



香港鐵路有限公司
西港島線建造工程

**Construction of MTR Corporation Limited
West Island Line**

根據《鐵路條例》(第 519 章)辦理補償事宜須知

**Information Note
on Compensation Matters under
the Railways Ordinance (Cap. 519)**

地政總署
鐵路發展組
二零零九年五月
Railway Development Section
Lands Department
May 2009

本小冊子只供一般參考用途。本小冊子並非法律文件，並無法律效力，且絕不應被視為法律文件或具法律效力。任何人士如擬根據《鐵路條例》(第 519 章)提交補償申索，請參閱該條例的條文。文內提述的政府政策均有可能改變。

This pamphlet is for general information only, is not a legal document and has no legal effect, and must not be construed as such. Any person who wishes to submit a compensation claim under the Railways Ordinance (Cap. 519) is advised to refer to the provisions of the Ordinance. Any Government Policy stated herein may be subject to change.

1. Introduction

- 1.1 The West Island Line (WIL) is an extension of the existing MTR Island Line from Sheung Wan to Kennedy Town for the provision of domestic passenger service. The railway scheme comprises an approximately 3 kilometres long underground railway tunnel with three proposed stations at Sai Ying Pun, near the University of Hong Kong and at Kennedy Town.
- 1.2 The WIL has been authorized by the Chief Executive in Council and the notice for the authorization was gazetted on 20 March 2009 under the Railways Ordinance (Cap. 519). The railway works is scheduled to commence in the third quarter of 2009.
- 1.3 This information note is prepared to provide general information which briefly explains the procedures and arrangements for compensation payment for the resumption of private land, creation of easements and/or other permanent rights over private land and creation of rights of temporary occupation over private land, as well as compensation claims submitted by businesses which are adversely affected and have sustained disturbance as a result of the closure of roads. This note is intended to give guidance and information for making a claim for compensation in these aspects. Any person whose interest is affected by the WIL is advised to refer to the provisions of the Railways Ordinance for details or consult professional consultants.

2. Brief details of the construction works

- 2.1 Under the authorized scheme of the WIL, the railway tunnels will be constructed by either cut-and-cover method, mined tunnel method or bored tunnel method. Traffic diversion works along the railway line in the Western District will be carried out progressively in stages to

tie in with the construction sequences of the works for the period from 2009 to 2014.

- 2.2 Throughout the planning and design stage, MTRCL and concerned departments have worked closely to minimize disturbance to the local people. Vehicular and pedestrian access to and from all buildings within or adjacent to the railway scheme will be maintained as far as possible. Sufficient width of footpaths fronting the shops and buildings entrances will be provided, and temporary traffic management schemes in various construction stages will be implemented to maintain traffic flow. The concerned parties will continue to monitor such arrangements throughout the works programme.

3. Compensation under the Railways Ordinance

- 3.1 According to the authorized scheme, resumption of private land, creation of easements and/or other permanent rights over private land, creation of rights of temporary occupation over private land and closure of roads will be required to make way for the construction of the WIL.
- 3.2 The resumption of private land, creation of easements and/or other permanent rights over private land, creation of rights of temporary occupation over private land and closure of roads for the construction of the WIL will be carried out under the Railways Ordinance. Apart from the powers to resume land, to create easements and/or other permanent rights over land, to temporarily occupy land and to close roads, the Railways Ordinance also provides for payment of compensation for losses caused by the exercise of such powers.

- 3.3 Compensation may be claimed under the procedures laid down in the Railways Ordinance which represents the basic legal entitlement of affected persons. S.32 of the Railways Ordinance sets out the right to compensation. Part II of the Schedule to the Railways Ordinance, which should be read with Part I of the Schedule, sets out the matters for which compensation may be claimed; the basis on which compensation is to be assessed; the persons who may claim compensation; and the period within which the claim must be served on the Secretary for Transport and Housing.

- 3.4 Any person who has a compensatable interest in the land resumed under S.16 of the Railways Ordinance is entitled to claim compensation from the Government for the following :-

- (a) the open market value of the claimant's interest in the resumed land or building at the date of resumption;
- (b) the amount of loss or damage to a business conducted by the claimant due to the removal of the business as a result of the resumption; and
- (c) the amount of any expenses reasonably incurred by the claimant in moving from the resumed land or building to, or in connection with the acquisition of, alternative land or building.

- 3.5 Any person owning a compensatable interest in the land which an easement and/or other permanent right is created or temporarily occupied under S.20 of the Railways Ordinance is entitled to claim compensation from the Government for the following :-

- (a) (i) In the case of an easement or other permanent right, the amount of an open market value of the claimant's interest

in the land by which it is diminished; or

- (ii) In the case of the creation of a right of temporary occupation, the amount of an open market rent for the claimant's interest in the land occupied during the period of the easement; and

(b) a disturbance payment¹.

3.6 For any temporary or permanent closure of road under S.22 of the Railways Ordinance, any person owning a compensatable interest in the land that access to the land is adversely affected by the closure of road is entitled to claim compensation from the Government for the following :-

- (a) if access to the land is adversely affected, the expense fairly and reasonably incurred in remedying or mitigating the effect of such closure, as far as may be practicable, and any diminution in the open market value of the claimant's interest in the land after such expense has been incurred; and

¹ Pursuant to Part I of the Schedule to the Railways Ordinance, "disturbance payment" means a sum equal to -

- (a) the expenditure and loss of money actually and reasonably incurred or to be reasonably incurred and arising from the dispossession of a person of land by reason of the matter for which the claimant is entitled to claim compensation under Part II; and
- (b) for disturbance of a trade or business on the land, the expenditure and loss of money actually and reasonably incurred or to be reasonably incurred and arising from the disturbance of that trade or business by reason of the matter for which the claimant is entitled to claim compensation under Part II,

but a disturbance payment is not to include any expenditure or loss which would not be recoverable, on the grounds that the expenditure or loss was too remote or was not caused by the disturbance, if that disturbance were a tort.

(b) a disturbance payment¹.

3.7 For physical or structural damage to any land or building resulting from the exercise of power under S.24 of the Railways Ordinance for inspection, preventive and remedial work on land and buildings, compensation will be assessed on the basis of the expense which is fairly and reasonably incurred in repairing, preventing or mitigating the damage and a disturbance payment for disturbance resulting from the exercise of power under S.24. The claim should be made before the expiration of one year from the date of completion of the operations carried out under S.24 from which the damage is alleged to have resulted.

3.8 (a) As regards the exercise of power under S.26 of the Railways Ordinance for the removal of any object or structure which is erected and maintained without the contravention of any Ordinance or Government lease, compensation will be assessed on the basis of diminution in the open market value of the claimant's interest in the land or building; and the expense which is fairly and reasonably incurred in moving the object or structure and making good that part of the building from which it is removed.

(b) The basis of assessment of compensation for reinstating an object or structure so removed or replacing the same with a similar object or structure is the expense fairly and reasonably incurred in reinstating or replacing the object or structure.

(c) The basis of assessment of compensation for the loss sustained in respect of an object or structure so removed which is not to be reinstated or replaced with a similar object or structure is the amount which is fairly and reasonably estimated as the value of the object or structure.

- (d) Compensation may be claimed for a disturbance payment¹ for disturbance resulting from the exercise of power under S.26.

The claim should be made before the expiration of one year from the date of removal, reinstatement or replacement.

- 3.9 As regards the exercise of power under S.27 of the Railways Ordinance by the Building Authority requiring an amendment of any plan relating to the building works or imposing conditions on the giving of approval to plans or consent to commence building works (other than a condition delaying building works), to avoid any incompatibility with the works for the construction, operation and maintenance of the railway, the basis of assessment of compensation will be the amount which is fairly and reasonably estimated as the loss to the claimant, including :-

- (a) any additional expense fairly and reasonably incurred in carrying out building works; and
- (b) professional fees and expenses

which are attributable solely to compliance with the amendment required or the condition imposed. The owner of the land on which the building works are carried out may submit a claim for compensation before the expiration of one year from the completion of the building works.

- 3.10 Claimant has a general duty to mitigate the amount of loss or damage to be incurred resulting from land resumption, creation of easements and/or other permanent rights, creation of rights of temporary occupation of land and the closure, modification or restriction of roads as far as practicable.

- 3.11 The claimant is also entitled to claim the costs reasonably incurred in employing professionals to act on his behalf in preparing and submitting the claims, and agreeing the compensation payable.

4. Submission of claim for compensation

- 4.1 The claim should be made in writing and submitted to the Secretary for Transport and Housing within the period specified in the Railways Ordinance. The claim period in general is within one year from the date of resumption or the date of the creation of the easements or rights or the date of the closure, modification or restriction of roads. The claim should also contain the following details :-

- (a) the name of the claimant, and his address for service of notices;
- (b) a full description of the land including any covenants, easements, rights or restrictions affecting the land;
- (c) the nature of the claimant's interest in the land including for a sub-lessee or sub-tenant his landlord's name and address and details of the sub-lease or tenancy;
- (d) details of any mortgage, including the principal still owing and name and address of the mortgagee;
- (e) if the claimant has let the land or any part, the name and address of each tenant and details of his lease or tenancy; and
- (f) particulars of the claim showing :-

- (i) the amount of the claim;
- (ii) under which item in Part II of the Schedule to the Railways Ordinance the claim is made;
- (iii) how the amount claimed under each item is calculated; and
- (iv) relevant documents or business records in support of the amount claimed.

Claimants may seek independent professional advice in making the claim, in order to avoid delays.

- 4.2 In the case of claims for diminution in the open market value of the land, the claimant should state the amount of depreciation in land value or rental value claimed and provide evidence in support.
- 4.3 In the case of claims for business loss or disturbance payment, the claimant should submit business records, supporting documents and information proving the loss incurred.
- 4.4 For claims of business loss, assessment of the compensation amount relies substantially on the information and documents provided by the claimant as he possesses business information required for the assessment. Examples of documents required to support the claim for general guidance and which are by no means exhaustive are :-
 - (a) certified profit and loss accounts;
 - (b) trading receipts; and

- (c) invoices and receipts of additional services (if applicable) engaged by the business or statements showing additional operating costs.

4.5 Claimant may engage a professional surveyor to assist him to make a claim. The Railways Ordinance allows payment of costs or remuneration reasonably incurred in employing persons to act in a professional capacity in connection with claim for compensation. However, it should be noted that professional fees are not paid as a matter of course.

5. Assessment of claim

- 5.1 In considering the claim, the Government may request further particulars from the claimant. It is in the claimant's own interest to make every effort to produce the information requested to substantiate his claim. Compensation will be assessed in accordance with the provisions of the Railways Ordinance.
- 5.2 Within 6 months of the date of receipt of the claim or further particulars, the Government will notify the claimant of its decision on the claim and the reasons for the decision. The submitted claim may either be accepted or rejected. Where the claim has been rejected, a counter offer may be made by the Government. If a claimant is not satisfied with the amount offered, he may discuss the assessment with the Government and may engage a professional surveyor to assist him.
- 5.3 If no agreement can be reached on compensation within 7 months from the receipt of the claim by the Secretary for Transport and Housing, either the claimant or the Secretary for Transport and Housing may refer the claim to the Lands Tribunal for

determination. The decision of the Lands Tribunal on the amount of compensation payable is final, even if it is less than the Government's offer. Parties may appeal against the decision of the Lands Tribunal on a point of law.

6. Payment of Compensation

- 6.1 Before compensation for land is released to the claimant, he is required to prove that he has good title to the land. He will be required to submit all title deeds and other documents to prove his title.
- 6.2 If any of the documents is not available he may have to make a statutory declaration to explain the circumstances of any loss or non-production of the title deeds or documents.
- 6.3 After the title documents have been checked and the Government is satisfied as to his entitlement to compensation, he will be required to attend the office of the Railway Development Section, Lands Department, or the office of a solicitors firm to sign an "Agreement as to Compensation and Indemnity" and at the same time to collect the cheque.

7. Enquiries

If you have any queries, please feel free to call the Railway Development Section, Lands Department at 2270 7728 or 2270 7727. The staff of the Railway Development Section will be happy to provide any necessary assistance.

Railway Development Section
Lands Department

May 2009

1. 序言

1.1 西港島線是現有港鐵港島線的延線，由上環伸延至堅尼地城，提供本地客運服務。該線包括一條長約三公里的鐵路隧道及擬設的三個鐵路車站，分別位於西營盤、香港大學附近和堅尼地城。

1.2 行政長官會同行政會議已批准興建西港島線。有關公告亦於二零零九年三月二十日根據《鐵路條例》(第 519 章)在憲報公布。鐵路工程定於二零零九年第三季展開。

1.3 本小冊子旨在提供有關因收回私人土地、在私人土地設定地役權及／或其他永久權利和暫時佔用權利及商戶因封閉道路所帶來的不利影響及所遭受的騷擾的申索補償程序及安排的一般資料。本小冊子旨在提供指引及資料，協助提出補償申索。任何人士的權益如受西港島線影響，請參閱《鐵路條例》的規定，以了解有關詳情，或徵詢專業顧問的意見。

2. 建造工程簡介

2.1 根據已批准之西港島線方案，列車管道將會採用明挖回填方式、挖掘隧道方式或鑽挖隧道方式建造。於二零零九年至二零一四年工程進行期間，香港鐵路有限公司會因應工程進度及次序在西區沿鐵路路線實施分階段交通改道措施。

2.2 香港鐵路有限公司及有關政府部門在策劃及設計階段一直保持緊密合作，將工程對區內人士的影響減至最少。通往所有位於鐵路方案範圍或毗鄰大廈的行車道及行人道會盡量維持開放。另外，會在商鋪及大廈入口前的行人道保留足夠的闊度，及在建造工程的各個階段制定臨時交通管理計劃。有關當局會在整個工程期間繼續監察各項安排。

3. 根據《鐵路條例》可獲得的補償

3.1 按已批准的鐵路計劃，當中涉及私人土地收回、在私人土地設定地役權及／或其他永久權利和暫時佔用權利及封閉道路以便進行西港島線的建造工程。

3.2 為建造鐵路而須收回私人土地、在私人土地設定地役權及／或其他永久權利和暫時佔用權利及封閉道路，將根據《鐵路條例》進行。《鐵路條例》除為收回土地、在私人土地設定地役權及／或其他永久權利和暫時佔用權利及封閉道路的權力訂定條文外，亦就因行使該等權力所造成的損失而須支付補償事宜作出規定。

3.3 《鐵路條例》代表了受影響人士的基本法律權利，受影響人士可根據該條例所訂的程序申索。《鐵路條例》第 32 條列明獲得補償的權利，該條例附表第 II 部(須連同該條例附表第 I 部一起閱讀)載列了可申索補償的事項、補償基準、何人可提出申索，以及向運輸及房屋局局長提交申索的期限等詳情。

3.4 任何就《鐵路條例》第 16 條被收回土地而擁有可獲補償權益的人士，均有權向政府申索下列補償： -

- (a) 於收回土地日期當日，申索人對被收回土地或建築物擁有的權益的公開市場價值；
- (b) 申索人因收地而須將經營的業務遷離，以致蒙受的損失或損害的款額；及
- (c) 申索人因被收回土地或建築物而須遷往其他土地或建築物時，或取得其他土地或建築物時，所招致的合理開支。

3.5 任何人士就《鐵路條例》第 20 條如在被設定地役權及／或其他永久權利和暫時佔用的土地上擁有可獲補償權益，均有權向政府申索下列補償： -

- (a) (i) 如屬地役權或其他永久權利，申索人對該土地擁有的權益的公開市場價值所減少的款額；或
- (ii) 如屬設定暫時佔用的權利，申索人對被佔用土地擁有的權益在設有地役權期間內的公開市場租金的款額；及

(b) 騷擾補償金¹。

¹ 依據《鐵路條例》附表第 I 部，「騷擾補償金」指一筆相等於下列開支及金錢損失的款項 -

- (a) 任何人因由於某事項而失去對土地的管有所引起的，並實際上和合理地招致或將會合理地招致的開支及金錢損失，而申索人根據《鐵路條例》附表第 II 部是有權就該事項提出補償申索的；及

3.6 就當局根據《鐵路條例》第 22 條暫時或永久封閉道路，任何因封路對土地的通道帶來不利影響而就有關土地擁有可獲補償權益的人士，均有權向政府申索下列補償： -

- (a) 如通道受到不利影響，為在切實可行範圍內盡量補救或減輕封路的影響而公平和合理地招致的開支，以及在招致此等開支後申索人對該土地擁有的權益的公開市場價值所減少的款額；及

(b) 騷擾補償金¹。

3.7 倘因行使《鐵路條例》第 24 條所賦予的權力而在土地及建築物進行視察或屬預防或補救性質的作業，引致土地或建築物遭受實質上或結構上的損壞，評定補償的基準為修補、防止或減輕該項損壞而公平和合理地引致的開支；倘因行使《鐵路條例》第 24 條的權力而引致任何騷擾，評定補償的基準則是騷擾補償金¹。申索須在根據《鐵路條例》第 24 條進行的被指稱引致該項損壞的作業的完成日期起計一年內提交。

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- (b) 就由於某事項對任何土地上所從事的行業或業務的騷擾而言，則因此而引起的，並實際上和合理地招致或將會合理地招致的開支及金錢損失，而申索人根據《鐵路條例》附表第 II 部是有權就該事項提出補償申索的事項的，

但如任何開支或損失，在假若該騷擾屬侵權行為的情況下，會以過於間接或非因該騷擾所導致為理由而不可追討，則該項開支或損失不得包括在騷擾補償金內。

- 3.8 (a) 倘因行使《鐵路條例》第 26 條所賦予的權力而拆除任何在不違反任何條例或政府租契下建造和維持的物體或構築物，評定補償的基準為申索人對該土地或建築物擁有的權益的公開市場價值所減少的款額；以及為自該建築物某部分拆除該物體或構築物和修復該部分而公平和合理地招致的開支。
- (b) 將被拆除的物體或構築物恢復原位或以相類物體或構築物代替，評定補償的基準為恢復原位或作出代替而公平和合理地招致的開支。
- (c) 被拆除的物體或構築物不獲恢復原位或以相類物體或構築物代替，因而就該物體或構築物蒙受損失，評定補償的基準為公平和合理地估計為該物體或構築物價值的款額。
- (d) 倘因行使《鐵路條例》第 26 條的權力而引致的騷擾，可申索騷擾補償金¹。

申索須在拆除、恢復原位或作出代替當日起計一年內提交。

- 3.9 建築事務監督行使《鐵路條例》第 27 條的權力，要求修訂任何建築工程的圖則或在批准該等圖則或同意該等建築工程展開時施加條件(施加造成延誤的條件除外)，以避免有關工程與鐵路的建造、營運及維修等工程不相容，評定補償的基準為公平和合理地估計為申索人所受損失的款額，包括： -

- (a) 任何為進行建築工程而公平和合理地招致的額外開支；及
- (b) 專業費用及專業開支，

而上述的損失、開支、專業費用及專業開支，是純粹為遵從所規定作出的修改或所施加的條件而引致的。而該土地的擁有人可由該等建築工程完成的日期起計的一年內提交申索。

- 3.10 申索人有一般責任，在切實可行範圍內盡量減低因收回土地、設定地役權及／或其他永久權利和暫時佔用土地的權利，以及因封閉、修改或限制使用道路而引致的損失或損害。
- 3.11 申索人亦有權申索有關聘用專業人士代其擬備申索、提交申索及商討應支付補償金額而產生的合理費用。

4. 提交申索補償

- 4.1 申索必須在《鐵路條例》訂明的期限內以書面提交運輸及房屋局局長。申索期一般為收回日期、設定地役權或權利日期或封閉、修改或限制使用道路日期起計的一年之內。申索亦必須載有下列詳情： -

- (a) 申索人的姓名及地址，以便可供送達通知；
- (b) 有關的土地的詳盡描述，包括任何影響該土地的契約、地役權、權利或限制；
- (c) 申索人在該土地所佔權益的性質，如申索人本身為分租契承租人或分租客，則須呈報其業主的姓名及地址，以及該項分租契或分租租賃的細節；
- (d) 任何按揭的細節，包括尚欠的本金及承按人的姓名及地址；
- (e) 如申索人已將該土地或其任何部分出租，則須呈報每一名租客的姓名及地址，以及該項出租或租賃的細節；及
- (f) 顯示下述資料的申索詳情： -
 - (i) 申索的款額；
 - (ii) 申索是根據《鐵路條例》附表第 II 部那一項目提出；
 - (iii) 根據每一項目而申索的款額是如何計算而得；及
 - (iv) 提供有關文件或商業記錄以支持所申索的金額。

為免延誤，申索人在提出申索時，可尋求獨立的專業意見。

- 4.2 倘就土地的公開市場價值的減少而提出申索，申索人須列明土地價值或租值所減少的款額，並提供證據，以支持申索。
- 4.3 如欲申索商業損失或騷擾補償金，申索人須提交有關商業記錄、文件或資料，證明已經蒙受的損失。
- 4.4 有關申索商業損失方面，申索人擁有評估所需的商業資料，而補償金額的評定主要倚賴申索人所提交的資料及文件。作為一般指引，現列述需要提交用以支持其申索的一些文件，但下列文件並非詳盡無遺： -
 - (a) 經核證為真實的損益帳；
 - (b) 交易單據；及
 - (c) 該業務使用額外服務(如適用者)的發票及收據，或顯示額外運作費用的報表。
- 4.5 申索人可聘用專業人士，協助他向政府提出申索。《鐵路條例》的條文容許當局支付因聘用專業人士辦理有關申索補償事宜而招致的合理費用或報酬，但須留意，專業費用並非理所當然應付的款項。

5. 申索的評定

- 5.1 在考慮申索時，政府可能要求申索人提供進一步詳情。為本身利益着想，申索人應盡力提供所需資料以支持其申索。有關補償會按《鐵路條例》的規定而釐定。
- 5.2 在接獲上述申索或進一步詳情起計的六個月內，政府會把決定，以及作出該決定的理由，書面通知申索人。當局可能接納或駁回該項申索，或向申索人作出反建議。如申索人對政府建議的款額不滿意，可與政府商議有關評定補償事宜，並可聘請專業測量師協助商討。
- 5.3 如在運輸及房屋局局長接獲申索的七個月內，雙方仍未能就補償達成協議，申索人或運輸及房屋局局長可把申索轉介土地審裁處裁決。土地審裁處就補償款額作出的決定，即使款項較政府建議的為少，將為最終決定。不過，雙方仍可基於法律觀點就土地審裁處的決定提出上訴。

6. 如何領取補償

- 6.1 當局向申索人發放土地補償前，申索人須證明擁有有關土地的妥善業權。同時，他亦須提交所有業權的契據及其他文件，以證明擁有業權。
- 6.2 申索人如未能提交任何有關的文件，便須作出法定聲明，以解釋遺失或不能出示有關業權契據或文件的情況。

- 6.3 有關業權契據經過查核，並經政府信納申索人具備資格領取補償後，申索人須前往地政總署鐵路發展組辦事處或律師樓的辦事處簽署一份「補償及彌償協議」，同時領取支票。

7. 查詢

倘你對上文有任何查詢，請致電地政總署鐵路發展組（電話：2270 7728 或 2270 7727）。該組人員樂意提供所需協助。

地政總署
鐵路發展組

二零零九年五月