



THE HONG KONG INSTITUTE OF
SURVEYORS

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30th November, 2001

Chief Estate Surveyor/Acquisition
Lands Department
19/F., North Point Government
Offices Building
333 Java Road
North Point
Hong Kong

Attn: Mr. Gordon Ho

Dear Mr. Ho

**Pamphlet on Land Resumption and Compensation
in Urban Area**

I refer to the draft information pamphlet and enclose the views and comments of The Hong Kong Institute of Surveyors for your consideration and follow up.

Should you have any queries, please contact Mr. David C Lee, Chairman of our Town Planning/Sustainable Development/Urban Renewal Committee on 2802 8336 or our Mr. Gordon Ng, Secretary-General on 2526 3679.

In the report, we have suggested a number of issues, which include starting parallel dialogues with the Government. We look forward to hearing from you on these issues.

Yours sincerely

Stephen Liu
President

c.c. TP/SD/UR Committee, Chairman - Mr. David C Lee #2802 8862
GPD, Chairman - Mr. Tony Tse #2893 5937

Encl.

Draft Pamphlet on Land Resumption and Compensation in Urban Area published by the Lands Department, Hong Kong Special Administrative Region Government – Views and Comments from the Hong Kong Institute of Surveyors

General

In general, the Hong Kong Institute of Surveyors welcomes the issue of the proposed Pamphlet.

Specific Comments

Paragraph	Comments
1.	<p>i) To add the following at the end of this paragraph: <i>"...or consult professional consultants"</i>.</p> <p>ii) For the sake of clarification particularly to the general public, we would suggest defining "<i>Urban Area</i>" within the Pamphlet.</p>
2.	<p>i) Given that majority of the ordinances quoted within this paragraph is also applicable to the New Territories, would the Lands Department consider including the New Territories under the same or another Pamphlet?</p> <p>ii) Whilst less applicable recently, the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap.276) could be included within the list of ordinances.</p> <p>iii) Whilst not applicable to "land", there could be merit in mentioning briefly the "Foreshore and Seabed (Reclamations) Ordinance (Cap.127), which is one of the ordinances frequently adopted by the Government in resuming foreshore and seabed.</p> <p>iv) We would suggest amending the last sentence as follows: <i>"Only <u>The Director of Lands will be</u> given the authority..."</i></p>
4. (a)	<p>We would suggest amending the last sentence, from line 10 onwards, to read as follows:-</p> <p><i><u>"..... 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."</u></i></p>
4. (c)	<p>i) It would be helpful to give some indication of how long it takes between acceptance of compensation and proof of title, execution of the "Agreement as to Compensation and Indemnity" and other</p>

Paragraph	Comments
	<p>necessary documentation, and the actual payment of compensation. This is particularly important where an owner is purchasing a replacement property and needs to know when funds will be available.</p> <p>ii) We would like to take this opportunity to point out the fact that the terms included within the "Agreement as to Compensation and Indemnity" are not on fair and equitable basis. This should be the subject of another major discussion.</p>
5 (a)	We would suggest amending "... <i>floor</i> ..." to "... <i>floor level</i> ..."
5 (b)	<p>i) We note the principle of valuation relating to "unauthorized building works" within this paragraph follows the prevailing Government policy; and is not a result of the provisions within any of the ordinances under paragraph 2 above.</p> <p>ii) Whilst we agree that compensation relating to uses of properties which are in breach of the Government Lease should not be payable, consideration could be given to allow payment of compensation relating to "unauthorized building works" under certain circumstances. For example, and following similar provisions under the Limitation Ordinance (Cap.347), consideration could be given to allow payment of compensation to "unauthorized building works" which were in existence for 6 years or more prior to gazettal of the resumption scheme under the provisions of the relevant ordinances.</p>
5 (b) (ii)	We would suggest replacing "... <i>not compensatable</i> ..." with "... <i>normally disregarded</i> ..."
5 (b) (iii)	We would suggest the following amendment: "... <i>The open market value of a tenanted property normally comprises</i> ..."
6.1.1 (a) 6.1.1 (b) 6.1.1(c)(i) 7.	<p>As a pamphlet for members of the public, we would suggest deleting "<i>Legal</i>.." at the beginning of these paragraphs.</p> <p>Alternatively, you might wish to clarify the definitions of "<i>Legal</i>" Owners, "<i>Legal</i>" tenants and "<i>Legal</i>" domestic occupiers within the Pamphlet.</p>
6.1.1 (b)	We would suggest the Government to clarify if " <i>Tenants</i> " here include also " <i>licensees</i> ".

Paragraph	Comments
6.1.2(b)(iv)	<p>We would suggest amendment to the last sentence to read as follows:</p> <p><u><i>"Where an individual owns more than two flats within the same resumption area, he will be entitled to receive the S.A for a maximum of 2 flats only."</i></u></p>
6.1.1 (c)(i)	<p>Given that the costs incurred should be reasonable when compared with the value/ size of the property resumed, we would suggest the following:</p> <p><u><i>"...if the actual removal costs reasonably incurred when compared with the value/ size of the property resumed, including stamp duty..."</i></u></p>
6.1.2 (c)	<p>i) We would suggest amending "...floor..." to "...<u>floor level</u>..."</p> <p>ii) Whilst we recognize that the methodology elaborated within this paragraph has recently been approved by the Legislative Council, the differences in value due to differences in locations or height of units within the same development have not been taken into consideration. Accordingly, and in the event of future review of this methodology, we would suggest such differences in value within the same development be taken into consideration.</p>
6.1.2 (e) (i)	<p>It is proposed that in the event that the Director of Lands does not accept the determination of the Appeals Committee, the case will be referred to the Secretary for Planning and Lands. <u>We have strong reservation relating to this proposal.</u></p> <p>As the Secretary for Planning and Lands and the Director of Lands are both representatives of the Government responsible for its land policy, adding that we recognized that the Secretary for Planning and Lands will normally consult the Director of Lands about professional and administrative issues, the proposed appeal mechanism will effectively retain the ultimate control firmly within the HKSAR Government.</p> <p>Accordingly, we would suggest that an Independent Appeals Committee be appointed to review all the appeals. Majority of members of this Committee should be HKIS members, with more than half of the committee members, including the Chairman, being non-civil servants.</p> <p>We would further recommend that decisions of the Independent Appeals Committee should be final.</p>
6.1.2(e) (ii)	<p>In view of the above proposal, we would suggest deleting this paragraph.</p>

Paragraph	Comments
6.2(a) (i)	<p>i) Given that the public will not in a position to assess whether the payment under items (i) or (ii) will be greater, the relevant professional fee should also be included within the additional payments.</p> <p>Accordingly, we would suggest adding "<u>...and professional fee</u>" at the end of this paragraph.</p> <p>ii) Furthermore, we would suggest further amendments as follows:</p> <p><u>"(i) an owner will be offered an ex-gratia allowance equivalent to four times the amount of the rateable value of his resumed property and professional fee, which can be accepted without the need to substantiate a claim for business loss, or alternatively,</u></p> <p><u>(ii) where an owner believes that his business loss is greater than the amount of the ex-gratia offer, he has the right"</u></p>
6.2(a) (i) Footnote 2	We would suggest clarifying that it would be the prevailing rateable values as at the date of reversion that will be adopted for the calculation of ex-gratia allowance.
6.2(c) (i)	<p>(i) Same as paragraph 6.2 (a) (i) above, we would suggest adding "<u>...and professional fee</u>" at the end of this paragraph.</p> <p>(ii) We would suggest adding "; or" at the end of paragraph 6.2 (c)(i).</p>
7	Will "Industrial/ Office" buildings be classified as "Commercial" or "Industrial" buildings?
8	To avoid possible confusion, it may be desirable to state that the interest rate of a particular note-issuing bank to be adopted for calculation of interest.
9	<p>We would suggest indicating the time in effecting the provisional payment.</p> <p>Furthermore, is the 90% stated refers only to the statutory compensation? If affirmative, we would suggest adding the following after the first sentence:</p> <p><u>"No element of any ex-gratia allowance will be included in the calculation of the 90% provisional payment."</u></p> <p>In passing, we note that in the case of Wah Kai, Government succumbed to political pressure for releasing 100% of the statutory and ex-gratia compensation.</p>

Paragraph	Comments
10.	<p>i) As it is not uncommon for compensation claim cases to drag on for years, we would suggest to include:</p> <p>a) stage payment of professional fee;</p> <p>b) payment of interest relating to professional fee.</p> <p>ii) Given the various disputes upon the appropriate level of professional fee, we would suggest including an appeal mechanism to determine the appropriate level of professional fee. The Independent Appeals Committee, as proposed under paragraph 6.1.2(e)(i) above, can serve the same function relating to disputes in professional fee.</p> <p>iii) As professional valuers are often involved in resumption cases, in order to safeguard the persons affected, it is suggested to state the professional valuer must be a Registered Professional Surveyor (General Practice).</p>
12.1(d)	<p>Suggested amendment: <i>"... tax returns and tax computations in support..."</i></p>

Hong Kong Institute of Surveyors
30th November 2001.