



LAND RESUMPTION AND COMPENSATION IN THE URBAN AREA

Guidelines for Owners, Occupiers and Surveyors



**We strive to achieve excellence in land administration in
Hong Kong for the greater benefit of the community**

**Lands Department
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LAND RESUMPTION IN URBAN AREA

1. PURPOSE

This pamphlet briefly outlines the procedures and compensation provisions for private land resumed in Urban Area (defined as Hong Kong Island, Kowloon and New Kowloon). Resumption proceedings are instituted under the relevant Ordinances for different purposes. As the procedures and compensation provisions of various Ordinances differ, the following paragraphs only intend to give a general guideline on resumption matters. Any person whose interest is affected by a land resumption project is advised to refer to the provisions of the respective Ordinances for details or consult professional consultants.

2. LAND RESUMPTION

The Government may acquire private land by resumption for the implementation of public projects such as a road scheme, a public housing development, an urban renewal project, an open space, a drainage improvement project, a new market, a school or any item in the Public Works Programme. According to the purpose of public projects, resumption proceedings may be instituted mainly under the provisions of:-

- (a) the Lands Resumption Ordinance, Chapter 124;
- (b) the Roads (Works, Use and Compensation) Ordinance, Chapter 370;
- (c) the Railways Ordinance, Chapter 519;
- (d) the Land Acquisition (Possessory Title) Ordinance, Chapter 130;
- (e) the Land Drainage Ordinance, Chapter 446;
- (f) the Urban Renewal Authority Ordinance, Chapter 563;

- (g) The Mass Transit Railway (Land Resumption and Related Provisions) Ordinance, Chapter 276.

The Director of Lands is given the authority to implement resumption and compensation provisions of these Ordinances.

3. NOTICE OF RESUMPTION

When a resumption is ordered, a Government Notice will be published in the Gazette and a freezing survey¹ will be conducted. A copy of the Government notice will be affixed on or near the properties affected, and sent to the registered owners thereof, where possible. Under normal circumstances, the Government will give a period of notice of three months from the date upon which the notice was affixed on or near the properties and upon expiry of the period specified in the notice, the ownership of the properties will revert to the Government. If there is an urgency to acquire the properties, a shorter period may be given. Upon the date of reversion, all legal rights and interests are extinguished. Henceforth, the former owner is not entitled to collect rents or fees of any kind from his tenant or the occupant.

4. OFFER OF COMPENSATION

When the private land is resumed or otherwise adversely affected by the actions of the Government, the Ordinance under which the legal interest is extinguished or affected provides for the payment of compensation. The former owner or persons having an interest in the land such as the tenant, will be entitled to statutory compensation for the value of the land and building (if any) or other land interests resumed in accordance with the provisions of the Ordinance.

- (a) For land resumed under the Lands Resumption Ordinance (Chapter 124), the Government will make an offer of

¹ For railway projects, the Lands Department or for urban renewal projects, the Urban Renewal Authority (URA) will carry out a survey when the project is announced which may be more than a year before the resumption is gazetted. Such survey will be adopted by the Lands Department as the freezing survey.

compensation in respect of the resumption to the former owner and to any person having an estate or interest in the land immediately before reversion under an instrument registered in the Land Registry or invite claims for compensation from them within 28 days from the date of reversion. Any person who considers that he has a compensatable interest in the land resumed, and who has not been offered compensation nor been invited to claim compensation may, within one year from the date of reversion, submit a claim stating the nature of his estate or interest in the land and the amount of compensation which he claims for the resumption of that estate or interest.

- (b) For land resumed under the Roads (Works, Use and Compensation) Ordinance (Chapter 370) and the Railways Ordinance (Chapter 519), any person having compensatable interests in the land resumed should submit a claim within the period as specified in Part II of the Schedule of the respective Ordinances.
- (c) The amount of compensation will be assessed on the basis prescribed in the respective Ordinances. Upon acceptance of the amount of compensation offered and the proof of title to the satisfaction of the Government, the claimant is required to sign necessary documents. Thereafter, the release of compensation will be arranged accordingly. In straightforward cases, cheques for the amount of compensation offered will be made available for collection within 4 weeks following receipt of acceptance and proof of title.

5. ASSESSMENT OF OPEN MARKET VALUE FOR RESUMED PROPERTIES

Under the Ordinance, compensation payable to the registered owners is based on the open market value of the resumed properties at the date of resumption. Valuation principles and practices adopted by the Lands Department in assessing the value of resumed properties are outlined below:-

(a) How is open market value assessed

In assessing the open market value of resumed properties, reference is made to the market evidence of similar properties in similar locality around the date of resumption. The assessment involves comparing the resumed properties with the sale transactions of similar properties and making necessary adjustments for various factors such as location, environment, building condition, age, accessibility, date of transaction, floor, size, orientation, facilities etc.

(b) Existing Use Value

For properties in multiple ownership, the open market value of an individual unit is normally assessed with reference to the use as shown on the approved building plans/alterations and additions plans and the use as permitted under the lease. Any change of use not authorised by the Building Authority even if it is permitted under the lease is normally disregarded in the assessment of statutory compensation. For example, where the use of the unit as shown on the approved building plans/alterations and additions plans or on the occupation permit is domestic but it has been partially/wholly used for non-domestic purpose without the Buildings Authority's approval, the unit will be valued as domestic use. Likewise, where the use of the unit as shown on the approved building plans/alterations and additions plans or on the occupation permit is non-domestic but it has been partially/wholly used for domestic purpose without the Buildings Authority's approval, the unit will be valued as non-domestic use.

(i) Area of the resumed properties

Normally, the saleable area^{*} of the resumed properties as alienated under the registered assignment documents and measured from the approved building plans/alterations and additions plans is adopted in the assessment of statutory compensation. The area of ancillary

^{*} Defined in Code of Measuring Practice issued by the Hong Kong Institute of Surveyors on 1.3.1999.

accommodations of an individual unit such as balcony, flat roof, top roof, bay window, utility room and open yard is also taken into account in the assessment. In case the approved building plans/alterations and additions plans cannot be located, in particular in respect of pre-war buildings, on-site measurements of the properties as described or indicated in the registered assignment documents may be conducted so as to ascertain the saleable area of the properties. In case the saleable area cannot be measured on site due to site constraint, internal floor area* measured on site may be adopted, with suitable adjustments for conversion to saleable area.

(ii) Unauthorised Structures

Unauthorised ground floor cocklofts, cockloft extensions, structures underneath staircase, rooftop, flat roof and yard structures, extensions etc are sometimes detected within the resumed properties. These structures are not compensatable if they are not in compliance with the Buildings Ordinance and the terms of the lease under which the land is held. However, the value of open roof top, open side roof, open yard and high headroom of the ground floor shop unit will be reflected in the assessment.

(iii) Tenanted property

The open market value of a tenanted property normally comprises the capitalized value of the rent for the unexpired term and the deferred reversionary value. The unexpired term of the tenancy, the rent paid under the tenancy agreement, the full market rent upon reversion and the deferment period before reversion will be reflected in the assessment. For those periodic tenancies, the duration of the unexpired term must be determined having regard to the facts of each case.

* Defined in Code of Measuring Practice issued by the Hong Kong Institute of Surveyors on 1.3.1999.

(c) **Redevelopment Value**

- (i) For lots in single ownership, the existing use value and redevelopment value will be assessed. The higher of the two values will be offered as a statutory compensation. In assessing the redevelopment value, any tenants' compensation, demolition costs and the period required to obtain vacant possession will be reflected in the assessment.
- (ii) For compensation claims based on joint development with adjoining lots held under different ownership, the likelihood of joint development must be proved. In addition, there must be evidence that (i) there is a realistic possibility of joint redevelopment; (ii) joint redevelopment value is higher; (iii) there are no obvious impediments to joint redevelopment; and (iv) the proposed scheme is compatible with the predominant redevelopments in the vicinity. Each case must be examined having regard to its own peculiar facts and circumstances.
- (iii) For compensation claims based on redevelopment or joint redevelopment, the assumed development scheme must be realistic: the size of the amalgamated site, the environment and the pattern of redevelopment in the vicinity must be taken into account when assuming a redevelopment scheme. Also the length of time estimated to effect the proposed redevelopment or joint redevelopment must be properly reflected in the redevelopment value.

6. **STATUTORY AND EX-GRATIA COMPENSATION TO DIFFERENT PARTIES**

The type of compensation to a party affected by a land resumption scheme may vary according to the type of property in question and the legal interest held by the party in the property. The details are set out in the following paragraphs.

6.1 DOMESTIC PROPERTY

6.1.1 STATUTORY COMPENSATION

(a) Owners' property interest

Legal owners are entitled to the open market value of the resumed properties assessed on a vacant possession basis or subject to tenancy basis as appropriate as at the date of reversion. Where appropriate, the redevelopment value of the resumed properties, will also be considered. Details of the assessment of the open market value for resumed properties are depicted in paragraph 5 above.

(b) Tenants' property interest

Legal tenants are entitled to the open market value, if any, of their interest in the domestic properties (for example, the value of an unexpired lease term subject to an existing rent below the prevailing open market rent).

(c) Removal costs and expenses

(i) Legal domestic occupiers (including owner-occupiers and tenants) are entitled to claim the losses and expenses reasonably incurred by them in moving from the resumed flat to a replacement flat due to the land resumption. Ex-gratia removal allowance will normally be offered to them in lieu of statutory compensation. However, if the actual removal costs incurred including stamp duty, agency fee, legal cost etc. exceed the ex-gratia removal allowance offered by the Government, the occupiers can submit claims for reimbursement of actual costs that have been reasonably incurred.

(ii) In the event that the redevelopment value of the resumed properties is offered as compensation to the owners, they will not be entitled to claim compensation for removal costs and expenses.

6.1.2 HOME PURCHASE ALLOWANCE AND SUPPLEMENTARY ALLOWANCE

(a) Owner-occupiers

- (i) In addition to the statutory compensation, owner-occupiers may also receive an ex-gratia allowance, namely the Home Purchase Allowance (HPA).
- (ii) The HPA is payable to owner-occupiers to enable them to purchase a relatively new replacement flat of a similar size in the locality of the resumed flat. The amount of HPA payable to individual owners is the difference between the value of a notional replacement flat (based on a seven year old flat of a size similar to the resumed flat and in the same locality) and the open market value of the resumed flat. The eligibility for receiving the HPA will be subject to screening in accordance with the prevailing Government policy. The HPA will not be offered if the owner-occupier has already accepted rehousing by the Government.
- (iii) The full HPA will be paid to an owner who is occupying the entire flat or if he can prove that the entire flat is occupied by his immediate family members, including children, parents and dependent brothers and sisters, grandparents, grandchildren, step-parents, spouse's parents and spouse's step-parents.

(b) Owners of tenanted flats or tenanted areas

- (i) In addition to the statutory compensation, owners of tenanted flats or tenanted areas are eligible for the Supplementary Allowance (SA) which is a supplement to the open market value of the resumed flat subject to tenancy.
- (ii) An owner who partially occupies his flat and lets out part of it will be paid the full HPA for the area he occupies and the SA at 75% of the full HPA for the tenanted area.

- (iii) For a flat partially occupied by an owner's immediate family members and partially tenanted, the full HPA will be paid for the area occupied by the immediate family members and the SA at 75% of the full HPA for the tenanted area.
- (iv) The SA will be paid at 50% of the full HPA for a first wholly-tenanted flat and at 25% of the full HPA for a second wholly-tenanted flat. No SA will be paid for a third wholly-tenanted flat.

(c) **How is the HPA assessed**

For all resumed flats in old buildings within a resumption project, the Director of Lands will assess the unit rate (i.e. \$ per square meter) of a notional replacement flat of 7 years old. The notional replacement flat is assumed to be in a comparable quality building, situated in a similar locality in terms of characteristics and accessibility. The notional replacement flat will be situated at the middle floor of a notional building with average orientation, i.e. not facing south or west, and without sea view. Normally, comparables aged around 7 years and transacted around the date of reversion will be selected. Based on these comparables, appropriate adjustments for time, age, orientation, floor, quality, size, accessibility, environment etc will be made so as to arrive at the unit rate of a notional replacement flat for a resumption project. A single notional replacement flat unit rate will be used throughout a resumption project.

The HPA for a resumed flat is the difference between the value of a notional replacement flat (the area of the resumed flat multiplied by the notional replacement flat unit rate) and the open market value of the resumed flat.

(d) **General issues in relation to the HPA/SA**

- (i) An owner of a vacant flat is eligible for the same amount of SA as an owner of a tenanted flat.

- (ii) The HPA/SA will be payable for a maximum of three flats per owner per resumption exercise.
- (iii) In computing the amount of the HPA/SA payable, the saleable area of the flat in which the owner is occupying shall form the basis of calculation. However, unauthorized building works will not be included in the computation of saleable floor area. The definition of saleable area shall follow the Code of Measuring Practice issued by the Hong Kong Institute of Surveyors on 1 March 1999.
- (iv) The HPA/SA is not payable to owners of unauthorized roof-top structures. The legal owner-occupier will still be eligible for a compensation assessed at the open market value of the roof-top itself together with rehousing (if eligible).
- (v) Where statutory compensation for the land resumed is assessed on redevelopment basis, an owner is not entitled to claim the HPA/SA. In the event that the redevelopment value is greater than the existing use value, the owner is entitled to claim existing use value plus the HPA if it is to his benefit.
- (vi) For urban renewal projects, if an owner of sub-divided flat elects not to receive the HPA, he may be offered rehousing.
- (vii) The HPA is payable to owner-occupiers of non-domestic properties which have been issued with an occupation permit other than for domestic use but which have been used for domestic purpose for a long time provided that such use is not prohibited under the lease.
- (viii) For urban renewal projects, the HPA/SA is not payable to an owner who has acquired the affected property after the commencement date of the project published in the Gazette under section 23 of the Urban Renewal Authority Ordinance.

- (ix) For railway projects, Government's survey *or* for urban renewal projects, the URA's survey (both surveys carried out at the time of announcement of the project) will normally be adopted for the purpose of determining the eligibility for HPA/SA. Government's update survey (carried out at the time of gazetting of the Resumption Notice) will be used to counter check if the owner is still entitled to HPA/SA or the same amount of HPA/SA. No additional HPA/SA entitlement or increased amount of HPA/SA will be allowed as a result of the update survey in normal circumstances.

(e) **Appeals mechanism**

- (i) An owner, who considers himself aggrieved by the decision of the Director of Lands in respect of the payment of the HPA/SA (on contentious issues regarding the eligibility for the HPA/SA, the calculation of floor area for payment of the HPA/SA and other related matters) could, within 60 days of such decision, submit an appeal in writing to an Appeals Committee. The Appeals Committee, after hearing and investigation, would then make a determination on the decision of the Director of Lands, if necessary. If the Director of Lands does not accept the determination, the case will then go to the Secretary for Development who will review the case and make a final decision on it. The owner wishing to lodge an appeal may write to the Appeals Committee at 17/F, West Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong.
- (ii) Appeals on the unit rate of the notional replacement flat as referred to in paragraph 6.1.2(c) above will be considered by the Director of Lands. Legal owners are required to submit an appeal in writing within 2 months from the date of an offer of compensation.

6.2 COMMERCIAL PROPERTY

(a) Compensation to owner-occupiers

Legal owner-occupiers of commercial properties are entitled to the existing use value of the resumed properties as at the date of reversion, plus one of the following additional payments: –

- (i) an ex-gratia allowance equivalent to four times the amount of rateable value of the resumed properties² prevailing as at the date of reversion and where appropriate, severance payments to employees under the Employment Ordinance, Chapter 57; or
- (ii) where an owner believes that his business loss is greater than the amount of the ex-gratia offer, he has the right to claim business loss (if substantiated by documentary evidence) under section 10(2)(d) of the Lands Resumption Ordinance, removal costs under section 10(2)(e)(i) and professional fees (also see paragraph 10 below) under section 10(2)(e)(ii) of that Ordinance.

With regard to paragraph 6.2(a)(ii) above, owner-occupiers may submit statutory claims for business loss and related loss and expenses as a result of total extinguishment or removal of the business from the resumed property. The various heads of claim for statutory compensation may include :-

- (I) Permanent or temporary loss of business profit;
- (II) Loss on forced sale of fixtures & fittings and stock;
- (III) Loss of business goodwill; and

² The rateable value of a property is the reasonable annual rental value of that property as assessed by the Rating and Valuation Department. Rateable values are reviewed annually.

(IV) Severance payments to employees under the Employment Ordinance, Chapter 57.

The above items may not be taken as exhaustive and each case will be considered on its own merits.

In appropriate cases where the redevelopment value for the land resumed is higher than the existing use value as at the date of reversion, the former will be offered as a statutory compensation. However, the owner-occupier is not entitled to claim compensation as referred to in paragraph 6.2 (a)(ii) above if the land resumed is assessed on redevelopment value.

(b) Compensation to owners (not in occupation)

Legal owners of tenanted or vacant commercial properties will be offered the higher of (i) the redevelopment value of the resumed properties as at the date of reversion (if established) and (ii) the existing use value of the resumed properties plus an ex-gratia allowance of the amount of the rateable value of the same prevailing as at the date of reversion.

(c) Compensation to tenants

Legal tenants are entitled to the open market value, if any, of their interest in the commercial properties (for example, the value of an unexpired lease term subject to an existing rent below the prevailing open market rent), plus one of the following additional payments:-

- (i) an ex-gratia allowance equivalent to three times the amount of the rateable value of the resumed properties prevailing as at the date of reversion and where appropriate, severance payments to employees under the Employment Ordinance, Chapter 57, or
- (ii) the right to make statutory claims for compensation under the Lands Resumption Ordinance as described in paragraph 6.2 (a)(ii) above.

7. INDUSTRIAL PROPERTY

Legal owners (whether in occupation or not) and tenants of industrial properties are entitled to similar compensation payable to those of commercial properties except the ex-gratia allowance which will be assessed in accordance with the floor areas of the resumed properties.

8. INTEREST PAYMENT

Any sum of money normally payable as statutory compensation and ex-gratia payment will bear interest from the date of reversion until the date of the compensation payment. The interest rate applicable will not be lower than the lowest of the interest rate payable from time to time by the note-issuing banks on 24 hours' call deposits.

9. PROVISIONAL PAYMENT

When land is resumed and any compensation offered by the Government is not accepted, the Government will offer to the claimant 100% of the statutory valuation assessed by the Government as a provisional payment together with interest. Thereafter, both parties may continue with the negotiation or apply to the Lands Tribunal for a determination of the amount of compensation. The Government will pay the balance together with interest to the claimant if the final agreed compensation exceeds the provisional payment. Where the provisional amount exceeds the final compensation agreed between the claimant and the Government or determined by the Lands Tribunal, the excess sum must be refunded to the Government.

10. PROFESSIONAL FEES

Costs or remuneration reasonably incurred in employing persons to act in a professional capacity in connection with claims for statutory compensation are reimbursable in appropriate circumstances. However, it should be noted that professional fee is not paid as a matter of course. A genuine need for the professional service must first be established. Besides, there are three

requirements for fees to be claimable :-

- (a) the fees must have been reasonably incurred;
- (b) a formal claim as required by the relevant Ordinance for professional fees must be made; and
- (c) the professional advisor must have recognised professional qualifications.

No interest is payable for any professional fee to be reimbursed.

11. LANDS TRIBUNAL REFERRALS

In the event that an agreement as to the amount of statutory compensation (if any) cannot be reached between the claimant and the Government, either party may submit the claim to the Lands Tribunal for a determination of the amount of the compensation. The figure awarded will then be binding on both the claimant and the Government. Moreover, any offer of the HPA/SA will be withdrawn upon referral of the case to the Lands Tribunal.

12. INFORMATION REQUIRED

12.1 PROOF OF LOSSES AND EXPENSES

To facilitate the processing of a statutory claim, the claimant must submit evidence to support his claim. For claims on losses and expenses, supporting documents such as receipts and invoices would be required. For example, a claimant of business loss would be required to provide the following documents (the list is not exhaustive) to substantiate his claim:

- (a) business registration certificate;
- (b) financial statements (e.g. balance sheet, profit and loss account) covering the claim period as well as the preceding years;
- (c) monthly analysis of sales/income;

- (d) tax returns in support of the claim;
- (e) tenancy agreement, if applicable; and
- (f) inventory of stock and the value of the respective items.

12.2 PROOF OF TITLE

Before compensation for the resumption of land is released to the claimant, he is required to prove that he has a good title to the land being resumed. The claimant is requested to submit all the title deeds and documents listed in the schedule attached to the offer letter to the District Legal Advisory and Conveyancing Office. At the same time he should also produce a copy of his Identity Card or other proof of identity, such as a passport.

13. ENQUIRIES

For further information or queries, please contact the Acquisition Section of the Lands Department at 19/F North Point Government Offices, 333 Java Road, North Point. Our staff members are happy to provide any necessary assistance.

Prepared by Acquisition Section,
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