

收回市區土地及補償安排

供業主，佔用人及測量師參考的指引

收回市區土地

1. 目的

本小冊子簡介收回市區（市區的定義為香港島、九龍及新九龍）私人土地的程序及補償規定。收回土地的法律程序，會因應不同的目的而根據相關的條例提出。由於各條例所訂定的程序及補償規定各有不同，下文僅就收地事宜提供概括性的指引。倘任何人的權益受收地計劃影響，請參閱有關條例的規定，以瞭解其中詳情或諮詢專業顧問。

2. 收回土地

政府為進行公共工程，例如道路計劃、發展公共房屋、市區重建計劃、提供遊憩用地、排水改善工程、提供新街市、興建新學校或展開工務計劃下任何項目等，均可能須收回私人土地。根據不同公共工程的目的，收回土地的法律程序主要根據下列條例的規定提出：

- (a) 《收回土地條例》（第124章）
- (b) 《道路（工程、使用及補償）條例》（第370章）
- (c) 《鐵路條例》（第519章）
- (d) 《土地徵用（管有業權）條例》（第130章）
- (e) 《土地排水條例》（第446章）
- (f) 《市區重建局條例》（第563章）
- (g) 《地下鐵路（收回土地及有關規定）條例》（第276章）

地政總署署長獲授權力執行此等條例所訂定的收回土地及補償規定。

3. 收地通告

在下令進行收地計劃時，政府會在憲報刊登收地公告和進行凍結人口登記¹。該公告的一份副本會在受影響物業或其附近張貼，並盡可能寄交有關註冊業主。在一般情況下，政府給予的通知期為在受影響物業或

其附近張貼公告當日起計的三個月。公告所載的限期屆滿後，受影響物業的業權即復歸政府所有。倘有迫切需要收回有關物業，通知期可能縮短。自復歸日期起，有關人士享有的一切法律權利及權益亦於該日終止。此後，前業主不得向其租戶或物業佔用人收取租金或任何費用。

4. 補償建議

政府採取行動收回私人土地或以其他方式令有關土地受到不利影響時，須要按有關法定權益喪失或受到影響的相應條例，向受影響人士作出補償。有關土地的前業主或擁有該土地權益的人士(例如租戶)，可根據收回有關土地的條例規定，就土地及建築物(如有的話)的價值或其他土地權益獲得法定補償。

- (a) 按《收回土地條例》(第124章)收回的土地，政府會就收回土地，向前業主及根據在土地註冊處註冊的文書而在緊接復歸前擁有該土地產業權或權益的任何人士，發出補償建議，或邀請有關人士在復歸日期起計的28天內，就法定補償提出申索。任何人士如認為其擁有該收回土地的可獲補償權益，而又未接獲政府的補償建議或獲邀請提出補償申索，可於復歸日起計的一年內提出申索，列明其在有關土地上擁有的產業權或權益的性質，以及他就政府收回有關產業權或權益所申索的補償額。
- (b) 按《道路(工程、使用及補償)條例》(第370章)及《鐵路條例》(第519章)收回的土地，任何人士如擁有該土地的可獲補償權益，須於該等條例附表第II部分所列明的期限內，提出申索。
- (c) 補償額按相關法例所述的準則評估。倘申索人接受提出的補償建議，於能夠證明其業權達到政府滿意的程度後，須簽署所需文件。當局其後會安排發放補償金。以簡單個案而言，在收到申索人接納補償的文件及業權證明後，會在四個星期內按建議補償額備妥支票候領。

5. 評估收回物業公開市值

根據條例，支付給註冊業主的補償額，是根據該收回物業在收回當日的公開市值計算。地政總署評估收回物業價值時採取的估價原則及程序如下：

(a) 如何評估公開市值

評估收回物業的公開市值，會參考收回當日前後近似地區內同類物業的市場資料。評估包括比較收回物業及同類物業的售賣交易，再就各種因素，如地點、環境、物業狀況、樓齡、交通方便程度、交易日期、樓層、面積、座向及設施等作出調整。

(b) 現有用途價值

至於共有業權物業, 評估個別單位的公開市值時, 通常會參考經批准建築圖則/改建及加建圖則顯示的用途, 以及租契許可的用途。進行法定補償評估時, 任何未得建築事務監督批准的用途更改, 即使租契許可, 通常都不會在考慮之列。舉例而言, 倘經批准建築圖則/改建及加建圖則或佔用許可證顯示某單位的用途為住宅用途, 如未經建築事務監督批准而將該單位部分/全部改作非住宅用途, 在估值時, 該單位仍視作住宅用途。同樣, 倘經批准建築圖則/改建及加建圖則或佔用許可證顯示某單位的用途為非住宅用途, 如未經建築事務監督批准而將該單位部分/全部改作住宅用途, 在估值時, 該單位將視作非住宅用途。

(i) 收回物業面積

一般而言, 評估收回物業的實用面積 *作法定償時, 會採用在已登記轉讓文件劃定, 並由經批准建築圖則/改建及加建圖則量度所得的面積。此外, 評估時還會考慮個別單位附屬地方, 如露台、平台、天台、窗台、雜用房及天井等的面積。倘若無法找到經批准建築圖則/改建及加建圖則(特別是戰前樓宇), 當局便會於已登記轉讓文件描述或表明的物業進行實地量度, 以確定物業的實用面積。倘因現場限制而無法實地量度實用面積, 便會於實地量度室內樓面面積* , 再進行適當調整以轉換成實用面積。

(ii) 違例構築物

收回物業內有時會發現違例的地下閣樓、閣樓擴建物、樓梯底構築物、天台、平台及天井構築物, 以及擴建工程等。這些構築物倘若不符合《建築物條例》及有關土地的租契條款, 並不會獲得補償。然而, 露天天台、露天平台、天井及地下商舖的高淨空高度等, 均會在評估中反映。

(iii) 出租物業

出租物業的公開市值通常包括餘下租期租金的資本轉化值及遞延復歸價值。租約餘下租期、租賃協議下支付的租金、復歸時的十足市值租金及復歸前的遞延期, 均會在評估中反映。至於定期租賃, 則必須視乎每宗個案來計算餘下的租期。

(c) 重新發展價值

- (i) 對於單一業權的地段，當局會評估地段的現有用途價值及重新發展價值。兩者之中會以較高的價值作為建議的法定補償金額。評估重新發展價值時，任何租客補償、拆卸現有建築物的成本及取得空置管有權所需時間等，均會反映在估值之中。
- (ii) 倘屬與毗連不同業權地段的聯合發展作為根據的補償申索，申索人必須證明聯合發展的可能性。此外，必須有證據證明(i)聯合發展確實有可能性；(ii)聯合發展有較高的價值；(iii)聯合發展並無明顯障礙；及(iv)建議計劃與周圍的主要重新發展計劃協調。當局會參考每宗個案的獨特事實及情況。
- (iii) 對於以重新發展或聯合重新發展作為根據的補償申索，假設的發展計劃必須切實可行。假設重新發展計劃時，必須考慮合併地段的面積、周圍的環境及重新發展的模式。進行建議重新發展或聯合重新發展預計所需的時間，必須在重新發展的價值中恰當反映。

6. 發放給各類人士的法定及特惠補償

受收地計劃影響人士可獲補償的類別，會視乎物業類別及有關人士所擁有物業的法定權益而定。詳情見下列各段。

6.1 住宅物業

6.1.1 自住業主

(a) 業主的物業權益

合法業權擁有人有權獲得收回物業在復歸政府當日的公開市值，估值時會以騰空交回管有權或連租約作為根據。在恰當情況下，亦會考慮收回物業的重新發展價值。評估收回物業公開市值的詳情載列於第5段。

(b) 租客的物業權益

合法租客有權獲得其於住宅物業所擁有權益(如有的話)的公開市值(例如：現有租金低於市值租金情況下的餘下租期市值)。

(c) 搬遷費用及開支

- (i) 合法的住宅物業佔用人(包括自住業主及租客)，倘因收回土地而須由收回的單位遷往新單位，有權就因此引致的合理損失及開支提出申索。當局通常會就此支付特惠補償，代替法定補償。然而，倘若確

實的搬遷費用(包括印花稅、代理費及法律費用)超逾政府建議的特惠補償，有關佔用人可提出申索，要求付還因搬遷而合理引致的確實費用。

- (ii) 倘提出以收回物業的重新發展價值作為向業主的補償，有關業主無權就搬遷費用及開支申索補償。

6.1.2 自置居所津貼及額外津貼

(a) 自住業主

- (i) 除法定補償外，自住業主亦有可能領取稱為自置居所津貼的特惠補償。
- (ii) 政府向自住業主發放自置居所津貼，旨在協助他們在收回單位的鄰近地方購置面積相若的較新重置單位。向個別業主發放的自置居所津貼金額，為假設重置單位(同一地區內與收回單位面積相若的七年樓齡單位)價值與收回單位公開市值的差額。當局會根據政府的現行政策，審查業主是否合資格領取自置居所津貼。倘自住業主已接受政府安置，便不會獲發自置居所津貼。
- (iii) 倘整個單位由一名業主佔用或他能證明整個單位均由其直系家庭成員(包括子女、父母及受供養的兄弟姐妹、祖父母或外祖父母、孫或外孫、繼父母、配偶的父母或繼父母)佔用，政府會向該業主發放全數自置居所津貼。

(b) 出租單位或出租地方的業主

- (i) 除法定補償外，出租單位或出租地方的業主有資格領取額外津貼。額外津貼補足連租約的收回單位的公開市值。
- (ii) 倘業主佔用單位的一部分，並將單位部分出租，則該業主會獲發其佔用的部分的全數自置居所津貼，以及出租地方全數自置居所津貼的 75% 作為額外貼。
- (iii) 倘業主直系家庭成員佔用單位的一部分，並將單位部分出租，則該業主會獲發其直系家庭成員所佔用部分的全數自置居所津貼，以及出租地方全數自置居所津貼的 75% 作為額外津貼。
- (iv) 首個全部出租單位會獲發全數自置居所津貼的 50% 作為額外津貼，而第二個全部出租單位會獲發全數

自置居所津貼的 25% 作為額外津貼，但第三個全部出租單位不會獲發額外津貼。

(c) 如何評估自置居所津貼

就所有為某個發展項目收回的舊式樓宇單位而言，地政總署署長會評估七年樓齡的假設重置單位的單位價值（即\$/平方米）。假設重置單位將假定位於質素與收回樓宇可資比較的假設樓宇內，在特點及交通方便程度方面屬類似地區。假設重置單位位於假設樓宇中層，座向一般（即並非向南或向西，無海景）。一般而言，會選擇大約七年樓齡，並在復歸日前後成交的單位作為可資比較個案。基於這些可資比較個案，當局會就時間、樓齡、座向、樓層、質素、面積、交通及環境等因素作調整，以便就有關收地項目訂出假設重置單位的單位價值。假設重置單位的單位價值，會在整個收地項目內劃一採用。

收回單位的自置居所津貼為假設重置單位的價格（假設重置單位的單位價值乘以收回單位面積）與收回單位公開市值的差額。

(d) 自置居所津貼／額外津貼有關的一般事項

- (i) 空置單位業主有資格領取全數自置居所津貼的作為額外津貼。
- (ii) 每次收地的每名業主，最多可就三個單位獲發自置居所津貼或額外津貼。
- (iii) 計算自置居所津貼／額外津貼時，會以業主佔用單位的實用面積作為計算根據。然而，違例建築工程不會計算在實用面積內。實用面積的定義，依據香港測量師學會於一九九九年三月一日發出的測量守則。
- (iv) 非法天台搭建物的業主不會獲發自置居所津貼／額外津貼。合法自住業主仍有資格領取根據天台本身公開市值評估的補償和獲得安置（如符合資格的話）。
- (v) 倘收回土地的法定補償是根據重新發展原則進行值，業主無權申索自置居所津貼／額外津貼。倘重新發展價值大於現時用途價值，業主有權為本身利益，申索現時用途價值加自置居所津貼。
- (vi) 以市區重建項目而言，倘分契單位業主選擇不領取自置居所津貼，可能會獲安置。
- (vii) 獲發給住宅用途以外佔用許可證的非住宅物業，

倘已用作住宅用途一段長時間，只要租契並無禁止此項用途，該非住宅物業的自用業主亦可獲發自置居所津貼。

- (viii) 以市區重建項目而言，受影響物業的業主，如於據《市區重建局條例》第 23 條在憲報刊登發展項目的開始日期後才取得有關物業，不會獲發自置居所津貼／額外津貼。

(e) 上訴機制

- (i) 業主倘就自置居所津貼／額外津貼的發放對地政總署署長的決定(關乎領取自置居所津貼／額外津貼資格、計算自置居所津貼／額外津貼的樓面面積及其他有關事項的爭訟事宜)感到不滿，可於署長作出決定後的 30 天內，向上訴委員會提出上訴。上訴委員會聽取上訴和進行調查後，倘有需要，可就地政總署署長的決定作出裁決。地政總署署長倘不接納裁決，有關個案將呈交規劃地政局局長覆核和作出最後決定。業主如欲提出上訴，可去信上訴委員會，地址為香港花園道美利大廈 9 樓。
- (ii) 有關以上第 6.1.2(c) 段提及的假設重置單位基本單價值的上訴，由地政總署署長考慮。合法業主須於提出補償建議日期起計的兩個月內，以書面提出上訴。

6.2 商業物業

(a) 對自用業主的補償

商業物業的合法自用業主，有權獲得收回物業在復歸政府當日的現有用途價值，加上下列其中一項額外補償：

- (i) 相等於復歸日當時的收回物業應課差餉租值²四倍的特惠津貼，並在適當情況下，根據《僱傭條例》(第57章)向僱員發放的遣散費；或
- (ii) 倘業主相信其商業損失大於額外補償的數目，該業主有權根據《收回土地條例》第 10(2)(d) 條提出商損失申索(須有文件證據支持)；根據該條例第 10(2)(e)(i) 條提出的搬遷費申索；及根據該條例第 10(2)(ii) 條提出專業費用申索(亦見以下第 10 段)。

關於以上第 6.2(a)(ii) 段，自用業主可就因結束營業或將業務遷離收回物業而引致的商業損失及有關損失或開支，提出法定補償申索。法定補償的各項申索項目可包括：

- (I) 永久或暫時的生意利潤損失；
- (II) 被逼出售附屬裝置與設備及存貨所引致的損失；
- (III) 商譽損失；及
- (IV) 根據《僱傭條例》(第57章)向僱員發放的遣散

上述項目並非詳盡無遺，而當局會根據每宗個案的情況作個別考慮。

在適當的情況下，倘收回土地的重新發展價值高於復歸當日的現有用途價值，政府會提出以前者作為法定補償的建議。不過，倘若根據收回土地的重新發展價值評估補償額，則自用業主無權申索以上第6.2(a)(ii)段的補償。

(b) 對業主的補償(非佔用物業)

出租或空置商業物業的合法業主，可獲發放以下兩項補償中價值較高的一項：(i)收回物業於復歸政府當日的重新發展價值(倘已確定)；及(ii)收回物業的現有用途價值加相等同一物業復歸日當時的應課差餉租值的特惠津貼。

(c) 對租客的補償

合法租客有權獲得其於商業物業所擁有的權益(如有的話)的公開市值(例如：現有租金低於市值租金情況下的餘下租期市值)加下列其中一項額外補償：

- (i) 相等於收回物業在復歸日當時的應課差餉租值三倍的特惠津貼，並在適當情況下，根據《僱傭條例》(第57章)向僱員發放的遣散費；或
- (ii) 按以上第6.2(a)(ii)段所述，有權根據《收回土地條例》就補償提出法定申索

7. 工業物業

工業物業的合法業主(不論是否佔用物業)及租客，有權取得類似商業物業的補償，但特惠津貼則會根據收回物業的樓面面積評估。

8. 支付利息

以法定補償及特惠津貼形式支付的任何款項，由復歸當日起至付款日期止，可孳生利息。利率不會低於發鈔銀行就24小時通知存款不時釐定的最低息率。

9. 暫付款項

倘政府收地而其建議發放的補償不獲接納，政府將向申索人發放由政府評估的法定補償的 100%，作為暫付款項，並付利息。其後，雙方可繼續商討，或向土地審裁處申請裁定補償額。如最終協議的補償額超逾暫付款項，政府會將差額連同利息支付予申索人。倘暫付款項超逾申索人與政府最終協議的補償額或土地審裁處所裁定的款額，申索人須將多付款額退還政府。

10. 專業費用

倘申索人為申索法定補償委聘專業人士，在恰當情況下，其所支付的合理費用及酬金可獲發還。不過，政府並不一定會支付專業費用。申索人須首先確立有關專業服務實屬必要。此外，申索費用須符合下列三項要求：

- (a) 所支付的費用必須合理；
- (b) 須按有關條例規定正式申索專業費用；
- (c) 獲聘的專業顧問必須具備認可專業資

當局不會就發還的專業費用支付利息。

11. 轉介土地審裁處

倘申索人與政府未能就法定補償額(如有的話)達成協議，任何一方可向土地審裁處申請裁定補償額。土地審裁處判定的數額對申索人及政府均具約束力。倘有關個案已轉介土地審裁處處理，先前的自置居所津貼／額外津貼建議即告撤回。

12. 所需資料

12.1 損失及開支證明

申索人須就其法定申索提供證據，以便當局處理。倘就損失及開支提出申索，申請人須提供收據及發票等證明文件。舉例來說，申索商業損失的人士須提供以下文件(以下列表並非詳盡無遺)支持其申索：

- (a) 商業登記證；
- (b) 申索所涉期間以至之前年度的財政文件(如資產負債表、損益表)；
- (c) 每月銷售／收入分析報告；
- (d) 支持申索的報稅表；

- (e) 租賃協議(如適用的話)；及
- (f) 存貨清單及有關項目的價值。

12.2 業權證明

就收回土地向申索人發放補償之前，申索人須證明對即將收回的土地擁有妥善業權。申索人須向分區法律諮詢及田土轉易處提交建議信附表列明的所有業權契據及文件。同時，申索人須呈交其身分證或例如護照等的其他身分證明文件的副本。

13. 查詢

如需其他資料或有任何疑問，可到北角渣華道333號北角政府合署十九樓地政總署土地徵用組查詢，本署人員樂意提供協助。

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- 1 進行市區重建時，市區重建局會在宣佈有關項目時，展開凍結人口登記。有登記可能在刊憲收回土地的一年以前展開。政府會採用市區重建局的凍結人登記資料，並於刊憲收回土地時加上最新的登記資料。
 - * 根據香港測量師學會於一九九九年三月一日所發出測量守則的定義。
 - 2 物業的應課差餉租值為差餉物業估價署評定有關物業每年的合理租值。應課差餉租值每年檢討。
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地政總署土地徵用組
二〇〇一年十二月

Land Resumption and Compensation in the Urban Area

Guidelines for Owners, Occupiers and Surveyors

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 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 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.

(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 SA at 50% of the full HPA.
- (ii) The HPA or 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.

(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 30 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 Planning and Lands 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 9/F, Murray Building, Garden Road, 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
- (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 should 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.

¹ For urban renewal projects, the Urban Renewal Authority (URA) will carry out the freezing survey when the project is announced which may be more than a year before the resumption is gazetted. The Government will adopt URA's freezing survey, which will be supplemented by an updated survey when the resumption is gazetted.

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

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

Lands Department
December 2001