

Guidelines on Applying for the Resumption of Land under section 18A of the Lands Resumption Ordinance (Cap. 124)

Purpose

These guidelines provide general guidance to a person who wishes to submit an application for resumption of land under section 18A of the Lands Resumption Ordinance (Cap. 124).

Objective of section 18A of Cap. 124

2. When a piece of land is resumed under Cap. 124, the land that is contiguous or adjacent to the land resumed may be rendered incapable of being reasonably used and enjoyed due to the severance of the resumed land from its contiguous or adjacent land. Section 10(2)(c) of Cap. 124 currently provides compensation to be made available for the loss or damage suffered by a person due to the severance of the land resumed from any other contiguous or adjacent land of that person (the “severance payment”). With effect from 1 September 2023, section 18A of Cap. 124 provides an avenue to an eligible owner or mortgagee in possession of such land to apply to the Chief Executive for the resumption of the land, subject to the fulfillment of specified criteria.

Requirements for submitting an application

3. Applications for resumption of land under section 18A of Cap. 124 should be submitted to the Chief Executive (with a copy to the Secretary for Development) for processing. Applicants should comply with these guidelines when making their applications.

Eligibility to apply

4. Under section 18A(1) of Cap. 124, the owner or a mortgagee in possession of any land (***Relevant Land***) that is contiguous or adjacent to land that has been resumed pursuant to an authorization made under section 3(1) or (2) of Cap. 124 (***Resumed Land***) may apply to the Chief Executive¹ for the resumption of the Relevant Land.

¹ A reference to the Chief Executive in these guidelines includes any public officers delegated by the Chief Executive to exercise the powers on his behalf.

5. Therefore, an application should meet the following criteria –
- (a) **Eligibility of the applicant:** The applicant should demonstrate that he is the **owner**² or a **mortgagee in possession** of the Relevant Land by submitting particulars on current ownership or the relevant mortgage of the land and his identity proof. It is not necessary for the applicant to be the owner or the mortgagee in possession of the Resumed Land.
 - (b) **Eligibility of the land:** The Relevant Land must be contiguous or adjacent to the Resumed Land. On the other hand, land that is contiguous or adjacent to any land resumed under section 18A of Cap. 124, i.e. the Relevant Land, is not eligible for consideration. The applicant should provide information on the Relevant Land (i.e. lot number, area and site plan of the Relevant Land) as well as the Resumed Land in question (i.e. lot number of the Resumed Land, project title under which the Resumed Land was resumed and the date on which the Resumed Land reverted to the Government or the undivided share in the Resumed Land vested in The Financial Secretary Incorporated under Cap. 124). Information relating to resumption of the Resumed Land can be found in the notice published upon resumption being ordered for that land³.

Time limit of application

6. Under section 18A(2) of Cap. 124, the application must be made before the expiry of a period of **one year** from the date on which the Resumed Land reverts to the Government under section 5 of Cap. 124, or a further period allowed by the Chief Executive in a particular case as mentioned in paragraph 7 below. The date on which the Resumed Land

² “Owner” is defined under section 2 of Cap. 124 to mean “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”. Where the Relevant Land is owned by more than one owner, an application may be submitted by any one or all of the owners. A person who holds or claims to hold the Relevant Land under possessory title is not an “owner” as defined in section 2 of Cap. 124 and is not qualified to make an application under section 18A of Cap. 124.

³ Such a notice is published in the Government Gazette, affixed upon the Resumed Land, published on the website of the Lands Department, published in local newspapers (i.e. 1 issue of an English newspaper and 1 issue of a Chinese newspaper), and made available for public inspection at relevant government offices.

reverts to the Government can be found on the notice published upon resumption ordered for the Resumed Land⁴.

7. Where the application is not made before the expiry of a period of one year from the date on which the Resumed Land reverts to the Government, the applicant should provide reasons for seeking the Chief Executive's agreement for an extension of time under section 18A(2)(b) of Cap. 124. Each case will be considered on its own circumstances and merits.

Consideration factors

8. Under section 18A(3) of Cap. 124, the Chief Executive may order the resumption of the Relevant Land, whether or not the resumption is required for a public purpose, if the Chief Executive is of the opinion that –

- (a) the Resumed Land is reasonably necessary to the use and enjoyment of the Relevant Land; and
- (b) it would be just and equitable to make an order for the Relevant Land to be resumed.

9. Whether an application meets both criteria above will be determined on a case-by-case basis having regard to all facts and circumstances of the case. To facilitate the Chief Executive's consideration of an application under section 18A of Cap. 124, the applicant should submit the following information to demonstrate how his application fulfills the two criteria above –

- (a) **“Use and enjoyment of the Relevant Land”**: The applicant should state why the Resumed Land is reasonably necessary to the use and enjoyment of the Relevant Land, and how the Relevant Land has been rendered incapable of reasonable use and enjoyment as a result of the resumption of the Resumed Land. Below are some examples (which are by no means exhaustive) of possible factors to be taken into account –
 - (i) the Resumed Land provided the only access to the Relevant

⁴ Such a notice is published in the Government Gazette, affixed upon the Resumed Land, published on the website of the Lands Department, published in local newspapers (i.e. 1 issue of an English newspaper and 1 issue of a Chinese newspaper), and made available for public inspection at relevant government offices.

Land, and as a result of the resumption of the Resumed Land, the Relevant Land became landlocked or inaccessible, and no remedial measure (such as construction of an alternative access for the Relevant Land) can reasonably be taken by the Government or the applicant to rectify such situation;

- (ii) the Resumed Land was previously used together with the Relevant Land, and as a result of the resumption of the Resumed Land, the Relevant Land became odd or irregular in shape (e.g. only a small but long narrow strip of land remained) that it could no longer be reasonably used for any purpose⁵;
- (iii) where occupiers of the Relevant Land (when notified by the applicant as per the requirement in paragraph 9(b) below) express strong aspirations for continuing their occupation and use of the Relevant Land despite the resumption of the Resumed Land, this could possibly mean that the Relevant Land may still be capable of being used and enjoyed;

(b) **“Just and equitable”**: The purpose of requiring a decision to order resumption to be “just and equitable” is to ensure that the outcome is just and fair to all parties concerned, having regard to the facts and circumstances of the case. In this connection, the applicant should give details of why it is just and fair for the Relevant Land to be resumed. The applicant should also provide the name and correspondence address of all parties with known interest in the Relevant Land⁶ (including but not limited to other co-owners, tenants, and chargees/mortgagees) and the details of such interest, as well as the name of all existing occupiers on the Relevant Land (who are not considered as parties with known interest in the Relevant Land) and the details of such occupation. The applicant should confirm that these persons have been notified of his intended application. The applicant must also set out the views received from these persons towards the intended application. In case of any unwithdrawn objection from any of the persons concerned, the applicant should provide information about the grounds of objection raised by the

⁵ The fact that the Relevant Land cannot be used for the previous purpose in itself may not be sufficient to justify the application made under section 18A of Cap. 124. The applicant should also demonstrate how the Relevant Land cannot be reasonably used for other purpose(s). In addition, the unmarketability of the Relevant Land may be relevant evidence to substantiate that the Relevant Land cannot be reasonably used and enjoyed without the Resumed Land, while a mere reduction in the market value of the Relevant Land alone may not be a strong justification.

⁶ Whether or not a party’s interest is registered in the register of the Land Registry.

objectors, the applicant's efforts made to address the objection and his responses/comments on the unwithdrawn objection. In the event that the applicant is unable to notify any of the parties with known interest in the Relevant Land and/or existing occupiers of the intended application, or cannot obtain the views of the aforesaid persons towards the intended application, the applicant should provide an explanation in the application as to why this is the case.

Any severance payment previously received for the Relevant Land

10. If the resumption of the Relevant Land is eventually ordered by the Chief Executive pursuant to section 18A(3) of Cap. 124, upon reversion of the land to the Government, compensation for the Relevant Land will be processed in accordance with the relevant statutory provisions and applicable administrative policies as if the land were resumed for a government development clearance⁷. Where severance payment has previously been received by the applicant (in his capacity as the owner of the Relevant Land and the former owner of the Resumed Land for the loss or damage due to severance of the Resumed Land from the Relevant Land as a result of the resumption of the Resumed Land as provided for under section 10(2)(c) of Cap. 124), the amount of severance payment will be deducted, as appropriate, from the ex-gratia compensation to be offered for the resumption of the Relevant Land to the applicant to avoid double compensation⁸.

11. In connection with the above, the applicant should state in his application whether he has submitted a claim for or received severance payment for the Relevant Land as a result of the resumption of the Resumed Land to facilitate processing of ex-gratia compensation for resumption of the Relevant Land if so ordered by the Chief Executive.

⁷ Occupiers will be offered ex-gratia allowances and rehousing according to applicable policies as if the land were resumed for a government development clearance, subject to fulfilment of relevant eligibility criteria. An occupier will be required to submit proof of his actual occupation of the land as at the date of the pre-clearance survey conducted for the project for which the Resumed Land was resumed (and for a specified duration prior to the date of the pre-clearance survey as per the eligibility criteria of the relevant compensation and rehousing arrangement). The rates of ex-gratia compensation to owners and ex-gratia allowances to occupiers of the Relevant Land will adopt the rates as at the time of resumption of the Relevant Land. Alternatively, occupiers who have an estate or interest in the Relevant Land may claim statutory compensation according to Cap. 124.

⁸ For instance, where the Relevant Land is a private agricultural land in the New Territories and the applicant opts to receive Ex-gratia Zonal Compensation, he will be required to return the severance payment (if any) with interest (at the same interest rate applicable to compensation pending payment by the Government upon land reversion in Cap. 124) as a pre-condition for receipt of the Ex-gratia Zonal Compensation.

Submission of true and updated information

12. The applicant should declare that all information submitted is true and complete to the best of his knowledge. The applicant should also undertake to notify the Government of any changes to the information contained in the application after it has been submitted.

Covering form

13. A covering form with a checklist of information required for the application is at **Appendix 1**. When submitting the application, the applicant should enclose the covering form as duly completed and signed, together with all supporting documents. Any application not made in accordance with the above requirements may not be processed.

Processing procedures by the Government

14. Upon receipt of an application, the Government will post a 60-day notice on or near the Relevant Land to make known the application to the public. Enquiries may also be made with the applicant and/or other interested or related persons as and when necessary to facilitate the assessment of the case.

15. As provided in section 18A(6) & (7) of Cap. 124, if the resumption of the Relevant Land is ordered by the Chief Executive, a notice of resumption of the Relevant Land will be published in the Gazette, and will also be published by other means and affixed upon the Relevant Land in accordance with section 4 of Cap. 124. The Relevant Land will revert to the Government upon the expiry of the period stated on the said notice. Compensation for resumption of the Relevant Land will be processed accordingly (see paragraph 10 above).

16. As provided in section 18A(4) & (5) of Cap. 124, if a person is aggrieved by a decision of the Chief Executive not to order resumption under section 18A(3) of Cap. 124, he may apply to the Lands Tribunal for a review of the decision. In the circumstances, the person should complete and file the form at **Appendix 2** to apply for a review. If the Lands Tribunal is satisfied that the matters as mentioned in section

18A(3)(a) & (b) of Cap. 124 are satisfied, the Lands Tribunal may order the resumption of the Relevant Land and the same procedures as in the case of resumption ordered by the Chief Executive as mentioned in paragraph 15 will be followed.

Development Bureau
1 September 2023

**Covering Form for Submission of an Application for
Resumption of Land under s.18A of the Lands Resumption Ordinance (Cap. 124)**

To: Chief Executive

(cc.: Secretary for Development)

**(by post with one copy each to: Chief Executive's Office, Tamar, Hong Kong; and
18/F West Wing, Central Government Offices, 2 Tim Mei Avenue,
Tamar, Hong Kong; or**

by email: ceo@ceo.gov.hk; plbenq@devb.gov.hk)

I/We* hereby submit an application for resumption of land under section 18A of the Lands Resumption Ordinance (Cap. 124). All the required information (where applicable), as checked below, is enclosed. I/We* declare that all information provided is true and complete to the best of my knowledge. I/We* undertake to notify the Lands Department of any changes to the information contained in this application.

Checklist

- (i) Particulars of the applicant, including his name, address, telephone number and email address.
- (ii) The lot number and area of the Relevant Land, and a copy of an up-to-date location / site plan on an appropriate scale (normally 1:1000) showing the Relevant Land.
- (iii) A computer printout containing the current ownership particulars or mortgages (as the case may be) of the Relevant Land within one month before the submission of the application.
- (iv) Identity proof of the applicant. If the applicant is a limited company, 2 sets of certified true copies of its Certificate of Incorporation, Certificate of Change of Name (if applicable) and latest Annual Return of the Company. For overseas companies, documents equivalent to the above should be produced.
- (v) The lot number of the Resumed Land, and the project title under which the Resumed Land was resumed and the date on which the Resumed Land reverted to the Government or the undivided share in the Resumed Land vested in The Financial Secretary Incorporated under the Lands Resumption Ordinance (Cap. 124).
- (vi) Reason for late submission of the application (if applicable).
- (vii) Information on why the Resumed Land is reasonably necessary to the use and enjoyment of the Relevant Land, and how the Relevant Land has been rendered incapable of reasonable use and enjoyment as a result of the resumption of the Resumed Land.

- (viii) A schedule showing the name and correspondence address of all parties with known interest in the Relevant Land and the details of such interest (including the nature of the interest, relevant instrument creating the interest etc). Please provide information on why it is just and fair for the Relevant Land to be resumed, with confirmation that all parties with known interest have been notified of the intended application and any views received from these parties. In case of any unwithdrawn objection from any of the parties concerned, please provide information about the grounds of objection raised by the objector, the applicant's efforts made to address the objection and the applicant's responses/comments on the unwithdrawn objection. In the event that the applicant is unable to notify any of the parties with known interest in the Relevant Land of the intended application or cannot obtain the views of the aforesaid persons towards the intended application, the applicant should provide an explanation as to why this is the case.

- (ix) A schedule showing the name of all existing occupiers on the Relevant Land (who are not considered as parties with known interest in the Relevant Land) and the details of such occupation (including the nature of occupation, length of occupation and instrument to which the occupation relates). Please provide information on why it is just and fair for the Relevant Land to be resumed, with confirmation that all existing occupiers have been notified of the intended application and any views received from these occupiers. In case of any unwithdrawn objection from any of the occupiers concerned, please provide information about the grounds of objection raised by the objector, the applicant's efforts made to address the objection and the applicant's responses/comments on the unwithdrawn objection. In the event that the applicant is unable to notify any of the existing occupiers on the Relevant Land of the intended application or cannot obtain the views of the aforesaid persons towards the intended application, the applicant should provide an explanation as to why this is the case.

- (x) If there is submission of claim for or receipt of statutory compensation assessed on the amount of loss or damage suffered by the applicant due to the severance of the Resumed Land from the Relevant Land due to the resumption of the Resumed Land, details of the claim or compensation received such as the date of submission of the claim, the date of receipt of the compensation, the agent authorized to submit the claim, the title of the project under which the Resumed Land is resumed and the claimed/received amount, etc.

- (xi) If submitted by an agent, a written authorization from the applicant.

- (xii) For an application which involves portion(s) of a lot, or sub-divisions of any lots, to assist the verification of site areas and site boundaries, all relevant assignment plans or Deed Poll plans should be provided together with any relevant information relating to the delineation of the boundaries of these sub-divisions.

Notes :

Please put a tick in the relevant box if applicable unless otherwise specified; and delete as appropriate.

For individual applicant:

Signature: _____ Date: _____

Name: _____

For company applicant:

Signature: _____

Name of authorised signatory: _____

Name of company: _____

Company chop:

* Delete as appropriate

Personal Information Collection Statement

Any information, including the personal data, submitted in connection with applications for resumption of land under section 18A of the Lands Resumption Ordinance (Chapter 124) will be used for the processing of the applications and other related purposes. The provision of any information, including the personal data, as required is obligatory. If such information, including the personal data, as required is not provided as requested, the applications may be rejected.

Any information, including the personal data, so submitted may be disclosed to the relevant government departments and other persons, organizations or agencies which are required to handle the applications and related matters.

Persons who have so submitted their personal data have the rights to request access to and correction of their personal data in relation to their claims.

Request for access to or correction of the personal data should be made in writing to the Access to Information Officer, Planning and Lands Branch, Development Bureau, 18/F, West Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong.

IN THE LANDS TRIBUNAL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

NOTICE OF APPLICATION TO REVIEW THE DECISION OF THE CHIEF EXECUTIVE
REFUSING TO RESUME CONTIGUOUS OR ADJACENT LAND
UNDER THE LANDS RESUMPTION ORDINANCE

Pursuant to section 18A(4)

Application No. LDLR / _____

I/ We _____

of _____

as *owner(s) / *mortgagee(s) in possession of —

(a) the contiguous or adjacent land being _____

(describe the contiguous or adjacent land)

; and

(b) the resumed land being _____

(describe the resumed land)

apply to the Lands Tribunal to review the decision of the Chief Executive made under section 18A(3) of the Ordinance that the resumed land is not reasonably necessary to the use and enjoyment of the contiguous or adjacent land and that it would not be just and equitable to make an order for such contiguous or adjacent land to be resumed.

A copy of the application made to the Chief Executive pursuant to section 18A(1) of the Ordinance is attached.

Dated this _____ day of _____, _____.

(Signature of *Applicant / *the authorised
representative of Applicant)

Full Name of the Signatory : _____

To : 1. The Registrar, Lands Tribunal.
2. Director of Lands.

Address for service of the Applicant : _____

Appendix 2

- ❖ If the Applicant is a company/incorporation, please affix the company seal/chop and write down the full name of the signatory. Any authorised representative should at the same time produce an effective letter of authorisation.
- * Delete whichever does not apply.

Address of Lands Tribunal : Lands Tribunal Building, 38 Gascoigne Road, Kowloon. (MTR Jordan Station Exit “B2”)

Lands Tribunal Hotline : 2771 3034