates paid, including any surcharges thereon due to default in payment, notwithstanding any other provisions in the Ordinance. In 1998, as one of the special relief measures to address the impact of the Asian financial crisis at that time, the Chief Executive ordered a refund to all ratepayers of the rates paid for the April to June 1998 quarter.

Other forms of rates relief and rebate are detailed in the section “Rates Relief and Concessions” in Chapter 3.

Appeal against Refusal to Refund

Any person aggrieved by the Commissioner's refusal to refund rates may appeal against such refusal to the District Court. Section 33 of the District Court Ordinance provides that the District Court has jurisdiction to hear and determine any action for the recovery of any sum which is declared by any enactment to be recoverable as a civil debt if the amount claimed does not exceed \$3,000,000. However, section 33 of the Rating Ordinance empowers the District Court to adjudicate an appeal even if the amount of refund claimed exceeds \$3,000,000.



Public Service Delivery

Chapter 11

Public Service Delivery

Customer-centric Service Delivery

Driving continuous improvement in service delivery to meet the growing needs and expectations of customers is one of the key objectives of any service organisation. The Rating and Valuation Department has formulated a customer management strategy aiming to provide better services to its customers through multiple customer-centric service delivery channels, transparency in property and market information as well as improved communication and operational efficiency.

Early Developments

Since the early 1990s, the Department has been keeping in view opportunities arising from technology advancement and made significant investment in computer development and information technology with the vision of re-engineering its processes and enhancing its capabilities to offer efficient, speedy and convenient services to ratepayers in particular and to the public in general.

Following the full digitisation of the Hong Kong local telephone network in 1993, the Department introduced a payment-by-phone service to enable ratepayers to settle rates payment by telephone. In 1995, the Department launched its first 24-hour Interactive Voice Processing System (IVPS) to handle enquiries on rates and tenancy matters, and to enable ratepayers to check their up-to-date rates payment accounts. The early IVPS was replaced in 1999 with a system which provided enhanced features and additional line capacity capable of attending up to 60 customer calls simultaneously. The enhanced functions include automated retrieval of forms, property statistics, press releases, payment records and requests for replacement demand notes for rates and Government rent.

In 1998, the Department implemented a 24-hour automated property information telephone service, the Info-Hotline, through which the public could obtain information about the age and floor area of residential properties. The Department was the prescribed source of such property information with effect from 1 November 1999 under the Estate Agents Practice

(General Duties and Hong Kong Residential Properties) Regulation, which was enacted in the same year. The system was further enhanced in 2001 to incorporate information about the permitted use of properties as stipulated in the occupation permits. Public access to such information has greatly improved the transparency of the property market in Hong Kong.

The Department's Internet Home Page was launched in 1997 to provide online information and customer services in step with rapid growth in use of the Internet. The subsequent surge in the number of Internet users and expansion of Internet access from dial-up into broadband services from 2000 triggered further growth in both demand and opportunity for more of the Department's services to be provided online.

The Department's Electronic Services

Electronic Service Delivery Scheme

The 21st Century is the new age of information technology and e-business. The Department was one of the pioneering departments in the first phase of Government's Electronic Service Delivery (ESD) Scheme which was launched in December 2000. Payment of rates and Government rent, checking of relevant accounts, change of payers' names and addresses, and other e-Government services can be done electronically on an "anywhere, anytime" basis through the Internet. Taking advantage of the accelerating pace of e-business development in the private sector, this ESD project was originally delivered and managed by a private company under a Public Private Partnership model. To handle the rapid increase in transaction volume and provision of more services, ESD was migrated to a new Government electronic platform, GovHK portal, in 2008. The new platform provides enhanced stability and increased capacity, and has adopted a service cluster approach to meet the needs of different customers.

Online Valuation List and Government Rent Roll

In 2001, the Department introduced for the first time online search facilities for rateable values in the new Valuation List and Government Rent Roll following the completion of the 2001-02 general revaluation.

Pursuant to Government's green policy, printed copies of the Valuation List and Government Rent Roll have been fully replaced by the electronic versions since 2005. In bilingual format displaying both English and Chinese address descriptions, the Valuation List and Government Rent Roll was migrated in early 2009 to the Property Information Online platform with enhanced features such as flexible search options.

Electronic Submission of Specified Forms

Following the enactment of the Electronic Transactions (Amendment) Ordinance 2004, the service of documents and notices under the Rating Ordinance and other ordinances in the form of an electronic record is admissible as a valid mode of service. In response to the change in legislation, the Department launched its e-form service in late 2004 enabling the public to submit statutory forms and notices through the Internet. The e-form service was also hyper-linked with Inland Revenue Department's e-stamping service in the same year, providing an additional channel for the public to obtain government services of the same cluster. Continuous enhancements have been made to enable more forms and value-added services to be processed electronically. One example was the implementation of online endorsement of the notices of new letting or renewal agreement under the Landlord and Tenant (Consolidation) Ordinance and the collection of payment for processing late submission of such notices in 2011.

The electronic mode of service was further expanded in November 2018 to provide a web accessible and mobile-friendly design for ensuing barrier-free access by people with disability and facilitating the public in the submission of electronic forms via mobile device. Starting from the same year, requisition forms have also been printed with QR codes, providing quick and convenient access to the corresponding e-forms for the public to submit the requisite information electronically.

Electronic Billing and Payment of Rates and/or Government Rent

In support of e-Government policy together with the objective of reducing paper consumption to promote green environment, the Department launched its "eRVD Bill" service in December 2010. The service is integrated with the GovHK portal at which a person can register for multiple services centrally and access all subscribed services with a single user name and password. Account holders subscribing to the "eRVD Bill" service will receive

their quarterly demands for rates and/or Government rent via the Internet with option to dispense entirely with the paper bills. Subscribers are notified by emails upon the issuance of the e-bills, which are retained for three years for easy retrieval. Reminder can also be set up to prompt payment before the due date. Customers can enquire the payment history and update personal details of their accounts from May 2015 onwards. In November 2018, the “eRVD Bill” service was further enhanced with a web accessible and mobile-friendly design.

To provide a seamless billing and payment service to the subscribers, an online payment service was launched in July 2011 for customers to settle their e-bills on the same platform. Multiple bills can be settled as one transaction. From time to time, the Department has continued to introduce various new electronic payment options for settling rates and Government rent bills to provide more convenient payment channels to meet our customers’ increasing expectations. Since June 2016, e-cheque and e-cashier’s order have been accepted for paying rates and Government rent through the centralised “Pay e-Cheque” platform at the GovHK portal. Starting from December 2018, payers with outstanding balance in their rates and Government rent accounts can obtain a unique “payment QR code” at the Department’s online account enquiry platform for making payments at post offices and convenience stores. As one of the three pioneering departments that adopted the Faster Payment System (FPS) in accepting payment of Government bills, the Department has since January 2020 printed FPS payment codes on the quarterly rates and/or Government rent demands, such that customers can use their mobile banking applications or electronic stored value facilities to scan the FPS payment codes to quickly settle the rates and Government rent payment anytime, anywhere.

Property Information Online

Launching the Property Information Online (PIO) was a milestone of the Department in the development of e-Government service. It laid a foundation for further inter-departmental collaboration in delivering public services.

Supported by a powerful bilingual search engine with five different searching paths¹, the system provides round-the-clock convenient service to the public for access to property information through the Internet. Following its debut in early 2009, the public can obtain information, at a small fee, on saleable area, year of completion and permitted uses of residential properties on this online platform. Frequent users can apply for a subscriber

¹ Users can search a record by development or building names, street or village name and building number, lot details, the Department’s Assessment Number as well as Land Registry’s Property Reference Number.

account for more convenient use of the system. The online service has been well-received by professionals and the general public. One of the objectives of developing the PIO was to replace the outdated telephone-based Info-hotline service, which supported assessment number search only with limited concurrent user connection capability.

To take full advantage of the powerful bilingual search engine of the PIO as well as capacity to handle multiple concurrent users, the online Valuation List and Government Rent Roll was migrated to the PIO in 2009. Since then, the public can make online inspection of the newly declared Valuation List and Government Rent Roll during the proposal period. Since March 2010, the public may conduct online enquiry, at a fee, on the rateable values of properties for the latest three years of assessment throughout the year. An online account balance enquiry service was introduced in late 2010. Payers can check, at a much reduced fee, any outstanding liability in rates and Government rent relating to a property round-the-clock online. Compared with checking account balance manually upon requests raised by payers, this e-service provides readily essential information which is normally required during a property transaction.

The services available under the PIO are summarised in the following:

Service Item	Launch Date
1. Enquiry on saleable area, age and permitted occupation purposes of domestic properties (excluding village type houses)	11 February 2009
2. Public inspection of the newly declared Valuation List and Government Rent Roll (<i>information is displayed online after the declaration of the Valuation List and Government Rent Roll in mid March and up to 31 May every year</i>)	16 March 2009
3. Enquiry on rateable values contained in the Valuation Lists and/or Government Rent Rolls for the latest 3 years of assessment	25 March 2010
4. Enquiry on rates and/or Government rent accounts	29 December 2010
5. Enquiry on saleable area and age for individual Rates or Government Rent Payers of domestic properties (excluding village type houses)	2 April 2013

The PIO provides an integrated platform, aligning over 2.7 million property records held by the Department and the Land Registry. The public can retrieve these address records free of charge. In 2020, the Department also successfully matched some 224 000 accounting

records of properties liable for Cap. 40 Government rent administered by the Lands Department. With these aligned records, the public can check Government rent account balance conveniently. In September 2018, the PIO was further upgraded to provide a web accessible and mobile-friendly design.

Enhancement in Valuation Transparency

In late 2011, the Department started to disseminate property information of newly completed domestic properties to the payers when these properties are first assessed to rates and/or Government rent. From April 2013, payers can also view the saleable area information of their residential properties in the PIO free of charge through an access code printed on their quarterly demands for rates and/or Government rent.

Promotion of Property Market Transparency

To enhance transparency for effective functioning of the property market, the Department makes available to the public statistical data across all the principal market sectors. The Department publishes its Property Review annually, with monthly updates, providing year-end snapshot of stock, vacancy, actual and forecast completions of various types of properties in Hong Kong as well as time series statistics on price and rental. Released via the Department's website, property information such as average rateable values of private domestic units in selected developments gives the public information about average rental estimates of these developments.

Improved Customer Interface

1823

The Department was among the first group of departments joining the 1823 call centre service administered by the Efficiency Office of the Government. 1823 provides 24-hour operator answer service to public telephone enquiries on all aspect of the Department's services.

Customer-centric Home Page

Recognising the ease and demand for providing services and information to the public on the Internet, the Department updated its website in mid-2005 to adopt the Government's "Common Look and Feel Design", offering users a more familiar and user-friendly experiences. To be more customer-focused, the website was again revamped in 2012 to provide information from the customer perspective in addition to service dimension.

Performance Pledge

To meet public expectations, the Department publishes its performance pledge on major service areas at the start of each financial year and then reports its achievements at year end. Following the comprehensive review to ensure the Department's performance pledges meet with public expectations in 2009, targets were raised and new service items were added. In addition, achievements are published at a quarterly interval instead of annually, through the Department's website to update the public more frequently on its performance.

Online Progress Tracking Facility

In December 2015, the Department launched the Online Progress Tracking Facility (OPTF) service to facilitate the public in making enquiries on the action progress and status of their submitted applications through the Department's website.

"Names of Buildings" Publication

The "Names of Buildings" publication was updated bi-annually at the Department's website to show the names, addresses and years of completion of buildings in Hong Kong. Since February 2018, the Department has enhanced the frequency of updating the entries to a quarterly basis and provided an additional machine-readable version of the publication at the platform Data.Gov.HK.

Improved Operational Efficiency through Outsourcing

Apart from the extensive use of innovative information technology to improve operational efficiency, the Department also makes use of outsourcing to tap the resources available in the private sector for service improvements and innovations.

Outsourcing is a tool adopted by the Department to help meet the challenges of tight resource constraints and continuous increase in the public's expectations on its services. The Department has been engaging external service providers since 1997, arising from the need to provide combined demands for rates and Government rent effective from June 1997. Since then, the Department seizes every opportunity to use the tool whenever appropriate and has outsourced amongst others, the vacancy survey for compilation of vacancy statistics for its Property Review, valuation of village houses, updating of change in payers' records, district-based Building Numbering Campaign, as well as printing and enveloping of bulk issue of rates/Government rent demands and requisition forms.

Outsourcing leverages the resources, knowledge, skills, experience and specialisation available in the private sector for the task. It provides an opportunity for access to new technology and innovation, as well as to meet seasonal activities. It improves service output by tapping the private sector's resources in handling voluminous, labour-intensive but rather straight-forward work. Although the responsibilities are contracted out, the Department is held accountable for the outsourced tasks. It thus has to ensure that the service providers have delivered the services in a timely manner and with acceptable quality. Before outsourcing, a sound business case must be developed with the right scope. Legal constraints have to be overcome. The service providers are required and committed to strictly observe the provisions on security and confidentiality of the Department's data and information. Risks associated with outsourcing need to be carefully assessed and managed. Accordingly, small-scaled pilot projects are usually conducted to test the success or otherwise of such approach for the selected tasks. Pilots include engaging external service providers for inspection of properties on the display of building number and rolling programme to review the physical data and value patterns of units in residential buildings.

Way Forward

Identifying customers' preferences is an important step towards improving service quality and operational efficiency. In this respect, the Department implemented its Customer Management Information System in 2011 with an aim to understand and serve its customers better. The Department will continue to leverage advanced technology and tools to meet diverse demands and rising public expectations. To strive for greater efficiency and better customer satisfaction is an on-going service commitment.



Government Rent Assessment and Collection

Chapter 12

Government Rent Assessment and Collection

The Commissioner of Rating and Valuation administers both the Rating Ordinance, Cap. 116 and the Government Rent (Assessment and Collection) Ordinance, Cap. 515 and is responsible for the assessment, collection and administration of property rates as well as Government rent in Hong Kong. The rateable value, as defined respectively in these two Ordinances, provides the basis of assessment. This chapter assists readers in understanding the dual roles of the Commissioner and the dual functions of rateable values in this respect.

Land Tenure in Hong Kong

Land on Hong Kong Island has been sold to private purchasers since 1841, when it was taken over by Britain under the Convention of Chuanbi (穿鼻草約). With the exception of the land for St John's Cathedral at Garden Road, which was granted freehold, all land has been sold on a leasehold basis. The terms of the land leases vary according to then prevailing land policies. Typical lease terms were either a fixed term of 75 years, 99 years, 150 years or 999 years with no right of renewal, or a renewable term of 75 years, 99 years or 150 years with a right to renew for a further similar period. The purchaser of the land, i.e. the leaseholder, was required to pay to the Government a premium, reflecting the current value of the land, upon the grant of the lease and an annual rent, usually of a nominal amount. In other words, all land owners, except the owner of St John's Cathedral, are liable for the payment of an annual rent, also known as Government rent, under their land leases held from the Government.

The Joint Declaration

The Sino-British Joint Declaration on the Question of Hong Kong ("the Joint Declaration") was signed between the Chinese and British Governments on 19 December 1984. It came into force on 27 May 1985. The Joint Declaration sets out in its Annex III provisions in regard to, *inter alia*, the grant of new land leases and the extension of non-renewable land leases.

In accordance with Annex III to the Joint Declaration, between 27 May 1985 and 30 June 1997, new leases of land were granted by the Hong Kong Government for a term

expiring not later than 30 June 2047. Such leases were granted at a premium and nominal rent until 30 June 1997, after which date the lessees did not need to pay an additional premium but were required to pay an annual rent equivalent to 3% of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter.

Annex III also provides that non-renewable leases expiring before 30 June 1997, except short term tenancies and special purpose leases, might be extended if the lessee so wished, for a period expiring not later than 30 June 2047 without payment of an additional premium. An annual rent would be charged from the date of extension equivalent to 3% of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter.

For leases not having a right of renewal expiring after 30 June 1997, Annex III provides that they should be dealt with in accordance with the relevant land laws and policies of the Hong Kong Special Administrative Region.

New Territories Leases (Extension) Ordinance, Cap. 150

Most of the non-renewable leases referred to in Annex III to the Joint Declaration are in respect of land in the New Territories (including New Kowloon). There were at that time over 30 000 leases of land in the New Territories, many of them in multiple ownership, and in practice it would have been impossible to extend each of them individually. The only practical way of extending so many leases at about the same time was by legislation and this led to the enactment of the New Territories Leases (Extension) Ordinance, Cap. 150, in 1988.

Section 6 of the Ordinance provides automatic extension of all New Territories leases to 30 June 2047, without payment of any additional premium but the lessees were required to pay an annual rent at 3% of the rateable value from time to time of the land leased.

The Basic Law

The Basic Law of the Hong Kong Special Administrative Region came into force on 1 July 1997 and gives effect to the land policies enshrined in the Joint Declaration.

Article 40

The lawful traditional rights and interests of the indigenous inhabitants of the “New Territories” shall be protected by the Hong Kong Special Administrative Region.

Article 120

All leases of land granted, decided upon or renewed before the establishment of the Hong Kong Special Administrative Region which extend beyond 30 June 1997, and all rights in relation to such leases, shall continue to be recognised and protected under the law of the Region.

Article 121

As regards all leases of land granted or renewed where the original leases contain no right of renewal, during the period from 27 May 1985 to 30 June 1997, which extend beyond 30 June 1997 and expire not later than 30 June 2047, the lessee is not required to pay an additional premium as from 1 July 1997, but an annual rent equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter, shall be charged.

Article 122

In the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on 30 June 1984 held by, or, in the case of small houses granted after that date, where the property is granted to, a lessee descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, the previous rent shall remain unchanged so long as the property is held by that lessee or by one of his lawful successors in the male line.

The interpretation of “lawful successors” in Article 122 of the Basic Law was deliberated in *Lai Hay On v Commissioner of Rating and Valuation (1st Respondent) and Director of Lands (2nd Respondent)* [2010] CACV 130/2007. The Court of Appeal

concluded that “lawful successors” in Article 122 refer to a succession on the death of the relevant ancestor and do not include an *inter vivos* transfer, e.g. by way of a Deed of Gift. There is nothing in Article 40 which requires a different interpretation.

Article 123

Where leases of land without a right of renewal expire after the establishment of the Hong Kong Special Administrative Region, they shall be dealt with in accordance with laws and policies formulated by the Region on its own.

Land Grant Arrangement since 1 July 1997

Shortly after the reunification and the establishment of the Government of Hong Kong Special Administrative Region (HKSAR Government), the HKSAR Government formulated its first land policy according to Annex III to the Joint Declaration in order to deal with leases of land without a right of renewal expiring after 30 June 1997 and related land matters to cope with changed circumstances. The land policy statement was announced by then Secretary for Planning, Environment and Lands on 15 July 1997.

Among other things, new leases of land to be granted (except new special purpose leases and short term tenancies) should be for a term of 50 years from the date of grant at a premium, and subject to the payment, from the commencement of the lease, of an annual rent equivalent to 3% of the rateable value from time to time of the land leased.

Non-renewable leases may, upon expiry and at the sole discretion of the HKSAR Government, be extended for a term of 50 years without payment of an additional premium, but an annual rent shall be charged from the date of extension equivalent to 3% of the rateable value from time to time of the property.

The policy of extending special purpose leases basically follows the arrangements for non-renewable leases. Special purpose leases, other than those specified below, expiring after 30 June 1997, may, upon expiry and at the sole discretion of the HKSAR Government, be extended for a term of 50 years, without payment of a premium, but an annual rent shall be charged from the date of extension equivalent to 3% of the rateable value from time to time of

the property. The exceptions to these arrangements, which follow the land policy prevailing before 1 July 1997, are as follows –

- (a) leases for recreational purposes may not be extended for a term exceeding 15 years;
- (b) leases covered by franchises or operating licences should normally be extended for a term to be the same as that of the franchise or licence;
- (c) leases for petrol filling stations may not be extended; new leases for a term of not more than 21 years may, however, be granted to the existing owner on payment of a premium; and
- (d) leases for kerosene stores may not be extended; however, short term tenancies at full market rental may be offered to the existing owner for an initial term of three years.

Government Rent (Assessment and Collection) Ordinance, Cap. 515

Since the coming into force of the Joint Declaration, new land grants contain a standard condition that the lessee is required to pay an annual rent, from 1 July 1997, equal to 3% of the rateable value from time to time of the land leased. But, neither Cap. 150 nor the conditions of Government land leases provide sufficient details regarding the assessment, payment and collection of Government rent, or any rights for the rent payer to make objection and appeal against the assessment. To help administer the assessment and collection of Government rent, the Government Rent (Assessment and Collection) Ordinance, Cap. 515, (referred to here as the “Rent Ordinance”) was enacted on 30 May 1997 and, under section 34 a subsidiary legislation, the Government Rent (Assessment and Collection) Regulation, was made on 6 June 1997 to codify and standardise the practices and procedures for assessment and collection of Government rent.

The Rent Ordinance applies to interests in land held under –

- (a) a lease extended by the operation of section 6 of the New Territories Leases (Extension) Ordinance, Cap. 150; and

- (b) a lease under which there is an express obligation to pay an annual rent of an amount equal to 3% of the rateable value from time to time of the land leased.

Different Types of Government Rent

As from 1 July 1997, there are four different types of Government rent collected from different leaseholders depending on the terms of their respective Government leases, namely,

- (a) zone Government rent, which is usually a nominal amount, payable throughout the lease term as stipulated in the Government lease;
- (b) Government rent payable during the renewal term of a renewable Government lease which is subject to the Government Leases Ordinance, Cap. 40;
- (c) Government rent equal to 3% of the rateable value from time to time of the land leased, which is assessable under the Rent Ordinance; and
- (d) concessionary Government rent, which is usually a nominal amount, payable for qualifying interests held by New Territories indigenous villagers continuously since 30 June 1984, as provided for under the Rent Ordinance.

The Lands Department is responsible for the collection of zone and concessionary Government rents, i.e. types (a) and (d) above. For Government rent of type (b), the Rating and Valuation Department is responsible for assessing the rent and notifying the Lands Department of the assessment for billing and collection. The Rent Ordinance is administered by the Department, which is solely responsible for the assessment and collection of Government rent of type (c).

Government Leases Ordinance, Cap. 40

Background

Renewable leases of land contain a right of renewal for a further term, exercisable by the lessee, at “*a rent to be fixed by the Director of Public Works as the fair and reasonable rental value of the land at the date of such renewal*”. This practice of granting renewable

leases was first introduced in the 1880s. Generally, the lease terms were 75 years renewable for a further 75 years or 99 years renewable for a further 99 years.

However, sharp increases in property rents in the early 1970s gave rise to strong opposition from leaseholders to the payment of the full market rental value of the land, as required by the lease conditions, for the renewal term. In view of this situation, the Government introduced a number of alternative methods of renewal. Finally, on 14 December 1973, the Crown Leases Ordinance, now re-titled the Government Leases Ordinance, Cap. 40, came into operation. Cap. 40 provided that for the renewal term, a leaseholder should pay an annual rent (referred to here as “new Government rent”) equivalent to 3% of the rateable value of the land at the date of renewal of the lease. The new Government rent so assessed would remain unchanged throughout the renewal term unless and until the land was redeveloped, in which case the Government rent would be re-assessed at 3% of the rateable value of the interim valuation of the new building erected on the land.

The Director of Lands is responsible for the general administration of Cap. 40 including assessment and collection of new Government rent, and enforcement action in the event of default in payment. Prior to 1994, the role of the Commissioner of Rating and Valuation was essentially supportive. Upon request, the Commissioner would provide the Director of Lands with the relevant rateable values of the tenements for assessing and collecting the new Government rent. In order to streamline the administration of Cap. 40, the Director of Lands delegated some of his powers and duties to the Commissioner in April 1994. Since then, the Commissioner has been responsible for –

- (a) initiating action to assess or re-assess new Government rent payable for the renewal term consequent upon the renewal of the lease or the completion of a new building on the land during the renewal term;
- (b) notifying the Director of Lands of new Government rent for billing and collection;
- (c) notifying the Land Registrar of the new Government rent for registration against the property; and
- (d) performing apportionment and aggregation of new Government rent whenever appropriate or upon request; and notifying the Director of Lands and the Land Registrar of such apportionment and aggregation.

Renewal of Certain Renewable Government Leases

Before the coming into operation of the Government Leases Ordinance on 14 December 1973, a number of renewable leases had already been renewed either:

- (a) at a rent assessed in accordance with the proviso for renewal contained in such lease, or
- (b) at a restricted rent with the new lease restricted to the existing development, or
- (c) at an otherwise concessionary rent in accordance with the policy prevailing at the time of renewal, or
- (d) at a premium and subject to a zone Government rent.

The new Government rent assessed in cases (a), (b) and (c) above may be much higher than that which would have been determined under the Government Leases Ordinance. To remedy this situation, a policy decision was taken to cap the amount of the new Government rent payable in such cases at 3% of the rateable value of the lot or section as at 1 July 1973.

Administration of the Government Rent (Assessment and Collection) Ordinance, Cap. 515

Liability for Payment

Section 6 of the Rent Ordinance provides that the lessee of a Government lease, which is subject to the application of the Ordinance (referred to here as the “applicable lease”), is liable to pay Government rent. The lessee for this purpose includes the owner of an undivided share in the land leased. Where undivided shares of the land have been assigned to individual tenements in the building erected on the land and the tenements have been assessed to rates, the Commissioner is authorised to demand the Government rent from ratepayers of the tenements by issuing combined demand notes for rates and Government rent, even though the ratepayers may not be the owners of the tenements. If a person other than the owner of a tenement pays the Government rent for the tenement, the rent paid by the person is a debt due to the person by the owner unless there is an express agreement between the owner and the person requiring otherwise.

Rateable Value of Land Leased

Section 7 of the Rent Ordinance provides that the rateable value of the land leased under an applicable lease is an aggregate of the rateable values of the tenements comprised in the land leased.

Valuation of Land and Tenements

Section 8 of the Rent Ordinance empowers the Commissioner to value land held under an applicable lease and any tenement comprised therein at any time to ascertain the rateable value for the purposes of the Rent Ordinance. Subject to any specific provisions of the Rent Ordinance, the basis of ascertaining the rateable value is the same as that in sections 7 and 7A of the Rating Ordinance. Where the estimated rateable value does not exceed the minimum rateable value, the rateable value shall be deemed to be \$1 and no demand for Government rent will be issued. That minimum rateable value, presently set at \$3,000, is the same as the amount prescribed under section 36(1)(ℓ) of the Rating Ordinance for rates exemption purposes.

Assessability of Development and Redevelopment Sites

Where a site is vacant pending development or redevelopment or is undergoing development or redevelopment, the site is not assessable to rates. However, the site is assessable to Government rent by virtue of section 8 of the Rent Ordinance and section 2 or 4 of the Government Rent (Assessment and Collection) Regulation. The legality of assessing development sites and redevelopment sites to Government rent was confirmed by the Court of Final Appeal (CFA) in its judgment in *Commissioner of Rating and Valuation v Agrila Limited & 58 others* [2001] FACV Nos. 1 and 2 of 2000.

For redevelopment sites, the CFA ruled that the Commissioner's approach to adopting the "last ascertained rateable value" is legitimate and consistent with the Basic Law. For development sites, the Court referred the appeal back to the Lands Tribunal to decide on "*the appropriate method of valuation*".

In view of a larger number of outstanding appeals on development site assessments, a test case was selected for hearing by the Tribunal. The Tribunal ruled in this test case, *Best Origin Limited v Commissioner of Rating and Valuation* [2008] LDGA 14/1998, that the method of valuation put forward by the Commissioner was the correct approach to ascertaining the rateable value of a development site for Government rent purposes. *Best Origin* appealed to the Court of Appeal against the Tribunal's judgment on points of law and the appeal was unanimously dismissed by the Court of Appeal. However, *Best Origin* had obtained leave to appeal to the CFA. The CFA handed down its judgment in December 2012 dismissing the appeal unanimously. It confirmed that section 2 of the Government Rent (Assessment and Collection) Regulation is a deeming provision under which a development site is to be treated, for the purpose of the Government Rent (Assessment and Collection) Ordinance, as if it were a rateable tenement.

Government Rent Roll

The provisions in the Rent Ordinance regarding the direction for the Commissioner to prepare a new Government Rent Roll, the designation of a valuation reference date, the particulars of tenements entered into the Government Rent Roll, the form of the Government Rent Roll and the display of the Government Rent Roll for public inspection are similar to those for the Valuation List under the Rating Ordinance.

To provide an equitable basis of assessing Government rent payable for tenements subject to both rates and Government rent, the preparation of a new Government Rent Roll and a new Valuation List are to be synchronised and the designated valuation reference dates for both will be the same.

As at 1 April 2020, there were 2.01 million assessments in the Government Rent Roll, generating a revenue estimated at about \$13.3 billion for the year 2020-21.

Collection of Government Rent

The Commissioner is responsible for the collection of Government rent payable under the Rent Ordinance and the Director of Lands is responsible for taking enforcement action in

case of default in payment. The Director of Lands may take proceedings to re-enter the land should the Government rent for the land or any surcharges thereon remain unpaid.

Similar to the frequency of demanding rates under the Rating Ordinance, Government rent is payable quarterly in advance to the Commissioner in the first month of each quarter. Where the Government rent has not been paid on or before the due date, a surcharge of 5% may be added to the amount due and, if not paid within six months from the original due date, a further surcharge of 10% will be added on all amounts outstanding.

Objections and Appeals

The provisions in the Rent Ordinance regarding proposals to alter the Government Rent Roll, objections to correction, deletion or interim valuation and appeals to the Tribunal against the decision of the Commissioner are similar to those provided under the Rating Ordinance, particularly with respect to those for a tenement which is *not* an “identical tenement”. The Rent Ordinance defines “identical tenement” as a tenement the entry for which in the Government Rent Roll is identical to an entry in the Valuation List for rates.

If the tenement is an identical tenement, a person may object to, or make a proposal on, or appeal against the rateable value of the identical tenement recorded in the Government Rent Roll *only under the Rating Ordinance*. The Commissioner is required to make the same alteration in the Government Rent Roll if he makes an alteration in the rateable value of an identical tenement included in the Valuation List as a result of a correction, deletion, interim valuation, objection, proposal or appeal made under the Rating Ordinance. For alterations, other than the rateable value, made in respect of an identical tenement in the Valuation List, the Commissioner may, having regard to the circumstances of the case, cause the same alterations to be made in respect of the identical tenement in the Government Rent Roll. If a tenement is deleted from the Valuation List, the tenement may still be included in the Government Rent Roll for Government rent purposes.

Government rent as demanded must be paid despite any proposal, objection or appeal that has not been finalised unless the Commissioner orders that the payment of the Government rent, or part thereof, be held over pending the determination of the appeal, whereas, under the Rating Ordinance, rates may be held over at the stage of an outstanding appeal only. It should,

however, be noted that because a notice of decision will be issued within a few months of the proposal or objection being lodged, then if the proposer or objector does not pursue the case to an appeal to the Tribunal, the holding over order will be cancelled by the Commissioner. Thus, in effect, most if not all holding over orders for Government rent relate to outstanding appeals.

General Powers of Commissioner

The provisions in the Rent Ordinance and the Rating Ordinance are generally the same in respect of the power to obtain information from the owner or the occupier of a tenement, the power to extend the time limit for returning a requisition for particulars of tenements, the committing of offences for refusal to give information or obstruction or provision of false or incorrect information, and the penalties for such offences.

Comparison of Rates and Government Rent

A schedule comparing the similarities and differences between rates and Government rent is set out in the **Table**.

Table

Comparison of Rates and Government Rent		
Subject	Rates	Government Rent
1. Enabling Legislation	Rating Ordinance, Cap. 116	Government Rent (Assessment and Collection) Ordinance, Cap. 515
2. Nature	Tax levied on property	Rent payable under Government land lease
3. Basis of Assessment	Rateable Values (subject to revaluation)	Rateable Values (subject to revaluation)
4. Percentage Charge	Determined by Legislative Council	Stipulated at 3% under the Sino-British Joint Declaration
5. Amount Payable	Prescribed % of rateable value	3% of rateable value
6. Register	Valuation List	Government Rent Roll
7. Liability	Owner and occupier jointly liable	Leaseholder (i.e. owner)
8. Demand Note	Single demand for Rates and Government Rent	Single demand for Rates and Government Rent
9. Collection	Payable quarterly in advance	Payable quarterly in advance
10. Surcharge for Late Payment	5% after due date, 10% on total outstanding amount after 6 months	5% after due date, 10% on total outstanding amount after 6 months
11. Arrears and Enforcement	A debt to the Government with power to lay a charge against the property	A debt to the Government with power to lay a charge against the property as well as re-entering the property
12. Concessions	Rates refund Rates rebate with a ceiling Waiver of surcharges Extension of payment due date Payment by instalments	No concession
13. Exemptions	Agricultural land, place for public religious worship, etc.	Rural holdings owned by indigenous villagers or their lawful successors
14. 2020-21 Statistics		
(a) No. of Assessments	2.57 million	2.01 million
(b) Total Rateable Value	HK\$732 billion	HK\$450 billion
(c) Estimated Annual Revenue	HK\$19.5 billion	HK\$13.3 billion
(d) % of Total Govt. Revenue	4.4%	3.0%



Rating and Government Rent Case Law

Chapter 13

Rating and Government Rent Case Law

The rating and Government rent cases listed in this chapter are not exhaustive, but are intended to provide quick references to decisions made by the judicial bodies in respect of major rating and Government rent issues in Hong Kong and the UK. The cases listed are arranged in alphabetical order of the subject matter. Readers are requested to refer to the relevant law reports for details of these cases.

Admissible Facts

Cheung Fat-Fan and Fu Ah-kum v Commissioner of Rating and Valuation (CRV) [1977]
HKLTLR 218

Grounds of appeal are confined to the grounds of proposal or objection. New facts in support of the grounds stated are however allowed at the hearing.

Assessability of Development and Redevelopment Sites to Government Rent

CRV v Agrila Limited & 58 others [2001] FACV 1 & 2/2000

Best Origin Limited v CRV [2012] FACV 21/2011

The legality of assessing development sites and redevelopment sites to Government rent was confirmed. The CFA considered that the Lands Tribunal had started with a valuable insight i.e. a development site has in common with some tenements owned by public utilities or statutory undertakers: that it is not immediately productive of income or profits, but is nevertheless of real value to the occupier. For development sites, CRV's method of valuation by annualising the unimproved capital value of the site was endorsed by the Lands Tribunal and was not intervened by a higher court. For redevelopment sites, the CFA ruled that CRV's approach to adopting the "last ascertained ratable value" is legitimate and consistent with the Basic Law.

Burden of Proof

United Theatres Corp. Ltd. v CRV [1978] HKLTLR 298

Kader Industrial Co. Ltd. v CRV [1958] DCLR 207

The onus is on the appellant to prove that the Commissioner is wrong.

Contractor's Test – Decapitalisation Rate

Mobil Oil Hong Kong Ltd. v CRV [1991] HKDCLR 77

Property market yield was accepted to determine the decapitalisation rate.

Controlled Rents

Poplar Assessment Committee v Roberts [1922] 2 AC 93

The House of Lords held, by a majority, that the operation and effect of the Rent Restriction Act 1920 was not to be taken into account in arriving at the valuation of the premises.

Hoey Fook Cheung & Hoey Fook Hong v CRV DC MP 94/73

Wei Che-Yan v CRV [1977] HKLTLR 192

Controlled rents were ignored when valuing a tenement for rating purposes. This followed the UK House of Lords decision in *Poplar Assessment Committee v Roberts*.

Elemental Approach

Kwong Fat Loong Shipyard v CRV [1990] HKDCLR 5

The tribunal accepted the respondent's elemental approach of valuation by dividing the tenement into four elements and using the comparative method to value three of those elements and the contractor's method for the remaining slipway.

Government Lease Restrictions

Lee King v CRV RA 130/77

CRV v Lai Kit Lau Mutual Aid Committee and Another [1986] HKLR 93

Government lease restrictions and conditions other than statutory restrictions should be ignored in rating assessments.

Illegal Extensions

Cheung Man Yee v CRV RA 41/84

Value of illegal extension was included in the assessment of the rateable value, but the value must reflect the calculated risks incurred by the hypothetical landlord and hypothetical tenant.

Interest Rate on Refund of Rates

The Hongkong Electric Co. Ltd. v CRV [2010] LDRA 358/04 & others, [2012] FACV 12/10

If the rateable value was decided to be reduced and interest was awarded for rates overpaid, the applicable rate of interest should be the ratepayer's borrowing rate for the relevant period.

Lands Tribunal's Jurisdiction

Yiu Lian Machinery Repairing Works Ltd. & Others v Attorney General HC MP 179-181/80

Lands Tribunal has jurisdiction to decide appeals. Attempt to take appeal direct to High Court failed.

Plant and Machinery

CLP Power Hong Kong Limited v CRV [2017] FACV No. 7 of 2016

The Court of Final Appeal held that certain fixed equipment, such as boiler supports, cooling water circuits, pipework and electrical cables, are rateable. Section 8A is to apply to any equipment which is plant by means of which any land, building or structure is occupied by a person whether or not such land, building or structure is otherwise a tenement. The Court also held that the inclusive definition of “plant” in section 8A(3) could be treated as limited to ancillary equipment which is not adjunct machinery falling within section 8(a).

Public Religious Worship

Gallagher (VO) (Respondent) v Church of Jesus Christ of Latter-day Saints (Appellant) [2008] UKHL 56

The rituals taken place in the Temple are exclusive to Patrons who have acquired a “recommend” from the bishop after demonstrating belief in Mormon doctrine, an appropriate way of life and payment of the required contribution to church funds. House of Lords held that the Temple is not a place of “public religious worship” because it is not open to the public and, neither, is it open to all Mormons.

Rateability of Assets under Construction

The Hongkong Electric Co. Ltd. v CRV [2010] RA 123, [2011] 1 HKC 165, 4 HKC 509

Assets of the electricity undertaking undergoing a process of construction or development, such as reclamation of land to expand the power station and expansions and modifications to the existing supply network, collectively referred to as “assets under construction”, were held to be not rateable by the Court of Final Appeal. In order for land, building or structure under construction to fall into the rating net, it must have attained a state making it capable of beneficial occupation.

Rateability of Contractor's Hut

London County Council v Wilkins (VO) [1957] AC 362

Builder's huts intended to remain in position for 12 to 18 months, having sufficient permanence and not being of too transient in nature, were held rateable by the House of Lords.

Rateable Occupation

Westminster City Council v Southern Railway Co., Railway Assessment Authority and W. H. Smith & Son Ltd. [1936] AC 511

Bookstalls, chemist's shop, kiosks, etc. within the area of railway station let under leases or licences were held to be capable of separate assessment and therefore not to be part of the railway hereditament.

Hing Hon Road Landlord and Tenant Association Ltd. v CRV [1978] HKLTLR 1

The Lands Tribunal held that all the four ingredients of rateable occupation were present and the appellant was in rateable occupation of the car parking spaces in Hing Hong Road, a private cul-de-sac.

Cardtronics and Others v Sykes and Others [2019] RA 1, CA

The Court of Appeal held, in relation to externally accessed machines, that automatic teller machines (ATM) owned by banks and used to provide banking services at supermarkets, convenience stores and petrol filling stations were not separately rateable from the premises at which they were situated, because the retailer had retained sufficient control over the ATM sites to remain in rateable occupation, and to prevent a separate hereditament from being formed. "General control" is the decisive factor in determining who was in rateable occupation.

Rebus Sic Stantibus Principle

Fir Mill Ltd. v Royton UDC and Jones (VO) [1960] 7 RRC 171

In connection with the assessment of cotton spinning mills and weaving sheds, the Lands Tribunal held that the premises must be valued as available for any industrial use, and not only for the use as spinning or weaving sheds. The Tribunal said:

“A dwelling house must be assessed as a dwelling house, a shop as a shop, but not as any particular kind of shop; a factory as a factory, but not as any particular kind of factory.”

Dawkins (VO) v Ash Brothers & Heaton, Ltd. [1969] AC 366

It was held by the House of Lords that a future event such as the demolition order in the subject case, being a fact and which was essential to and not accidental to the hereditament itself, should be taken into account in arriving at the assessment.

Midland Bank Ltd. v Lanham (VO) [1978] RA 1

The Lands Tribunal seemed to have applied a much wider meaning to the words “mode or category of occupation” than was indicated in the *Fir Mill Ltd.* case. It said:

“Finally, all alternative cases to which the hereditament in its existing state could be put in the real world, and which would be in the minds of the competing bidders in the market, are to be taken as being within the same mode or category, where the existence of such competition can be established by evidence.”

Ho Tang Fat v CRV RA 12/78

The Tribunal had considered the UK cases *Fir Mill Ltd. v Royton UDC and Jones (VO)* and *Midland Bank Ltd. v Lanham (VO)* and held that factory use was not in the same mode or category of the subject tenement, which was a community hall.

CRV v Lai Kit Lau Mutual Aid Committee and Another [1986] HKLR 93

Following *Midland Bank Ltd.*, it was held that all realistic alternative uses to which the premises could be put, as revealed by evidence, should be taken into account.

Williams (VO) v Scottish & Newcastle Retail Ltd. and Another [2001] RA 41

The Court of Appeal held that the Lands Tribunal was right in holding that two public houses must be valued disregarding their potential for shops and restaurant use because the works necessary for those uses were more than minor and because those uses were not in the same mode and category as public house use. The approach in *Midland Bank Ltd.* case (“...all alternative uses to which the hereditament in its existing state could be put in the real world, and which would be in the minds of competing bidders in the market, are to be taken as being within the same mode or category...”) was rejected.

Receipts and Expenditure Method

The following cases established that the receipts and expenditure method is appropriate in determining rateable values for certain types of specialised property and approved different methods in determining the tenant’s share of the divisible balance.

The Cross-Harbour Tunnel Co. Ltd. v CRV [1978] HKLTLR 144

With a relatively small amount of tenant’s capital, it was appropriate to have regard to the gross takings.

China Light & Power Co. Ltd. v CRV RA 180-185/91, CA 83, 101 & 176/94

The return on tenant’s assets in this case was determined after having regard to Capital Asset Pricing Model (CAPM) and Weighted Average Cost of Capital (WACC).

The Hongkong Electric Co. Ltd. v CRV [2010] RA 123, [2011] 1 HKC 165, 4 HKC 509

CLP Power Hong Kong Limited v CRV [2017] FACV No. 7 of 2016

In both cases, the tenant’s share was determined by taking a percentage of the divisible balance in proportion to the hypothetical tenant’s share of the value of the company’s assets.

Recreation Clubs

Royal Hong Kong Golf Club v CRV [1977] HKLTLR 236

Hong Kong Country Club v CRV [1978] HKLTLR 67

Royal Hong Kong Yacht Club v CRV [1987] HKLTLR 1

These cases established that recreation clubs are to be assessed in Hong Kong based on the Contractor's Test principle with the land value reflecting the value for recreation or agricultural use. Decapitalisation rate on Estimated Capital Value is to be determined by reference to financial market rates.

State of Locality

Clement (VO) v Addis Ltd. [1988] 1 All ER 593

The House of Lords held that an intangible factor such as the existence of an enterprise zone nearby should be taken into account as it had affected the state of locality of the premises. The effect of this decision was later restricted by the enactment of the Local Government Finance Act 1988 which provided that matters affecting the physical state of the hereditament and physical state of the locality in which the hereditament is situated were to be taken into account.

State of Repair and Redevelopment Prospect

Wexler v Playle (VO) [1960] 1 QB 217, [1960] 1 All ER 338, 5 RRC 359, CA

The Court of Appeal held that the Lands Tribunal was correct in ignoring defects in a flat which were readily repairable, in arriving at the gross value of the flat under s 2 (2) of the Valuation for Rating Act, 1953. The landlord's obligation to repair included the obligation to put the flat into repair and the defects being remediable were such that the hypothetical tenant would require him to put them right.

Saunders v Maltby (VO) [1976] 19 RRC 33, CA

The principle in *Wexler v Playle* was qualified by the Court of Appeal that if the cost of repair would be out of proportion to the value of the house, so much so that a hypothetical landlord would not do them all, then it must not be assumed he would do them.

Warren Chow v CRV [1977] HKLTLR 277

Man Sai Cheong Investment Co. Ltd v CRV [1978] RA 205/77

Wong Tak Woon v CRV RA 120/84 CA 127/86

Valuation must be made on the basis that the landlord would remedy readily remediable defects (*Warren Chow*). Premises in a very run down condition should be assessed on a refurbished basis as the cost was not out of proportion to the value of the property (*Man Sai Cheong*). Allowance should be made for very poor state if repairs would be uneconomical. Landlord's intention to redevelop the property must however be disregarded (*Wong Tak Woon*).

Structural Alteration

Kinco Investment Holding Limited v CRV [2006] LDRA 33-36/2006

“Structural alteration” in section 24 of the Rating Ordinance should be construed to mean any alteration made to the structure of a tenement so as to change its mode or character of occupation.

Tenancy from Year to Year

Staley v Castleton Overseers [1864] 33 LJMC 178

The hypothetical tenancy should be a tenancy from year to year and should not be a tenancy for a reasonable term of years.

R. v South Staffordshire Waterworks Co. [1885] 16 QBD 359

It was held that “a tenant from year to year is not a tenant for one, two, three, or four years but he is to be considered as a tenant capable of enjoying the property for an indefinite time, having a tenancy which it is expected will continue for more than a year, but which is liable to be put to an end by notice.”

Consett Iron Co. Ltd. v North-West Durham Assessment Committee [1931] AC 396

The House of Lords held that consideration should not be limited to the facts of the current year. The prospect of a reasonable continuance of the tenancy should be considered.

China Light & Power Co. Ltd. v CRV [1994/95] CPR 618, 626

Tenancy from year to year implies a reasonable expectation of its continuance.

Tenement

Yiu Lian Machinery Repairing Works Ltd. & Others v CRV [1982] HKLTLR 32

Distinction between definition of “tenement” in Hong Kong and “hereditament” in the UK was made.

Woolway (VO) v Mazars [2015] UKSC 53

The Supreme Court’s ruling had replaced the old tests of “contiguity” and “functional linkage” with new, and much more rigid, tests of “direct communication” and “essential interdependence”, to define a single hereditament. The primary test is “geographical” and is based on visual or cartographic unity. Unity is not simply a question of contiguity, but is determined if there exists direct communication in between. Where geographically two spaces are distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of the one was necessary to the effectual enjoyment of the other. The question whether the use of one part is necessary to the effectual enjoyment of the other depended not on the particular needs or way of operating the two parts by the actual occupier but on the character of the actual premises and on how an occupier would use them in the existing mode or category of use.

Sogo Hong Kong Company Ltd. v CRV [2019] HKLdT 68

The definition of “tenement” in section 2 is subject to section 9 of the Rating Ordinance, which is a new deeming provision added to the Ordinance in 1973 to create separate tenement for a right to use land for exhibiting advertisements and to strengthen the CRV’s position in regard to the assessment of advertising station. The Lands Tribunal concluded that the two advertising stations located at the external wall of the department store each constituted a separate tenement under section 9, and were respectively liable for rates.

Tone of the List

Ladies Hosiery and Underwear Ltd. v West Middlesex Assessment Committee [1932] 2 KB 679

It was held that the appellant’s hereditament had been entered in the valuation list at the proper figure. The fact that the seven other hereditaments had been assessed at a lower figure was irrelevant and could not be used to justify a reduction of the appellant’s assessment. The rule was that correctness must not be sacrificed for uniformity.

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