



沙田至中環線的建造工程

Construction of Shatin to Central Link

根據《鐵路條例》(第519章)辦理補償事宜須知

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

地政總署
鐵路發展組
二零一二年十月
Railway Development Section
Lands Department
October 2012

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

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

1. Introduction

- 1.1 The Shatin to Central Link (SCL) consists of two sections namely an extension of the Ma On Shan Line from Tai Wai via Southeast Kowloon to Hung Hom where it will join the West Rail Line and an extension of the East Rail Line from Hung Hom across the Victoria Harbour to Wan Chai North and Admiralty. The SCL is 17 kilometres long with ten stations at Tai Wai, Hin Keng, Diamond Hill, Kai Tak, To Kwa Wan, Ma Tau Wai, Ho Man Tin, Hung Hom, northern Wan Chai and Admiralty.
- 1.2 The SCL has been authorized by the Chief Executive in Council and the notice for the authorization was gazetted on 13 April 2012 and 20 April 2012 under the Railways Ordinance (Cap. 519). The railway works commenced in August 2012.
- 1.3 This information note provides general information which briefly explains the procedures and arrangements for compensation claim for the resumption of private land, creation of easements and/or other permanent rights over private land and creation of rights of temporary occupation over private land, as well as compensation claims submitted by businesses which are adversely affected and have sustained disturbance as a result of closure of roads. This information note is intended to give guidance and information for making a claim for compensation in these aspects. Any person whose interest is affected by the SCL is advised to refer to the provisions of the Railways Ordinance for details or consult appropriate professionals.

2. Brief details of the construction works

- 2.1 Under the authorized scheme of the SCL, depending on local geology, the railway tunnels will be constructed by bored/mined/drill and blast/cut-and-cover methods while the stations will be constructed by cut-and-cover method. The cross-harbour tunnel connecting Hung Hom and Hong Kong Island section of the SCL will be constructed using a combination of cut-and-cover method and immersed tube tunnel method. Temporary reclamation will be involved at Hung Hom waterfront and Causeway Bay Typhoon Shelter.
- 2.2 Throughout the planning and design stage, the MTRCL and Government departments concerned had worked closely to minimize disturbance to the local people. Vehicular and pedestrian accesses to and from all buildings within or adjacent to the railway scheme will be maintained as far as possible. Sufficient width of footpaths fronting the shops and buildings entrances will be provided, and temporary traffic management schemes in various construction stages will be implemented to maintain

traffic flow. The parties concerned will continue to monitor such arrangements throughout the works programme.

3. Compensation under the Railways Ordinance

- 3.1 According to the authorized scheme of the SCL, resumption of private land, creation of easements and/or other permanent rights over private land, creation of rights of temporary occupation over private land, closure of roads and reclamation of or other works above or upon the Government foreshore or sea-bed will be required to make way for its construction.
- 3.2 The resumption of private land, creation of easements and/or other permanent rights over private land, creation of rights of temporary occupation over private land, closure of roads and reclamation of or other works above or upon the Government foreshore or sea-bed for the construction of the SCL will be carried out under the Railways Ordinance. Apart from the powers to resume land, create easements and/or other permanent rights over private land, temporarily occupy land and close roads, the Railways Ordinance also provides for payment of compensation for losses caused by the exercise of such powers.
- 3.3 Compensation may be claimed under the procedures laid down in the Railways Ordinance which represents the basic legal entitlement of affected persons. S.32 of the Railways Ordinance sets out the right to compensation. Part II of the Schedule to the Railways Ordinance, which should be read with Part I of the Schedule, sets out the matters for which compensation may be claimed; the basis on which compensation is to be assessed; the persons who may claim compensation; and the period within which the claim must be served on the Secretary for Transport and Housing.
- 3.4 Any person who has a compensatable interest in the land resumed under S.16 of the Railways Ordinance is entitled to claim compensation from the Government for the following :-
- (a) the open market value of the claimant's interest in the resumed land and any building erected thereon at the date of resumption;
 - (b) the amount of loss or damage to a business conducted by the claimant due to the removal of the business from that land or building as a result of the resumption; and
 - (c) the amount of any expenses reasonably incurred by the claimant in moving from the resumed land or building to, or in connection with the acquisition of, alternative land or building.

The claim should be made before the expiration of one year from the date of resumption of the land.

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

- (a) (i) In the case of an easement and/or other permanent right, the amount of an open market value of the claimant's interest in the land by which it is diminished; or
- (ii) In the case of the creation of a right of temporary occupation, the amount of an open market rent for the claimant's interest in the land occupied during the period of the easement; and
- (b) a disturbance payment¹.

The claim should be made before the expiration of one year from the date on which the easement and/or other permanent right or the temporary occupation of land is created.

3.6 For any land of which underground stratum is resumed under S.16 of the Railways Ordinance or which underground stratum is temporarily occupied under S.20 of the Railways Ordinance, any person owning a compensatable interest in the land is entitled to claim compensation from the Government according to paragraphs 3.4 and 3.5 above.

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

- (a) the expenditure and loss of money actually and reasonably incurred or to be reasonably incurred and arising from the dispossession of a person of land by reason of the matter for which the claimant is entitled to claim compensation under Part II; and
- (b) for disturbance of a trade or business on the land, the expenditure and loss of money actually and reasonably incurred or to be reasonably incurred and arising from the disturbance of that trade or business by reason of the matter for which the claimant is entitled to claim compensation under Part II, but a disturbance payment is not to include any expenditure or loss which would not be recoverable, on the grounds that the expenditure or loss was too remote or was not caused by the disturbance, if that disturbance were a tort.

3.7 For any temporary or permanent closure of road or any reclamation of Government foreshore or sea-bed under S.22 of the Railways Ordinance, any person owning a compensatable interest in the land the access to which is adversely affected by the closure of road or a private right over Government foreshore or sea-bed which is affected by the reclamation or other works is entitled to claim compensation from the Government for the following :-

- (a) (i) In the case of access to the land being adversely affected, the expense fairly and reasonably incurred in remedying or mitigating the effect of such closure, as far as may be practicable, and any diminution in the open market value of the claimant's interest in the land after such expense has been incurred; or
- (a) (ii) In the case of a private right over Government foreshore or sea-bed being affected by the reclamation or other works, the amount fairly and reasonably assessed to be open market value of the right and, where the claimant has a compensatable interest in contiguous or adjacent land, any diminution in the open market value of that interest; and
- (b) a disturbance payment¹.

The claim should be made before the expiration of one year from the date of closure, extinction, modification or restriction.

3.8 For physical or structural damage to any land or building resulting from the exercise of power under S.24 of the Railways Ordinance for inspection, preventive and remedial work on land and buildings, compensation will be assessed on the basis of the expense which is fairly and reasonably incurred in repairing, preventing or mitigating the damage and a disturbance payment¹ for disturbance resulting from the exercise of power under S.24. The claim should be made before the expiration of one year from the date of completion of the operations carried out under S.24 from which the damage is alleged to have resulted. Similar provision of claims and assessment of compensation is applicable for physical or structural damage to any land or building resulting from the works pursuant to Item 6(a) of Part II of the Schedule to the Railways Ordinance and the claim should be made before the expiration of one year from the date of completion of works.

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

incurred in moving the object or structure and making good that part of the building from which it is removed.

- (b) The basis of assessment of compensation for reinstating an object or structure so removed or replacing the same with a similar object or structure is the expense fairly and reasonably incurred in reinstating or replacing the object or structure.
- (c) The basis of assessment of compensation for the loss sustained in respect of an object or structure so removed which is not to be reinstated or replaced with a similar object or structure is the amount which is fairly and reasonably estimated as the value of the object or structure.
- (d) Compensation may be claimed for a disturbance payment¹ for disturbance resulting from the exercise of power under S.26.

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

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

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

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

3.11 The claimant has a general duty to mitigate the amount of loss or damage to be incurred resulting from land resumption, creation of easements and/or other permanent rights, creation of rights of temporary occupation of land, closure, modification or restriction of roads and reclamation of Government foreshore or seabed as far as practicable.

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

4. Submission of claim for compensation

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

- (a) the name of the claimant, and his address for service of notices;
- (b) a full description of the land including any covenants, easements, rights or restrictions affecting the land;
- (c) the nature of the claimant's interest in the land including for a sub-lessee or sub-tenant his landlord's name and address and details of the sub-lease or tenancy;
- (d) details of any mortgage, including the principal still owing and name and address of the mortgagee;
- (e) if the claimant has let the land or any part of it, the name and address of each tenant and details of his lease or tenancy; and
- (f) particulars of the claim showing :-
 - (i) the amount of the claim;
 - (ii) under which item in Part II of the Schedule to the Railways Ordinance the claim is made; and
 - (iii) how the amount claimed under each item is calculated; and
- (g) relevant documents or business records in support of the amount claimed.

- 4.2 In the case of claims for diminution in the open market value of the land, the claimant should state the amount of depreciation in land value or rental value claimed and provide evidence in support.

- 4.3 In the case of claims for business loss or disturbance payment, the claimant should submit business records, supporting documents and information proving the loss incurred.

- 4.4 For claims of business loss, assessment of the compensation amount relies substantially on the information and documents provided by the claimant as he possesses business information required for the assessment. Examples of documents required to support the claim for general guidance and which are by no means exhaustive are :-
- (a) certified profit and loss accounts;
 - (b) trading receipts; and
 - (c) invoices and receipts of additional services (if applicable) engaged by the business or statements showing additional operating costs.
- 4.5 The claimant may engage a professional surveyor to assist him to make a claim. The Railways Ordinance allows payment of costs or remuneration reasonably incurred in employing persons to act in a professional capacity in connection with claim for compensation. However, it should be noted that professional fees are not paid as a matter of course.
- 5. Assessment of claim**
- 5.1 In considering the claim, the Government may request further particulars from the claimant. It is in the claimant's own interest to make every effort to produce the information requested to substantiate his claim. Compensation will be assessed in accordance with the provisions of the Railways Ordinance.
- 5.2 Within 6 months of the date of receipt of the claim or further particulars, the Government will notify the claimant of its decision on the claim and the reasons for the decision. The submitted claim may either be accepted or rejected. Where the claim has been rejected, a counter offer may be made by the Government. If a claimant is not satisfied with the amount offered, he may discuss the assessment with the Government and may engage a professional surveyor to assist him.
- 5.3 If no agreement can be reached on compensation within 7 months from the receipt of the claim by the Secretary for Transport and Housing, either the claimant or the Secretary for Transport and Housing may refer the claim to the Lands Tribunal for determination. The decision of the Lands Tribunal on the amount of compensation payable is final, even if it is less than the Government's offer. Parties may appeal against the decision of the Lands Tribunal on a point of law.

6. Payment of Compensation

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

7. Enquiries

If you have any queries, please feel free to call the Railway Development Section, Lands Department at 2683 9152 or 2683 9193. The staff of the Railway Development Section will be happy to provide all necessary assistance.

Railway Development Section
Lands Department

October 2012