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Analysis of the Compensation Standards and Judicial Review Mechanism under Hong Kong's Land Resumption Ordinance

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Abstract. Hong Kong's Land Resumption Ordinance (Cap. 124) is the core legal basis for the government to exercise eminent domain and carry out public housing construction, infrastructure development and urban renewal. The current compensation system takes the open market value as the primary principle and ex-gratia allowances as supplementary measures, while the Lands Tribunal is responsible for hearing relevant compensation disputes. In recent years, land resumption conflicts have become increasingly prominent, especially disputes over compensation for New Territories agricultural land and old multi-storey buildings. The existing compensation standards expose problems such as insufficient valuation and unreasonable benefit distribution, and The adjudication mechanism for land compensation disputes suffers from practical drawbacks including ambiguous demarcation of adjudication jurisdiction, protracted litigation cycles, and inconsistent judicial standards in rulings over similar cases. This paper systematically combs the legal framework of Hong Kong's land resumption and compensation, analyzes the practical dilemmas and root causes of current compensation standards and judicial review mechanisms based on legal texts, official documents and typical judicial precedents, and puts forward targeted optimization suggestions. The research aims to balance the exercise of public power and the protection of private property rights, improve the rationality and fairness of the land resumption system, and reduce social disputes arising from land resumption.

Keywords: Land resumption ordinance, eminent domain, compensation standard, judicial review, open market value

1. Introduction

Land resources are a crucial material foundation for Hong Kong's social and economic development and urban construction. Faced with tight land supply, the Hong Kong Special Administrative Region Government needs to resume private land continuously to promote public housing projects, transportation infrastructure construction and urban renewal initiatives. Land Resumption Ordinance (Cap. 124) has long standardized the subject, procedure, scope of resumption and corresponding compensation obligations of the government. Under the framework of this ordinance, the

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government exercises eminent domain for public interests, and affected landowners are entitled to obtain corresponding compensation for the loss of property rights.

In the past decade, with the acceleration of urban renewal and public housing planning, the number of land resumption cases in Hong Kong has risen steadily, and related compensation disputes have also intensified. A large number of small landowners have filed appeals to the Lands Tribunal, questioning the fairness and adequacy of compensation. Compensation disputes mainly arise from two high-value subject matters: New Territories agricultural land and aged multi-storey Tang buildings. Compensation litigation also frequently emerges in urban industrial land redevelopment projects. For agricultural land in the New Territories, landowners generally believe that the open market value valuation ignores the potential development value of land, resulting in low compensation. For old multi-storey buildings with scattered ownership, problems such as unclear division of shared areas and unreasonable depreciation calculation have triggered conflicts among multiple owners. These phenomena fully reflect the tense relationship between the government's exercise of eminent domain for public interests and the protection of citizens' private property rights and also reveal the structural defects of the current land resumption compensation and judicial review system, making it urgent to conduct in-depth research and institutional improvement.

The research has both theoretical and practical value. In theory, this paper takes Hong Kong's common law system as the research perspective, explores the application boundary of eminent domain and the protection mechanism of private property rights under the local legal framework, supplements the research results on the balance between public power and private rights in the field of land law, and enriches the theoretical research on compulsory purchase and compensation in common law jurisdictions.

In practice, this paper sorts out the practical problems exposed in the implementation of current compensation standards and judicial review procedures, combines official regulatory documents and judicial precedents to summarize the shortcomings of the system, and puts forward operable reform suggestions. The research results can provide legal reference for the Hong Kong government to optimize the land resumption system, standardize compensation calculation rules and improve dispute resolution efficiency, help reduce social conflicts caused by land resumption, and guarantee the steady progress of public construction and urban renewal work.

2. Legal framework of land resumption and compensation in Hong Kong

2.1. Overview of Hong Kong's land resumption ordinance (Cap. 124)

The origin of Hong Kong's land resumption legislation can be traced back to the colonial period. Legislation governing land resumption can be traced back as early as the Land Resumption Ordinance of 1900. The current Land Resumption Ordinance (Chapter 124) has undergone multiple major amendments, establishing a comprehensive land resumption procedure, and after multiple revisions and iterations, it evolved into the current Land Resumption Ordinance (Cap. 124). As a long-standing land law in Hong Kong, the ordinance has formed a complete institutional system after more than a century of development, and its legislative purposes are to standardize the government's land resumption acts for public interests and protect the legitimate rights and interests of landowners.

In terms of core provisions, the ordinance clearly defines the scope of land resumption: all private land and buildings that need to be used for public housing, public infrastructure, urban renewal and other public welfare projects are within the scope of resumption. It also standardizes the whole

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process of resumption procedures, including public notice, property assessment, compensation negotiation, formal resumption announcement and other links. Meanwhile, the ordinance takes compensation as a statutory obligation of the government, clearly stipulating that the government must pay sufficient compensation to landowners for the loss of property rights caused by resumption, which lays a legal foundation for the subsequent compensation system and dispute resolution mechanism.

2.2. Core principles of land resumption compensation

2.2.1. Open market value principle

The open market value principle is the primary principle of land resumption compensation under Cap. 124, and it is also the core standard for calculating statutory compensation. According to the unified definition of Hong Kong's Lands Department and judicial organs, open market value refers to the reasonable transaction price of the land or building on the open market under normal transaction conditions, assuming that both the buyer and the seller conduct transactions voluntarily and rationally, without coercion or preferential factors.

In practical application, professional surveyors appointed by the government will evaluate the property based on factors such as land location, area, land use nature, building age and surrounding market transaction prices, and take the evaluated open market value as the main amount of compensation. This principle has the advantage of objectivity and uniformity [1]. Such criteria are calculated based on actual market transaction records, enabling consistent valuation for standard residential lots in urban areas, yet they are limited in application to farm buildings and aged premises, and ensure the basic fairness of compensation in general land resumption cases. It has been recognized by academia and the judicial circle as the basic support of Hong Kong's land resumption compensation system [2].

2.2.2. Ex-gratia allowance supplementary principle

The open market value can only make up for the direct property loss of landowners, but cannot cover the additional losses such as relocation costs, operating losses and living difficulties caused by land resumption. For this reason, Hong Kong has established an ex-gratia allowance system as an important supplement to statutory compensation.

Ex-gratia allowances are discretionary relief measures formulated on the basis of statutory compensation, mainly including relocation allowances for residents of old buildings, classified allowances for New Territories agricultural land, and hardship subsidies for vulnerable small landowners. The Lands Department has formulated differentiated allowance standards according to different property types and regional divisions. Different from statutory compensation based on market value, ex-gratia allowances focus on solving practical life and economic difficulties of affected persons. Ex-gratia allowances can alleviate owners' relocation burdens to a certain extent. However, the slow update of relevant standards renders them insufficient to fully cover the shortfall between market-value compensation for special types of properties [3, 4].

2.3. Legal basis for judicial review of resumption compensation

The Lands Tribunal is a statutory tribunal exclusively tasked with hearing disputes over the amount of land resumption compensation, while judicial reviews of administrative land resumption acts fall

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within the jurisdiction of the High Court. It is a professional court specially set up for land and property disputes in Hong Kong. When landowners disagree with the government's compensation assessment result, compensation amount or resumption procedure, they can file an application to the Lands Tribunal for review, which is the main legal channel for judicial relief in land resumption cases.

In terms of judicial review scope and procedures, the Lands Tribunal is responsible for reviewing two core contents: first, whether the resumption act complies with legal procedures; second, whether the calculation of compensation amount is reasonable and compliant. After accepting the case, the tribunal will organize both parties to present evidence, conduct cross-examination and hold hearings, and finally make a judgment on the dispute. If either party is dissatisfied with the judgment of the Lands Tribunal, it can further appeal to the Court of Appeal and the High Court, forming a multi-level judicial review system. This institutional design provides a guarantee for landowners to safeguard their legitimate rights and interests and also restricts the government's administrative discretion in land resumption [5].

3. Current situation and practical dilemmas of Hong Kong's land resumption compensation standards

3.1. Current application status of compensation standards

3.1.1. Application in general land resumption cases

For common land and buildings in urban areas, the dual compensation model of open market value plus ex-gratia allowances has maintained stable operation for a long time. These properties have active and transparent market transactions. Professional surveyors commissioned by the Lands Department can refer to surrounding transaction records, property conditions and regional market trends to calculate the open market value objectively and accurately. Statutory market value compensation for standard urban residential properties can generally cover owners' direct property losses, yet a compensation shortfall persists for special properties [6]. Meanwhile, basic relocation allowances are provided to offset moving expenses and short-term life disturbances.

In such conventional cases, both parties generally recognize the compensation results, and the number of appeals to the Lands Tribunal remains low. As mainstream land law textbooks elaborate, the open market value principle embodies the basic requirement of fair compensation under common law compulsory purchase rules, which guarantees procedural and substantive fairness for most ordinary resumption cases. Therefore, the current compensation framework is universally accepted in general land resumption scenarios.

3.1.2. Special provisions for new territories agricultural land

Given the unique nature and geographical distribution of New Territories agricultural land, the Hong Kong government has formulated a set of differentiated compensation rules independent of urban land. According to the official guidance issued by the Development Bureau and the Lands Department, the New Territories is divided into four tiers (Grade A, B, C and D) based on geographical location, traffic conditions and development potential, with corresponding tiered ex-gratia compensation rates for agricultural land.

Different from urban construction land, agricultural land is restricted by statutory land use, so its inherent open market value is relatively low. In the total compensation for resumed agricultural land,

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ex-gratia allowances account for a much larger proportion than statutory market value compensation [7]. This special institutional arrangement was originally designed to protect the livelihood rights of local farmers and make up for the deficiency of market value compensation. The Lands Department updates the ex-gratia compensation rates for New Territories land on a regular basis and releases detailed standards on its official website for public inquiry. Nevertheless, with the continuous expansion of Hong Kong's urban scope and the change of regional development patterns, the four-tier graded allowance standards for agricultural land have not been dynamically adjusted for many years. With the development of new towns in the New Territories, the original regional classification rules are out of touch with current development realities. and become one of the main sources of disputes.

3.2. Practical dilemmas of compensation standards in special scenarios

3.2.1. Insufficient compensation for new territories agricultural land

The most acute problem of the current compensation system lies in the systematic under-compensation of New Territories agricultural land, a problem repeatedly pointed out in local legal studies and judicial practices. The core flaw stems from the inherent limitations of the open market value principle: the valuation only calculates the value of land for agricultural use at the time of resumption, while completely excluding the potential development value (hope value) brought by urban planning and land use conversion [8].

The landmark case Nam Chun Investment Co Ltd v Director of Lands [2005] CACV 335/2003 decided by the Hong Kong Court of Appeal has established a long-standing judicial rule: the expected appreciation of land arising from future urban planning and development shall not be included in the scope of statutory open market value compensation. In this case, the appellant owned a large parcel of agricultural land in the New Territories, which was included in the government's urban development reserve land. The landowner claimed that the land had clear potential to be converted into construction land, and the compensation should include its development premium. However, the Court of Appeal held that under Cap. 124, the open market value shall be assessed based on the existing use of the land rather than hypothetical future use. The so-called development hope value belongs to uncertain expected interests and is not protected by statutory compensation.

This judgment has become the guiding precedent for subsequent agricultural land resumption cases. For decades, a large number of New Territories agricultural land located on the fringe of urban areas faces the same dilemma: landowners have relied on the appreciation expectation of land conversion for long-term income, but the government's compensation only targets the low value of agricultural cultivation. There is a substantial gap between market-value compensation and the development proceeds expected by landowners. Coupled with the absence of supplementary compensation for livelihood losses, this leads to widespread objections among New Territories farmers against land resumption proposals.

In addition, the tiered ex-gratia allowance system also has obvious drawbacks. The regional grading standard formulated years ago has not been dynamically adjusted in accordance with regional economic development and traffic changes. Some areas classified as Grade C or D have gradually become key development zones, but their allowance standards remain at a low level. Moreover, the current compensation dimension is overly single. It only compensates for land property losses and basic relocation costs and fails to take into account the fact that local farmers rely on agricultural land for long-term livelihood. Once the land is resumed, farmers will face the risk of losing their main source of income, and the existing allowances cannot make up for such

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long-term livelihood losses. As academic research confirms, the rigid valuation rules and backward allowance standards jointly lead to frequent disputes over New Territories agricultural land resumption [9].

3.2.2. Unreasonable compensation for old multi-storey buildings

Old multi-storey buildings, commonly known as old tenement buildings, are another major dispute concentration area in land resumption, especially in urban renewal projects. Such buildings feature fragmented property rights, mixed usage functions and ambiguous division of shared areas, which make the existing compensation standards difficult to adapt to complex actual conditions.

First of all, there are defects in the calculation of building depreciation. The government adopts a uniform benchmark depreciation figure without flexibly adjusting the depreciation margin in light of differences in building maintenance conditions and structural types, ignoring differences in building maintenance, structural conditions and actual service life. In many cases, well-maintained old buildings are depreciated at an excessive rate, resulting in a seriously underestimated assessed value. There are no supporting operational guidelines on land resumption governing the distribution of compensation for common shared areas such as corridors and rooftops, and apportionment can only be made in accordance with general civil rules applicable to co-owned properties. These shared parts belong to all owners collectively, but the current system does not specify the proportion and distribution method of compensation, which often triggers conflicts among hundreds of small owners in the same building.

The case involving urban renewal resumption of old buildings fully reflects this problem. In many community resumption projects in old urban areas, individual owners often lodge appeals to the Lands Tribunal, arguing that the compensation for shared areas is unreasonably divided and the depreciation assessment is unfair. Many residents living in old buildings are elderly people and low-income groups. They have lived here for decades and form a strong living dependence on the community. After resumption, their living costs rise sharply. Although the government provides basic relocation ex-gratia allowances, the single standard cannot target the living difficulties of vulnerable groups.

Tang Sai's research on the ex-gratia allowance system for old multi-storey buildings points out that the current system lacks targeted hardship subsidies for long-term elderly residents. The discretionary power of administrative departments in formulating allowances is too large, and the calculation basis is not transparent. For old buildings with scattered property rights, it is even more difficult to coordinate the interests of all parties, making compensation disputes unavoidable.

3.3. Root causes of compensation standard disputes

Synthesizing official documents, academic papers and judicial cases, the root causes of continuous compensation disputes can be summarized into two levels.

First, the open market value principle has inherent structural limitations. This valuation method is designed for properties with single use and active market transactions. It focuses on current tangible value but ignores intangible interests such as future development potential, long-term livelihood reliance and living attachment. For New Territories agricultural land and old multi-storey buildings with special attributes, a single market value standard cannot fully reflect the comprehensive losses of landowners. Restricted by precedents such as Nam Chun Investment Co Ltd v Director of Lands, the judicial system cannot break the existing valuation rules, which makes under-compensation a common problem.

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Second, the ex-gratia allowance system is imperfect and lacks standardization and transparency. As shown in the research brief of the Legislative Council Research Office, the classification, calculation basis and dynamic adjustment mechanism of various allowances are not clearly defined. The tiered allowance framework and pricing rule adjustments are formulated solely by government departments, with a lack of regular public consultation and external oversight mechanisms. The tiered standards for agricultural land and the relocation allowances for old buildings fail to keep pace with social and economic changes. When supplementary allowances cannot remedy the defects of statutory compensation, disputes between landowners and the government will inevitably intensify.

4. Legal suggestions for optimizing Hong Kong's land resumption compensation

4.1. Optimization of land resumption compensation standards

A single open market value principle is no longer applicable to special land types, so it is necessary to establish a differentiated and diversified valuation system. For New Territories agricultural land, appropriately incorporate reasonable potential development value within the scope of planning into the valuation reference factors on the premise of clear planning scope, and change the valuation mode that only focuses on the current agricultural use value. For old multi-storey buildings, formulate targeted valuation rules for shared areas and building depreciation, clarify the division standard of compensation for public parts, and refine the depreciation calculation rules according to the actual maintenance and use of buildings.

In addition, expand the connotation of compensation, and Non-market interests such as farmers' long-term livelihood losses and the residential dependency of elderly residents shall be offset by special allowances, rather than directly incorporated into the market value assessment of properties, so as to make the compensation amount truly match the comprehensive losses of landowners.

4.2. Perfection of the judicial review mechanism

Formulate unified judicial review guidelines for land resumption compensation disputes, clearly define the division between judicial review and administrative discretion. Clarify the review standards for compensation rationality, unify the judgment criteria for fair compensation in similar cases, and solve the problem of inconsistent adjudication results.

For special cases involving agricultural land and old buildings, appropriately expand the scope of judicial review where necessary, allow judicial organs to review the rationality of compensation rules themselves within a certain range, and strengthen the judicial restraint on unreasonable administrative normative documents.

Set up a fast-track trial mechanism for simple compensation disputes. For cases with clear facts and single disputes, simplify the evidence and hearing procedures, shorten the trial cycle, and reduce the time cost of rights protection. For complex cases involving a large number of owners and huge amounts of compensation, arrange professional judges and surveyors to form a collegial panel to ensure the professionalism of adjudication.

At the same time, strengthen the professional capacity building of the judges and staff of the Lands Tribunal, organize regular training on land valuation and relevant laws, and improve the ability to handle special land resumption disputes. Reduce the litigation threshold for vulnerable groups, and provide appropriate legal aid to solve the problem of high litigation costs [10].

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5. Conclusion

After years of evolution, Hong Kong's Land Resumption Ordinance and its supporting compensation and judicial review framework form a full institutional regime. Its compensation formula for open market value plus ex-gratia allowances, alongside Lands Tribunal-led judicial reviews, has long regulated land resumption and settled related disputes. Yet shifting urban development and land use patterns have laid bare major practical flaws in the regime.

On compensation benchmarks, reliance solely on open market value fails to cater to New Territories farmland and ageing multi-storey buildings, leaving their owners undercompensated unlike ordinary urban residential properties. Vague, infrequently adjusted and opaque ex-gratia allowances further fuel conflicts. For judicial review, blurred lines between judicial authority and administrative discretion, protracted, costly proceedings and inconsistent rulings mean court remedies cannot fix deep-rooted structural flaws. These issues escalate land resumption tensions and delay public infrastructure works.

Reforms should introduce multi-tiered valuation for special land parcels, standardize and streamline ex-gratia payments, clarify judicial review scopes and judgment criteria, and simplify lawsuits to speed up dispute resolution.

This study identifies systemic defects via statutory provisions, official materials and landmark cases. Its main limitation lies in narrow focus on New Territories agricultural land and aged multi-storey buildings, with limited analysis of other special land categories.

As Hong Kong presses ahead with urban renewal and public housing projects, land resumption will grow more complicated. Follow-up research may integrate big data and field surveys to evaluate revised policies, design long-term adjustable compensation benchmarks, and examine mediation and arbitration as alternative dispute resolution tools, perfecting Hong Kong's resumption regime to strike a lasting balance between public welfare and private property rights.

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