

# **DRAINAGE SERVICES DEPARTMENT**

## **TECHNICAL CIRCULAR NO. 7/96**

### **PROCEDURES IN DEALING WITH CLAIMS ARISING FROM ENFORCEMENT OF THE LAND DRAINAGE ORDINANCE**

#### **Introduction**

This Technical Circular sets out the procedures to be followed when compensation claims arise from application of the Land Drainage Ordinance Chapter 446 (LDO). It should be read in conjunction with DSD Technical Circular No 4/96 on implementation of the LDO.

2. The LDO creates a Drainage Authority (DA), who is the Director of Drainage Services (D of DS), with powers to administer and enforce the provisions of the LDO. On the other hand, it has provisions for the public to claim compensation for losses incurred as a result of works executed or things done by DA and authorized under the LDO.

#### **Compensation under the Land Drainage Ordinance**

3. Section 36 of the LDO provides for certain rights of compensation to affected persons under the LDO. The provisions are described in detail in Part I and Part II of the Schedule of the LDO. The matters for which compensation may be claimed under the LDO are summarised below -

- (a) resumption of private land which has been rendered incapable of reasonably beneficial use resulting from the DA's execution of any works authorized under the LDO;
- (b) physical or structural damage to any land or building, damage to crop or agricultural cultivation, or disturbance resulting from the execution of drainage works by DA under section 18;
- (c) physical or structural damage to any land or building, damage to crop or agricultural cultivation, or disturbance resulting from the execution of temporary works for drainage works by DA under section 19;
- (d) cost, loss or disturbance resulting from the removal of a legitimate structure under section 21;
- (e) physical or structural damage to any land or building, damage to crop or agricultural cultivation, or disturbance resulting from the requirement of entry for executing works by DA under section 22; or
- (f) physical or structural damage to any land or building, damage to crop or agricultural cultivation, or disturbance resulting from the requirement of entry for carrying out inspections by DA under section 23.

### General guidelines

4. For the purpose of evaluating any potential claims which may arise due to enforcement of the LDO, the following records should be prepared and kept by the Drainage Services Department (DSD) before and during execution and upon completion of any works authorized under the LDO. The assistance of the Agriculture and Fisheries Department (AFD) and District Lands Office (DLO) should be sought if any building, crop or agricultural cultivation is affected.

- (a) Land status of the affected land prior to the authorization of the works.
- (b) Photographs, video tapes, measurements and surveys capturing the conditions and details of the land, building, crop, agricultural cultivation, factory, farm, business and trade of any kind.
- (c) Daily site diaries and ad-hoc reports covering -
  - (i) date, details and causes of all damage; and
  - (ii) date, duration, details and causes of all disturbance arising from the works or inspections.

5. As far as possible, DSD should agree with the Contractor on the liability of all damage and disturbance arising from execution of the works and keep records accordingly. If in doubt, DSD should seek opinions of relevant Departments having expertise on the matter.

### Procedures in dealing with claims

6. Section 39 of the LDO stipulates the general procedures to be followed for compensation claims under section 36.

7. Claims should be served on DA within the period specified in column 5 of Part II of the Schedule of the LDO. In case the claim is served after the expiry date and the claimant has not applied to the Lands Tribunal for granting an extension of the period within which a claim can be served, the claimant should be advised to make such an application to the Lands Tribunal and give notice of such an application to DA in accordance with sections 38(2) and 38(3).

8. All claims for compensation shall be processed by the Chief Engineer/Land Drainage (CE/LD) or the Chief Engineer of the District Division (CE/Dist) of DSD as appropriate. Where necessary, the claimant shall be asked to furnish further particulars to support his claim as per section 39(2) of the LDO.

9. The basis on which compensation is to be assessed is set out in Part I and Part II of the Schedule of the LDO. When there is any doubt as to the DA's liability, advice of the Attorney General's Chambers (AGC) shall be sought.

10. CE/LD or CE/Dist shall submit a claim assessment report and a draft notice of the DA's determination to D of DS for consideration. Upon reaching a decision on the claim, the claimant shall be given a notice stating whether his claim is admitted; rejected or a specified part of the claim is admitted and the remainder rejected. If the claim is wholly or partly rejected, the notice must give the reasons for rejection.

11. For a claim that is wholly or partly admitted, the amount of compensation should as far as possible be reached by agreement with the claimant. When assessing the extent of damage/disturbance and the amount of compensation, DSD should seek advices from relevant Departments having expertise on the issue if necessary.

12. In case the claimant does not accept the DA's determination or valuation, CE/LD or CE/Dist should negotiate with the claimant to try to reach an agreement. If necessary, the relevant District Officer (DO) should be invited to act as a mediator. Where DO is not invited to attend the negotiation, a copy of the records of the points discussed should be forwarded to him for record purpose. If revisions of the DA's determination or valuation appears justifiable, CE/LD or CE/Dist should make appropriate recommendations to D of DS.

13. If the claim is not settled within a period of 7 months, CE/LD or CE/Dist should recommend to D of DS whether the claim should be referred to the Lands Tribunal. Normally, the claim should not be referred to the Lands Tribunal if there is a likelihood of settlement by agreement through negotiation in the foreseeable future.

14. When a claim or any part thereof is referred to the Lands Tribunal for jurisdiction pursuant to section 39(3) of the LDO, assistance of the Civil Litigation Unit of AGC shall be sought. The Secretary of Planning, Environment and Lands (SPEL) shall be informed of such referral.

15. All compensation (including any interest thereon) and all costs -

- (a) agreed to be paid to a claimant; or
- (b) awarded by the Lands Tribunal against the Crown,

shall be paid out of the general revenue within 3 months of the agreement or final award, unless there is a dispute as to the person entitled to such compensation. A recurrent sub-head shall be created by STA, DSD for such payments.

#### **Claims in connection with resumption of land**

16. When the land owner has applied to the Governor in Council (G-I-C) for resumption of land under section 37(1) of the LDO, DSD shall arrange for a joint site inspection with the owner and DLO to identify the extent of the affected area; to determine whether the affected land is incapable of reasonably beneficial use; and to ascertain whether the situation has originated from the works authorized under the LDO or any other causes. The following should be considered -

- (a) the existing state of the land including its physical state, size and shape;
- (b) any authorization of existing use of the land;
- (c) any surrounding authorized land uses and the general pattern of authorized land use in the area;
- (d) any authorized use of the land in conjunction with other contiguous land in the same ownership; and
- (e) the records kept by DSD as per paragraph 4.

17. A draft ExCo submission in respect of the application shall be prepared by DSD, with the assistance of DLO, for delivery to SPEL. A land resumption plan shall be prepared by DLO for inclusion in the ExCo paper.

18. When G-I-C orders to resume the land, a notice together with a list of persons appearing to have an interest in the relevant land shall be prepared by the Director of Lands (D of L) for SPEL's action under section 37(3) of the LDO.

19. As soon as practicable after the land has vested in The Financial Secretary Incorporated or reverted to the Crown under section 37(5) of the LDO, a list of the land resumed and a notice shall be prepared by D of L for SPEL's action under sections 37(7)(a) and 37(7)(b). DLO shall affix the notice in a prominent position on or near the land resumed as per section 37(7)(c).

20. All claims concerning resumption of land under section 37 of the LDO shall be referred to D of L for processing as if they were raised under the Crown Lands Resumption Ordinance. D of L shall continue to deal with any related dispute referred to the Lands Tribunal under section 39(3). D of L shall act as the DA's agent in undertaking the procedures stipulated in paragraphs 8 to 14.

21. Where compensation is paid for land resumption under the LDO, the claimant shall be required to surrender his documents of title to DA as a condition of payment being made; and where the documents of title relate also to land not resumed, they shall be returned to the claimant after the vesting or reversion has been noted in the register of the land kept in the Land Registry under section 37(7)(a) of the LDO.

**Claims in connection with damage to land, buildings, crops or agricultural cultivation**

22. On receipt of a claim, DSD shall copy all related correspondence to DLO. AFD should also be informed in case he is involved.

23. DSD shall arrange for a joint site inspection of the affected area with the claimants, DLO and the Contractor to ascertain whether the damage has originated from the works authorized under the LDO or any other causes such as the Contractor's fault, owner's liability or natural disaster. AFD shall be invited to attend the site inspection where there is damage to crops or agricultural cultivation.

24. During the inspection, the following shall be carried out -
- (a) DSD to take record photographs of the damage, define/record the boundary and extent of the damage;
  - (b) DLO to record lots number, details of the damage, and measure/prepare a plan of the land area involved; and
  - (c) AFD to record the types and quality of crops/agricultural cultivation damaged and the depth of silt deposited.

25. DLO shall define the damaged area according to the situation recorded at the inspection and estimate the costs in connection with any damage to land/buildings as prescribed in the LDO. AFD shall, based on the data provided by DLO, assess the unit values of crops/agricultural cultivation damaged. The unit rehabilitation cost for silt removal and soil reinstatement, if applicable, should also be made. DSD shall make use of the information provided by DLO and AFD to evaluate the amounts of compensation to be paid to the claimants.

26. Where compensation has to be re-assessed due to any change of circumstance, DSD shall arrange another site inspection following the procedures laid down in paragraphs 23 and 24. If there is any doubt as to the DA's liability, AGC should be consulted. The new information shall be used to reach another agreement with the claimant.

#### **Claims in connection with disturbance**

27. A claim in connection with disturbance normally involves dispossession of land or interruption of or interference with a trade or business. Such dispossession, interruption or interference is usually of temporary nature, albeit occasionally of permanent nature.

28. Site diaries, progress photographs and records of the works shall be used to find out the nature, extent and duration of the alleged disturbance. Where the claimant is entitled to disturbance compensation under the LDO, an appropriate amount shall be fixed. Advice should be sought from relevant Departments having knowledge of the effects of alleged disturbance.

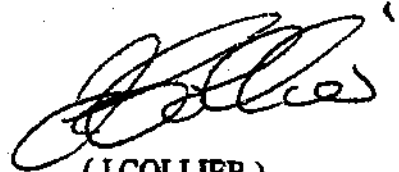
#### **Claims in connection with removal of structure**

29. Before ordering removal of any structure under section 21 of the LDO, DLO, the District Office, Planning Department, Buildings Department and Housing Department (HD) shall be consulted as to whether the relevant structure was erected and maintained without contravention of any Ordinance, Crown lease or other instrument. Detailed records of the structure in the form of photographs, video tapes and measurements shall be prepared. If there is any doubt as to the legitimacy of the structure, AGC and the Legal Advisory and Conveyancing Office of the Lands Department should be consulted.

30. Evidence is needed to justify any claim for the cost incurred in removing a legitimate structure. DSD shall determine a reasonable compensation amount based on the evidence submitted by the claimant and the relevant records kept as per paragraph 29. If necessary other Departments having knowledge of such structure should be consulted.

31. Where the claim also includes loss resulting from the removal of a legitimate structure under section 21 of the LDO, DSD shall request DLO and the Squatter Control Unit of HD to prepare a list of persons owning a share or interest in the structure removed. The value of the structure at the time of removal shall be assessed.

32. The assessments made under paragraphs 30 and 31 shall be the basis for reaching agreement with the claimants.



( J COLLIER )

Director of Drainage Services

Drainage Services Department  
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