**For Discussion**
**24 March 2015**

# LEGISLATIVE COUNCIL
# PANEL ON DEVELOPMENT

## Assessment of the statutory compensations of resumed properties and resolution of disputes arising from land resumption

## INTRODUCTION

This paper outlines the Government's practice in assessing statutory compensations payable to legal owners of resumed properties in single or multiple ownership, as well as in resolving disputes arising from land resumption.

## LAND RESUMPTION AND COMPENSATION

2. To facilitate the implementation of public works projects or for other public purposes, the Government may need to resume landed properties, i.e. land and buildings, in accordance with the statutory provisions. The statutory power to resume most commonly applied is that found in the Lands Resumption Ordinance (Cap. 124) (LRO), which, together with the applicable common law principles, also provides for the underlying basis for assessing the statutory compensation payable to the affected owners. Notably, the "principle of equivalence" underlies the law of compensation: "the right (of the owner) to be put, so far as money can, in the same position as if his land had not been taken from him. In other words, he gains a money payment not less than the loss imposed on him in the public interest, but on the other hand no greater". *Horn v Sunderland Corp.* [1941] 2 KB 26. Another established principle of compensation law is the so-called *Pointe-Gourde* rule, that compensation "cannot include an increase in value which is entirely due to the scheme underlying the acquisition." *Pointe Gourde Quarrying and Transport Co v Sub-Intendent of Crown Lands* [1947] AC 565.

3. The Government's position on statutory compensation payable regarding specific resumption exercise is assessed by the professional qualified surveyors of the Lands Department (Lands D). The claimant has

the right to seek professional advice on the Lands D's offer and under s.6(2A) and s.8(4) of LRO, the claimant may submit a claim for any costs or remuneration reasonably incurred or paid by the claimant in employing persons to act in a professional capacity in connection with such offer or claim. Accordingly, reasonable fees would be reimbursed by Lands D and generally, the Hong Kong Institute of Surveyors Scale of Charges (1995 Edition) will be followed in considering claims for professional fee reimbursement. Moreover, the claim for professional fee could also be referred to the Lands Tribunal, which will determine the amount of such costs or remuneration reasonably incurred or paid by the claimant (s.10(2)(e)(ii) of LRO). In the event that Lands D's offer is not acceptable to the claimant, Lands D will continue to negotiate with the claimant and/or the professional appointed by the claimant on the amount of statutory compensation. In default of agreement, the amount may be determined by the Lands Tribunal upon application by either the claimant or Lands D in accordance with s.6(3) of the LRO. The procedure is comprehensively set out and explained in the "Land Resumption and Compensation in the Urban Area – Guidelines for Owners, Occupiers and Surveyors" (Copy at **Annex A**), which is accessible from Lands D's website and provided to all affected owners and occupiers for their information.

4. It is stipulated in s.10(1) of the LRO that (if agreement between the parties cannot be reached) the Lands Tribunal shall determine the amount of compensation on the basis of the loss or damage suffered by the claimant due to the resumption of his or her property. It is further provided in s.10(2) and s.12(d) of the LRO that the compensation for resumed land and buildings should be determined by the Lands Tribunal on the basis of the value expected to be realised if the said land and buildings were sold by a willing seller in the open market as at the date of resumption, subject to the conditions set out in s.11 and s.12 of LRO, for example, (i) taking into consideration the nature and existing condition of the property (s.11(1)(a)); (ii) disregarding the rental of the building for any illegal purpose (s.11(2)(a) and s.11(3)(a)); (iii) no allowance should be made on account of the resumption being compulsory (s.12(a)); (iv) no account of the fact that the resumed land may be lying within various zonings under Town Planning Ordinance (Cap. 131) (s. 12(aa)); (v) no compensation to be given which is not in accordance with the terms of the Government lease (s.12(b)); and (vi) no compensation to be given in respect of any expectancy or probability of the grant and renewal or continuance, by the Government or by any person, of any licence, permission, lease, permit, etc. affecting the resumed land and buildings (s. 12(c)). The LRO is at **Annex B** for reference.

*Lands Tribunal*

5. The Lands Tribunal is established under the Lands Tribunal Ordinance (Cap. 17). It has four professional judges: a President who is a Judge of the Court of First Instance of the High Court and three Presiding Officers, who are District Court Judges. There are also two Members of the Lands Tribunal who are qualified surveyors. The President and a Presiding Officer may either sit alone or together with a Member in hearing cases. A Member may also sit alone in hearing cases involving purely valuation principles without any substantive legal issue in dispute. A party may appear and be heard personally or by counsel or a solicitor or by any other person allowed by leave of the Lands Tribunal to appear instead of that party. Generally, hearings at the Lands Tribunal are conducted in a similar manner to those civil cases at the District Court or the High Court, but can be less formal. Without prejudice to the Lands Tribunal's impartiality, guidance may be given by the Lands Tribunal to parties who are not legally represented. At the hearing, parties may give oral evidence, produce documents in support and call witnesses. After hearing evidence and submissions from both parties, the Lands Tribunal will then make its decision. Any party to the proceedings before the Lands Tribunal may appeal to the Court of Appeal (subject to leave to appeal being granted by the Lands Tribunal or the Court upon satisfaction that the appeal has a reasonable prospect of success or there are some other reasons in the interests of justice to hear the appeal) against a judgment, order or decision of the Lands Tribunal on the ground that such judgment, order or decision is erroneous on a point of law. Apart from appeal, the Lands Tribunal may (either on its own motion or on the application of any party), within one month from the date of its decision, decide to review that decision. The Lands Tribunal may in any review hear and receive any evidence it thinks fit.

## PRINCIPLES ADOPTED FOR THE VALUATION OF COMPENSATION

*Open Market Value*

6. According to s.12(d) of LRO, the value of the land resumed shall be taken to be the amount which the land if sold by a willing seller in the open market might be expected to realise. In most cases, the open market value of a property is the price paid for the occupation or for the rental income of the property, i.e. the Existing Use Value (EUV). If the entire property is held by a single owner, he has the choice of demolishing it and

redeveloping the site into a new building for occupation, rental, or sale; or selling the site and building to a developer for redevelopment. The price that could be received by the owner for the site for development is its Redevelopment Value (RDV). This RDV is not necessarily higher than the EUV. The RDV i.e. gross development value less the cost of development, the cost of finance and taking into account the market risk during the development period may be lower than the EUV and in such case the site is not ripe for redevelopment. However, it is understandable that this choice of redevelopment is **not** available to the owner of a single unit in a building, holding only undivided shares **without the right of controlling the land** unless all other owners agree to the redevelopment. This is also consistent with the rationale behind the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545), an Ordinance to enable persons who own a specified majority of the undivided shares in a lot to make an application to the Lands Tribunal for an order for the sale of all of the undivided shares in the lot to enable redevelopment.

7. Reference can be made to the judgment handed down by the Court of Appeal on 31 July 2013 in *Siu Sau Kuen v The Director of Lands* (CACV 180/2012), in which it was held that the test for determining if development value should be included in the compensation payable in respect of a resumed property is whether, on a balance of probabilities, the evidence discloses that, as at the date of resumption, redevelopment of the property resumed was likely. Such likelihood may be demonstrated by actual proposals by the owner to redevelop the property (or unlikelihood demonstrated by the absence of such proposals) whether on its own or by merger with other properties; or evidence of redevelopment in the vicinity of the resumed property (whether accompanied by evidence of redevelopment plans for the resumed property or not), so long as such evidence of redevelopment in the vicinity supports a finding that redevelopment on its own or merger of the resumed property with other properties giving rise to a viable redevelopment scheme was likely within a reasonably foreseeable time scale. A copy each of the Court of Appeal judgment and the judgment of the Lands Tribunal are at **Annex C** and **Annex D**.

8. Taking into account the principles set out above as well as laid down in the above-mentioned judgment, the Lands D's prevailing valuation practice is that for the case of a single unit in a building, only EUV will be offered unless the likelihood of redevelopment as at the date of resumption is proven having regard to evidence disclosed. In the case of resumption of a property owned by a single owner, the EUV and RDV will be assessed and the higher of the two values will be offered.

*Redevelopment Value*

9. In many cases, redevelopment proposals by owners are not in line with the statutory Outline Zoning Plan for the implementation of the public works or for the public purpose, in particular when the site is zoned for "Government, Institution or Community" or "Open Space", and private redevelopment would not normally be permitted. Nevertheless, it is provided in the LRO that such planning controls contradictory to the redevelopment proposals submitted by the claimant under the lease would be ignored in the compensation assessment (s.12(aa) of LRO). On the other hand, if one argues for an RDV based on a redevelopment involving a modification of the contractual lease covenants, such an RDV would not be accepted as it **should not be assumed** that such approval would be forthcoming (s.12(c) of LRO). For example, approval for a lease modification of the agricultural lots for building purpose to facilitate the proposed redevelopment should not be assumed.

*Overseas Practice*

10. Reference is made to the Information Note on "Assessment of the value of resumed properties" (IN03/14-15) of the Research Office of the Legislative Council Secretariat (**Annex E**). The paper advises the findings of research into some overseas practice. However, as the research paper does not refer to the scenario of property held under multiple ownership, it would not be appropriate to directly compare these overseas practices with Hong Kong's situation. It must be emphasised that for resumed land and building held by a single owner (whereby it would be reasonable to expect that a redevelopment proposal could more likely be realised), RDV will be assessed and offered by Lands D if it is higher than the EUV of the building. On this aspect, we consider that Lands D's prevailing practice does not deviate from the overseas practice as revealed from the said Information Note.

**DISPUTE RESOLUTION**

11. The Research Office of the Legislative Council Secretariat has also issued another Information Note on "Resolving disputes arising from land resumption" (IN04/14-15) (**Annex F**).

12. Lands D so far has not adopted "mediation" as a standard procedure for resolving disputes in compensation assessment. As explained in the Government's reply to Hon Albert Chan's question at the

Legislative Council sitting on 26 March 2014, the entitlements to compensation, the procedures involved, as well as the basis and principles of assessment of the statutory compensation are set out in the relevant ordinances, while the authority of final determination of compensation under the ordinances rests with the Lands Tribunal. In assessing the amount of statutory compensation, Lands D is obliged to follow the principles set out in the respective ordinances and the court rulings made in relevant land resumption cases. Under such circumstances when the differences between the parties are on the interpretation and application of the legal principles, the scope of matters which can be submitted to mediation would be relatively limited, and for that reason mediation may not necessarily enhance the flexibility of the Government's handling of the disputes arising from compensation claims.

13. Based on past experience, the established compensation system has been working well. For reference, the acceptance rate of the Government's compensation offers to property owners affected by the resumption for the urban renewal projects is about 69%, whereas only about 12% of such compensation offers are referred to the Lands Tribunal for determination (with the remaining 19% being on-going cases and cases involving untraceable owners). Therefore, the Government has no plan at present to introduce mediation as part of the standard procedure in handling disputes arising from land resumption.

14. Nevertheless, subject to the nature of the issues of dispute between Lands D and the claimants and whether mediation may enhance the resolution of the claim concerned, Lands D may consider requests for referring statutory compensation claims to mediation on a case-by-case basis if claimants so request, on the premise that the mediation process and the agreement to mediate cannot affect the Government's and the Lands Tribunal's exercise of authority as provided for under the law.

**SUMMING UP**

15. Members are invited to take note of the established practice and mechanism applicable to land resumption and compensation as outlined in this paper.

**Lands Department**
**Development Bureau**
**March 2015**

# 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**
**July 2013**
**(Revised Version)**



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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 survey[1] 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 the Code of Measuring Practice issued by the Hong Kong Institute of Surveyors on 1 March 1999 and the subsequent supplements or amendments.

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) <u>Unauthorised Structures</u>**

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) <u>Tenanted property</u>**

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 the Code of Measuring Practice issued by the Hong Kong Institute of Surveyors on 1 March 1999 and the subsequent supplements or amendments.

**(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) <u>How is the HPA assessed</u>**

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) <u>General issues in relation to the HPA/SA</u>**

(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 and the subsequent supplements or amendments.

(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) <u>Appeals mechanism</u>**

(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 properties[2] 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) <u>Compensation to owners (not in occupation)</u>**

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) <u>Compensation to tenants</u>**

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 owner-occupiers 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,
Lands Department
July 2013

| Chapter: | 124 | **LANDS RESUMPTION ORDINANCE** | Gazette Number | Version Date |
|---|---|---|---|---|

| | | **Long title** | 29 of 1998 | 01/07/1997 |
|---|---|---|---|---|

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 ss. 31 & 32

To facilitate the resumption of Government lands required for public purposes.
(Amended 50 of 1911; 1 of 1912 Schedule; 29 of 1998 s. 31)

[14 November 1900]

(Originally 32 of 1900 (Cap 124 1950))

| Section: | 1 | **Short title** | 29 of 1998 | 01/07/1997 |
|---|---|---|---|---|

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32

This Ordinance may be cited as the Lands Resumption Ordinance.
(Amended 5 of 1924 s. 6; 29 of 1998 s. 32)

| Section: | 2 | **Interpretation** | 6 of 2001 | 12/04/2001 |
|---|---|---|---|---|

Remarks:
Adaptation amendments retroactively made - see 2 of 2012 s. 3

In this Ordinance, unless the context otherwise requires-

"Authority" (主管當局) means-

(a) in relation to land to which Part II of the New Territories Ordinance (Cap 97) does not apply, the Director of Lands; and (Amended L.N. 107 of 1978; L.N. 76 of 1982; L.N. 94 of 1986; L.N. 291 of 1993)

(b) in relation to land to which Part II of the New Territories Ordinance (Cap 97) applies, the Director of Lands; (Added 63 of 1974 s. 2. Amended L.N. 370 of 1981; L.N. 76 of 1982; L.N. 94 of 1986; L.N. 291 of 1993)

"former owner" (前業主) means, in relation to land resumed by the Government, the person who was the owner of the land immediately before the land reverted to the Government under section 5; (Added 63 of 1974 s. 2. Amended 29 of 1998 s. 105)

"land" (土地) means Government land of whatever description (whether held under Government lease or other title recognized by the Government), or any part or section thereof in Hong Kong and the New Territories, and includes buildings erected thereon; (Amended 50 of 1911; 51 of 1911; 1 of 1912 Schedule; 2 of 1912 Schedule; 29 of 1998 s. 105)

"non-working day" (非工作日) means a day that is not a working day; (Added 6 of 2001 s. 2)

"note-issuing bank" (發鈔銀行), for the purposes of sections 16A and 17, has the meaning assigned to it by section 2 of the Legal Tender Notes Issue Ordinance (Cap 65); (Added 6 of 2001 s. 2)

"owner" (業主) means the person registered or entitled to be registered in the Land Registry in respect of any land sought to be resumed, or, if such person is absent from Hong Kong, or cannot be found, or is bankrupt or dead, his agent or representative in Hong Kong; (Amended 50 of 1911 s. 4; 51 of 1911; 1 of 1912 Schedule; 2 of 1912 Schedule; 21 of 1912 s. 2; 8 of 1993 s. 2; 3 of 2000 s. 3)

"resumption for a public purpose" (收回作公共用途) includes-

(a) resumption of insanitary property for the purpose of securing the erection of improved dwellings or buildings thereon or the sanitary improvement of such property; and (Amended 51 of 1911; 2 of 1912 Schedule)

(b) resumption of any land upon which any building is erected which, by reason of its proximity to or contact with any other buildings, seriously interferes with ventilation or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health; and (Amended 51 of 1911; 2 of 1912 Schedule)

(c) resumption for any purpose connected with the Hong Kong Garrison; and (Replaced 2 of 2012 s. 3)

(d) resumption for any purpose of whatsoever description whether ejusdem generis with any of the above purposes or not, which the Chief Executive in Council may decide to be a public purpose; (Amended 51 of 1911; 2 of 1912 Schedule; 3 of 2000 s. 3)

"working day" (工作日), for the purposes of sections 16A and 17, means any day other than-

(a) a public holiday; or

(b) a gale warning day or black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap 1). (Added 6 of 2001 s. 2)

(Amended 50 of 1911 s. 4)

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| Section: | 3 | **Resumption of land for public purpose** | 29 of 1998; 3 of 2000 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32; 3 of 2000 s. 3

Whenever the Chief Executive in Council decides that the resumption of any land is required for a public purpose, the Chief Executive may order the resumption thereof under this Ordinance.

(Replaced 27 of 1930 s. 2. Amended 63 of 1974 s. 3; 3 of 2000 s. 3)

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| Section: | 4 | **Notices** | 29 of 1998; 3 of 2000 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32; 3 of 2000 s. 3

(1) Where resumption is ordered a notice that the land is required for a public purpose and will be resumed shall be published in the Gazette in English and Chinese. (Amended 63 of 1974 s. 4)

(2) A copy of such notice shall be served on the owner, if he can be found, and a further notice shall be affixed upon a conspicuous part of the land to be resumed or, where the land is divided into lots, sections or subsections, if practicable, upon each lot, section or subsection affected.

(3) The notice affixed to the land shall state the date on which it has been so affixed. It shall also state that the land will be resumed on the expiration of 1 month from such date, unless the Chief Executive shall have authorized the giving of a longer period of notice, in which case the longer period shall be stated. (Amended 3 of 2000 s. 3)

(4) A notice published and served or affixed under this section shall be deemed to be notice to the owner of the land and every person interested in the land or having any right or easement therein.

(Replaced 27 of 1930 s. 2)

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| Section: | 4A | **Purchase by agreement** | 29 of 1998 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 ss. 32 & 33

Where an order has been made for the resumption of any land under section 3, the Authority may, before the land reverts to the Government under section 5, agree with the owner and any person having an estate or an interest in such land under an instrument registered in the Land Registry on the purchase of the land and of any such estate or interest therein, and any such agreement relating to land in respect of which an order under section 3 is made on or after the commencement of the Crown Lands Resumption (Amendment) Ordinance 1984 (5 of 1984) may provide for the payment by the Authority to the owner or such person of any costs or remuneration reasonably incurred or paid by him in employing persons to act in a professional capacity in connection with the purchase.

(Added 63 of 1974 s. 5. Amended 5 of 1984 s. 2; 8 of 1993 s. 2; 29 of 1998 s. 33)

| Section: | 5 | **Reversion of ownership to the Government** | 29 of 1998 | 01/07/1997 |
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Remarks:
Adaptation amendments retroactively made - see 29 of 1998 ss. 32 & 105

On the expiration of 1 month, or any longer period authorized under section 4(3), the land other than any land purchased by agreement under section 4A shall-

(a) where it is an undivided share in land, vest in The Financial Secretary Incorporated together with such rights to the use and occupation of any building or part thereof as may be appurtenant to the ownership of that share; and

(b) in all other cases, revert to the Government, (Amended 29 of 1998 s. 105)

and all the rights of the owner, his assigns or representatives and of any other person in or over the land or any part thereof shall absolutely cease.

(Replaced 71 of 1987 s. 20)

| Section: | 6 | **Compensation** | 29 of 1998 | 01/07/1997 |
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Remarks:
Adaptation amendments retroactively made - see 29 of 1998 ss. 32 & 105

(1) Within a period of 28 days from the date on which land reverts to the Government under section 5, the Authority shall- (Amended 29 of 1998 s. 105)

(a) write 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, making an offer of compensation in respect of the resumption of the land; or (Amended 5 of 1984 s. 3; 8 of 1993 s. 2)

(b) serve on any of the persons referred to in paragraph (a) a notice in such form as the Authority may specify, requiring him to submit his claim for compensation within the time stipulated in such notice.

(2) Where a notice is served on a person under subsection (1)(b) he shall submit his claim in a form specified by the Authority and shall furnish to the Authority such accounts, documents and particulars as the Authority may reasonably require in support of such claim.

(2A) Where, in the case of land resumed under an order made under section 3 on or after the commencement of the Crown Lands Resumption (Amendment) Ordinance 1984 (5 of 1984), an offer of compensation is made or a claim for compensation is submitted to or by any person under this section, such offer may provide for the payment by the Authority to that person of, or such claim may include a claim for, any costs or remuneration reasonably incurred or paid by him in employing persons to act in a professional capacity in connection with such offer or claim. (Added 5 of 1984 s. 3)

(3) If-

(a) a person to whom an offer has been made under subsection (1)(a) does not accept the offer within 28 days from the date thereof; or

(b) a person on whom a notice has been served under subsection (1)(b)-

(i) does not submit his claim within the time stipulated therein; or

(ii) submits his claim but he and the Authority do not agree as to the amount of compensation,

such person or the Authority may then refer the matter to the Lands Tribunal for determination of the amount of compensation to be paid. (Amended 5 of 1984 s. 3)

(Replaced 63 of 1974 s. 7)

| Section: | 7 | **Power of entry** | 29 of 1998; 3 of 2000 | 01/07/1997 |
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Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32; 3 of 2000 s. 3

(1) In any case where notice of intended resumption has been given it shall be lawful for the Chief Executive and all other persons authorized by him and without the consent of the owner or occupier thereof to enter into and

upon any land intended to be resumed for the purpose of surveying and taking levels of such land and doing all necessary acts for setting out the line of works. (18 of 1910 s. 6 incorporated. Amended 28 of 1911 s. 6(c); 51 of 1911; 2 of 1912 Schedule; 63 of 1974 s. 8; 3 of 2000 s. 3)

(2) If any damage is caused by reason of the entry into and upon the land or of any works performed under subsection (1) either the owner or occupier may submit to the Authority a claim for compensation in respect of such damage. (Added 63 of 1974 s. 8)

(3) The Authority may compromise or settle any claim submitted under subsection (2), or failing agreement, either party may refer the matter to the Lands Tribunal for determination of the amount of compensation to be paid. (Added 63 of 1974 s. 8)

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| Section: | 8 | **Claims for compensation** | 29 of 1998; 3 of 2000 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 ss. 32 & 105; 3 of 2000 s. 3

(1) Any person claiming compensation by reason of the resumption of any land under this Ordinance, and being a person who has not been offered in writing compensation under section 6(1)(a), or has not been served with a notice under section 6(1)(b), may submit a claim in writing to the Authority stating the nature of his estate or interest in the land and the amount which he seeks to recover.

(2) If any such person and the Authority do not agree as to the amount of compensation (if any) to be paid either party may submit the claim to the Lands Tribunal for determination of the amount of compensation (if any) to be paid.

(3) A person claiming compensation under subsection (1) shall submit his claim to the Authority within a period of 1 year from the date on which the land reverted to the Government under section 5 or within such further period as the Chief Executive may allow in any case. (Amended 5 of 1984 s. 4; 29 of 1998 s. 105; 3 of 2000 s. 3)

(4) A claim submitted by a person under subsection (1), in respect of land resumed under an order made under section 3 on or after the commencement of the Crown Lands Resumption (Amendment) Ordinance 1984 (5 of 1984), may include a claim for any costs or remuneration reasonably incurred or paid by that person in employing persons to act in a professional capacity in connection with such claim. (Added 5 of 1984 s. 4)

(Replaced 63 of 1974 s. 9)

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| Section: | 9 | **Barring of actions against the Government** | 29 of 1998; 3 of 2000 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32; 3 of 2000 s. 3

Subject to the provisions of this Ordinance, no action or suit shall lie against the Government or against any other person for any loss or damage suffered by any person as the result of the resumption of any land under this Ordinance.

(Replaced 63 of 1974 s. 10. Amended 3 of 2000 s. 3)

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| Section: | 10 | **Determination by Tribunal of compensation payable by Government** | 29 of 1998 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32

(1) The Tribunal shall determine the amount of compensation (if any) payable in respect of a claim submitted to it under section 6(3) or 8(2) on the basis of the loss or damage suffered by the claimant due to the resumption of the land specified in the claim.

(2) The Tribunal shall determine the compensation (if any) payable under subsection (1) on the basis of-

(a) the value of the land resumed and any buildings erected thereon at the date of resumption;

(b) the value of any easement or other right in the land resumed, owned, held or enjoyed by a claimant at

the date of resumption;

(c) the amount of loss or damage suffered by any claimant due to the severance of the land resumed or any building erected thereon from any other land of the claimant, or building erected thereon, contiguous or adjacent thereto;

(d) the amount of loss or damage to a business conducted by a claimant at the date of resumption on the land resumed or in any building erected thereon, due to the removal of the business from that land or building as a result of the resumption;

(e) in the case of land resumed under an order made under section 3 on or after the commencement of the Crown Lands Resumption (Amendment) Ordinance 1984 (5 of 1984)-

(i) the amount of any expenses reasonably incurred by him in moving from any premises owned or occupied by him on the land resumed to, or in connection with the acquisition of, alternative land or land and buildings, but excluding any amount to which paragraph (d) applies;

(ii) the amount of any costs or remuneration mentioned in sections 6(2A) and 8(4). (Added 5 of 1984 s. 5)

(Replaced 63 of 1974 s. 10)

| Section: | 11 | **Principles of assessment of compensation** | 29 of 1998 | 01/07/1997 |
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Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32

(1) When any property is resumed, the Lands Tribunal in determining the compensation to be paid and in estimating the value of the land resumed and of any buildings thereon, may- (Amended 28 of 1911 s. 6(i); 50 of 1911; 1 of 1912 Schedule)

(a) take into consideration the nature and existing condition of the property, and the probable duration of the buildings in their existing state, and the state of repair thereof; and

(b) decline to make any compensation for any addition to or improvement of the property made after the date of the publication in the Gazette of the notice of intended resumption (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair): (Amended 27 of 1937 Schedule)

Provided that, in the case of any interest acquired after the date of such publication, no separate estimate of the value thereof shall be made so as to increase the amount of compensation.

(2) The Lands Tribunal may also receive evidence to prove- (Amended 28 of 1911 s. 6 (i))

(a) that the rental of the buildings or premises was enhanced by reason of the same being used as a brothel, or as a gaming house, or for any illegal purpose; or

(b) that the buildings or premises are in such a condition as to be a nuisance within the meaning of any Ordinance relating to buildings or to public health, or are not in reasonably good repair; or (Amended 50 of 1911; 51 of 1911; 1 of 1912 Schedule; 2 of 1912 Schedule; 20 of 1948 s. 4)

(c) that the buildings or premises are unfit, and not reasonably capable of being made fit, for human habitation. (Amended 51 of 1911; 2 of 1912 Schedule)

(3) If the Lands Tribunal is satisfied by such evidence, then the compensation-

(a) shall, in the first case, so far as it is based on rental, be based on the rental which would have been obtainable if the building or premises had not been occupied as a brothel, or as a gaming house, or for an illegal purpose; and (Amended 51 of 1911; 2 of 1912 Schedule)

(b) shall, in the second case, be the amount estimated as the value of the building or premises if the nuisance had been abated or if they had been put into reasonably good repair, after deducting the estimated expense of abating the nuisance or putting them into such repair, as the case may be; and (Amended 50 of 1911; 51 of 1911; 1 of 1912 Schedule; 2 of 1912 Schedule)

(c) shall, in the third case, be the value of the land and of the materials of the buildings thereon.

(Amended 28 of 1911 s. 6(d); 14 of 1921 s. 7; 63 of 1974 s. 11)

| Section: | 12 | **Additional rules for determining compensation** | 29 of 1998 | 01/07/1997 |
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Remarks:
Adaptation amendments retroactively made - see 29 of 1998 ss. 32 & 105

In the determination of the compensation to be paid under this Ordinance- (Amended 5 of 1924 s. 30)

(a) no allowance shall be made on account of the resumption being compulsory;

(aa) no account shall be taken of the fact that the land lies within or is affected by any area, zone or district reserved or set apart for the purposes specified in section 4(1)(a), (c), (d), (e), (f), (g), (h) or (i) of the Town Planning Ordinance (Cap 131); (Added 32 of 1973 s. 2. Amended 2 of 1988 s. 8(2); 4 of 1991 s. 9)

(b) no compensation shall be given in respect of any use of the land which is not in accordance with the terms of the Government lease under which the land is held; (Amended 29 of 1998 s. 105)

(c) no compensation shall be given in respect of any expectancy or probability of the grant or renewal or continuance, by the Government or by any person, of any licence, permission, lease or permit whatsoever: (Amended 29 of 1998 s. 105)

Provided that this paragraph shall not apply to any case in which the grant or renewal or continuance of any licence, permission, lease or permit could have been enforced as of right if the land in question had not been resumed; and

(d) subject to the provisions of section 11 and to the provisions of paragraphs (aa), (b) and (c) of this section, the value of the land resumed shall be taken to be the amount which the land if sold by a willing seller in the open market might be expected to realize. (Amended 5 of 1924 s. 30; 32 of 1973 s. 2; 5 of 1984 s. 6)

(Replaced 9 of 1922 s. 2)
[cf. 1919 c. 57 s. 2 (1) & (2) U.K.]

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| Section: | 13 | **(Repealed 63 of 1974 s. 12)** | 29 of 1998 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32

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| Section: | 14 | **(Repealed 63 of 1974 s. 12)** | 29 of 1998 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32

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| Section: | 15 | **(Repealed 63 of 1974 s. 12)** | 29 of 1998 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32

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| Section: | 16 | **Power to demise or grant land resumed** | 29 of 1998; 3 of 2000 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32; 3 of 2000 s. 3

Any land resumed under the provisions of this Ordinance may be demised and granted by the Chief Executive on such terms and conditions and at such price, whether by way of rent, premium or otherwise, and either by public auction or private contract, as the Chief Executive may determine.

(Amended 28 of 1911 s. 6(d); 3 of 2000 s. 3)

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| Section: | 16A | **Provisional payment pending determination of compensation** | 6 of 2001 | 12/04/2001 |

(1) Where, in the case of land resumed under an order made under section 3 on or after the commencement of the Crown Lands Resumption (Amendment) Ordinance 1984 (5 of 1984), any offer of compensation made by the Authority to any person under this Ordinance in respect of any claim is not accepted, the Authority may, pending the determination by the Lands Tribunal of the compensation, if any, payable in respect of such claim under this

Ordinance, pay-

(a) an amount as a provisional payment of the amount payable by virtue of such determination; and

(b) interest on any payment made under paragraph (a), for the period from the date on which the land reverts to the Government under section 5, until the date on which the payment is made, calculated on a daily basis according to subsection (1A). (Amended 62 of 1985 s. 2; 29 of 1998 s. 105; 6 of 2001 s. 2)

(1A) For the purposes of subsection (1)(b), the rate of interest paid-

(a) in respect of a working day must not be lower than the lowest of the interest rates paid on deposits at 24 hours' call by note-issuing banks at the close of business on that day; and

(b) in respect of a non-working day must not be lower than the lowest of the interest rates paid on deposits at 24 hours' call by note-issuing banks at the close of business on the last working day before that day. (Added 6 of 2001 s. 2)

(2) Any payment made by the Authority under subsection (1) in respect of any claim shall be without prejudice to the claim or the submission thereof to, or the determination thereof by, the Lands Tribunal under this Ordinance; but the amount of compensation payable by virtue of such determination in respect of such claim shall be reduced by the amount of such payment. (Amended 62 of 1985 s. 2)

(3) Where the amount of compensation payable by virtue of a determination of the Lands Tribunal under this Ordinance is reduced under subsection (2) by the amount of any payment made under subsection (1), such compensation shall not as from the date on which the payment is made bear interest except on the amount thereof as so reduced. (Replaced 62 of 1985 s. 2)

(4) Where the amount of any payment made by the Authority under subsection (1) in respect of any claim exceeds the amount of the compensation determined by the Lands Tribunal in respect of such claim, the amount of the excess shall be recoverable by the Authority as a civil debt. (Amended 62 of 1985 s. 2)

(Added 5 of 1984 s. 7)

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**Note:**
**For the validation of interest payments and application provisions relating to the amendments made by 6 of 2001, see section 13 of 6 of 2001.**

| Section: | 17 | **Payment of compensation and interest** | 6 of 2001 | 12/04/2001 |
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(1) All sums of money agreed or determined as compensation (together with interest thereon as hereinafter mentioned), and all costs and remuneration awarded against the Government, shall be paid out of the general revenue. (Amended 63 of 1974 s. 13; 3 of 2000 s. 3)

(2) At any time after agreement or determination by the Lands Tribunal of the amount of compensation to be paid under this Ordinance, the Authority may by notice published in the Gazette require the person entitled to such compensation to collect the same within the time and at the place specified in the notice. (Replaced 63 of 1974 s. 13)

(3) Subject to section 16A(3), any sum of money payable as compensation by virtue of a determination of the Lands Tribunal or an agreement under this Ordinance shall bear interest from the date of resumption of the land until the expiration of the time specified in the notice referred to in subsection (2). No interest shall be payable on any costs or remuneration. (Replaced 63 of 1974 s. 13. Amended 5 of 1984 s. 8)

(3A) Subject to subsection (3B), the rate of interest for the purposes of subsection (3) shall be such rate as the Lands Tribunal may fix. (Replaced 6 of 2001 s. 2)

(3B) The rate of interest fixed under subsection (3A)-

(a) in respect of a working day must not be lower than the lowest of the interest rates paid on deposits at 24 hours' call by note-issuing banks at the close of business on that day; and

(b) in respect of a non-working day must not be lower than the lowest of the interest rates paid on deposits at 24 hours' call by note-issuing banks at the close of business on the last working day before that day. (Added 6 of 2001 s. 2)

(4) If no claim be made for the compensation money at the place, and within the time appointed, the officer appointed as aforesaid shall cause such money to be paid into the Treasury.

(5) The money thus paid into the Treasury or any part of it may, within a period of 5 years from the expiration of the time referred to in subsection (2), be claimed by the person entitled thereto and upon such claim being substantiated shall be paid to the person so entitled.

(6) At the expiration of the said period of 5 years the money or such part of it as remains unpaid shall be

transferred to the general revenue. (Amended 71 of 1971 s. 3; 3 of 2000 s. 3)

(Replaced 33 of 1929 s. 2)

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**Note:**
**For the validation of interest payments and application provisions relating to the amendments made by 6 of 2001, see section 13 of 6 of 2001.**

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| Section: | 18 | **Payment when owner absent, etc.** | 29 of 1998; 3 of 2000 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32; 3 of 2000 s. 3

When the owner of any land which has been resumed is absent from Hong Kong or cannot be found, or within 6 months from the date when the amount of compensation shall have been determined makes no claim to the same, or is in the opinion of the Chief Executive unable to give an effectual discharge for the same, the Chief Executive may direct payment of the compensation to be made to such other person on behalf of the owner as he shall think proper, subject to such conditions as he thinks fit, and the receipt of such person shall be a valid and effectual discharge for the same in the same manner as if payment had been made to the owner.

(18 of 1910 s. 7 incorporated. Amended 28 of 1911 s. 6(e); 50 of 1911; 1 of 1912 Schedule; 62 of 1985 s. 3; 3 of 2000 s. 3)

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| Section: | 19 | **Effect as evidence of notice of resumption** | 29 of 1998 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32

In any notice to resume any land, it shall be sufficient to state that the resumption of such land is required for a public purpose, without stating the particular purpose for which the land is required; and a notice containing such statement shall be conclusive evidence that the resumption is for a public purpose.

(Amended 28 of 1911 s. 6(f))

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| Section: | 20 | **Arrangement with owner of buildings or dwellings to reconstruct them** | 29 of 1998; 3 of 2000 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32; 3 of 2000 s. 3

Whenever the buildings or dwellings on any land are of insanitary construction as regards conditions of light and air, the Chief Executive may, notwithstanding any of the powers of resumption herein contained or prior to the exercise of any such powers, permit the owner of such buildings or dwellings to reconstruct or rebuild the same or any part thereof, on such terms and conditions and subject to such security being given for the proper carrying out of such reconstruction or rebuilding as the Chief Executive may think fit.

(Amended 28 of 1911 s. 6(f); 50 of 1911; 1 of 1912 Schedule; 3 of 2000 s. 3)

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| Section: | 21 | **(Repealed 63 of 1974 s. 14)** | 29 of 1998 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 s. 32

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| Section: | 22 | **Saving of power of resumption under Government lease** | 29 of 1998 | 01/07/1997 |

Remarks:
Adaptation amendments retroactively made - see 29 of 1998 ss. 32 & 34

This Ordinance shall not be deemed to prevent the exercise by the Government of any power of resumption

contained in any Government lease

(Amended 28 of 1911 s. 6(f); 50 of 1911; 1 of 1912 Schedule; 29 of 1998 s. 34)

附件三
Annex C

CACV 180/2012

**IN THE HIGH COURT OF THE**
**HONG KONG SPECIAL ADMINISTRATIVE REGION**
**COURT OF APPEAL**

CIVIL APPEAL NO. 180 OF 2012

(ON APPEAL FROM LDLR NO. 1 OF 2010)

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BETWEEN

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| SIU SAU KUEN | Applicant (Appellant) |
| and | |
| THE DIRECTOR OF LANDS | Respondent (Respondent) |

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Before: Hon Kwan, Fok and Barma JJA in Court

Date of Hearing: 24 July 2013

Date of Judgment: 31 July 2013

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J U D G M E N T

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Hon Kwan JA:

1. I agree with the judgment of Fok JA.

Hon Fok JA:

*Introduction*

2. This appeal is concerned with the question of whether the compensation payable for the compulsory resumption of the applicant's

property was properly assessed by the Lands Tribunal (the Tribunal) and, in particular, whether the test for determining if the compensation payable under the Lands Resumption Ordinance (Cap. 124) (the Ordinance) should include an element for its development value was properly formulated and applied.

3. By its Judgment dated 9 March 2012 (Judgment), the Tribunal assessed the amount of compensation payable to the applicant in the sum of $4,710,000. Dissatisfied with this assessment, the applicant applied to the Tribunal for leave to appeal, which was refused by the Tribunal's Reasons for Decision dated 19 April 2012 (Reasons for Decision). On the applicant's renewed application for leave to appeal, leave was granted by this court[1] on 15 August 2012.

*The Property and its resumption*

4. The applicant was the registered owner of the ground floor unit at No. 426A Un Chau Street, Cheung Sha Wan, Kowloon ("the Property"). The Property was used as a shop for processing and selling glass. It was situated in a six-storey tenement building completed in 1956, on a site area of 100.34 $m^2$ including a scavenging lane. On the approved building plans the Property was designed for shop use and it was held under a government lease that was unrestricted in general, except for offensive trades. It was zoned for "Residential (Group A)" uses on the relevant Outline Zoning Plan.

5. By a notice of resumption dated 7 July 2005, the Government gave notice of its resumption of the Property for the implementation of a development scheme by the Urban Renewal

[1] Tang VP and Fok JA.

Authority called "K21" at Castle Peak Road/Hing Wah Street/Un Chau Street. K21 was part of a larger resumption scheme consisting also of three other development proposals called "K20", "K22" and "K23". For its own part, K21 comprised 24 to 25 tenement buildings, consisting of 291 domestic premises and 59 non-domestic premises. The notice of resumption was affixed to the Property on 15 July 2005 and reversion of the Property to the Government took effect under the notice on the expiration of 3 months from that date, namely on 15 October 2005.

6. On 23 March 2010, the applicant made an application to the Tribunal for determination of the amount of compensation to be paid in respect of the resumption of the Property pursuant to s. 6(3) of the Ordinance.

*The Tribunal's approach*

7. Pursuant to s. 10(1) of the Ordinance, the Tribunal is directed to assess compensation payable in respect of a claim under s. 6(3) "on the basis of the loss or damage suffered by the claimant due to the resumption of the land specified in the claim" and s. 10(2)(a) stipulates that this is to be determined on the basis of "the value of the land resumed and any buildings erected thereon at the date of resumption".

8. Under s. 12(d) of the Ordinance, "the value of the land resumed shall be taken to be the amount which the land if sold by a willing seller in the open market might be expected to realize".

9. It was the applicant's case before the Tribunal that compensation for the resumption of the Property should incorporate its development value, that being "an added value on the open market

because of the likelihood that it will be incorporated into a scheme of redevelopment": see *Cheung Lai-wan & Others v Director of Lands and Survey*[2] [1977] HKLTLR 14 at 17.

10. In its Judgment, the Tribunal accepted that, in determining the compensation for resumption of a property, the claimant is entitled to include the development value if justified (Judgment §36).

11. So far as the assessment of that development value was concerned, the Tribunal appears to have adopted a two-stage approach advocated by the respondent's counsel, namely (Judgment §31):

(1) Stage 1: Whether it is more likely than not that such redevelopment will, in a no-scheme world, take place on the date of resumption; if this question is determined against a claimant, that would be the end of the matter; and

(2) Stage 2: If Stage One is determined in favour of a claimant, the Court/Tribunal would then proceed to conduct a valuation of the redevelopment potential.

12. The Tribunal considered the evidence and concluded that there was no or no sufficient evidence to suggest that at the date of resumption "there might well have been several people ready to buy up properties … with a view to collecting a site worth redevelopment"[3] (Judgment §§38 to 41).

13. Although it held that there was no evidence to reflect development value in the Property, so that Stage One was determined

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[2] The respondent to the case is mistakenly reported as being the Director of Public Works.

[3] *Harding v Cardiff Corporation* (1971) 219 Estates Gazette 885.

against the applicant, the Tribunal went on to deal with Stage Two for the sake of completeness (Judgment §54). In this regard, the Tribunal considered and rejected the applicant's expert valuer's approaches (as to residual valuation and premium ratio) (Judgment §§54 to 67). Instead, it held that the direct comparison method was the best approach in valuing the market value of the Property and that, if the Property had any development value, this would be reflected in the comparables (Judgment §68). On the facts, it considered that four of the respondent's expert's comparables (identified as RC6, RC8, RC9 and RC10), which were shops in 8-storey buildings of a similar age to that in which the Property was situated, might reflect the development value, if any, of the Property (Judgment §46).

14. The Tribunal ultimately assessed the value of the Property as being $4,713,298 which it rounded off to $4,710,000 (Judgment §188) and it awarded the applicant this sum by way of compensation (Judgment §193(2)).

*The appeal*

15. On appeal, the applicant challenges the Tribunal's decision on two broad grounds, namely:

(1) First, on the basis that the Tribunal's formulation of the Stage One approach was wrong in principle and law; and

(2) Secondly, on the basis that the finding that there was no or no sufficient evidence to suggest that at the date of resumption there might well have been several people ready to buy up properties with a view to collecting a site worth redevelopment was predicated on a wrong premise.

16. In substance, these two challenges are, first, to the formulation of the relevant test and, secondly, as to its application.

17. On the basis that these challenges were made good, the applicant invited this court to set aside the Tribunal's assessment of compensation and to remit the matter to the Tribunal for re-assessment.

*The applicant's challenge to the formulation of the test*

18. Mr Patrick Chong, counsel for the applicant, submitted that the Stage One test apparently adopted by the Tribunal is in line with and "by and large" applied in cases such as *Cheung Lai-wan, Million-Add Development Ltd & Anor v Secretary for Transport* [1997] CPR 316 and *Joy Take Development Ltd & Ors v Director of Lands* [2008] 6 HKC 232.

19. However, Mr Chong noted that the facts of those cases involved claimants for compensation who owned an entire block of land being resumed rather than just one unit on it. Those owners had contended that, but for the resumption, they could have co-operated with the owners of the adjoining lands jointly to redevelop their combined sites together. As such, Mr Chong maintained that it was understandable that the Tribunal embarked on the fact-finding exercise it did in those cases, namely to assess whether the claimants could have jointly redeveloped their sites with their neighbours' on or before the date of resumption. If they could, that would be the best-use of the claimants' lands. In this regard, Mr Chong referred to the fundamental principle in land compensation that the claimant is entitled to compensation for the best-use of the dispossessed land: see Cruden *Land Compensation & Valuation Law in Hong Kong* (3rd Ed.) at pp. 123-4.

20. This did not mean, Mr Chong submitted, that the cases were laying down a general rule that, if before the date of resumption, the claimants could not have jointly co-operated with their neighbours, no compensation would be awarded for the development potential. Even though the lands might not be able to be incorporated into a larger redevelopment scheme before the date of resumption, they nonetheless would still have development potential, albeit to a lesser extent.

21. The crux of Mr Chong's criticism of the Stage One test as formulated by the Tribunal, therefore, was that that formulation would appear to preclude the award of compensation for development value in a case where an adjoining owner of land had not agreed and committed to redevelopment of its land together with the claimant's land before the date of resumption of the claimant's land.

22. Mr Chong illustrated this criticism and argument by way of the following example. In January, the adjoining owner promised he would only be willing to amalgamate his site with the claimant owner's land jointly to redevelop their sites in July. The adjoining owner expressly stipulated he would not do so any earlier than July. In the meantime, the Government issued a notice in February notifying the claimant that his land would be resumed in March and it was so resumed. As at the date of resumption in March, in light of the express agreement between the two land owners, the resumed land could not have been incorporated in a redevelopment plan. Applying Stage One of the approach formulated by the Tribunal, the claimant would receive no compensation for the potentiality of development. That, however, would be unfair in the light of the agreement to develop. Instead, it would be appropriate to recognise the "second best" use of the claimant's

land in this scenario and take into account the potentiality for development by assessing the present value of that potential as at the date of resumption.

23. It was submitted that this argument was supported by *Cheung Lai-wan* where the Tribunal, having rejected a valuation based on a joint-site development, considered an alternative of redevelopment of the sites individually. At p. 18 of the report, President Power (as he then was) said:

> "The witness for the Respondent, Mr Hay, who also submitted a proof of evidence Exh.2, approached the valuation 'on the basis that the lots were ripe for redevelopment.' However in his approach each lot was redeveloped individually.
>
> The Tribunal is of the opinion that in this case Mr Hay's approach is the correct one provided that he can show that the redevelopment value of the land exceeds the capitalized value of the existing rents. …".

24. In *Million-Add* and *Joy Take*, the Tribunal found that there would be redevelopment on a joint-development basis and so there was no need to consider this alternative. But, it was submitted, neither of those cases, nor *Cheung Lai-wan* were authority for the proposition that, if joint-development were not possible, "that would be the end of the matter" as postulated by the Tribunal's Stage One test in the present case.

25. Thus, it was submitted, the Tribunal should have gone on to consider whether the Property had future potential for redevelopment given the location and attributes of the Property in a no-scheme world. Mr Chong supported this submission by reference to *Transport for London (formerly London Underground Ltd) v Spirerose Ltd (in administration)* [2009] 1 WLR 1797. In that case, planning permission had not been granted to the claimant as at the date of resumption but the

House of Lords held that the valuation should take into account its potential for development, albeit discounted for future uncertainties. Lord Collins, with whose speech the rest of their Lordships agreed, said (at §95):

> "I emphasise that the reference is to 'possibilities of the land and not its realised possibilities', and that a deduction would have to be made to take account of the fact that the land might not be required for building or might not be required for a considerable time. This is a powerful confirmation of a principled approach to valuation. … It is elementary that the price which the land in question might reasonably be expected to fetch on the open market at the valuation date would be expected to reflect whatever development potential the land has …".

26. Similarly, in *Waters & Ors v Welsh Development Agency* [2004] 1 WLR 1304, Lord Nicholls emphasised the need to take the potentiality of development into account when assessing compensation, when he said:

> "32. … The resultant compensation, which takes potentiality into account in all cases, approximates more closely to the price an owner could reasonably expect if the property were sold in the open market between a willing seller and a willing buyer. …
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> …
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> 36. … Potentiality is part of the market value of land and must be taken into account when assessing compensation. Potentiality should be valued even if the only likely purchaser is the acquiring authority itself. That was decided in the *Indian* case".

27. The latter case referred to by Lord Nicholls as "the *Indian* case" is *Raja Vyricherla Narayana Gajapatiraju v The Revenue Divisional Officer, Vizagapatam* [1939] AC 302. In that case, Lord Romer said (at p. 313):

> "For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined … but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self-evident one. No one can suppose in the case of land which is certain, or even likely, to be used in the immediate or reasonably near future for building purposes, but which at the valuation date is waste land or is being used for agricultural purposes, that the owner, however willing a vendor, will be content to sell the land for its value as waste or agricultural land as the case may be. It is plain that, in ascertaining its value, the possibility of its being used for building purposes would have to be taken into account. It is equally plain, however, that the land must not be valued as though it had already been built upon … it is the possibilities of the land and not its realized possibilities that must be taken into consideration."

28. Finally, in this context, Mr Chong also cited *Cedars Rapids Manufacturing and Power Company v Lacoste & Ors* [1914] AC 569, where the Privy Council stated the following two propositions (at p. 576), namely:

> "(1.) The value to be paid for is the value to the owner as it existed at the date of the taking, not the value to the taker. (2.) The value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined."

29. In my view, if what the Tribunal did was to apply the test encapsulated in the formulation of Stage One of the two-stage approach set out in §31 of the Judgment, there would be some justification for Mr Chong's submission that the Tribunal formulated the test incorrectly. As noted above, that formulation was in the following terms, namely:

> "(a) Stage One: Whether it is more likely than not that such redevelopment will, in a no-scheme world, take place on the date of resumption; if this question is determined against a claimant, that would be the end of the matter".

As such, the test would appear to look only to development potential committed to take place as at the date of resumption and would not, on its face, appear to cater for the existence of future potentialities for development.

30. However, I accept the submission of Mr Simon Lam, counsel for the respondent, that the test as set out in §31 of the Judgment is in fact merely an adoption of the submission advanced by him as counsel below (and which he did not seek to defend on appeal, accepting it to be too narrow) since the Stage One and Stage Two approach set out there is apparently quoted from his submission. It is therefore not clear that the Tribunal was expressing itself to be in agreement with that formulation. Instead, I would accept Mr Lam's submission in this court that the test the Tribunal actually applied is to be found in §§37 and 41 of the Judgment, namely: whether the Tribunal was satisfied on the evidence that, at the date of resumption, there were people ready to buy up properties in the subject lot with a view to collecting a site worth redeveloping.

31. That being so, it is not the case that the Tribunal applied a test that required it not to take account of any future redevelopment potential existing as at the date of the resumption. Rather, the Tribunal focused on the question of whether there was evidence to establish that there was this redevelopment potential, i.e. existing in the future, at that date. This is made clear in §13 of the Reasons for Decision where the Tribunal said:

> "So, it is not the case that we did not take into account any redevelopment potential that could have been in the future, but it is entirely a matter of whether there are [sic] evidence establishing that there was this possibility at the date of the

> resumption. And, in our case, we found there was no such evidence."

32. Therefore, whilst at first blush the so-called Stage One test[4] identified by the Tribunal appears to contain an error, and would be better not to be expressed in that way in future, the reality is that the Stage One test actually applied by the Tribunal was capable of reflecting the development value for potential redevelopment as at the date of valuation.

33. However, in order to avoid any confusion that might arise by formulating the relevant test in the way the Tribunal appeared to do in §31 of the Judgment and to provide guidance on this for future cases, I would instead suggest that the inquiry on which the Tribunal should focus in deciding whether an element of development value should be included in the compensation to be paid on the resumption of land should look to the considerations that were identified by Cruden DJ when sitting as Presiding Officer of the Tribunal in *Tsang Chun Ki & Anor v Director of Engineering Development*, unrep., LDMT 2/1984, 24 October 1984 at pp. 6-7. There, His Honour said:

> "The applicants therefore only had to establish that redevelopment was likely. They did not have to establish that specific redevelopment proposals contemplated by the owners had been frustrated by the resumption. [The respondent's expert's] evidence was misconceived to the extent that it was concerned with the absence of any actual proposals by the applicants to redevelop rather than addressed to the different question whether the likelihood of redevelopment existed and if so to what extent. Although I accept that it is proper to consider whether the absence of any actual proposal is in the circumstances evidence of the possible unlikelihood of redevelopment.

[4] It is not necessary to call this the Stage One test and, insofar as I refer later in this judgment to "the Stage One test", I do so for convenience only. This is, in fact, simply the first question the Tribunal must ask itself when determining if a development value should be included in the compensation payable in respect of a resumed property.

> On the other hand, the likelihood of redevelopment would strongly be established if evidence of an actual redevelopment proposal, solely frustrated because of the resumption, was adduced. However, the likelihood of redevelopment may also be established by different and far less positive evidence. For example, in *Director of Lands & Survey v Cheung Ping-kwan* (1978) HKLTLR 101, 107 there was evidence of redevelopment in the vicinity of the resumed property but no evidence of any redevelopment plans for the resumed property. The Lands Tribunal inspected the locality and from that merely visual evidence was prepared to find that a merger of the resumed property with two of its neighbours 'was likely within a for[e]seeable time scale and that such a merger would result in a viable redevelopment scheme'."

34. Restating the relevant test in the light of those considerations will address the concerns of Mr Chong with regard to the Tribunal's apparent formulation of that test, since the potentiality of future development, existing as at the date of the resumption, will be taken into account. I would therefore restate the test as follows:

> "Whether, on a balance of probabilities, the evidence discloses that, as at the date of resumption, redevelopment of the property resumed was likely. Such likelihood may be demonstrated by:
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> (i) actual proposals by the applicant to redevelop the property (or unlikelihood demonstrated by the absence of such proposals) whether on its own or by merger with other properties, or
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> (ii) evidence of redevelopment in the vicinity of the resumed property (whether accompanied by evidence of redevelopment plans for the resumed property or not), so long as such evidence of redevelopment in the vicinity supports a finding that redevelopment on its own or merger of the resumed property with other properties giving rise to a viable redevelopment scheme was likely within a reasonably foreseeable time scale."

35. So far as the cases cited by Mr Chong are concerned (namely *Spirerose, Waters & Ors v Welsh Development Agency*, the *Indian* case and *Cedars Rapids Manufacturing and Power Company v Lacoste & Ors*), I would accept Mr Lam's submission that these each concerned

development potentials or possibilities that already existed as at the relevant valuation date. As such, they do not establish any proposition that wholly future potentialities, i.e. the viability of future redevelopment that could not be shown as at the date of the resumption to be likely within a reasonably foreseeable time scale, should be taken into account or reflected in the valuation.[5] I do not think there is any basis for the applicant to contend that this is what the authorities require and it is noteworthy that, even in Mr Chong's example summarised above, the thrust of the example is addressed to an agreement for development that has actually been made before the date of valuation, albeit is not to be carried out until after that date. As I have indicated, it is that sort of future potential that should be reflected in the valuation, as well as likely future redevelopment supported by evidence of redevelopment in the vicinity of the resumed property but not wholly future potentialities.

36. I do not therefore accept the applicant's first main ground of appeal based on the formulation of the Stage One test.

*The applicant's challenge to the application of the Stage One test*

37. The applicant's second broad ground of appeal focuses on the Tribunal's application of the Stage One test. The criticism here appears to be two-fold, namely that: (1) the Tribunal failed to consider whether it was possible that, after the resumption date, there was any chance that the Property could have been redeveloped or acquired for the purpose of redevelopment; and (2) the Tribunal failed to take into account the effect of the extracts of the annual report of the Land Development Corporation in 1997 (the 1997 LDC plan).

[5] This was the thrust of Mr Chong's argument at the leave application before the Tribunal, as reflected in §§14 to 16 of the Reasons for Decision.

38. Taking criticism (1) first, the applicant submitted that the Property must have had the potential of redevelopment because of the following attributes, namely:

(1) It was part of a building erected on a piece of land which had not fully utilised its plot ratio;

(2) The building in which the Property was located and the buildings in the vicinity were about 48-years old at the time of resumption;

(3) The Property was zoned for Residential (Group A) use in the Outline Zoning Plan and thus capable of being developed at a higher density and for a more valuable composite development without the need for further Government approvals;

(4) It was situated in a convenient and busy location in Kowloon.

39. Mr Chong relied on dicta in *Tak Shing Investment Co Ltd v Director of Lands*, unrep., LDLR 23/1995, 9 April 1996 (at p. 4) and *Tsang Chun Ki & Anor v Director of Engineering Development* (at p. 5) to support the proposition that it is very common in Hong Kong for old and under-developed properties like the Property to be bought by a property developer or speculator to exploit the potential for redevelopment.

40. That this potential should be reflected in the assessment of the valuation on resumption of the Property was supported, it was submitted, by the requirement in s. 12(d) of the Ordinance that the value

of the land resumed should be taken to be the amount which a willing seller of the land might be expected to realise in the open market.

41. I have already addressed above, in relation to the applicant's first main ground of appeal, the criticism that the Tribunal did not consider the possibility that the Property could have been redeveloped after the resumption date. As I have noted, however, it is apparent from the Judgment that the Tribunal did consider the development potential of the Property, namely the chance that the Property would be redeveloped in the future, but concluded that there was no or insufficient evidence to show that, as at the date of resumption, there were people ready to buy up properties in the subject lot with a view to collecting a site worth redeveloping (Judgment §41). The Tribunal went on to say, in §42 of the Judgment, that:

> "… In the present case, almost all the owners in K21 were different. No single lot was owned by one owner. We are not satisfied that in a no-scheme world, there were several people ready to buy up properties in the subject lot with a view to collecting a site worth redeveloping on the date of resumption. We are not satisfied on the balance of probabilities that there was existence of this possibility. Thus, we do not find that there was any likelihood back in 2005 to have the Property redeveloped. …"

42. This is clearly a finding of fact on the evidence before the Tribunal and the question is whether this finding, which was open to the Tribunal, has been shown to be plainly wrong such as to entitle this court to reverse it. In this regard, turning to the applicant's criticism (2) of the Tribunal's application of the Stage One test, Mr Chong submitted that the Tribunal erred in failing to take into account the effect of the 1997 LDC plan.

43. It was submitted that, although the Tribunal purported to make its finding of facts "in a no-scheme world", it was evident that the Tribunal did not in fact take the effect of the 1997 LDC plan into account. Mr Chong submitted that the reality was that, once the lands had been earmarked by the LDC in 1997, this would naturally put off developers and speculators who would not wish to buy into litigation. This explained the Tribunal's observation that "[o]ver the years, there had been very little acquisition activities going on in the K21 area"[6] and that there were not "several people ready to buy up properties in the subject lot with a view to collecting a site worth redeveloping on the date of resumption".[7] As a matter of commercial common sense, Mr Chong submitted, the reality was that the sterilisation started in 1997, at which time the 1997 LDC plan scared off developers and speculators.

44. In this regard, Mr Chong relied on *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111 for the proposition that losses sustained after inception of a scheme for the resumption of land but before resumption were due to the resumption of the land within s. 10(1) and qualified for compensation if the conditions applicable to post-resumption losses were fulfilled. Thus, in that case, the loss of profits in the shadow period, being the period after the possibility that the claimant's site might be resumed became known and which had a paralyzing effect on its operations, were awarded.

45. In further support of this argument, Mr Chong referred to a list of redevelopment sites showing 45 examples of sites of low-rise tenements redeveloped in the Sham Shui Po district, some of which were in the immediate vicinity of the Property. He submitted that these

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6 Judgment §40.
7 Judgment §42.

examples illustrated that, but for the 1997 LDC plan, the Property could have been incorporated in a redevelopment plan in a no-scheme world even before the date of resumption as there were developers and speculators interested in the area. Notwithstanding this, Mr Chong continued, the Tribunal did not explain why it did not accept the applicant's expert's evidence regarding the sterilizing effect of the 1997 LDC plan.

46. Mr Chong also relied on the evidence given by the applicant's expert, referred to in §41 of the Judgment, "that the applicant might have to wait for about 10 years to have the Property developed, and he contended that the applicant had the financial ability to hold on to the Property for another 10 years". He submitted that the Tribunal's holding that this was "totally beside the point" disclosed an error of law in its fact finding as regards the question of whether the Stage One test was satisfied by the applicant.

47. Mr Lam submitted in response that the alleged sterilization effect of the 1997 LDC plan was pure conjecture on the part of the applicant and that there was no probative evidence to support it.

48. I agree with this submission and the reasoning advanced by Mr Lam in support of it.

49. The document described as the 1997 LDC plan consists of four sheets, being extracted from another document the provenance of which is unclear. There is no evidence that the document came from a publication of the LDC or that it was even published in 1997, although it seems that when it was introduced into the trial bundles it was agreed to be an extract of the annual report of the LDC in 1997. The document

did not form part of the appendices to the applicant's expert's report and although it appears to have been introduced by the applicant on the first day of the trial below[8] and referred to obliquely by counsel for the applicant in his opening submissions,[9] it was not obviously referred to at trial in the evidence of the witnesses nor was it referred to in counsel's closing submissions. Even if the 1997 LDC plan was rather cryptically referred to by the applicant's expert in evidence,[10] it was not put to the respondent's expert as evidence supporting the alleged sterilization effect.

50. More importantly, the projects in the list which appear to be relied upon by the applicant are not directly referable to the schemes in question in the present case, including K21. The projects are listed under a heading "Projects under Planning" but there is no explanation as to what precisely this designation means or whether this would have a sterilization effect on the properties covered by the development schemes leading to the resumption of the Property. Reference to the transcript demonstrates that the applicant's expert referred in cross-examination to developers being put off by a scheme, but that scheme was one published in 2005 and not in 1997. The alleged blighted effect arising from any plan in 1997 was not dealt with in closing arguments for the applicant, hence it is unsurprising that the blighted effect which the Tribunal did deal with (Judgment §§101 to 107) concerned the period from the commencement of negotiations concerning the K20, K22 and K23 projects in 2004 to the resumption date in October 2005. Similarly, the applicant's expert also referred in cross-examination to the effect of the Housing Society's decision to zone K21 for redevelopment (which might or might not have been a cryptic reference to the effect of the 1997 LDC

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8 Transcript, p. 8 (16.5.11).
9 Transcript, p. 78 (17.5.11).
10 Transcript, p. 326 (8.9.11) & p. 442 (14.9.11).

plan) but it would appear from his expert report that he was referring to something occurring after the publication of the Cheung Sha Wan Outline Zoning Plan which was dated 12 August 2005. Thus, the scheme to which he was referring would appear to be one in 2005 and not 1997.

51. Furthermore, Mr Lam pointed to the following matters in support of his argument that the effect of the 1997 LDC plan contended for by the applicant was conjecture. First, the fact that it was accepted by the Tribunal[11] that it was because redevelopment by private developers was too slow that the Urban Renewal Authority had to step in and implement the development proposals K20, K21, K22 and K23. The inclusion of the site in LDC planning would therefore point towards a lack of interest by private developers. Secondly, the Tribunal also noted[12] that, since 1983, there were only three suspected acquisition transactions within the area of K21. Even if one only considered the period up to 1997, this still represented a period of 14 years in which only three transactions took place, none of which were in the building in which the Property was situated. Thirdly, the Tribunal did not confine itself to looking at the site of K21 but looked to the whole area of Sham Shui Po, in which, since 1985, there were only 45 development projects and the fact, confirmed by a site visit in May 2011, that only sporadic redevelopments were seen.[13]

52. As regards reliance on the applicant's expert's evidence that the applicant might have to wait for about 10 years to develop the Property, Mr Chong confirmed that this was the only evidence to which the applicant could point to support the potentiality of redevelopment.

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11 Judgment §40.
12 *ibid.*
13 Judgment §39.

As such, I do not think there can be any doubt that this would not satisfy the Stage One test as I have indicated that should be formulated. This is clearly not evidence of any actual proposal by the applicant to redevelop the Property, nor is it evidence of redevelopment in the vicinity of the resumed property such as to support likely future redevelopment. Indeed, in my view, that evidence could not show the viability of future redevelopment as at the date of the resumption to be likely within a reasonably foreseeable time scale.

53. For these reasons, I do not accept the applicant's case that the Tribunal erred in its application of the Stage One test.

54. This conclusion makes it unnecessary to deal with Mr Lam's further point that the applicant's argument based on the 1997 LDC plan is procedurally objectionable. Had it been necessary to do so, however, I would have accepted Mr Lam's submission in this regard. As already mentioned, the document was introduced by the applicant at a late stage in the trial below and was not referred to at trial in the evidence of the witnesses or in counsel's submissions (or, if it was, any such reference was at best ambiguous). The respondent's expert was never cross-examined on the document or on the alleged sterilization effect, nor was the Tribunal invited to consider or take this into effect. I am not satisfied that the point is such that, had it been raised by the applicant at trial, the respondent would not have wished to adduce evidence in response to it. Applying the applicable principles,[14] I do not consider that it is open to the applicant to raise this new point for the first time in this court on appeal.

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[14] See *Flywin Co Ltd v Strong & Associates Ltd* (2002) 5 HKCFAR 356 at §38.

55. The conclusion that the Tribunal did not err in the application of the Stage One test also makes it unnecessary to express any view on the further argument of Mr Lam that the applicant's complaints in this regard are immaterial by reason of the fact that the development value of the Property was already taken into account by the Tribunal. The factual basis of that argument is addressed above at §13.

*Conclusion*

56. For the above reasons, I would dismiss this appeal.

57. It was common ground that costs should follow the event and I would accordingly make an order that the applicant pay the costs of the appeal to the respondent, to be taxed if not agreed.

Hon Barma JA:

58. I agree with the judgment of Fok JA.

| (Susan Kwan) | (Joseph Fok) | (Aarif Barma) |
|---|---|---|
| Justice of Appeal | Justice of Appeal | Justice of Appeal |

Mr Patrick Chong, instructed by B. Mak & Co., for the Applicant (Appellant)

Mr Simon K C Lam, instructed by the Department of Justice, for the Respondent (Respondent)

附件四
Annex D

LDLR 1/2010

**IN THE LANDS TRIBUNAL OF THE**
**HONG KONG SPECIAL ADMINISTRATIVE REGION**

Lands Resumption Application No. 1 of 2010

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BETWEEN

SIU SAU KUEN Applicant

and

THE DIRECTOR OF LANDS Respondent

---

Before: HH Judge M Wong, Presiding Officer of the Lands Tribunal and Mr Kenneth Kwok, Temporary Member of the Lands Tribunal

Dates of Hearing: 16-20 May 2011, 8, 9, 12, 14, 16, 19 & 20 September 2011, 4 & 31 October 2011 and 10 November 2011

Date of Judgment: 9 March 2012

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JUDGMENT

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*BACKGROUND*

1. This is an application made by the applicant on 23 March

2010 for determination of the amount of compensation to be paid in respect of the resumption of "1/6th equal and undivided parts and shares of and in the Remaining Portion of New Kowloon Inland Lot No. 1497 and of and in the appurtenant thereto together with the right to the exclusive use occupation and enjoyment of messuage, erections and buildings known as No. 426A Un Chau Street, Cheung Sha Wan, Kowloon together with the sole and exclusive right and privilege to hold use occupy and enjoy the Ground Floor of the said messuages erections and buildings" ("the Property") pursuant to section 6(3) of the Lands Resumption Ordinance, Cap 124 ("the Ordinance").

2. The applicant was the registered owner of the Property and used it as a shop for processing and selling glass. By notice of resumption dated 7 July 2005 and published in Gazette Notice No. 3331, the government resumed the Property for the implementation of the development proposal "K21" by the Urban Renewal Authority in association with the Hong Kong Housing Society. The applicant and the respondent could not agree on the amount of compensation payable to the applicant and hence the applicant makes the present application.

3. There is no dispute that the Property comprised a shop on the Ground Floor together with a cockloft at No. 426A Un Chau Street in Cheung Sha Wan, Kowloon. The Property formed part of a building which was a 6-storey tenement building completed in 1956. The site area of the land upon which the building was erected is 100.34 $m^2$ including scavenging lane. According to the approved building plans, the Property was designed for shop uses. The government lease under which the Property was held was unrestricted in general, except for

offensive trades.

4. Under the Cheung Sha Wan Outline Zoning Plan No. S/K5/28 dated 12 August 2005, the Property was zoned for "Residential (Group A)" uses as at the date of resumption. The Property was resumed for implementation of the development proposal K21 at Castle Peak Road/Hing Wah Street/Un Chau Street. Together with development proposals K20, K22 and K23, the four development proposals form part and parcel of a large resumption scheme.

5. In the Notice of Application, the applicant claimed for a sum of $7,727,610.00 as the market value of the Property. The applicant also claimed for a disturbance payment of $19,396,301.10 or $49,224,160.00. Nevertheless, at the trial, the applicant amended the claim for the market value of the Property to a sum of $56,951,770.00 and confirmed that there is no longer any claim for disturbance payment.

6. In support of the application, the applicant's valuation expert, Mr Wong Yung-shing ("Mr Wong") of Dynasty Premium Asset Valuation & Real Estate Consultancy Limited, gave a valuation report dated 3 December 2009, in which Mr Wong opined that:-

> (1) "according to the scientific method of assessment, the reasonable total amount of statutory land valuation to the claimant as at 15th October, 2005 in its existing use and state, with the benefit of immediate vacant possession, and without the problem of 3rd parties' interests in the affected property, is **HK$56,951,770.00** … This value is the maximum amount of acquisition price that might be expected to realize by the affected owner out of her own willingness according to the Section 12(d) of the relevant Ordinance under the 'as-of-right' conditions of the Government Lease, the current town planning controls and the building regulations at the date of valuation."

> (2) "However, according to the performance in the general market, … the affected owner should be paid not less than ***HK$27,123,911.10*** by way of bare negotiation and mutual agreement with the acquisition institutions under the circumstances of private acquisition for redevelopment to a larger density and upon the compliance with the 'as-of-right' conditions of the Government Lease, the current town planning controls and the building regulations at the date of valuation."
>
> (3) "According to the direct comparison method for assessment of the market value on the basis of "existing use and state", the market value of the affected property is **HK$7,727,610.00**."

7. In his Supplementary Statement dated 15 November 2010, Mr Wong added that since the market value of the Property means the "full market value of the land taken", the reasonable amount of resumption compensation can be equivalent to either one of the following 10 scenarios:-

> "(a) under Section 10(2)(a) of Cap. 124 and principle of common law basis (***Horn v Sunderland Corp*** (1941)) with reference to the definition of "value to the owner" embedded in Section 12(d) of Cap. 124
>
> in line with the Judge Cruden's advice for the case of solitary purchaser. The form of resumption compensation may be divided into two heads – 'present' market value of property plus development land value:
>
> (i) Section 10(2)(a) - **HK$8,126,081.00** for the part of 'present market value in existing (lawful) use and state; plus ***Horn v Sunderland Corp*** (1941) - **HK$20,396,463.31**, for the part of development land value which is the loss to the affected owner; or
>
> (ii) Section 10(2)(a) - **HK$8,126,081.00** for the part of 'present' market value in existing (lawful) use and state; plus ***Horn v Sunderland Corp*** (1941) - **HK$48,825,689.00**, for the part of development land value which is the loss to the affected owner; or
>
> (iii) Section 10(2)(a) - **HK$8,126,081.00** for the part of

'present' market value in existing (lawful) use and state; plus ***Horn v Sunderland Corp*** (1941) - **a value between HK$20,396,463.31 and HK$48,825,689.00** for the part of development land value which is the loss to the affected owner; **OR**

(b) wholly under Section 10(2)(a) of Cap. 124

(i) either **HK$28,522,544.31**

(ii) or **HK$56,951,770.00**

as the whole full market value of the affected property; **OR**

(c) under Section 10(2)(a) & 10(2)(b) of Cap. 124

(i) Section 10(2)(a) - **HK$8,126,081.00** for the part of 'present' market value in existing (lawful) use and state plus Section 10(2)(b) - **HK$20,396,463.31** for the value of the right in the land resumed, owned, held, or enjoyed by a claimant at the date of resumption. The right is the proprietary right or the legal entitlement of assigning the property to a third party purchaser in the competitive market at a higher value shown in Appendix VI(c) of my First Valuation Statement; or

(ii) Section 10(2)(a) - **HK$8,126,081.00** for the part of 'present' market value in existing (lawful) use and state plus Section 10(2)(b) - **HK$48,825,689.00** for the value of the right in the land resumed, owned, held, or enjoyed by a claimant at the date of resumption. The right is the proprietary right or the legal entitlement of assigning the property to a third party purchaser in the competitive market at a higher value shown in Appendix VI(d) of my First Valuation Statement; or

(iii) Section 10(2)(a) - **HK$8,126,081.00** for the part of 'present' market value in existing (lawful) use and state plus Section 10(2)(b) - **a value between HK$20,396,463.31 and HK$48,825,689.00** for the value of the right in the land resumed, owned, held, or enjoyed by a claimant at the date of resumption. The right is the proprietary right or the legal entitlement of assigning the property to a third party purchaser in the competitive market at a higher value shown in Appendix VI(c) of my First Valuation Statement; **OR**

(d) wholly under Section 10(2)(b) of Cap. 124

a higher compensation value not less than the average premium ratio of 3.51 (= ranging from 3.42 to 3.65) times to the present market value in existing lawful use and state on the date of

> valuation (= **Multiplier 3.51 x Existing Use Value HK$8,126,081.00 = HK$28,522,544.31)**, when the claimant can freely and is entitled to exercise her exclusive (proprietary) right of selling her affected property to an acquiring entity in the open competitive market as if the instant resumption scheme does not occur.
>
> (e) <u>wholly under Section 10(2)(a) of Cap. 124 on the basis of existing (lawful) use and existing state with reference to the best evidence</u>
>
> Since EUV-3 is most proximity to the affected property accurately reflecting the parameters of the affected property for its market value, it is likely the best comparable. Adopting my adjustment to the different parameters of the Comparable EUV-3 in the Appendix VI(b) of my First Valuation Statement, the reviewed most reasonable amount of the market value of the affected property will be :
>
> Adjusted Unit rate of EUV-3 x Effective total saleable area of the affected property
>
> = HK$9,776,09 sq.ft.'S x 851.56 sq.ft.'S
>
> = **HK$8,324, 927.20**
>
> (f) <u>wholly under Section 10(2)(a) of Cap. 124 on the basis of existing (lawful) use and existing state with reference to the average adjusted unit rate of 4 comparables</u>
>
> The market value of the affected property is accordingly **HK$8,126,081.00**."

8. The respondent contends that the applicant's claimed amount is not properly assessed under the Ordinance and the claim is considered to be excessive. The respondent's valuation expert, Mr Lai Wah Chi ("Mr Lai") of AA Property Services Limited, gave a report dated 2 September 2010 and opined that the amount of compensation payable to the applicant for the resumption of the Property under the Ordinance should be $4,569,000.00. Mr Lai is of the views that the statutory principle of "value to the owner" as submitted by Mr Wong should be rejected and that compensation for the resumption of the Property should

be assessed on the basis of "market value" as defined by the Hong Kong Institute of Surveyors in paragraph VS3.1 of its Valuation Standard on Properties (first Edition 2005), namely:-

> "Market Value is the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."

9. Thus, although Mr Wong and Mr Lai both agree that the compensation should be based on the market value of the Property, they seem to have different interpretations on the basis of assessment for the compensation payable to the applicant.

*RELEVANT STATUTORY PROVISIONS*

10. Section 10 of the Ordinance provides that:-

> "(1) The Tribunal shall determine the amount of compensation (if any) payable in respect of a claim submitted to it under section 6(3) … on the basis of the loss or damage suffered by the claimant due to the resumption of the land specified in the claim.
>
> (2) The Tribunal shall determine the compensation (if any) payable under subsection (1) on the basis of-
>
> (a) the value of the land resumed and any buildings erected thereon at the date of resumption;"

11. Section 11 of the Ordinance provides that:-

> "(1) When any property is resumed, the Lands Tribunal in determining the compensation to be paid and in estimating the value of the land resumed and of any buildings thereon, may-
>
> (a) take into consideration the nature and existing condition of the property, and the probable duration of the buildings in their existing state, and the state of repair thereof; and

(b) decline to make any compensation for any addition to or improvement of the property made after the date of the publication in the Gazette of the notice of intended resumption (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair):

Provided that, in the case of any interest acquired after the date of such publication, no separate estimate of the value thereof shall be made so as to increase the amount of compensation.

(2) The Lands Tribunal may also receive evidence to prove-

(a) that the rental of the buildings or premises was enhanced by reason of the same being used as a brothel, or as a gaming house, or for any illegal purpose; or

(b) that the buildings or premises are in such a condition as to be a nuisance within the meaning of any Ordinance relating to buildings or to public health, or are not in reasonably good repair; or

(c) that the buildings or premises are unfit and not reasonably capable of being made fit, for human habitation.

(3) If the Lands Tribunal is satisfied by such evidence, then the compensation-

(a) shall, in the first case, so far as it is based on rental, be based on the rental which would have been obtainable if the building or premises had not been occupied as a brothel, or as a gaming house, or for an illegal purpose; and

(b) shall, in the second case, be the amount estimated as the value of the building or premises if the nuisance had been abated or if they had been put into reasonably good repair, after deducting the estimated expense of abating the nuisance or putting them into such repair, as the case may be; and

(c) shall, in the third case, be the value of the land and of the materials of the buildings thereon."

12. Section 12 of the Ordinance provides that:-

"In the determination of the compensation to be paid under this Ordinance-

(a) no allowance shall be made on account of the resumption being compulsory;

> (aa) no account shall be taken of the fact that the land lies within or is affected by any area, zone or district reserved or set apart for the purposes specified in section 4(1)(a), (c), (d), (e), (f), (g), (h) or (i) of the Town Planning Ordinance (Cap. 131);
>
> (b) no compensation shall be given in respect of any use of the land which is not in accordance with the terms of the Government lease under which the land is held;
>
> (c) no compensation shall be given in respect of any expectancy or probability of the grant or renewal or continuance, by the Government or by any person, of any licence, permission, lease or permit whatsoever:
>
> Provided that this paragraph shall not apply to any case in which the grant or renewal or continuance of any licence, permission, lease or permit could have been enforced as of right if the land in question had not been resumed; and
>
> (d) subject to the provisions of section 11 and to the provisions of paragraphs (aa), (b) and (c) of this section, the value of the land resumed shall be taken to be the amount which the land if sold by a willing seller in the open market might be expected to realize."

*BASIS OF ASSESSMENT*

13. From the above statutory provisions, it is clear to us that the applicant should be compensated on the basis of "the value of the land resumed and any buildings erected thereon at the date of resumption" (section 10(2)(a) of the Ordinance), and that the value of the land resumed, subject to the provisions of sections 11, 12(aa), 12(b) and 12(c) of the Ordinance, shall be taken to be "the amount which the land if sold by a willing seller in the open market might be expected to realize" (section 12(d) of the Ordinance).

14. In other words, the compensation payable to the applicant should be assessed on the basis of the open market value of the Property. The wording in section 12(d) of the Ordinance is not quite the same as the

definition used by the Hong Kong Institute of Surveyors mentioned above, but the concept is more or less the same. It still denotes an objective assessment based on the open market value.

15. We agree with Mr Lai that it is wrong for Mr Wong to rely on the principle of "value to the owner" or to say that this principle is embedded in section 12(d) of the Ordinance. The concept of "value to the owner" denotes a subjective assessment and has ceased to apply in Hong Kong since 1921 when section 12(d) was first enacted under the Crown Lands Resumption (Amendment) Ordinance 1921. In his book *Land Compensation & Valuation Law in Hong Kong* (3rd ed), p 102-103, Judge Cruden gave a succinct account of the no longer applicable concept of "value to the owner" as follows:-

> "Special value is a historical land compensation principle which no longer applies in Hong Kong. In other common law jurisdictions, the term was and in some is still concerned with an element of the higher value a property might have to the owner compared to the lower value of the same land to a resuming authority. The value to the owner was generally higher than open market value. At times, it also came to be used either to include or separately describe disturbance compensation. The concepts of 'value to the owner' and 'special value' ceased to apply in Hong Kong when in 1921 statutory changes replaced compensation for land resumed from the subjective basis of value to the owner to the objective assessment of the open market value of land.
>
> Despite these important statutory changes, the term 'value to the owner' and to a lesser extent 'special value' has lingered on at the highest judicial level. This, if fortunately declining practice, is not only wrong but can be misleading. Although it did not on the facts affect the outcome, the Privy Council in recent years in applying Hong Kong resumption law, while at times correctly referring to open market value, has also used the terms 'value to the owner' and 'special value': *Shun Fung Ironworks Ltd v Director of Buildings and Lands* [1995] 2 AC 111 at 125. More recently, Lord Millett in *Director of Lands v Yin Shuen Enterprises* (2003) 6 HKCFAR 1 when observing

> that English and Hong Kong land compensation law were generally the same, also listed the first relevant English compensation assessment principle as the value of the land to the claimant. That was only an accurate statement of English law until 1919 and of Hong Kong law until 1921. The no longer applicable concept of 'value to the owner' was replaced in both jurisdictions in 1919 and 1921 respectively by similar statutory amendments. Hence Lord Millett's statement in 2003 is no longer good law. These recent judgments emphasise the importance of using correct current statutory and common law compensation terminology. Otherwise errors of this magnitude can result in valuations being carried out on a fundamentally wrong basis. Although special value is no longer part of Hong Kong compensation law, an awareness of its history is useful, when considering the extent to which judgments referring to special value are otherwise relevant to Hong Kong."

16. We agree with Judge Cruden's views as aforesaid. We do not find it correct for Mr Wong to use the concept of "value to the owner" or to suggest that such a concept is embedded in section 12(d) of the Ordinance. In determining the compensation payable to the applicant, the basis of assessment should just be the open market value as stipulated in section 12(d) of the Ordinance, ie "the amount which the land if sold by a willing seller in the open market might be expected to realize".

*RELEVANT DATE*

17. According to section 10(2)(a) of the Ordinance, the relevant date for determining compensation is "the date of resumption". In his valuation report, Mr Wong submits that the Notice of Land Resumption for the Property was published in Gazette Notice No. 3331 dated 7 July 2005 and the date of resumption is 7 October 2005. Mr Wong further submits that the date of reversion and the date of valuation are both 15 October 2005. In Mr Wong's evidence, the date of resumption is different from the date of reversion.

18. Mr Lai, on the other hand, submits that the date of resumption and the date of reversion are the same. As the notice of resumption dated 7 July 2005 and published in G.N. 3331 stated that the Property would be resumed after the expiration of 3 months from the date of the affixing of the notice, and the notice of resumption was affixed to the Property on 15 July 2005, reversion took place on 15 October 2005 upon expiration of the 3-month notice period. Thus, the date of valuation should be 15 October 2005.

19. In our view, although Mr Wong agrees that 15 October 2005 is the valuation date, his opinion that the date of reversion and the date of resumption are different is clearly flawed. It is clearly stated in the notice of resumption G.N. 3331 that the Property "shall be resumed and revert to the Government … on the expiration of THREE months from the date of the affixing of this notice to the said land." Thus, both the date of reversion and the date of resumption should be 15 October 2005, being the expiration of 3 months from the date of affixing of the notice of resumption to the Property on 15 July 2005. The date of valuation should therefore be 15 October 2005.

*PLEADING POINT*

20. The respondent objects to the applicant asking us to determine the "development land value" of the Property as it is not a claim included in the Notice of Application. We do not agree with the respondent in this aspect. There is only one claim made by the applicant and that is "the value of the land resumed and any buildings erected thereon" pursuant to section 10(2)(a) of the Ordinance. The applicant is

not making a separate claim for "development land value", but merely alleges that the value of the land includes "development land value". The respondent is well aware of this issue as it was mentioned in the applicant's expert reports. We see no prejudice to the respondent by making determination of this issue. The Notice of Application in the Lands Tribunal is strictly speaking not a pleading. As long as the issues are clearly identified and the parties are not prejudiced in any way, we are entitled to proceed with the determination of the issues, including this issue on the "development land value" of the Property.

*THE ISSUES*

21. Mr Mak, counsel for the applicant, identifies the following main issues in this case:-

> "(a) The existence of Development Value.
>
> (b) Residual Value Method.
>
> (c) The "Premium Ratio" point.
>
> (d) Existing Use Value point.
>
> (e) "Without Prejudice Offers" point."

22. Mr Mak summarizes the applicant's case as follows:-

> (1) The compensation of the interest resumed is entitled to include development value.
>
> (2) If there is little or even total lack of evidence of likelihood of development, the Court will do its best, by making a discount, perhaps a substantial discount,

to measure that value (see *Transport for London (formerly London Underground Ltd) v Spirerose Ltd (in administration)* [2009] I WLR 1797).

(3) The extent of that development value is normally measured by reference to the residual value method, discounted by the likelihood of development. The figure advised by the applicant's expert is $56,951,770.

(4) Another bench mark is the compulsory sale of unwilling owner holding minority undivided share. In the speech of the Secretary for Development, a ratio or multiplier of 2.66 may be expected and in the event of the auction under an order of the Tribunal, the owner will get his percentage share of the profit in the land by way of development potential.

(5) Adopting the premium ratio approach, in the present case, comparables were adopted and a ratio or multiplier of 3.51 was arrived at. The figure advised by the applicant's expert is $27,123,911.10. Alternatively, if the premium ratio is 3.44, this will give $26,582,978.40 (3.44 x $7,727,610). The applicant does not apply mechanically the ratio of 2.66.

(6) Under the existing use valuation, this is arrived at by a direct comparison method. The figure as advised by the expert is $7,727,610.

(7) The objection to without prejudice correspondence is totally misplaced. The respondent has withdrawn its objection of the first offer and had failed to object to the content of the applicant's expert report with references to the offers. The respondent has waived its rights to object.

23. Mr Mak also makes it clear in his oral closing submission that he does not wish to go into the minor issues on valuation, but would leave them to the Tribunal for determination.

24. On the other hand, Mr Lam, counsel for the respondent, submits that the sole issue in the proceedings herein is the appropriate amount of compensation to be paid under section 10(2)(a) of the Ordinance, but it requires the Tribunal to determine the following matters:-

(a) What are the measurements of the Property and how should the ancillary areas (cockloft, yard etc.) be converted to arrive at the effective floor area for the purpose of valuation?

(b) What is the valuation obtained by using market comparables (called existing use value (EUV) by the

applicant's expert, but which the respondent says is already the "market value" under section 12(d) of the Ordinance)?

(c) Should a premium be added to the value at (b) above to reflect the redevelopment value of the Property and if so how much?

25. We shall deal with all these issues below.

*DEVELOPMENT VALUE*

26. Mr Mak submits that in determining the compensation for the resumption of the Property, the applicant is entitled to include development value, and the Property was ripe for development.

27. Mr Mak relies on *Tak Shing Investment Co Ltd v Director of Lands*, Crown Lands Resumption Reference No. 23 of 1995, where the Tribunal found the existence of development potential on the basis that the area was ripe for redevelopment, because of the age of the buildings and their location within the vicinity.

28. Mr Mak submits that the applicant does not need to show the existence of likelihood of development with adjoining buildings at the date of resumption. All that the applicant needs to show is that the Property has the ability to be considered as having development potential. Once this is accepted then it is a matter of estimating the quantum of development value. So long as the applicant can redevelop the lot, and so long as this is not excluded by the provisions under section 12 of the Ordinance, she should be entitled to claim development value, on top of

the existing use value.

29. Mr Mak further submits that there is no impediment for individual owners of units within a single building coming together and agreeing to combine their undivided shares to enable them to sell the combined interest to benefit from the development value of their combined interests. The only difference between single ownership and multiple ownerships is in the time that it would take the multiple owners to agree to join together.

30. Mr Mak also submits that section 12(d) of the Ordinance requires valuation on the basis of a "willing seller". If the land owner cannot negotiate or sell at the best value he could obtain in the open market, he is not a "willing seller". The best value in a piece of land that has no restriction of planning (ie under Residential Group A zoning), with unused plot ratio, and can redevelop without the need to apply for modification of the lease terms, must be the market value that includes development value.

31. On the other hand, Mr Lam submits that in the assessment of development value, a two-stage approach ought to be adopted:-

> "(a) Stage One: Whether it is more likely than not that such redevelopment will, in a no-scheme world, take place on the date of resumption; if this question is determined against a claimant, that would be the end of the matter ; and
>
> (b) Stage Two: If Stage One is determined in favour of a claimant, the Court/Tribunal would then proceed to conduct a valuation of the redevelopment potential."

32. Mr Lam submits that in Stage One, the approach in this

regard was explained by President Power in *Cheung Lai-wan v Director of Lands and Survey* (wrongly reported as Director of Public Works), [1977] HKLTLR 14, as follows:-

> "The Tribunal agrees that In re **Lucas and Chesterfield Gas & Water Board** is applicable in so far as it lays down, at 31, that when a value exists for possible purchasers, such as redevelopers, 'the owner is entitled to have this value taken into consideration' when compensation is being assessed. ... the Tribunal is satisfied that in broad terms the test to be applied in this regard in Hong Kong is still that laid down by Fletcher Moulton L.J. when he stated, at 30: 'The owner is to receive compensation based upon the market value of his lands as they stood before the scheme was authorized by which they are put to public purposes. Subject to that he is entitled to be paid the full price for this lands, and any or every element of value which they possess must be taken into consideration in so far as they increase the value to him .'
>
> Mr. Kan also referred to **Harding** *v* **Cardiff Corporation**. Again the Tribunal accepts the applicability of this decision in so far as it established, at 886, that where 'there might well have been several people ready to buy up properties (in a particular area) with a view to collecting a site worth redeveloping' this factor, must, where it is established to the satisfaction of the Tribunal, be taken into consideration as a factor increasing value when compensation is being assessed. The Tribunal further agrees that the words 'open market' are to be given the meaning attributed to them in the cases of **I.R.C.** *v* **Clay** and **Glass** *v* **Inland Revenue** ... We respectfully hold that Swinfen Eady L.J., at 475, of the former case, correctly set out the meaning of those words when he said: 'A value, ascertained by reference to the amount obtainable in an open market, shews an intention to include every possible purchaser. The market is to be the open market, as distinguished from an offer to a limited class only, such as the members of the family. The market is not necessarily an auction sale. The section means such amount as the land might be expected to realize if offered under conditions enabling every person desirous of purchasing to come in and make an offer, and if proper steps were taken to advertise the property and let all likely purchaser know that the land is in the market for sale.'
>
> These authorities establish that if it is shown that a property has an added value on the open market because of the likelihood that it will be incorporated into a scheme of

> redevelopment then this added value must be taken into account when compensation is being assessed. However before such a value can be attributed to the property the *likelihood of redevelopment* must be shown. It must be established, as it was to the satisfaction of the Tribunal in **Harding's case**, that 'there might well have been several people ready to buy up properties ... with a view to collecting a site worth redevelopment.' What the Tribunal was there saying was that they were, on the evidence before them in that claim satisfied on the balance of probabilities, of the existence of this possibility.
>
> What the Tribunal in the present case must ask is whether or not we are so satisfied. ... Having considered the matter the Tribunal feels that the redevelopment value of the sites on the evidence as it stands is so remote that it cannot be given any real weight."

33. Mr Lam further submits that *Cheung Lai-wan* is in line with later cases such as *Million-Add Development Ltd & Anor v Secretary for Transport* [1997] CPR 316 and *Joy Take Development Ltd & Others v Director of Lands* [2008] 6 HKC 232, and in short, in cases where a claimant claims compensation on the basis that the piece of land in question would be jointly developed with other pieces of land, the Court/Tribunal requires to be satisfied that it is more likely than not that the joint development would, but for the compulsory acquisition, occur on the date of resumption.

34. As to Stage Two, Mr Lam submits that after being satisfied on a balance of probabilities basis that compensation ought to be paid for redevelopment potential, the Court/Tribunal would then go on to look for comparables which have the same potential as the subject property, so as to give a value to the potential. This is the reverse of the scenario in *View Point Development Ltd & Another v Secretary for Transport* [2004] 2 HKC 52, where the Court had to look for comparables without

redevelopment potential. Such an approach is also in line with *Maori Trustee v Ministry of Works* [1959] AC 1 and *Transport for London (formerly London Underground Ltd) v Spirerose Ltd (in administration)*, supra, where the Court reiterated that compensation ought to be paid for "unrealized possibilities", not for "realized possibilities" (see also Judge Cruden's book, supra, p126).

35. Mr Lam submits that, in the present case, no compensation ought to be paid for any development value because:-

(a) But for the scheme, the chance of the Property being redeveloped together with all the other units in K21, or being acquired for the purpose of such redevelopment, at the date of resumption is remote; and

(b) The applicant has failed to prove such redevelopment value, by way of suitable comparables or other methodology, even assuming that such value in theory exists.

36. Although we agree with Mr Mak's submission that in determining the compensation for the resumption of a property, the claimant is entitled to include development value (if so justified), we also agree with Mr Lam's two-stage approach in assessing the compensation for development value.

37. In our view, *Cheung Lai-wan* sets out the test which the Tribunal should apply in the assessment of compensation payable to an

owner of a property with development value. Applying *Cheung Lai-wan* and considering Stage One, we have to examine if there were people ready to buy up properties in the subject lot with a view to collecting a site worth redeveloping.

38. There is no evidence before us that the owners of the subject lot were related to each other, or offers had been made to acquire their interests, other than from the respondent or the Urban Renewal Authority in association with the Hong Kong Housing Society. Applying the well established *Pointe Gourde* principle (*Pointe Gourde Quarrying and Transport Co v Sub-intendent of Crown Lands* [1947] AC 565), we should ignore the offers made under the K21 scheme.

39. According to Mr Wong, a developer, Yue Tai Hing or its associate companies, bought 3 properties at 422 Un Chau Street within K21 over a period of 12 years before 2005. Other than this, there is no evidence before us that of the 350 odd owners in the whole K21 site, there was any other majority owner. In fact, according to Mr Wong's own evidence, since 1985, in the vast area of Sham Shui Po covered by the plan at p 2235 of exhibit "A7", there were only 45 redevelopment projects as listed in p 2237 of Exhibit "A7". This is in line with observations during the site visit on 18 May 2011, where only sporadic redevelopments were seen, and they were relatively new and tall buildings surrounded by a sea of old Chinese tenement buildings.

40. We agree with the respondent that it is exactly because redevelopment by private developers in the area was too slow that the Urban Renewal Authority had to step in and implement the development

proposals K20, K21, K22 and K23. It is undisputed that, within the K21 area, there were 291 domestic premises and 59 non-domestic premises, of which the Property was only one. There were about 24 to 25 Chinese tenement buildings within the Scheme area, mostly of 4 or 5-storey high. The building in which the Property was situated was 6-storey high, with one unit on each floor. Over the years, there had been very little acquisition activities going on in the K21 area. The information produced by the applicant shows that since the year 1983, there were only three suspected acquisition transactions within the area, and among these three transactions, two were no more than loan activities not directly related to acquisition (it was only when the borrower defaulted in payment that the lender might be able to foreclose the properties). None of the suspected acquisition transactions occurred in the building in which the Property was situated.

41. Mr Wong agreed during cross-examination that the applicant might have to wait for about 10 years to have the Property developed, and he contended that the applicant had the financial ability to hold on to the Property for another 10 years. However, whether or not the applicant would be able to hold on to the Property for another 10 years or not is totally beside the point. The relevant date is the date of resumption, ie 15 October 2005. We have to consider the situation back in 2005. There is no evidence or no sufficient evidence to suggest that at the date of resumption, "there might well have been several people ready to buy up properties … with a view to collecting a site worth redevelopment" (see *Harding v Cardiff Corporation* (1971) 219 Estates Gazette 885).

42. The case of *Tak Shing Investment Co Ltd*, supra, is different

from the present case. In that case, it was held that in the assessment of development value, regard should have been made to the 2 flanking adjacent sites which were owned by one single owner. In the present case, almost all the owners in K21 were different. No single lot was owned by one owner. We are not satisfied that in a no-scheme world, there were several people ready to buy up properties in the subject lot with a view to collecting a site worth redeveloping on the date of resumption. We are not satisfied on the balance of probabilities that there was existence of this possibility. Thus, we do not find that there was any likelihood back in 2005 to have the Property redeveloped. In the circumstances, the applicant has failed to prove that the Stage One test in *Cheung Lai-wan* is satisfied.

43. Furthermore, we also agree with Mr Lam that the applicant has failed to prove the existence of development value by way of suitable comparables. In the course of Mr Wong's examination in chief in May 2011, we invited him to provide comparables which might already reflect the development value, so that the development value, if any, could be taken into account while using the direct comparison method. However, Mr Wong fails to produce any suitable comparables.

44. In *Nam Chun Investment Co Ltd v Director of Lands*, CACV 335 of 2003, Hon Rogers VP said that:-

> "Section 12 (d) requires the value to be taken as the amount that would be agreed between a willing buyer and willing seller. The best way of assessing compensation in accordance with these provisions is to take the amount of comparables as the starting point for the assessment. If the comparables taken are true comparables in terms of lease conditions and town planning orders, they will produce a result which reflects the

value required to be taken under section 12(d)."

45. Our suggestion to Mr Wong to look for comparables which might already reflect the development value follows the observation of Hon Rogers VP. However, there was no such comparable produced by the applicant.

46. As a matter of fact, as we shall examine later, in assessing the market value of the Property, Mr Lai produces 4 comparables, RC6, RC8, RC9 and RC10, which are shops in buildings of 8-storey high and may reflect the development value, if any, of the Property.

47. We also note that if the applicant is not willing to sell unless she could obtain a price which includes development value from either a developer or an investor, then the applicant is not a willing seller in the open market. In *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111, Lord Nicholls of Birkenhead said that:-

> "The purpose … is to provide fair compensation for a claimant whose land has been compulsorily taken from him. This is sometimes described as the principle of equivalence. No allowance is to be made because the resumption or acquisition was compulsory; and land is to be valued at the price it might be expected to realise if sold by a willing seller, not an unwilling seller. But subject to these qualifications, a claimant is entitled to be compensated fairly and fully for his loss. Conversely, and built into the concept of fair compensation, is the corollary that a claimant is not entitled to receive more than fair compensation: a person is entitled to compensation for losses fairly attributable to the taking of his land, but not to any greater amount. It is ultimately by this touchstone, with its two facets, that all claims for compensation succeed or fail."

48. We are of the view that by insisting that she would only sell

to someone offering a price which included development value, the applicant would not be compensated as a willing seller and she would be compensated more than fairly as mentioned in the case of *Shun Fung Ironworks Ltd*, supra. This would not satisfy the requirement in section 12(d) of the Ordinance.

49. Mr Mak, however, submits that if there is little or even total lack of evidence of likelihood of development, the Tribunal will do its best, by making a discount, perhaps a substantial discount, to measure that value. Mr Mak relies on the case of *Spirerose*, supra, to suggest that the potential for development has to be valued by discounting for future uncertainties, and as said in that case:-

> "the principles applicable were that the value of land the subject of compulsory acquisition was its open market value, any depression in the price that it might be expected to fetch caused by the scheme was to be disregarded, the valuation had to take into account its potential, including its potential for development, and that potential had to be valued by discounting for future uncertainties".

50. Mr Mak also relies on *Potter v London Borough of Hillingdon* [2010] UKUT 212 (LC). It was held by the English Lands Tribunal in that case that a prospective purchaser would have paid the full potential development value of the land resumed but that any such potential value must be discounted for delay and risk.

51. Mr Mak further relies on *Tsang Chun Ki & Wong Yuet Sin v Director of Engineering Development*, MTR Reference 2 of 1984, where the Tribunal held that redevelopment potential existed and the likelihood of redevelopment may also be established by different and far less

positive evidence. For example, in *Director of Lands & Survey v Cheung Ping-kwan* (1978) HKLTLR 101, there was evidence of redevelopment in the vicinity of the resumed property but no evidence of any redevelopment plans for the resumed property. The Tribunal inspected the locality and from that merely visual evidence was prepared to find that a merger of the resumed property with two of its neighbours "was likely within a foreseeable time scale and that such a merger would result in a viable redevelopment scheme."

52. We do not agree that either *Spirerose* or *Potter* is applicable, as they were concerned with valuation of the whole site in question. Here we are dealing with only 1/6$^{th}$ share in the subject lot. Not until the owners in the subject lot have joined together, there is no question of valuing development value of the subject lot. Likewise, *Cheung Ping-kwan* is not applicable as it was concerned with a site and there was evidence that it could be developed with the adjourning sites.

53. Although *Tsang Chun Ki* was concerned with a flat, it is still different from the present case in that the assessment was based on the evidence from a comparable. It only establishes that if redevelopment value is proved to exist, the valuation may be made by applying a discount to the value of the comparable on vacant possession basis, rather than subject to tenancy. It does not help the applicant in the present case.

*RESIDUAL VALUATION*

54. We have already held that there was no evidence to reflect development value in the Property, and hence the applicant fails to satisfy

us at Stage One. Nevertheless, for the sake of completeness, we shall still deal with Stage Two below.

55. As advised by Mr Wong, the applicant claims compensation including development value of the Property by reference to residual valuation, and before any discount is given for the extent of likelihood for development by merger of site, the value is at $56,951,770.

56. In his assessment, Mr Wong first of all determines the land value of the whole site comprised in the K21 scheme by residual valuation. He then apportions the land value to the subject lot by the proportion of the site area of the subject lot to the total site area of K21. Mr Wong then further apportions the value so ascribed by the existing use value of the Property bears to the existing use value of all the units on the subject lot.

57. Mr Mak submits that in a compulsory sale order granted under the Land (Compulsory Sale for Redevelopment) Ordinance, Cap 545, the Lands Tribunal is required to include development potential in the determination of the reserve price. The aim is to protect minority owner. If a minority owner is to be protected in an order for sale by the majority, it is difficult to see why the applicant, being also a minority owner, should not be protected similarly. Otherwise there can be no sufficient balance of the right and interests of the owner and that of the public interest.

58. In our opinion, residual valuation is just one of the methods to value development value. It is a means to an end. However, by

adopting this approach, the applicant would be compensated for value that she would not be able to establish, had there not been any resumption. This is not in line with the principles in *Maori Trustee* and *Spirerose*, supra. It is clearly not appropriate to use the residual valuation method in the present case when there was no evidence to support any development value.

59. We also find it inappropriate to relate Cap 545 with the Ordinance. Cap 545 concerns with the situations where there will definitely be redevelopment. The Ordinance only concerns with the open market value of the property in question at the date of resumption, and redevelopment (apart from the one intended for the resumption which should not be taken into account) would not necessarily happen. The two ordinances operate under completely different situations and criteria. Under the Ordinance, compensation is to be assessed in a "no scheme world"; whereas under Cap 545, the minority owner will have a share of the prospect of redevelopment reflected in the auctioned price. Thus, we do not see any merit in the applicant's argument.

*PREMIUM RATIO*

60. As an alternative, the applicant claims compensation by reference to the premium ratio approach suggested by Mr Wong. By multiplying a ratio or multiplier of 3.44 to the existing use value of $7,727,610, Mr Wong arrives at a sum of $26,582,978.40.

61. Mr Mak accepts that this is a novel approach. He quotes the speech of the Secretary for Development that a ratio or multiplier of 2.66 of the existing use value of a property may be expected by the owner

in the event of an auction under an order for compulsory sale of the Lands Tribunal pursuant to Cap 545.

62. According to Mr Wong, the premium ratio represents the historic difference between purchase offers resulting in development and those that do not result in development. This ratio, according to his assessment, should be 3.51. He submits that the systematic approach to arrive at 3.51 is a reasonable approach. The starting point is to select appropriate comparables, which consists of 45 redevelopment sites in the vicinity of the Property. 13 comparables are then selected to examine the unused plot ratio and planning use. In his analysis, only 38 Hing Wah Street (with a multiple or Premium Ratio of 3.46) and 477-487 Shun Ning Road (with a multiple or Premium Ratio of 3.42) appear to be suitable comparables. These two comparables are sufficiently good for comparison with the subject lot. In particular, the 38 Hing Wah Street development includes two of the shop comparables of the respondent, which must be assumed to be good equivalents with the subject lot. If 12-22 Davies Street is included, the average is 3.51. If not, the average premium ratio is 3.44. Applying 3.44, the claim is $26,582,978.40.

63. Mr Lam, on the other hand, submits that this approach ought to be rejected without further ado. According to Mr Wong himself, as stated in his report, the acquisition price that a developer is willing to pay depends on the stage of acquisition. It is undisputed that the Hing Wah and Shun Ning acquisitions were at a very late stage (if not the last batch) of acquisition. The price that a developer might be willing to pay for these acquisitions is totally irrelevant to what he might be willing to pay to buy the Property (assuming there was an interested developer around),

which was situated in a site in respect of which there was hardly any acquisition activity at all. The sample size is in any event too small for any generalization.

64. Mr Lam also comments on the premium ratios calculated from the Hing Wah, Shun Ning and Davies acquisitions. For the Hing Wah acquisition, Mr Lam submits that the exercise is of no value whatsoever because of the following:-

(1) Adjustments have to be made for a host of other factors and the accuracy of such adjustments gravely affects the accuracy of the exercise.

(2) Substantial adjustments have to be made for size and time, thus making the resulting figure unreliable.

(3) In calculating the price without redevelopment value, an average is taken between two sets of figures which are substantially apart (one in the region of $12,000 and the other $8,000). Such an averaging exercise is meaningless.

(4) The transacted sale at G/F, No. 27A Hing Wah Street is very close in age and nature to the Property, but Mr Wong claims that it has no redevelopment value. If there is no redevelopment value in the transacted sale, why is there such value in the Property?

(5) The same “market value on basis of Existing Use Value” is

used for both the 1st and 2nd acquisitions, when the difference in price index between the time of these two acquisitions differed by as much as 46.07%.

65. For the Shun Ning acquisition, Mr Lam submits that the exercise is again futile because:-

(1) The exercise combined shop and residential premises. Mr Wong admits under cross-examination that the premium which a developer is willing to pay for residential premises may be different from shop premises.

(2) The adjustments for other factors also make the exercise valueless.

(3) 3 shop comparables in Po On Road were used to calculate the existing use value. Vast adjustments for location, size and time are required, gravely affecting the accuracy of the exercise.

(4) After adjustment, shop premises are even cheaper than residential premises. This makes a mockery of the entire exercise.

(5) In any event, the resulting figure is only in relation to the situation in 1999, and has little relevance to the situation in 2005.

66. For the Davies Street acquisitions, Mr Lam queries that although analysis has been done for both domestic and shop premises, only premium ratio related to shop premises is used by Mr Wong, and it was a waste of time to analyse domestic premises. He submits that the exercise is also futile because:-

(1) Davies Street is situated in Hong Kong Island. Mr Wong admits under cross-examination that there may be a great difference between the premium that a developer is willing to pay for land in Hong Kong Island and the premium for land in Sham Shui Po.

(2) Some of the shop premises used for the calculation of existing use value were built in the 1960s. If they had no redevelopment value, why would the Property have such value?

(3) Substantial adjustments have to be made for other factors.

67. We agree with Mr Lam's analysis of the weakness and unreasonableness of the premium ratio approach advocated by Mr Wong. We would add that in the samples cited to us, the premium ratio ranges between 2.66, being the average of some of the Cap 545 cases, and 3.65, for a development site in Davies Street. Even in Mr Wong's evidence, he only identifies 13 sites out of 45 redevelopment sites in the vicinity of the Property for examination. Of these 13 sites, only 2 are suitable comparables according to Mr Wong. In the end, he has to rely on a transaction in Davies Street on Hong Kong Island to support his approach.

We are very doubtful of the accuracy and reliability of Mr Wong's novel approach. It is extremely arbitrary. We do not accept that the premium ratio approach is used by professional valuers in assessing the market value of properties with development potential. In our view, there are other more conventional and well tested valuation methods which can be applied to value the compensation payable to the applicant. We therefore do not accept Mr Wong's proposed premium ratio approach, even if the Property had development value.

*MARKET VALUE*

68. We agree with the respondent that the direct comparison method is the best approach in valuing the market value of the Property. Although Mr Wong alleges that this approach only reflects the existing use value, we do not agree with him and are of the view that this approach can assess the true market value of the Property. If the Property had any development value, it would also be reflected in the comparables.

*The Property*

69. When we had site inspection in May 2011, we found that the areas covered by the development proposals K21 (which encompassed the Property) and K22 (which were on the opposite side of Un Chau Street) had become development sites. Hence, we have to rely on the photographs produced and the evidence adduced by the parties to ascertain the situation back in 2005. Mr Wong produced some video clips taken at the junction of Un Chau Street and Cheung Wah Street between 25 September and 31 October 2010. However, we do not find these video clips helpful, as they were not taken at the Property and they

were taken only about 7 months earlier than our site visit, but still some 5 years after the valuation date.

70. Mr Wong describes the Property as located at or very near to the junction of Cheung Wah Street and Un Chau Street. This is rather misleading and we cannot agree. As a matter of fact, the Property was not located at the junction of Cheung Wah Street and Un Chau Street. As can be seen on the plans shown to us at the hearing (for example, the plan at page 2235 of Exhibit "A7"), it was located almost in the middle between Cheung Wah Street and Hing Wah Street. This is not the same as "very near" to the junction of Cheung Wah Street and Un Chau Street.

71. Mr Wong also alleges that the Property had a strategic position, in that it was placed at the centre of a large number of residential buildings clustered with low to middle income accommodation. On the evidence, we note that these "residential buildings" were just old tenement buildings.

72. Mr Wong places a lot of emphasis in advocating that a minibus terminus of 7 routes is located just across the street and that a large number of passengers setting down are expected. Although we cannot step back to 2005, during our site inspection in May 2011, we were able to see the minibus terminus at Un Chau Street as it stood in 2011. There is no evidence produced by both parties that there was any substantial difference between 2005 and 2011, in so far as the minibus terminus is concerned.

73. Before the hearing, Mr Wong and Mr Lai had different

views on some of the measurements and the calculation of the effective floor area of the Property. At the end of the hearing, the two experts were able to narrow down the differences.

74. The agreed measurements of the Property are:-

(1) Ground Floor 63.47 m²
(2) Yard 23.88 m²
(3) Headroom 2.743 m

75. The following items are not agreed:-

| Item | | Mr Wong | | Mr Lai | |
|---|---|---|---|---|---|
| | | Area | Conversion Factor | Area | Conversion Factor |
| (a) | Area under staircase | 5.20 m² | 1/2 | 4.04 m² | 1/2 |
| (b) | Covered yard | 23.88 m² | 1/4 | 23.88 m² | 1/6 |
| (c) | Enclosed cockloft | 19.91 m² | 1/2.5 | 21.24 m² | 1/4 |
| (d) | Frontage | 3.362 m | N/A | 3.63 m | N/A |

*Area under staircase*

76. Mr Mak submits that the applicant can alter any part of her premises to provide maximum use, so long as it is not unauthorized structure. In the present case there is never any suggestion of unauthorized works. In Mr Mak's submission, 5.2 m² is therefore the correct figure to be used.

77. Mr Lam submits that Mr Wong's measurement is based, not

on the approved building plan, but on a new position of an internal staircase apparently constructed without proper authorization.

78. We agree with Mr Lam that since there is no evidence that the new position of the internal staircase is authorized, we should adopt Mr Lai's calculation rather than Mr Wong's. The area should be 4.04 $m^2$.

79. We also agree with the conversion factor of 1/2 used by both experts.

*Covered yard*

80. Mr Wong maintains that since the yard is covered, it should be valued as such. Since there is no suggestion of any unauthorized work, the yard may be considered to be covered yard, under section 41(3) of the Buildings Ordinance, as exempted works. He proposes a conversion factor of 1/4. However, Mr Wong could not produce any evidence showing that the cover is authorized and just argues that the applicant has been using it for a long period of time. When we raised the question to Mr Wong that if the structure covering the yard was not authorized, this would be unauthorized building works and how would he value unauthorized building works, Mr Wong was evasive.

81. We hold that since there is no evidence that the majority of the covering to the yard was authorized, we prefer Mr Lai's conversion factor of 1/6.

*Cockloft*

82. Mr Wong's area is 19.91 m² and Mr Lai, 21.24 m². Both experts confirm that their figures were from measurement of plans. However, their details of measurement or calculation were not shown to us. Doing the best we can, we determine the area to be 20.58 m² by taking the average of the two figures.

83. Mr Wong adopts a conversion factor of 1/2.5. To support his methodology, Mr Wong produces 3 sets of "comparables", which are sales analysis of ground floor shops and mezzanine floor commercial units.

84. Mr Lam submits that such an exercise is devoid of meaning because:-

(1) All three sets of "comparables" are in respect of mezzanine floor premises, which are very different from cocklofts.

(2) Substantial adjustments have to be made for the other factors (eg size). The accuracy of such adjustments greatly affects the reliability of the figure advocated by Mr Wong.

(3) The sample size is too small to be reliable.

(4) The resulting figures from the exercise range from 30.225% to 31.16%. There is no satisfactory explanation as to why 1/2.5 (i.e., 40%) is adopted by Mr Wong.

85. In response to Mr Lam's criticism, Mr Mak submits that:-

(1) The 3 sets of "comparables" are in respect of mezzanine floor, but they are not necessary better in terms of usage, as separate access/ staircase would have to be used.

(2) Adjustments made are said to be substantial. However, Mr Lai makes no effort to suggest suitable comparables, and makes no suggestion what adjustments are appropriate.

(3) Sample size of 3 is not too small. The comparables are near the locality of the Property.

(4) The criticism of use of 1/2.5 or 40% is that there is no satisfactory explanation why it should differ from the range of 30.225% to 31.16%. However, if this is a sensible criticism, it amounts to a suggestion that the conversion factor of 1/3 should be used.

(5) The rule of thumb is 1/3 which is not substantially different from 1/2.5. The difference between 1/2.5 and 1/3 is 1/15 which is not a significant difference for the adjusted area. The difference is actually 1/15 x 23.88 = 1.592 m.

86. On the other hand, Mr Lai adopts a conventional conversion factor of 1/4, which is used in *Poon Chao Fai v Director of Lands*, LDLR 6 of 1998.

87. We do not accept Mr Wong's analysis. A cockloft is very different to a mezzanine floor. A cockloft is part and parcel of the ground floor, without unauthorized alteration, accessible only from within. We agree with Mr Lam that Mr Wong's exercise is devoid of meaning. After considering the 2 different approaches of the experts, we prefer the methodology of Mr Lai and adopt a conversion factor of 1/4.

*Frontage*

88. Mr Mak submits that Mr Wong's figure is less favourable to the applicant. Both experts have not produced details to support their evidence. In our view, the minor difference has no bearing on the valuation of the Property. However, for completeness, we shall adopt 3.5 m as the frontage.

*High headroom*

89. In the calculation of effective floor area, Mr Wong applies an increase of 10% because the high headroom of 5.18 m of the Property commands 10% higher in value (not in area) than lower headroom of 2.74 m. Therefore notwithstanding the adjustment is in fact made in the area, this has no difference in impact on the adjustment in value.

90. Mr Lam submits that this approach is unconventional, subjective, and without justification.

91. In our view, if there is a difference in headroom between the Property and any of the comparables, any adjustment should be made in the analysis of the comparables. Mr Wong's approach is amounting to

double counting. We reject his methodology.

*Effective Floor Area*

92. Our assessment of the effective floor area of the Property is:-

| Item | | Area | Conversion Factor | Effective Floor Area |
|---|---|---|---|---|
| (1) | Ground Floor | 63.47 m² | N/A | 63.47 m² |
| (2) | Area under staircase | 4.04 m² | 1/2 | 2.02 m² |
| (3) | Covered yard | 23.88 m² | 1/6 | 3.98 m² |
| (4) | Enclosed cockloft | 20.58 m² | 1/4 | 5.15 m² |
| Total | | | | 74.62 m² |

*Direct Comparison Method*

93. Between the experts, it is common ground that the Direct Comparison Method should be used as the primary method of valuation. Both experts analyze comparables and apply the adjusted unit rate to the effective floor area to determine the market value of the Property, although in Mr Wong's valuation, this is his existing use value.

94. Mr Wong's valuation on this basis is $7,727,610 or $8,126,081, whereas Mr Lai's revised valuation is $4,666,000.

*Comparables*

95. Both experts are wide apart in the choice of comparables and their appropriate adjustments. Mr Wong does not agree to any of the 10 comparables of Mr Lai nor Mr Lai to Mr Wong's 4 comparables.

96. The comparables are:-

Mr Wong's comparables

| Ref. | Date of Transaction | Location | Price | Area m² |
|---|---|---|---|---|
| EUV-1 | 13/10/2005 | Shop 1C, LG/F, Lai Bo Garden 38 Cheung Wah Street | $1,570,000 | 11.61 |
| EUV-2 | 5/10/2005 | Shop 7A-7C Federal Plaza 550-554 Fuk Wing Street | $7,300,000 | 41.25 |
| EUV-3 | 30/9/2005 | Shop 1 Campion Court 20 Cheung Wah Street | $1,700,000 | 8.76 |
| EUV-4 | 13/9/2005 | Shop 2 Peaceful Mansion 283 Shun Ning Road | $12,800,000 | 58.34 |

Mr Lai's comparables

| Ref. | Date of Transaction | Location | Price | Area m² |
|---|---|---|---|---|
| RC1 | 3/4/2006 | Shop 14 Golden Jade Heights Nos.482-492 Un Chau Street | $3,480,000 | 48.2 |
| RC2 | 11/11/2005 | Shop 3 Hing Wah Apartments 38 Hing Wah Street | $2,950,000 | 32.6 |

| | | | | |
|---|---|---|---|---|
| RC3 | 11/11/2005 | Shop 5<br>Hing Wah Apartments<br>38 Hing Wah Street | $2,450,000 | 28 |
| RC4 | 14/9/2005 | Shop 12<br>Golden Jade Heights<br>482-492 Un Chau Street | $2,980,000 | 46.37 |
| RC5 | 19/4/2005 | Shop A,<br>Lun May Building<br>386-390 Castle Peak Road | $5,900,000 | 92 |
| RC6 | 18/3/2005 | G/F, 27B Hing Wah Street | $4,000,000 | 57.13 |
| RC7 | 21/2/2005 | Shops C & D<br>Chiu Tak Mansion<br>373-379 Caste Peak Road | $12,080,000 | 158.49 |
| RC8 | 30/1/2005 | G/F, 561 Fuk Wing Street | $2,570,000 | 53.65 |
| RC9 | 29/1/2005 | G/F, 567 Fuk Wing Street | $2,980,000 | 52.78 |
| RC10 | 25/1/2005 | G/F, 383 Castle Peak Road | $5,200,000 | 83.27 |

*Location*

97. In Mr Wong's opinion, one important feature of the Property is that it has a "strategic" position in the locality, which can be regarded as the centre of a hinterland according to the Central Place Theory. The locality of the Property, particularly at the junction of Cheung Wah Street and Un Chau Street, is the hub of the bustling commercial area serving

the local residents and the commercial buildings with the operation of a franchised minibus terminus nearby. The position of the Property is within the central point of this commercial area.

98. We reject Mr Wong's opinion outright for the simple reason that if, the position of the Property is at or near the centre of a bustling commercial area, this is not reflected by the uses of the Property and its neighbouring shops which are largely workshop type. We find no justification in Mr Wong's adjustments for location in the comparables.

99. In our view, in valuing the Property, it is not necessary to rely on any academic theory, such as the Central Place Theory. Reference should be based on evidence from analyzing suitable comparables, and making suitable adjustments to relevant factors, such as pedestrian flow.

100. We have also found earlier that the location of the Property is not at the junction of Cheung Wah Street and Un Chau Street. There is no merit whatsoever in Mr Wong's opinion.

*Blighted Effect*

101. Mr Mak submits that if Mr Lai's comparables were to be used, any blighted effect due to the resumption should be removed. This proposition is the reverse of the Pointe Gourde principle. In *Melwood Units Pty Ltd v Commissioner of Main Roads* [1979] AC 426, 37 acres of land were severed into a north and south block. The Privy Council was satisfied that but for the resumption, planning permission would have been granted for the whole 37 acres. It was held that the *Pointe Gourde*

principle applied in reverse. Secondly, it was also held that foreknowledge of a road having a depressive effect should be excluded.

102. Mr Mak further submits that in the present case, the blighted effect of K20, K22, K23 projects, or the foreknowledge of these projects, between commencement of negotiation (in 2004) and the resumption date (October 2005) has the impact of reducing the value of the Property. The effect of the blight operated from the moment when the Hong Kong Housing Society commenced negotiation in July 2004, stating clearly that the Housing Society intended to redevelop comprehensively as an urban renewal project in association with the Urban Renewal Authority, and that it had the right to apply to the Secretary for Housing, Planning and Lands to recommend land resumption. The scope of the redevelopment did not include K21 alone, but was extended to K20, K21, K22 and K23.

103. Mr Wong rejects Mr Lai's comparables because in Mr Wong's opinion, Mr Lai has failed to prove his comparables are suitable because of the blighted effect. According to Mr Wong, there are two dimensions to the blighted effect. Firstly the five URA redevelopment projects had a blighted effect on the location factor of Mr Lai's comparables. Pedestrian flow was also affected due to people moving out from the URA projects. Secondly, when people moved out in a substantial form this would render Mr Lai's comparables not suitable for use. Mr Wong is of the view that the blighted effect of the URA projects, or the foreknowledge of these projects, had the impact of reducing the value of Mr Lai's comparables at the valuation date.

104. To establish that Mr Lai's comparables RC2, RC3, RC5,

RC6, RC7 and RC10 are unsuitable because they were subject to blighted effect, Mr Wong makes comparison between the following transactions:-

(a) RC1 with RC4;
(b) RC2 and RC3 with RC6;
(c) RC5 with RC10;
(d) RC8 with RC9;
(e) RC1 with RC8 and RC9; and
(f) RC4 with RC8 and RC9.

105. Mr Lam submits that such an exercise is wholly irrational and pointless, for the following reasons:-

(a) The combination of comparables chosen for comparison is entirely arbitrary.

(b) All other adjustment factors are simply ignored and the price difference attributed entirely to time.

(c) The analysis shows an increase in value with the approach of resumption and beyond. The exercise negates blighted effect rather than proving it.

106. Mr Lam criticizes Mr Wong contradicts himself in this respect by adopting EUV-3, which Mr Wong calls "the best comparable" and "the best evidence", because EUV-3 is closer to the K21 site than any of the RCs. If blighted effect did exist, EUV-3 should be the first to be disregarded.

107. After considering carefully Mr Wong's exercise, we reject his proposition. In Mr Wong's opinion, RC2, RC3, RC5, RC6, RC7 and RC10 should not be used because they were subjected to blighted effect. If Mr Wong wishes to prove his case, he should compare these comparables with Mr Lai's remaining comparables, ie RC1, RC4, RC8 and RC9 to see if there is any substantial difference in the adjusted rates. However, all the comparisons of Mr Wong are between either comparables which Mr Wong asserts were subjected to blighted effect, or not subjected to blighted effect. There is no comparison between comparables with and without blighted effect. We find Mr Wong has failed to prove there was blighted effect in any of Mr Lai's comparables.

*Mr Wong's Comparables*

*EUV-1*

108. EUV-1 is a shop at Shun Ning Road, near the junction with Cheung Wah Street. During our site inspection, we find the locality distinctly different to Un Chau Street, without the busy vehicular traffic. The shop is very small.

109. Mr Mak submits that location should be the primary consideration in deciding whether a comparable is suitable. Size comes with secondary importance. The logic is relatively simple, no matter how similar the size a potential comparable is, if it is situated in a different district, it would not be a suitable comparable as objectivity and arbitrariness would inevitably arise on adjustment on location and other matters. On the other hand, difference in size can be made up by relatively simple adjustments to size and perhaps frontage. The small size

of EUV-1 is well compensated because of Mr Wong's -30% adjustment to size. Such adjustment should not be considered to be too large. This is because the prices of comparables RC8 and RC9 of Mr Lai have reflected the volatility of the prices, despite their very close proximity to each other. Their transaction prices differ by 17.8%, and despite the transactions differ only by one day.

110. Mr Lam submits that EUV-1 is unsuitable, and ought to be rejected because it is extremely small. EUV-1's size is only about 15.4% of the Property.

111. We find EUV-1 not a suitable comparable because it is too small. We reject it for exactly the same reason as Mr Mak's reason in not rejecting it. A -30% adjustment in size speaks of itself.

*EUV-2*

112. EUV-2 is located at the junction of Castle Peak Road and Fuk Wing Street. The shop also opens to an internal arcade of the shopping complex.

113. Mr Lam submits that EUV-2 enjoys triple frontage and is at the busy junction of Castle Peak Road and Fuk Wing Street, close to the industrial area in Castle Peak Road. It is of a totally different character and class from the Property.

114. Whilst we do not agree to reject EUV-2 as a suitable comparable because of location, we agree with Mr Lam that its triple frontage is of a totally different character from the Property. We reject

EUV-2.

*EUV-3*

115. EUV-3 is very near the Property, on the same side of Un Chau Street and close to the junction with Cheung Wah Street. It has a return frontage to a small side lane from Un Chau Street.

116. Mr Mak submits that, similar to EUV-1, the small size of EUV-3 is well compensated because of -35% adjustment to size. EUV-3 is in close proximity to the Property. Purchase of this property for development purpose should not be discounted. Exclusion of this property only on ground of size is inappropriate.

117. Mr Mak relies on *Chung Pui Hing and Tam Wai Ling v The Director of Lands* LDLR 2 of 2008, where it was held that the most important factor governing the value of a shop is location.

118. Mr Lam submits that EUV-3 is unsuitable, and ought to be rejected because it is extremely small. EUV-3's area is only about 11.6% of the Property.

119. We find EUV-3 not a suitable comparable. In addition to being too small, EUV-3 has a return frontage to a side lane, making it very different in character to the Property. We also do not understand Mr Mak's submission that the shop could be purchased for development purposes because the building is fairly new, completed in 1996.

120. Regarding Mr Mak's reliance on *Chung Pui Hing*, we

observe that despite the remarks of the Tribunal, in the end the comparables adopted by the Tribunal were with sizes ranging from 12.06 m² to 25.81 m², comparing to the size of the subject property in that case of 10.31 m².

*EUV-4*

121. EUV-4 is located at Shun Ning Road, directly opposite a wet market. We find the location completely different from the Property.

122. Mr Lam submits that EUV-4 is right within the market place in Shun Ning Road, and far away from the Property. It is situated in a locality of totally different character.

123. We agree with Mr Lam that the location of EUV-4 within the market place is totally different to the Property. We reject EUV-4.

*Mr Lai's Comparables*

*Measurements of the Comparables*

124. All measurements of RCs are agreed between the experts. The only disagreement, which gives rise to different effective floor areas for RC6, RC8, RC9 and RC10, is whether the yard of these comparables ought to be taken into account in the calculation.

125. Mr Wong refuses to take the yards into account, on the ground that service facilities are located in these comparables.

126. Mr Mak submits that the respondent has the burden of proof that the yard in all the comparables is part of the comparable property,

that the yard in question could be used for useful purpose. He relies on *Rand Company Ltd v Director of Lands* LDLR 7 of 2001, where it was held that as it is not proved that the occupier has used the yard, there being no evidence that the yard forms part of the property, the yard should be excluded.

127. Mr Lai uses a conversion factor of 1/4.

128. In our view, there is no evidence that the yard is not part of the comparable. *Rand* is not applicable. However, the size of the yard is very small. We hold that the appropriate conversion factor should be 1/6.

*RC1and RC4*

129. RC1 and RC4 are both situated at Un Chau Street, on the same side as the Property. They are located further along Un Chau Street towards Castle Peak Road than the Property.

130. Mr Wong's objection to RC1 and RC4 is on the basis that they are of different character from the Property in terms of locality. They are industrial and distinctly different from the residential character of the Property. The 2 comparables are situated in a locality comprising printing, metal-ware, car-repair, and logistic trade's shops.

131. Mr Lam submits that it is however undisputed that the locality of the Property is similarly made up of glass shop, building material shop, metal shop, and locksmith. The locality at which RC1 and RC4 is situated is even more superior to that of the Property. Mr

Wong's ground of objection is wholly without merits.

132. We find RC1 and RC4 to be good comparables because they are on the same side of Un Chau Street as the Property, and in close proximity. From what we observe from our site inspection, we are disturbed to note Mr Wong's comment that the locality is industrial, which is by no means true. Except for age, we find the characters of the 2 comparables and the Property are very similar. The 2 comparables are also directly opposite a mini-bus terminus, similar to the Property as advocated by Mr Wong.

*RC2 and RC3*

133. RC2 and RC3 are situated at Hing Wah Street, between Castle Peak Road and Shun Ning Road.

134. In Mr Wong's view, RC2 and RC3 should be considered as one unit. As a matter of fact, they are used as a single unit, as a restaurant. Before selling as RC2 and RC3 to 2 different owners, they were bought together by one owner and rented to the same tenant. Since RC2 and RC3 are used as a single unit, there should not be any size adjustment. This is because the combined size of the two units is 60.6 $m^2$ and the difference with the Property is only 14.14 $m^2$. Adopting Mr Lai's approach, no adjustment on size should be made if the size difference is less than 20 $m^2$.

135. Mr Wong is also of the opinion that the 2 comparables are situated in an area which has a much wider road (Hing Wah Street) separated by long and large stretch of flower beds from the other side of

the road. They do not enjoy any advantage of mini-bus stop and has no public transport stops. They are inferior to the Property.

136. Mr Lam agrees that RC 2 and RC3 are used as a single unit, as a restaurant. However the two premises were sold to two different purchasers and there is no evidence to show that the two purchasers are related.

137. We find the size of RC2 is only 51.36% of the Property and RC3, 44.12%. Since they are Mr Lai's comparables and he adopts them as separate comparables, we conclude that we should not use them as suitable comparables in the present exercise, particularly when there are other more suitable comparables for the purpose of comparison.

*RC5*

138. RC5 is situated at Castle Peak Road. It is next to K20.

139. In Mr Wong's opinion, the transaction date is 19 April 2005 when a large number of residents in K20 must have moved away. The blighted effect would have set in and yet no account is taken of this fact by Mr Lai. The photos exhibited show much less pedestrian flow and prove RC5 being inferior to the Property. Castle Peak Road is apparently more heavily used by buses and any effect of pedestrian flow from the opposite side of the road is lessened.

140. Mr Lam submits that RC5 is situated right at the busy Castle Peak Road, a thoroughfare with heavy traffic and pedestrian flow. There are bus stops right in front of the shop. The locality of the shop is

definitely more superior to that of the Property.

141. We have already ruled out blighted effect. We agree Castle Peak Road is a busy street. The bus stops in front of the shop should have added value. We find RC5 is superior to the Property in terms of location.

*RC6*

142. RC6 is situated at Hing Wah Street, between Castle Peak Road and Shun Ning Road, on the opposite side as to RC2 and RC3.

143. Mr Wong opines that RC6 is separated by a long and wide stretch of flower beds from the opposite side of Hing Wah Street. Pedestrians are not turning from Castle Peak Road into Hing Wah Street to approach RC6.

144. Mr Lam submits that the junction of Hing Wah Street and Castle Peak Road is a busy area. The junction brings pedestrians to RC6. The locality is more superior to that of the Property.

145. From what we observe, we consider RC6 is similar in location to the Property. Any advantage in the pedestrian flow from Castle Peak Road is offset by the reduction in vehicular traffic when comparing to the Property.

*RC7 and RC10*

146. RC7 and RC10 are at Castle Peak Road, near the junction with Hing Wah Street.

147. Mr Wong's objection to the use of these 2 comparables is also that blighted effect would have set in at the transaction dates but no account is taken of this fact with an upward adjustment on location by Mr Lai. In Mr Wong's opinion, the 2 comparables are inferior to the Property. There are no mini-bus stops on the other side of the street. Again Castle Peak Road is apparently more heavily used by buses and any effect of pedestrian flow from the opposite side of the road is lessened.

148. Mr Lam submits that RC7 and RC10 are similar to RC5.

149. We reject Mr Wong's opinion that the location of the 2 comparables is inferior to the Property. From our observation during the site inspection, we find Castle Peak Road a busy shopping street, with retail shops catering for the daily requirements of the local residents. Indeed we are very surprised that given the claim by Mr Wong of his intimate local knowledge, he would have considered the 2 comparables inferior to the Property in terms of location. We are very doubtful of Mr Wong's professional judgment.

*RC8 and RC9*

150. RC8 and RC9 are located at Fuk Wing Street, between Castle Peak Road and Cheung Wah Street.

151. In Mr Wong's opinion, RC8 and RC9 are of different characters in terms of locality. They do not suffer from the objection of

a blighted effect.

152. Mr Lam submits that the locality bears resemblance with that of the Property, both being occupied predominantly by retail-cum-workshop type of shops. He admits that the locality is inferior to the Property.

153. We reject Mr Wong's opinion that RC8 and RC9 are of different characters in terms of locality. We find that although the location of the 2 comparables is inferior to the Property, they share the same characteristics in many aspects. We accept RC8 and RC9 are good comparables.

154. The effective area and unit rate before adjustment of the comparables adopted by us are:-

| Ref. | Price | Area m² | Cockloft Yard Area m² | Factor | Area m² | Effective Area m² | Unit Rate /m² |
|---|---|---|---|---|---|---|---|
| RC1 | $3,480,000 | 48.2 | | | | 48.2 | $72,199 |
| RC4 | $2,980,000 | 46.37 | | | | 46.37 | $64,266 |
| RC5 | $5,900,000 | 92 | | | | 92 | $64,130 |
| RC6 | $4,000,000 | 57.13 | 6.19 | 1/6 | 1.03 | 58.16 | $68,776 |
| RC7 | $12,080,000 | 158.49 | | | | 158.49 | $76,219 |
| RC8 | $2,570,000 | 53.65 | | 1/6 | | 54.28 | $47,347 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | 3.80 | | 0.63 | | |
| RC9 | $2,980,000 | 52.78 | 3.86 | 1/6 | 0.64 | 53.42 | $55,784 |
| RC10 | $5,200,000 | 83.27 | 75.90<br>8.43 | 1/4<br>1/6 | 18.98<br>1.41 | 103.66 | $50,164 |

*Factors of Adjustment and the Appropriate Adjustment*

*Time*

155. Both experts use the Rating & Valuation Department's Private Retail - Price Indices ("R & V Indices") for the whole territory of Hong Kong.

156. Although both experts agree the time adjustments for RC2 to RC10 (inclusive), for RC1, Mr Wong's adjustment is +2% whilst Mr Lai, -2%. Both experts agree the R & V Indices for RC1 and the Property are respectively 155.8 and 153.2. Based on a simple mathematical calculation, Mr Wong clearly has made a mistake. We accept Mr Lai's figure and reject Mr Wong's.

*Date of Transaction of Comparables*

157. Mr Mak submits that if reference is made to transactions entered by way of provisional sale and purchase agreement, this is at the most only "provisional" and cannot be market value information. This is because firstly, the provisional agreement has a standard clause that one party can withdraw by forfeiting the deposit together with another amount of the deposit. This is commonly known as double penalty clause. Further, provisional agreement is not registered and hence it

cannot be market information. Formal sale and purchase agreements are registered in the Land Registry and both parties could claim for specific performance. Therefore the date for formal sale and purchase agreement ought to be adopted.

158. Mr Lai uses the date of provisional sale and purchase agreement as the date of transaction.

159. We reject Mr Mak's submission. If the sale is cancelled after the signing of sale and purchase agreement (whether provisional or otherwise), this should not be relied on by the experts as market evidence. We do not agree that an agreement must be registered at the Land Registry before experts may use it as market evidence. Tenancy agreements are often not registered and there is no reason why experts may not use them in determining market rents.

*Location*

160. In his adjustments for RCs , Mr Wong divides the factor for location into 5 sub factors:-

(a) Accessibility;
(b) Complimentarity;
(c) Intensity of use;
(d) Visibility; and
(e) Distance to the centre point.

161. Mr Wong gives an adjustment figure to each of the 5 sub-factors and adds them together to arrive at total location adjustment.

He explains that the impact of the factors will affect the business customs of a given volume of pedestrian flow. Thus it is important to distinguish between the 5 sub-factors.

162. In particular, Mr Wong considers visibility is an important sub-factor. In his opinion, there are 2 aspects for visibility: signage and parking meters. It cannot be disputed that the signage is there. No suggestion is made to the legality of the signage. Dilapidation of the signage only affects the extent of adjustment. The lack of parking meters outside the Property also improves the visibility of the Property and commands additional value. The circumstances in the present case requiring a sub-factor analysis is rather obvious, as adjustment for location is always a complex matter.

163. Mr Mak submits that the analytical approach of Mr Wong is a better choice than a subjective and arbitrary assessment on pedestrian flow.

164. Mr Lam submits that it is undesirable to make separate assessments and add the figures together to arrive at total location adjustment, for the following reasons:-

(a) The approach is unconventional.

(b) Some of these "sub-factors" do not seem to be conceptually well defined.

(c) There may be overlapping among the "sub-factors".

(d) Making separate adjustment for these "sub-factors" runs a high risk of losing sight of the big picture and arriving at grossly inflated overall location adjustment totally out of touch with the reality.

(e) At the end of the day, the location value of shop premises depends on the volume of pedestrians and the character of the pedestrians (who they are, what they are there for, etc.). It is better for a valuer to use common sense rather than being bogged down by unrealistic technicalities.

165. We reject Mr Wong's exercise to subdivide location into 5 sub-factors. In our view, in considering location, an expert would take into account the 5 sub-factors as identified by Mr Wong as well as other factors coming to his mind and make a global decision. It is not necessary to subdivide the factors.

166. We also reject Mr Wong's claim that the projecting signage should command additional value. On the evidence, there is no record that the signage is approved or authorized.

167. For visibility, we agree that this is a relevant consideration for shop valuation. However, in our view, since the Property and all the comparables are mainly used as services or local day-to-day retail but not premium high street type retail shops, we agree with Mr Lam's submissions that visibility has very little, if not nil, effect on the value of

the Property and the comparables. We accept that nil adjustment should be made.

168. Mr Lam also submits that:-

(a) The vicinity of the Property is occupied by retail-cum-workshop type of shops selling glass, building materials, metal-ware, tyres and locks, as well as engineering shops.

(b) On the evidence, photographs show that building materials were dumped on the pavement in the vicinity of the Property, and lorries were parked (sometimes double parking) off the pavement outside the Property, apparently loading and unloading building materials.

(c) The Property is situated at a quieter section of Un Chau Street, and the side of the road at which the Property is situated is quieter than the opposite side of the road.

(d) The side of the road at which the Property is situated is "cut off" from the opposite side by mini-buses parked along the pavement of the opposite side.

(e) There are people alighting from mini-buses at the section of Un Chau Street where the Property is situated, but they mostly walk to the opposite side of

the road, not to the side where the Property is situated.

(f) The section of Un Chau Street between Castle Peak Road and Cheung Wah Street is, on the other hand, much busier; it is here (and not the section where the Property is situated) that people wait/waited to get on mini-buses.

169. Based on what we observe during the site inspection, we agree with Mr Lam's submission and hold that the location of the Property is primarily service type uses.

*Size*

170. Mr Wong conducts an exercise of making comparison between 4 pairs of transactions to arrive at 1% per 1 $m^2$ in his adjustments.

171. Mr Lam submits that the exercise is meaningless and valueless, for the following reasons:-

(a) Adjustments have to be made for a host of other factors before comparison on size could be made; the accuracy of the exercise depends too much on the reliability of the other adjustments.

(b) Mr Wong adopts an adjustment rate of 7.62% per 1 m for frontage. If this rate is rejected by the Tribunal, the accuracy of the exercise is gravely called into

question.

(c) In each pair of transaction, Mr Wong compares a large shop with a small shop and not shops of similar size.

(d) For example, for S3 and S4 (in Mr Wong's exercise), the total adjustment is as big as 96%, and the size of the two shops are 32 times different.

(e) The sample size is in any event too small for any generalization.

172. We agree with Mr Lam's submission that Mr Wong's exercise is meaningless because it is subjective and very arbitrary. We reject Mr Wong's adjustments and prefer Mr Lai's figures.

*Frontage*

173. Mr Wong carries out investigation with reference to market evidence, by making comparison between 3 pairs of transactions and arrives at a rate of 7.62% per metre.

174. Mr Lam submits that Mr Wong's unconventional approach is wholly untenable, and meaningless, for the following reasons:-

(a) Substantial adjustments have to be made for other factors, such as time and size, making the accuracy of the exercise highly dependent upon the other adjustments.

(b) In making size adjustment, Mr Wong does not make use of the 1% per m² rate that he advocates.

(c) The transaction dates of some of transactions are far apart; the character of the locality may have changed with time rendering the comparison meaningless.

(d) The selection of transactions for comparison is arbitrary and apparently to suit Mr Wong's purpose. For instance, if F2 and F4 (in Mr Wong's exercise) are compared (the transactions being merely one month apart), it will be discovered that the shop with the larger frontage (F2) fetches a lower price; this highlights the fallacy of the entire exercise.

(e) The exercise results in figures which range from 6.83% to 9.05%. It is meaningless to take an average out of figures that disagree by such a large magnitude.

(f) The samples are in any event too small for any generalized conclusion to be drawn.

175. Mr Lai uses an adjustment of 2% for every 1 metre difference in frontage, in accordance with *Gaininn Company Limited v The Director of Lands* LDLR 5 and 10 of 2006.

176. We agree with Mr Lam that Mr Wong's exercise is

subjective and meaningless. We reject Mr Wong's adjustment and adopt Mr Lai's figures.

*Vacant Possession*

177. All the comparables of Mr Lai except RC7 are subject to tenancies.

178. Mr Wong is of the opinion that according to the general valuation principle, in assessing the open market value of a property at a particular valuation date, one should take into account the effect of the tenancy subsisting. Mr Wong relies on *Yuen Shu Wing v Director of Lands* LDLR 1 to 4 of 2004, that the market will always give allowance as to whether vacant possession can be given at a certain date of valuation. The Court has to give regard to this fact.

179. Mr Wong adopts nil adjustment for tenancies more than one year, 5% for one year (because they are less secure) and 10% for monthly tenancy (because they are unsecure).

180. Mr Lam submits that since none of the comparables are subject to unusual tenancies, no adjustment needs to be made for tenancies.

181. In our view, Mr Wong's interpretation of *Yuen Shu Wing* is mistaken. In *Yuen Shu Wing*, the Tribunal applies the term and reversion method to value the subject property which is subject to tenancy. Applying *Yuen Shu Wing*, it is the unexpired term that matters, not the original length of tenancy. For monthly tenancy, since they may

be terminated at any time, there should be no adjustment. We reject Mr Wong's adjustments.

182. We have examined the tenancy details of the RCs. We agree with Mr Lai that no adjustment is necessary because the tenancies are either just starting (hence the rent should be at or close to market rent) or expiring soon.

*Headroom*

183. In Mr Wong's opinion, RC2 and RC3 combined together have an effective floor area of 60.6 m² but RC5 has an effective floor area of 92 m². The volume of the headroom space is much larger in the case of RC5. Therefore a downward adjustment of -2% and -5% for RC2 and RC3, and RC5 respectively is not incorrect, notwithstanding these RCs have the same headroom.

184. With respect, we cannot understand the rationale of Mr Wong. If the comparables have the same headroom, any adjustment for headroom should be the same. If Mr Wong considers volume should be a factor of adjustment, he should put forward his suggestion accordingly, but not mingle it under headroom.

185. Earlier in this judgment, we said any adjustment for headroom should be made in the analysis of the comparables. We have compared Mr Wong and Mr Lai's figures. Since we are doubtful of Mr Wong, we prefer Mr Lai's.

*Adjusted Unit Rate*

186. Taking into account all the factors as examined above, the adjusted unit rate to be used in the direct comparison valuation is:-

| Ref. | Unit Rate /m² | Time | Location | Size | Frontage | Headroom | Total | Unit Rate /m² |
|---|---|---|---|---|---|---|---|---|
| RC1 | $72,199 | -2% | 0% | -7% | 0% | 2% | -7% | $67,145 |
| RC4 | $64,266 | -1% | 0% | -7% | 3% | 2% | -3% | $62,338 |
| RC5 | $64,130 | 1% | -15% | 0% | 0% | -3% | -17% | $53,228 |
| RC6 | $68,776 | 2% | 0% | 0% | 0% | 2% | 4% | $71,527 |
| RC7 | $76,219 | 11% | -15% | 21% | -9% | 2% | 10% | $83,841 |
| RC8 | $47,347 | 5% | 15% | -5% | -3% | 2% | 14% | $53,976 |
| RC9 | $55,784 | 5% | 15% | -5% | -3% | 2% | 14% | $63,594 |
| RC10 | $50,164 | 5% | -15% | 7% | 0% | 2% | -1% | $49,662 |

| | |
|---|---|
| Average | $63,164 |

187. Looking at the adjusted rates of all the comparables adopted by us, we are satisfied that they are all within a reasonable range. We are satisfied that if there is any development value attributable to the comparables, it is reflected in the adjusted unit rates. No further adjustment is necessary.

188. Applying the average unit rate to the effective area of the Property, the value of the Property is $4,713,298 (74.62 m² x $63,164 / m² ), which we round off to $4,710,000.

*"WITHOUT PREJUDICE" OFFERS*

189. On 11 May 2011, shortly before the commencement of the trial, the respondent applied by summons to strike out certain documents enclosed in Mr Wong's reports, including Exhibit III of Mr Wong's 1st

report (ie the 4 letters of offer dated 31 July 2004, 4 November 2005, 21 September 2006 and 12 October 2007) on the ground that it is "unnecessary, irrelevant, lacking in probative value and/or prejudicial and that they are unhelpful to the Court in the determination of any issue to be resolved herein".

190. During the trial, the parties at first agreed that these documents could be admitted *de bene esse*, subject to the determination of the Tribunal at the end of the trial. The parties then agreed that most of these documents including the letter of offer dated 31 July 2004 could be admitted as evidence and the respondent no longer raised any objection to these documents. The letters of offer dated 4 November 2005, 21 September 2006 and 12 October 2007 were, however, removed from the exhibits and the applicant did not attempt to put them back in evidence. Nevertheless, Mr Mak in his closing submission made lengthy submission on these letters of offer, when they were not produced as evidence.

191. In our view, our duty is to determine the amount of compensation payable to the applicant under the Ordinance, and as aforesaid, it should be the open market value. We are not required to arbitrate on or to have regard to the offers made by or on behalf of the respondent. The offers, whether made known to us or not, or whether made “without prejudice” or not, will in no way affect our determination. We fail to see why the applicant would rely on these offers at all.

192. As the parties have actually resolved what documents should be admitted or not, we do not find it necessary to make any determination

concerning the summons. Thus, no order will be made in respect of the summons. As to the costs of the summons, subject to any further application, we will make no order as to costs, as the parties seem to have resolved the matters themselves.

*ORDER*

193. We therefore order that:-

(1) In respect of the summons dated 11 May 2011, no order is made, save that there be a costs order nisi that the summons shall have no order as to costs. If the parties do not make any application concerning the costs of the summons within the next 14 days, the costs order nisi shall become absolute.

(2) The amount of compensation payable to the applicant is in the sum of $4,710,000.

(3) All the consequential and ancillary matters, including professional fees, interest and costs, be adjourned to a date to be fixed by the listing officer at the request of the parties.

(Michael Wong)
Presiding Officer
Lands Tribunal

(Kenneth Kwok)
Temporary Member
Lands Tribunal

Mr Andrew MAK, instructed by Messrs Yip & Partners for the applicant

Mr Simon LAM, instructed by the Department of Justice, for the respondent

Research Office
Legislative Council Secretariat

# Information Note

# Assessment of the value of resumed properties

IN03/14-15

## 1. Introduction

1.1 At present, the Government resumes private land for public purposes pursuant to the provisions in the relevant legislation, such as the *Lands Resumption Ordinance* (Cap. 124), the *Roads (Works, Use and Compensation) Ordinance* (Cap. 370) and the *Railways Ordinance* (Cap. 519). The dispossessed owners of the resumed land/property and/or persons having an interest in the land such as the tenants, are entitled to statutory compensation for the open market value of the land and building (if any) or other land interests resumed in accordance with the provisions of the relevant legislation. Open market value refers to the "amount which the land if sold by a willing seller in the open market might be expected to realize".[1]

1.2 The Government has also put in place a system of ex-gratia land compensation and allowances as an alternative to statutory compensation with a view to (a) addressing the reasonable needs of the affected parties; and (b) reducing their need to submit claims for statutory compensation. If the parties concerned do not accept the ex-gratia compensation offer, they may continue pursuing their claim for statutory compensation.

1.3 In determining statutory compensation for lots/buildings in *multiple ownership*, the Lands Department has adopted the practice of assessing the open market value of an individual unit with reference to the use as shown on the approved building plans/alternations and additions plans and the use as permitted under the lease (i.e. the existing use value of the individual unit) at the date of resumption. For lots/buildings in *single ownership*, the existing use value and redevelopment value will be assessed and the higher of the two values will be offered as a statutory compensation.[2]

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1 Section 12(d) of the *Lands Resumption Ordinance*.

2 See Lands Department (2013).

1.4 The Panel of Development will discuss the issue related to the different treatment of lots/buildings in *single* and *multiple ownerships* by the Government in assessing statutory compensation at a future meeting. To facilitate the discussion of the subject matter, the Panel at its meeting on 28 October 2014 requested the Research Office to study the overseas practices adopted for assessing the value of resumed properties.[3] This information note studies the practices adopted by England of the United Kingdom, New South Wales ("NSW") of Australia, Ontario of Canada[4] and Singapore in assessing the value of resumed properties. England, NSW and Ontario are selected as they are common law jurisdictions, whereas Singapore is selected as it shares similar socio-economic conditions with Hong Kong.

## 2. Assessing the value of resumed properties in Hong Kong

2.1 In Hong Kong, the principles of assessing statutory compensation for resumed properties are set out in the relevant legislation and the court rulings made in relevant land resumption cases. According to the *Lands Resumption Ordinance*, statutory compensation payable to the owner of resumed land is based on the open market value of the resumed land at the date of resumption. However, compensation may not take into account: (a) the resumption being compulsory (section 12(a)); (b) the fact that the land is affected by specified provisions of a town plan (section 12(aa)); (c) any non-conforming use of the land (section 12(b)); and (d) any expectancy or probability of the grant, renewal or continuance of any licence, permission, lease or permit unless the grant, renewal or continuance could have been enforced as of right if the land in question had not been resumed (section 12(c)).

2.2 The statutory provisions governing compensation for land resumption have been reinforced by common law principles, which include:

(a) the presumption that the law does not permit resumption without compensation;

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[3] The Panel also requested the Research Office to study the mechanism adopted by Hong Kong and Commonwealth states for resolving disputes arising from land resumption. In this connection, the Research Office has prepared a separate information note *Resolving disputes arising from land resumption* (IN04/14-15).

[4] In Australia and Canada, the land resumption process is regulated by legislation developed by individual state/province and territory.

(b) any increase or decrease in the value of the land due to the scheme underlying the resumption is disregarded;

(c) where the resumed land has development potential, the owner is entitled to have the value of his or her land assessed to include the development value;

(d) the owner is entitled to have the land valued under its highest and best use[5]; and

(e) a claimant may apply either for the bare present value of the land plus disturbance or the land's development value.[6]

2.3 According to the Lands Department, for the basis of assessment of development value, reference can be made to the judgment handed down by the Court of Appeal in *Siu Sau Kuen v The Director of Lands* in July 2013. It was held in the judgment that the test for determining if a development value should be included in the compensation payable in respect of a resumed property is whether, *on a balance of probabilities*, the evidence discloses that, as at the date of resumption, redevelopment of the property resumed was likely. Such likelihood may be demonstrated by (a) "actual proposals by the applicant to redevelop the property (or unlikelihood demonstrated by the absence of such proposals) whether on its own or by merger with other properties" or (b) "evidence of redevelopment in the vicinity of the resumed property (whether accompanied by evidence of redevelopment plans for the resumed property or not), so long as such evidence of redevelopment in the vicinity supports a finding that redevelopment on its own or merger of the resumed property with other properties giving rise to a viable redevelopment scheme was likely within a reasonably foreseeable time scale".[7]

2.4 In the light of the relevant statutory provisions and the principles established in relevant court cases, the Lands Department has adopted the approach of determining statutory compensation for properties in *multiple ownership* by assessing their existing use value in accordance with the established valuation practices. For lot(s)/building(s) in *single ownership*, the

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5 In Hong Kong, the common law best use principle is "limited by section 12(c) of the *Land Resumption Ordinance* to uses which may lawfully be carried on under the user covenants of the Government lease, new grant or other title granted by Government". See Cruden (2009).

6 See Special Committee on Compensation and Betterment (1992).

7 See *Siu Sau Kuen v Director of Lands, CACV 180/2012.*

Lands Department has considered that the owner concerned will normally choose to redevelop his or her own lot(s)/building(s) if redevelopment is proved to be more profitable. In such cases, where redevelopment as a private initiative is more likely to take place, the existing use value and the redevelopment value will be assessed, and the higher of the two values reflecting a more profitable option will be offered as a statutory compensation.

2.5 Nevertheless, the Lands Department states that it will examine each compensation case having regard to its own peculiar facts and circumstances. If a former owner contends that there is a likelihood of redevelopment of the building of which his or her resumed property forms part at the date of resumption, he or she has to provide the relevant evidence (e.g. the availability of an approved redevelopment proposal) to prove the existence of such likelihood of redevelopment.

## 3. Assessing the value of resumed properties in selected overseas jurisdictions

3.1 With regard to the practices adopted in assessing the value of resumed properties, the relevant land resumption legislation in the selected jurisdictions does not contain any provision specifying the use of different approach for assessing the value of resumed properties in *single* and *multiple ownerships*. Nor do the relevant guidelines on compensation for land resumption issued by the relevant authorities (if available) specify such a requirement.

3.2 In the selected overseas jurisdictions, the principles for assessing the value of resumed properties are laid down in the relevant land resumption legislation and the case law. The common law compensation principles mentioned in paragraph 2.2 also apply unless the relevant legislation provides otherwise. In general, the value of the resumed properties is assessed on the basis of the market value of the properties at the date of resumption or valuation. The ensuing paragraphs describe the practices adopted by the selected overseas jurisdictions for assessing the value of resumed properties, particularly whether and how development potential of the resumed properties is taken into account in the assessment.

## England of the United Kingdom

3.3 In England, the principles for determining compensation for land resumption are laid down in legislation (including the *Land Compensation Act 1961* and the *Compulsory Purchase Act 1965)* and the case law. According to the *Land Compensation Act 1961*, the resumed properties are valued on the basis of their open market value at the date of valuation[8] without any increase or decrease attributable to the scheme of development underlying the resumption. Any increase in the value of property which is attributable to a use which is unlawful or detrimental to the health of the occupants of the premises or to public health may be excluded.

3.4 The open market value of the resumed property may be assessed on the basis of the existing use of the property. However, the assessed value may reflect development value provided it can be demonstrated that such value would have existed in the absence of the scheme which gives rise to the resumption. Any claim that the resumed property possesses development value has to be justified by actual[9] or assumed planning permission for the development, and market demand for such development.[10]

3.5 In contrast with the regulatory framework in Hong Kong, the land resumption legislation in England provides for the application of statutory planning assumptions when land with development potential is being resumed. This avoids the necessity to assess, on the balance of probabilities, whether the necessary permissions and approvals will be forthcoming. The relevant legislation provides for different forms of assumed planning permission including: (a) a permission for development of the land resumed in accordance with the proposals of the acquiring authority; and (b) a permission for development certified by a local planning authority on an application to it. In case an actual or assumed permission for development is not available, the prospect or hope of permission for the development being granted at the valuation date may be taken into account in assessing the value of the resumed property.[11]

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8 The valuation date for the assessment of compensation is the earliest of (a) the date the acquiring authority takes possession of the property or the date the title of the land vests in the acquiring authority; and (b) the date when the assessment is made.

9 Actual planning permission refers to any planning permission that is in force at the valuation date.

10 See Davies (1994).

11 See Barnes (2014).

## New South Wales of Australia

3.6 The assessment of compensation for land resumption in NSW is governed by the *Land Acquisition (Just Terms Compensation) Act 1991.* It stipulates that the independent NSW Valuer General[12] will consider, among other things, the market value of the land at the date of acquisition in determining the amount of compensation to be offered to the dispossessed land owners.

3.7 In NSW, market value of the land is defined as the amount that would have been paid for the land if it had been sold at the date of acquisition by a willing but not anxious seller to a willing but not anxious buyer. But the value will not include (a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was resumed; and (b) any increase in value of the land caused by unlawful use, and improvements carried out by the state government authority before resumption for the public purpose for which the land is to be resumed.

3.8 In practice, the market value of the resumed land is determined on the basis of its most advantageous use, i.e. the highest and best use of the resumed land, at the date of acquisition. The land resumption legislation in NSW does not provide for planning assumptions as in the case of England. As such, the highest and best use potential is determined on the basis of the most probable use of the land based on planning guidelines, and whether the development is physically possible, legally permissible[13] and financially feasible[14]. The value of the development potential depends upon how good was the chance of the potential being realized at the acquisition date.

## Ontario of Canada

3.9 In Ontario, the *Expropriation Act* provides that compensation payable to property owners affected by land resumption will be based on, among other things, the market value of the land (i.e. the amount that the land might be

[12] The NSW Valuer General is an independent statutory officer appointed by the Governor of NSW to oversee the land valuation system. The NSW Valuer General determines the amount of compensation for land resumption independent of the owners of the resumed properties and the acquiring authorities.

[13] Legally permissible means, for example, whether the resumed land is appropriately zoned or likely to become appropriately zoned under the relevant planning instruments.

[14] Financially feasible means, for example, whether the development project is likely to be profitable.

expected to realize if sold in the open market by a willing seller to a willing buyer). In determining the market value of the land, no account shall be taken of (a) the special use to which the acquiring authority will put the land; (b) any increase or decrease in the value of the land resulting from the development or the imminence of the development in respect of which the resumption is made; and (c) any increase in value of the land resulting from any use that is unlawful or is detrimental to the health of the occupants of the land or to the public health.

3.10 In practice, market value of the resumed property is determined on the basis of its highest and best use, i.e. its highest economic use. Similar to NSW, the land resumption legislation in Ontario does not provide for planning assumptions. As such, if the land would need to be rezoned to realize its highest and best use, the hypothetical rezoning must be reasonably probable based on planning evidence.

## Singapore

3.11 In Singapore, the land resumption process and the award of compensation to the affected parties are governed by the *Land Acquisition Act* (Cap. 152). Prior to 2007, payment of compensation was based on the market value of the resumed property as at the date of acquisition or the statutory date (which was a date in the past), whichever was lower. The market value of the resumed property was assessed basing on the value of its existing use or the value of its anticipated continued use as designed in the government's land use plan, whichever was lower. As such, potential development value of the resumed property was disregarded in determining the amount of compensation for the dispossessed property owner.

3.12 After the amendment of the *Land Acquisition Act* in 2007, valuation of the resumed property has been based on the market value which a bona fide purchaser would reasonably be willing to pay for the property, after taking into account the permitted use of the property and the potential value that is realizable under the Master Plan[15], subject to the prevailing planning requirements, and other factors such as location, restrictive covenants in the title and site conditions. Nonetheless, no account will be taken of any

[15] The Master Plan is the statutory land use plan which shows the permissible land use and density for development in Singapore. The Master Plan guides Singapore's development in the medium term and is reviewed every five years.

potential value of the land for any other use more intensive than that permitted by or under the Master Plan at the date of acquisition. Besides, the amount of compensation to be awarded will not take into account, among other things, (a) any increase in value likely to accrue from the use to which it will be put when resumed; and (b) evidence of sales of comparable properties, unless the parties concerned can prove that these transactions were bona fide and not speculative.

## Conclusion

3.13 In the selected overseas jurisdictions, the value of the resumed properties is assessed on the basis of the market value of the properties at the date of resumption or valuation. Development value of the resumed properties may be taken into account in assessing the amount of compensation payable to the dispossessed property owners. In England, NSW and Ontario, the claim for development value has to be justified by evidence demonstrating that the development plan for the resumed property would have been permissible and feasible at the date of resumption. In contrast, the claim for development value in Singapore is subject to the statutory restriction laid down in the relevant legislation.

3.14 In England, the claim for development value can be justified by actual or assumed planning permission. Unlike England, the land resumption legislation in the other selected overseas jurisdictions does not provide for planning assumptions. In NSW, a claimant may have to demonstrate that the development plan of the resumed property is physically possible, legally permissible and financially feasible in the claim for development value. In Ontario, a claimant claiming for development value may need to provide evidence to justify that the rezoning of the resumed land would have been probable if rezoning is required to realize the development potential of the resumed land.

3.15 In Singapore, the land resumption legislation provides that no account will be taken of any potential value of the land for any other use more intensive than that permitted by or under the Master Plan at the date of acquisition.

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# Information Note

# Resolving disputes arising from land resumption

IN04/14-15

## 1. Introduction

1.1 In Hong Kong, the claimant or the Government may refer the case to the Lands Tribunal for final determination if they cannot agree on the amount of statutory compensation for land resumption. Nonetheless, some members of the public have considered that the litigation process can be costly. Instead, they have suggested that the Government considers introducing alternative dispute resolution ("ADR") procedures such as mediation and arbitration for resolving disputes arising from land resumption.[1]

1.2 Against the above, the Panel on Development at its meeting on 28 October 2014 requested the Research Office to study the mechanism adopted by Hong Kong and Commonwealth states for resolving land resumption disputes.[2] This information note studies the corresponding mechanisms adopted by Hong Kong, England of the United Kingdom, New South Wales ("NSW") of Australia, Ontario of Canada[3] and Singapore. England is studied as it has an established land resumption regime and the responsible judicial body for adjudicating compensation disputes has been encouraging the adoption of ADR procedures for resolving such disputes. NSW and Ontario are studied for their common use of ADR procedures for resolving disputes arising from land resumption. Meanwhile, Singapore is selected as it is a Commonwealth state with socio-economic characteristics similar to those of Hong Kong.

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1 See GovHK (2014).

2 The Panel also requested the Research Office to study the practices adopted by Hong Kong and Commonwealth states for assessing the value of resumed properties. In this connection, the Research Office has prepared a separate information note entitled *Assessment of the value of resumed properties* (IN03/14-15).

3 In Australia and Canada, the land resumption process is regulated by legislation developed by individual state/province and territory.

## 2. Mechanism for resolving land resumption disputes in Hong Kong

2.1 In Hong Kong, either the Government or the parties affected by land resumption may refer claims for statutory compensation to the Lands Tribunal for final determination if they cannot agree on the amount of compensation after negotiation. The Lands Tribunal is headed by a President who is a Judge of the Court of First Instance. It also comprises three Presiding Officers who are District Judges, and two Members who are qualified surveyors. The President and a Presiding Officer may either sit alone or together with a Member in hearing cases. Any party to the proceedings may appeal to the Court of Appeal against a judgment of the Lands Tribunal on the ground that such judgment is erroneous in point of law.

2.2 In recent years, the Judiciary has been encouraging a wider use of mediation as an ADR procedure for the resolution of civil disputes such as family disputes, construction disputes and disputes relating to building management. Mediation is a voluntary process in which a trained and impartial third person, the mediator, helps the parties in dispute to reach an amicable settlement that is responsive to their needs and acceptable to all sides. The efforts of the Judiciary in promoting the use of mediation are in line with the Civil Justice Reform implemented in April 2009 aiming to, among other things, streamline and improve civil procedures, and facilitate the settlement of disputes by a means other than litigation in court.

2.3 The Government has also stated that it will consider introducing schemes for mediation or arbitration in appropriate contexts. In August 2014, the Government has introduced a pilot scheme under which arbitration is adopted as a dispute resolution procedure to facilitate early agreement on land premium payable for lease modification/land exchange applications. Arbitration is a consensual dispute resolution procedure where the parties agree to submit their disputes to be resolved by one or more independent third parties – the arbitrators – appointed by or on behalf of the parties in dispute. Arbitration awards are final and binding.

2.4 Nonetheless, some members of the public have pointed out that the Government inclines to adopt litigation instead of ADR procedures in dealing with disputes with the public arising from land resumption. They are concerned that affected parties in land resumption who cannot afford the

costly litigation procedure before the Lands Tribunal may have no choice but to accept the compensation proposals offered by the Government.[4]

2.5 Against the above concern, the Government has stated that the Lands Department is obliged to follow the principles set out in the relevant legislation and the court rulings made in relevant land resumption cases in assessing the amount of statutory compensation. As such, the scope of matters relating to statutory compensation claims that can be submitted to arbitration or mediation is relatively limited. Besides, ADR procedures may not be applicable in some Government disputes with the public which involve important legal disputes or significant public interest. For these cases, it is necessary to seek determination by the courts so as to lay down legal precedents and guidance for the Government's reference in handling future cases of similar nature. Nevertheless, the Lands Department could consider requests for handling statutory compensation claims by mediation if the claimants so request. Yet, the mediation process and the agreement to mediate cannot affect the Government's and the Lands Tribunal's exercising of authority provided for under the law.

## 3. Mechanism for resolving land resumption disputes in selected overseas jurisdictions

3.1 Among the selected overseas jurisdictions, Ontario is the only jurisdiction where the land resumption legislation requires the resolution of disputes arising from land resumption through mediation and/or arbitration. In contrast, the land resumption legislation in England, NSW and Singapore provides for the resolution of compensation disputes through judicial proceedings before a tribunal or a specialist court. Nonetheless, the respective judicial bodies in these overseas jurisdictions have encouraged the adoption of ADR procedures for the resolution of land resumption disputes before hearings are held.

### England of the United Kingdom

3.2 In England, either the claimant or the acquiring authority may refer a dispute arising from land resumption to the Lands Chamber of the Upper Tribunal

[4] See GovHK (2014).

("the Lands Chamber") for final determination. The jurisdictions of the Lands Chamber include, amongst others, determining disputes regarding entitlement to compensation and the amount of compensation to be paid for resumed properties. The Lands Chamber comprises the President, the Deputy President, six part-time judges, and three specialist members who are chartered surveyors. The parties concerned may appeal to the Court of Appeal against a decision of the Lands Chamber on points of law.

3.3 The Lands Chamber has been encouraging the parties involved in disputes, including land resumption disputes, to consider ADR procedures for resolving their disputes.[5] The ADR procedures include mediation, arbitration and early neutral evaluation[6], and they are quicker and less costly than litigation procedure before the Lands Chamber.

3.4 The Practice Directions of the Lands Chamber specify that in case the parties concerned agree to adopt ADR procedure for resolving their dispute after referring the case to the Lands Chamber, they may apply to the Lands Chamber for a short stay in the proceedings to allow time for settlement of their dispute through the ADR procedure. The Practice Directions further empower the Lands Chamber to award costs against a party for unreasonably refusing to consider ADR.[7]

3.5 Notwithstanding the effort of the Lands Chamber, it was reported that the adoption of ADR procedures for resolving compensation disputes referred to the Lands Chamber was not common.[8] The low adoption rate of ADR procedures was attributed to a lack of understanding of or familiarity with the principles and processes of the procedures among legal practitioners and other relevant professional advisors of the claimants, making them cautious about advising their clients to adopt the procedures.[9]

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5 *Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010* stipulate that the Lands Chamber "should seek, where appropriate (a) to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute; and (b) if the parties wish and provided that it is compatible with the overriding objective, to facilitate the use of the procedure".

6 Early neutral evaluation refers to a procedure whereby the parties agree to employ a senior lawyer or other appropriate expert such as a chartered surveyor to evaluate the likely outcome of a case or to consider the strengths and weaknesses of the parties' evidence or arguments and advise how best to conduct the litigation quickly and economically.

7 See Tribunal Judiciary (2010).

8 See Williams (2013).

9 According to Williams (2013), the potential for resolving compensation disputes through ADR procedures such as mediation still exists provided that further education efforts are made.

## New South Wales of Australia

3.6 In NSW, property owners affected by land resumption can lodge their objection to the Land and Environment Court ("LEC") if they oppose the compensation offered by the acquiring authority. LEC is a specialist statutory court in NSW with jurisdiction in environmental, planning and land matters. Claims for compensation for land resumption are usually heard by a judge, at times assisted by a commissioner[10] with special knowledge and expertise in valuation of land. A claimant may appeal to the Court of Appeal against a decision of LEC on a question of law.

3.7 LEC has implemented an ADR system since 2006 for handling specified classes of dispute, including claims for compensation for land resumption. These disputes are screened, diagnosed and referred to an appropriate ADR procedure, such as conciliation[11], mediation and neutral evaluation, for resolution after proceedings are commenced in LEC.

3.8 According to LEC, the implementation of the ADR system has led to an increased percentage of matters resolved without hearing and determination by the Court. In particular, the percentage for disputes relating to compensation for land resumption increased from 63% in 2006 to 78% in 2010.

### *Conciliation*

3.9 The Practice Note of LEC has laid down a presumption in favour of referring matters of specified classes of dispute to conciliation unless the parties involved demonstrate a reason to the contrary. As such, conciliation has been the most frequently used ADR procedure in LEC.

3.10 Pursuant to the *Land and Environment Court Act,* conciliation undertaken in LEC is a combined dispute resolution procedure. It starts with conciliation and, if the parties involved do not agree to resolve the dispute,

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[10] Commissioners are specialist members appointed for their expertise in disciplines of knowledge relevant to specified classes of dispute. They are also trained in ADR procedures. A commissioner may exercise the functions of the Court in adjudicating proceedings or acting as a conciliator or mediator for specified classes of proceedings including claims for compensation for land resumption.

[11] Conciliation is a process in which the parties to a dispute, with the assistance of an impartial conciliator, identify the issues in dispute, develop options, and consider alternatives and endeavour to reach agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role.

adjudication will ensue. Conciliation involves a commissioner with technical expertise on issues relevant to the case acting as a conciliator in a conference between the parties. The conciliator facilitates negotiation between the parties with a view to their achieving agreement as to the resolution of the dispute. In 2012, 911 conciliation conferences were held for the specified classes of dispute, up from 552 in 2008.

### *Mediation*

3.11 LEC may, at the request of the parties involved or on its own initiation, refer specified classes of dispute to mediation. LEC provides a mediation service at no cost to the parties by referral to the Court's mediators. LEC may also refer disputes for mediation to an external mediator not associated with the Court and agreed to by the parties involved. In 2012, mediation was conducted for nine dispute cases in the category of land valuation appeals and claims for compensation for land resumption. The corresponding number was eight in 2008.

### *Neutral evaluation*

3.12 LEC may also refer proceedings in specified classes of dispute to neutral evaluation with or without the consent of the parties involved. The dispute may be referred to neutral evaluation by a commissioner or an external person agreed to by the parties involved.

## Ontario of Canada

3.13 In Ontario, the *Expropriation Act* requires the settlement of disputes about compensation for land resumption through mediation and/or arbitration. Either the property owners concerned or the acquiring authority may lodge disputes arising from land resumption to the Board of Negotiation ("BON"), an informal tribunal established under the Environment and Land Tribunals Ontario ("ELTO")[12]. BON aims to provide a fair, accessible and informal forum for the parties involved to reach a resolution through mediation. There is no cost to the parties to apply or have a matter proceed before BON.

[12] ELTO comprises five tribunals and boards which adjudicate matters relating to, amongst others, land use planning, environmental and heritage protection, property assessment and land valuation.

3.14 BON comprises members who have experience in real estate, property appraisal and business loss claims. The members are appointed by the provincial government based on a competitive and merit-based selection process.[13] The BON meetings held for dispute resolution are closed to the parties involved and are usually guided by two BON members. BON has no power to impose a settlement. However, it may, where sufficient information has been submitted, provide a non-binding recommendation to the parties on what would be fair compensation in case they cannot reach a settlement by the end of the meeting. According to ELTO, BON has been able to achieve a high rate of success with the cases brought before it. In 2012-2013, mediation was conducted for about 28 cases, of which around 40% of the cases were resolved.

3.15 If a settlement is not reached after a BON meeting, a second meeting may be scheduled or either party may file an appeal with the Ontario Municipal Board ("OMB"). OMB is an independent adjudicative tribunal established under ELTO for resolution of the dispute by arbitration. It comprises members who have legal training and/ or experience in land use planning or other relevant fields. The members are appointed by the provincial government based on a competitive and merit-based selection process.[14] Either party involved in a dispute may request for or OMB may initiate a pre-hearing conference.[15] If no settlement can be reached, OMB will conduct a hearing and make a determination on the amount of compensation to be given to the claimant based on the evidence presented, the applicable law and policies, and previous OMB decisions (if applicable).

3.16 The parties who disagree with an OMB decision may request OMB to review its decision on questions of law or fact. The parties may also lodge an appeal with or seek judicial review in the Divisional Court against a decision of OMB on a question of law. In 2012-2013, 55 dispute cases related to compensation for land resumption were filed with OMB. According to ELTO, most disputes filed with OMB were resolved by a full hearing.

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[13] As at 14 December 2014, BON comprised eight members and one vacancy.

[14] As at 5 November 2014, OMB comprised 30 members and one vacancy.

[15] The conference is to identify issues, discuss opportunity for settlement or deal with any matter that may assist in a fair, cost-effective and expeditious resolution of the issues.

## Singapore

3.17 In Singapore, any person who is dissatisfied with the statutory compensation awarded to him or her for land resumption may appeal to the Appeals Board (Land Acquisition) ("the Appeals Board"), a quasi-judicial tribunal established under the *Land Acquisition Act* to hear and determine appeals. The Appeals Board for hearing an appeal consists of a Commissioner of Appeals or a Deputy Commissioner of Appeals[16], either sitting alone or with two assessors who are drawn from a panel comprising experts in related fields such as valuation and quantitative surveying. All proceedings in appeals to the Appeals Board are deemed to be judicial proceedings and the determination of the Appeals Board is final. Either the claimant or the acquiring authority may appeal to the Court of Appeal against a decision of the Appeals Board upon any question of law provided that the award as determined by the Appeals Board exceeds S$5,000 (HK$29,450).

### *Mediation in Land Acquisition Appeals Scheme*

3.18 To facilitate quicker resolution of disputes relating to compensation for land resumption, the Appeals Board has implemented a voluntary Mediation in Land Acquisition Appeals Scheme ("MiLAAS") since 2009. Under the scheme, parties which have lodged an appeal with the Appeals Board may seek mediation services in case the statutory compensation offered is less than S$500,000 (HK$2.95 million) and the property concerned is residential.

3.19 Upon receipt of the consent to mediation from the parties involved in an appeal case, the Appeals Board may appoint a mediator from the panel of assessors to help the parties reach a settlement. Where a settlement has been reached, the appeal will be fixed for hearing for a consent decision to be made in terms of the agreed terms of settlement. In case a settlement cannot be reached within four weeks[17] or any party withdraws the consent to mediation, the appeal will be fixed for pre-hearing to discuss issues relating to the appeal and fix a hearing date in case the parties intend to proceed with the appeal.[18]

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[16] The current Commissioner and Deputy Commissioner are sitting judges of the State Courts.

[17] The time for mediation may be extended by the mediator with the consent of the parties involved in the dispute.

[18] The Research Office has written to the Appeals Board to enquire about the adoption rate of mediation service for resolution of disputes arising from land resumption under MiLAAS. As at publication of this information note, no reply has been received.

## Conclusion

3.20 In contrast with Hong Kong, all the selected overseas jurisdictions have promoted the use of ADR procedures for resolving disputes arising from land resumption, either under the relevant land resumption legislation, or under arrangements or schemes introduced by the judicial bodies responsible for handling such disputes.

3.21 Ontario is the only jurisdiction where the land resumption legislation provides for the use of mediation and/or arbitration for resolving compensation disputes. In both NSW and Singapore, ADR procedures are administered by the judicial bodies responsible for adjudicating compensation disputes. Likewise, in England, the *Rules* and Practice Directions of the Tribunal provide for the adoption of ADR procedures for resolving disputes lodged before the Tribunal, including those relating to land resumption. Nonetheless, the lack of familiarity with the principles and processes of ADR procedures among professional advisors of the claimants was identified to be one of the factors contributing to the relatively low adoption rate of ADR procedures in England.

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