

Legislative Council
Panel on Planning, Lands and Works

**Proposed Ex Gratia Allowances for
Property Owners and Tenants
Affected by the Resumption of Land**

Introduction

During the consideration of the Urban Renewal Authority Bill, some Legislative Council (LegCo) Members asked the Administration to review the proposed compensation package for owners and tenants affected by the resumption of land, in particular the proposed basis for calculating the Home Purchase Allowance (HPA) and to bring the Urban Renewal Authority Ordinance into operation only after the revised package has been endorsed by the Finance Committee of LegCo. The Bill was passed by LegCo on 27 June 2000. The Administration has now reviewed the current ex gratia allowances and our proposals are set out below.

Background

2. To arrest the problem of urban decay and to improve the living conditions of residents in old dilapidated areas, the Government will adopt a proactive and people-oriented approach to urban renewal. Our approach to urban renewal will be guided by three underlying principles –

- (a) affected property owners should be offered fair and reasonable compensation;
- (b) affected tenants should be provided with proper rehousing; and
- (c) the community at large should benefit from urban renewal.

3. If the ex gratia compensation package proposed below is approved by the Finance Committee of LegCo, the Urban Renewal Authority (URA) will be set up. It will be tasked to implement a 20-year urban renewal programme, consisting of 200 urban redevelopment projects and 25 uncompleted projects of the Land Development Corporation (LDC).

Proposals

4. Having reviewed the existing ex gratia compensation policy, the Administration proposes that –

- (a) the basis for calculating the HPA be revised from a replacement flat of about ten years' old to a replacement flat of about seven years' old;
- (b) the HPA for owners of a tenanted flat (or tenanted area) be retitled as the Supplementary Allowance (SA) to avoid confusion or misunderstanding;

(c) the eligibility criteria for the new HPA/SA and the amount payable, as set out in paragraph 12 below and at Annex A, be adopted;

Annex A

(d) owner-occupiers of commercial properties be offered an ex gratia allowance of four times the amount of the rateable value of the resumed properties, partly in lieu of the right to claim disturbance payments consisting of loss or damage to the business conducted in the resumed properties under section 10(2)(d) of the Lands Resumption Ordinance (Cap. 124), removal costs under section 10(2)(e)(i) and professional fees in relation to the claim for business loss under section 10(2)(e)(ii) of the same Ordinance (disturbance payments), and partly as a solatium (Note 1);

(e) tenants of commercial properties be offered an ex gratia allowance of three times the amount of the rateable value of the resumed properties in lieu of the right to claim disturbance payments;

(f) owners of tenanted or vacant commercial properties be offered an ex gratia allowance of the amount of the rateable value of the resumed properties as a solatium; and

Note 1 A solatium is a sum of money paid over and above the open market value as a solace for injured feelings or for being compelled to part with the resumed property.

- (g) the revised HPA for owner-occupiers of domestic properties and owners of domestic properties which are occupied by their immediate family members; the new SA for owners of tenanted/vacant domestic properties, and the new ex gratia allowance for owners and tenants of commercial properties be applicable to all land resumption exercises under any ordinance.

Review

(i) Background

5. We have reviewed the ex gratia allowances for owners and tenants affected by the resumption of land, taking into account the practices of the LDC, the current compensation policy of the Government for resumed land and the views of LegCo Members. A number of improvements to the existing package are recommended. The details of the proposed package are set out below in the following paragraphs.

(ii) HPA

6. At present, owners of domestic properties are eligible for statutory compensation if their properties are resumed by the Government. Under the Lands Resumption Ordinance, this statutory compensation will be the open market value of the resumed properties (Note 2). The open market value is the amount which a property, if sold in the open market

Note 2 Domestic tenants affected by URA projects will be rehoused by the URA.

by a willing seller, might reasonably be expected to realize. Owner-occupiers are also eligible for the HPA, which is an ex gratia allowance payable to enable them to purchase a relatively modern replacement flat of a similar size in the locality of the resumed flat. Owners of tenanted flats are eligible for the HPA at 50% of the full rate for their first tenanted flat.

7. The amount of HPA payable in individual cases is the difference between the cost of a replacement flat and the amount of statutory compensation. Under the current Government policy approved by the Finance Committee of the then LegCo in April 1997, the cost of a replacement flat is based on a flat of about ten years' old of a size similar to the one being resumed and in the same locality.

8. Under the Land Development Corporation Ordinance (Cap. 15), the LDC is required to take all reasonable steps to acquire properties within a project area, including negotiating for the purchase of the required properties on terms that are fair and reasonable. During the acquisition stage of its land assembly process, the LDC mostly follows the compensation terms offered by the Government, although the LDC terms are more flexible and generous in some aspects. However, if the LDC is unable to acquire some properties for a project and if these remaining properties are resumed under the Lands Resumption Ordinance for the project, the Government's compensation terms are used.

9. The Administration previously proposed to the Bills Committee on the Urban Renewal Authority Bill that the basis for calculating the HPA be revised from a replacement flat of about ten years' old to a replacement flat of about eight to ten years' old. However, the Bills Committee was not satisfied with this proposal and asked the Administration to reconsider the proposal with a view to further enhancing the HPA. Members also asked the Administration to review the eligibility criteria for the HPA and the amount of the allowance payable with a view to relaxing the established criteria.

10. In our review, we have taken as the starting point that a reasonably modern flat in the same locality and having a similar area as that of the resumed property should be used as the basis for calculating the cost of a replacement flat. A seven years' old flat is reasonably modern, yet no longer perceived as new. It fits our concept of a reasonably modern flat.

11. It has been pointed out to us that some elderly people are living on income from rents of flats in old buildings. At present, the HPA is payable for a maximum of two flats per owner per resumption exercise. We have reviewed the existing eligibility criteria to see if they could be relaxed to improve the ex gratia compensation for owners of tenanted flats. However, a maximum number of flats that are eligible for ex gratia compensation has to be set to avoid abuse or speculation.

12. Having reviewed the HPA and its eligibility criteria and taking into consideration the views of the property owners and Members, we propose that -

- (a) the basis for calculating the HPA be revised from a replacement flat of about ten years' old to a replacement flat of about seven years' old (a flat which is five years' old is still generally perceived as "new" and the depreciation in value is moderate; however, a flat which is seven years' old is generally no longer perceived as "new" and this perception is reflected in the value of such a flat);
- (b) the HPA for owners of a tenanted flat (or tenanted area) be retitled as the SA to avoid confusion or misunderstanding (the existing ex gratia allowance for owners of a tenanted flat is not really for home purchase; it is a supplement to the open market value of the resumed flat);
- (c) the HPA/SA be payable for a maximum of three flats per owner per resumption exercise (instead of two per owner as at present) (Note 3);

Note 3 The number of persons owning three or more flats in a project area is very small.

- (d) the full HPA be paid to an owner-occupier (ie, an owner who is occupying the entire flat);
- (e) the full HPA be paid to an owner if he could prove that the entire flat is occupied by his immediate family members (Note 4);
- (f) an owner, who partially occupies his flat and lets out part of it, be paid the HPA for the area he occupies and the SA at 75% of the HPA for the tenanted area on a pro rata basis;
- (g) for a flat partially occupied by an owner's immediate family members and partially tenanted, the HPA be paid for the area occupied by the immediate family members and the SA at 75% of the HPA for the tenanted area on a pro rata basis;
- (h) the SA be paid at 50% of the HPA for a first wholly tenanted flat;
- (i) the SA be paid at 25% of the HPA for a second wholly tenanted flat; and
- (j) no SA be paid for a third wholly tenanted flat.

Note 4 Immediate family members include children, parents and dependent brothers and sisters, grandparents, grandchildren, step-parents, spouse's parents and spouse's step-parents.

13. Some examples of how the revised HPA/SA scheme would work in practice are set out at Annex A.

(iii) Proposed new ex gratia allowance for owners and tenants of commercial properties

14. At present, owner-occupiers of commercial properties resumed by the Government are offered the following compensation to facilitate clearance and to help finance their move from the property resumed –

(a) the open market value of their properties, plus an ex gratia allowance based on a formula consisting of the rental cost for the removal period (during which no business is conducted), removal costs, decoration costs, stamp duty, legal fees and agent's fees (the different rates of the current ex gratia allowance are set out at Annex B); or

Annex B

(b) the open market value of their properties, plus the right to claim business loss (if substantiated) under section 10(2)(d) of the Lands Resumption Ordinance, removal costs under section 10(2)(e)(i) and professional fees under section 10(2)(e)(ii) of that Ordinance.

15. Tenants of commercial properties are offered the same ex gratia allowance as owner-occupiers of commercial properties in lieu of the right to claim disturbance payments. If the tenants so choose,

they have the right to make statutory claims for business loss, removal costs and professional fees.

16. In negotiations for the acquisition of land in recent projects, the LDC has offered the following compensation package to owners and tenants of commercial properties –

(a) for owner-occupiers of ground floor shops

the open market value of their properties, plus an ex gratia allowance of a further 35% of the open market value;

(b) for owners of tenanted ground floor shops

the open market value of their properties; plus an ex gratia allowance of a further 20% of the open market value;

(c) for owners of upper floor commercial premises

the open market value of their properties, plus an ex gratia allowance of a further 10% of the open market value;

(d) for all owners (an alternative option available to all)

the open market value of their properties, plus any business loss (if substantiated); and

(e) for tenants

three to five times the Government's ex gratia allowance as set out at Annex B.

This package, which is offered during the acquisition stage of the LDC land assembly process, is more generous and flexible than the compensation currently offered by the Government. However, if the LDC is unable to acquire some properties for a project and if these remaining properties are resumed under the Lands Resumption Ordinance for the project, the Government's compensation terms are used.

17. Owner-occupiers and tenants of commercial properties (mostly shopkeepers) may be entitled to claim business loss, removal costs and professional fees under the Lands Resumption Ordinance. However, many may find it difficult to produce documentary evidence to prove business loss. When compared with owner-occupiers and tenants of domestic properties who are entitled to the HPA and rehousing respectively, the amount of ex gratia compensation for owner-occupiers and tenants of commercial properties is relatively modest. The existing ex gratia allowance for owner-occupiers and tenants of commercial properties should be rationalized and enhanced.

18. In our review, we have looked at the possibility of using the rateable value as the basis for calculating the ex gratia allowance for owners and tenants of commercial properties. 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. The rateable value is a reliable measure of the commercial worth of a property.

19. Having reviewed the existing ex gratia payment policy, we propose that owner-occupiers of commercial properties be offered the open market value of their properties, plus an ex gratia allowance of four times the amount of the rateable value of the resumed properties. The new ex gratia allowance would be paid partly in lieu of the right to claim disturbance payments (deemed to be equivalent to three times the amount of the rateable value) and partly as a solatium (set at the amount of the rateable value).

20. In the case of tenants of commercial properties, we propose that they be offered the open market value of their lesser interest in the properties, if any (for example, long term lease at below market rent), plus an ex gratia allowance of three times the amount of the rateable value of the resumed properties they are occupying in lieu of the right to claim disturbance payments.

21. We also propose that owners of tenanted or vacant commercial properties be offered the open market value of their properties, plus an ex gratia allowance of the amount of the rateable value of the resumed properties as a solatium. This ex gratia allowance is partly to cover any temporary loss of rental income as a result of the resumption and partly to make up for the fact that the owner is forced to

give up his property.

22. The proposed ex gratia allowance for owners and tenants of commercial properties is generally more generous than the current ex gratia allowance.

23. If the above proposals are adopted, both affected owner-occupiers and tenants of commercial properties would continue to be offered the choice of either making a statutory claim for business loss, removal costs and professional fees, or receiving the new ex gratia allowance. The proposed ex gratia allowance would replace the existing one.

(iv) Application

24. Resumption of land for both URA and non-URA projects are conducted under the Lands Resumption Ordinance. It would not be fair to offer different compensation terms in respect of URA and non-URA projects. We therefore propose that the new HPA and SA and the new ex gratia allowance for owners and tenants of commercial properties be made applicable to all land resumption exercises under any ordinance to ensure equity.

(v) Ex gratia allowance for owners and tenants of industrial properties

25. The LDC has not acquired or requested the Government to resume any industrial properties in the past. The need to resume industrial properties is unlikely to arise in the next three or four years of URA's operation. As the review on the ex gratia allowance for industrial properties involves more complex issues, we are conducting a comprehensive review on the allowance as a separate exercise, and shall put forward proposals later this year.

Annex C 26. A summary of the proposals is at Annex C.

The Way Forward

27. Subject to LegCo Members' views, we intend to make a submission to the Finance Committee of the LegCo for approval of the proposals.

Planning and Lands Bureau

February 2001

Examples of How the Proposed Eligibility Criteria for the New HPA and SA Would Work in Practice

One Flat

	Resumption case	Amount
1.	A flat occupied by the owner or the owner's immediate family members.	Full HPA for the flat.
2.	A flat partially occupied by the owner and partially tenanted.	Full HPA for the area occupied by the owner and SA at 75% of HPA for the tenanted area.
3.	A wholly tenanted flat.	SA at 50% of HPA for the flat.

Two flats

	Resumption case	Amount
4.	One owner-occupied flat and one flat occupied by the owner's immediate family members.	Full HPA for both flats.
5.	One owner-occupied flat, and one flat partially occupied by the owner's immediate family members and partially tenanted.	Full HPA for the owner-occupied flat. For the partially occupied flat, full HPA for the area occupied by the owner's immediate family members and SA at 75% of HPA for the tenanted area.
6.	One owner-occupied flat and one wholly tenanted flat.	Full HPA for the owner-occupied flat. SA at 50% of HPA for the wholly tenanted flat.

	Resumption case	Amount
7.	One flat partially occupied by the owner and partially tenanted, and one flat partially occupied by the owner's immediate family members and partially tenanted.	For both partially occupied flats, full HPA for the area occupied by the owner or his immediate family members and SA at 75% of HPA for the tenanted area.
8.	One flat partially occupied by the owner and partially tenanted, and one wholly tenanted flat.	For the partially occupied flat, full HPA for the area occupied by the owner and SA at 75% of HPA for the tenanted area. SA at 50% of HPA for the wholly tenanted flat.
9.	Two wholly tenanted flats.	SA at 50% of HPA for the first wholly tenanted flat. SA at 25% of HPA for the second wholly tenanted flat.

Three flats

	Resumption case	Amount
10.	One owner-occupied flat, and two flats occupied by the owner's immediate family members.	Full HPA for all the three flats.
11.	Three flats occupied by the owner's immediate family members.	Full HPA for all the three flats.

	Resumption case	Amount
12.	One owner-occupied flat, one flat occupied by the owner's immediate family members, and one flat partially occupied by the owner's immediate family members and partially tenanted.	Full HPA for the two flats occupied by the owner and his immediate family members. For the partially occupied flat, full HPA for the area occupied by the owner's immediate family members and SA at 75% of HPA for the tenanted area.
13.	One owner-occupied flat, two flats partially occupied by the owner's immediate family members and partially tenanted.	Full HPA for the owner-occupied flat. For the two partially occupied flats, full HPA for the area occupied by the owner's immediate family members and SA at 75% of HPA for the tenanted area.
14.	One owner-occupied flat, one flat partially occupied by the owner's immediate family members and partially tenanted, and one wholly tenanted flat.	Full HPA for the owner-occupied flat. For the partially occupied flat, full HPA for the area occupied by the owner's immediate family members and SA at 75% of HPA for the tenanted area. SA at 50% of HPA for the wholly tenanted flat.
15.	One owner-occupied flat, one flat occupied by the owner's immediate family members, and one wholly tenanted flat.	Full HPA for the two flats occupied by the owner and his immediate family members. SA at 50% of HPA for the wholly tenanted flat.

	Resumption case	Amount
16.	One owner-occupied flat and two wholly tenanted flats.	Full HPA for the owner-occupied flat. SA at 50% of HPA for the first wholly tenanted flat. SA at 25% of HPA for the second wholly tenanted flat.
17.	Three flats partially occupied by the owner or the owner's immediate family members and partially tenanted.	For all the three partially occupied flats, full HPA for the area occupied by the owner or his immediate family members and SA at 75% of HPA for the tenanted area.
18.	Two flats partially occupied by the owner or the owner's immediate family members and partially tenanted, and one wholly tenanted flat.	For the two partially occupied flats, full HPA for the area occupied by the owner or his immediate family members and SA at 75% of HPA for the tenanted area. SA at 50% of HPA for the wholly tenanted flat.
19.	One flat partially occupied by the owner and partially tenanted, and two wholly tenanted flats.	For the partially occupied flat, full HPA for the area occupied by the owner and SA at 75% of HPA for the tenanted area. SA at 50% of HPA for the first wholly tenanted flat. SA at 25% of HPA for the second wholly tenanted flat.

	Resumption case	Amount
20.	Three wholly tenanted flats.	SA at 50% of HPA for the first wholly tenanted flat. SA at 25% of HPA for the second wholly tenanted flat. No SA for the other flat.

- Note:*
- An owner's immediate family members will be treated the same as the owner in respect of the calculation of the HPA/SA.
 - An owner of a vacant flat will be eligible for the same amount of SA as an owner of a tenanted flat.
 - In the case of company ownership, joint owners or shareholders will be subject to the same principles applicable to individual owners. The HPA/SA will be calculated pro rata to the share of ownership or the shareholding of each joint owner/shareholder.

Rates of the Current Ex Gratia Allowance for Legal Occupiers of Commercial Properties

Location ⁽¹⁾	Group A			Group B			Group C			Group D			Group E			Group F		
Area	For The First 40m ²	For the next 40m ²	For the re- mainder															
Different rates \$/m ² ⁽²⁾ (round off to the nearest \$10)	7,490	4,710	3,330	3,990	2,960	2,460	3,280	2,610	2,280	2,620	2,280	2,110	2,310	2,120	2,040	2,230	2,080	2,020

Notes : (1) Group A

Prime locations in Hong Kong Island and Kowloon.

Group B and C

Secondary locations in Hong Kong Island, Kowloon and New Kowloon. For example, main streets in Causeway Bay, Nathan Road and Queen's Road East will fall within Group B. Less preferable secondary locations such as Reclamation Street, Shanghai Street and Wan Chai Road together with primary locations in the New Territories will be included in Group C.

Group D and E

Tertiary locations in Hong Kong Island, Kowloon and New Kowloon. Group D includes streets such as First Street in Sheung Wan and Hoi Tan Street in Sham Shui Po and also secondary locations in the New Territories. More inferior locations in the urban area such as Lei Yue Mun Area together with tertiary locations in the New Territories are classified under Group E.

Group F

Most inferior locations in the New Territories.

- (2)(a) For upper floor commercial premises (including cocklofts) other than workshop areas, the different rates applicable to the area above 80m² will apply.
- (b) For open areas, a rate equivalent to 25% of the different rates applicable to the area above 80m² will apply.

**A Summary of the
Proposed Ex Gratia Allowances for Property Owners and Tenants
Affected by the Resumption of Land**

(I) Domestic properties

	EXISTING	PROPOSED
(a)	<p>Owner-occupiers</p> <p>Compensation package = OMV + HPA</p> <p>HPA = CRF – OMV</p> <p>CRF = cost of a 10 years' old replacement flat</p>	<p>Compensation package = OMV + HPA</p> <p>HPA = CRF – OMV</p> <p>CRF = cost of a 7 years' old replacement flat</p> <p>(the Administration's previous proposal – CRF = cost of an 8 to 10 years' old replacement flat)</p>
(b)	<p><u>Owners living in part of the flat and letting out part of it</u></p> <p>Compensation package = OMV + HPA</p> <p>Full HPA for self-occupied area</p> <p>50% HPA for tenanted area</p>	<p>Compensation package = OMV + HPA (for self-occupied area) + SA (for tenanted area)</p> <p>Full HPA for self-occupied area</p> <p>SA at 75% HPA for tenanted area</p>
(c)	<p>Owners of wholly tenanted flats</p> <p>Compensation package = OMV + HPA</p> <p><u>1st flat</u> 50% HPA</p> <p><u>2nd flat</u> No HPA</p>	<p>Compensation package = OMV + SA</p> <p><u>1st flat</u> SA at 50% HPA</p> <p><u>2nd flat</u> SA at 25% HPA</p>

(d)	Maximum number of flats HPA payable for a maximum of 2 flats per owner per resumption	HPA/SA payable for a maximum of 3 flats per owner per resumption
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(II) Commercial properties

	<u>EXISTING</u>	PROPOSED
(a)	Owner-occupiers OMV + EGA	OMV + 4 times RV
(b)	Tenants EGA	3 times RV
(c)	Owners of tenanted/vacant properties OMV	OMV + RV

Note :

HPA	Home Purchase Allowance
CRF	Cost of Replacement Flat
OMV	Open Market Value
SA	Supplementary Allowance
EGA	Ex Gratia Allowance
RV	Rateable Value

