

FORESHORE AND SEA-BED (RECLAMATIONS) ORDINANCE
- CHAPTER 127

LONG TITLE

Long title VerDate:30/06/1997

To provide for the publication of proposals in respect of reclamations over and upon any foreshore and sea-bed; to make provision in respect of objections to the proposals, the payment of compensation and connected matters; and to repeal the Public Reclamations and Works Ordinance (Cap 113, 1984 Ed.) and the Foreshores and Sea Bed Ordinance (Cap 127, 1984 Ed.).
(Enacted 1985)

[9 August 1985]

(Originally 63 of 1985)

SECT 1

Short title VerDate:30/06/1997

This Ordinance may be cited as the Foreshore and Sea-bed (Reclamations) Ordinance.
(Enacted 1985)

SECT 2

Interpretation VerDate:12/04/2001

In this Ordinance, unless the context otherwise requires-

"Director" means the Director of Lands; (Amended L.N. 94 of 1986; L.N. 291 of 1993)

"foreshore and sea-bed" means the shore and bed of the sea and of any tidal water within Hong Kong, below the line of the high water mark;
and

"non-working day" means a day that is not a working day; (Added 6 of 2001 s. 3)

"note-issuing bank", for the purposes of sections 14 and 15, has the meaning assigned to it by section 2 of the Legal Tender Notes Issue Ordinance (Cap 65); (Added 6 of 2001 s. 3)

"reclamation" includes any work over and upon any foreshore and sea-bed;

"working day", for the purposes of sections 14 and 15, 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. 3)
(Enacted 1985)

SECT 3

Plans relating to reclamations VerDate:30/06/1997

Where a reclamation is proposed in relation to any foreshore and sea-bed, the Director shall prepare a plan delineating and describing the proposed reclamation and the foreshore and sea-bed intended to be affected thereby.

(Enacted 1985)

SECT 4

Availability for public inspection VerDate:30/06/1997

A copy of a plan prepared under section 3 shall, upon the publication of a notice under section 5, be available for inspection by the public free of charge at such offices of the Government as the Director may direct, during the hours when those offices are open to the public.

(Enacted 1985)

SECT 5

Publication VerDate:30/06/1997

(1) Upon completion of the preparation of a plan under section 3, the Director shall cause notice of the plan to be published-

- (a) in 2 issues of the Gazette in both the Chinese and English languages;
- (b) in 2 issues of a Chinese language newspaper;
- (c) in 2 issues of an English language newspaper; and

(d) by affixing copies in the Chinese and English languages in such prominent positions within or near the foreshore and sea-bed affected by the notice, as may be appropriate for the purposes of drawing the notice to the attention of the public.

(2) The notice referred to in subsection (1) shall-

(a) describe the foreshore and sea-bed affected and describe the manner in which it will be affected by the proposed reclamation;

(b) either be published together with a copy of the plan to which it relates, or state where and at what times a copy of the plan may be inspected; and

(c) state that any person who considers that he has an interest, right or easement in or over the foreshore and sea-bed so described, may object to the proposal under section 6.

(3) A notice published under this section shall be deemed to be notice to every person who has an interest, right or easement in or over the foreshore and sea-bed described therein.

(Enacted 1985)

SECT 6

Objections VerDate:30/06/1997

- (1) Any person who considers that he has an interest, right or easement in or over the foreshore and sea-bed described in a notice published under section 5 may, by notice in writing delivered to the Director before the expiration of such time being not less than 2 months as shall be specified in the notice, object to the proposed reclamation.
- (2) A notice of objection shall describe the interest, right or easement of the objector and the manner in which he alleges he will be affected.
- (3) An objection delivered under subsection (1) may be amended or withdrawn in writing at any time before the proposed reclamation is considered under section 7 or 8; and if withdrawn, shall be treated for the purposes of those sections as not having been made.
(Enacted 1985)

SECT 7

Authorization procedure if no objection made VerDate:01/07/1997

Adaptation amendments retroactively made - see 62 of 2000 s. 3

When the time for the making of objections under section 6 in respect of a proposed reclamation has expired and no objection has been delivered to the Director, or if any objections made have all been withdrawn, the Chief Executive may authorize the proposed reclamation.

(Enacted 1985. Amended 62 of 2000 s. 3)

SECT 8

Authorization procedure if objection made VerDate:03/04/1998

Adaptation amendments retroactively made - see 62 of 2000 s. 3

(1) Where at the expiry of the time for the making of objections under section 6 in respect of a proposed reclamation any objection has been delivered under that section, the Director shall, within a period of 9 months after the expiry of that time, or within such further period of not more than 6 months after the expiry of that period as may, upon the application of the Director, be allowed by the Chief Executive having regard to the circumstances of the case, submit to the Chief Executive in Council for consideration the proposed reclamation and any such objection, and the Chief Executive in Council shall consider the proposed reclamation and every objection and may-

(a) decline to authorize the reclamation;

(b) authorize the reclamation in part only and defer for further consideration at such future time as the Chief Executive in Council shall specify, any objection which relates to the remaining part of the reclamation not so authorized; or

(c) authorize the whole of the reclamation. (Amended 17 of 1998 s.

2)

(2) Where a reclamation is authorized under subsection (1)(b) or

(c), the plan relating to such reclamation shall be subject to such modifications and conditions as the Chief Executive in Council thinks fit.

(Amended 62 of 2000 s. 3)
(Enacted 1985)

SECT 9

Notice of authorization and invitation to claim for compensation VerDate:01/07/1997

Adaptation amendments retroactively made - see 62 of 2000 s. 3

(1) Where a reclamation is authorized under section 7, 8(1)(b) or 8(1)(c) notice thereof shall, at any time before the commencement of the reclamation, be-

(a) served by the Director on every person who has made an objection under section 6;

(b) published in one issue of the Gazette in both the Chinese and English languages; and

(c) made available for inspection by the public free of charge at such offices of the Government as the Director may direct, during the hours when those offices are open to the public.

(2) The notice referred to in subsection (1) shall-

(a) describe the foreshore and sea-bed affected thereby;

(b) be served by the Director and published either with a copy of the plan to which it relates prepared under section 3, or if modified by the Chief Executive in Council, with a copy of the plan as so modified, or state where and at what times a copy of any such plan may be inspected;
(Amended 62 of 2000 s. 3)

(c) state that any person who considers that he has an interest, right or easement in or over such foreshore and sea-bed that will be injuriously affected by the reclamation may deliver a written claim for compensation under section 12 for the injurious affection to the Director, before the expiry of such time being not less than 1 year from the date when it is published in the Gazette, as shall be specified in the notice.

(3) A notice served by the Director and published under this section shall be deemed to be notice to every person who has an interest, right or easement in or over the foreshore and sea-bed so affected.
(Enacted 1985)

SECT 10

Extinguishment of rights upon publication of notice of authorization VerDate:01/07/1997

Adaptation amendments retroactively made - see 62 of 2000 s. 3

(1) Subject to section 17, upon the publication of a notice of authorization in the Gazette under section 9(1)(b)-

(a) all public and private rights in relation to the foreshore and sea-bed affected thereby shall be extinguished and cease to exist; and

(b) no person shall have any right against the Government or any other person to compel or restrain anything authorized under section 7, 8(1)(b) or 8(1)(c). (Amended 62 of 2000 s. 3)

(2) No action shall be brought or continued in respect of the extinguishment under subsection (1), in whole or in part, of any public or private right.
(Enacted 1985)

SECT 11

No claim for money except under this Ordinance VerDate:01/07/1997

Adaptation amendments retroactively made - see 62 of 2000 s. 3

No person shall have any right against the Government or any other person to claim any money in respect of anything authorized under section 7, 8(1)(b) or 8(1)(c) except to the extent of the entitlement to claim compensation under section 12.

(Enacted 1985. Amended 62 of 2000 s. 3)

SECT 12

Claims for compensation VerDate:30/06/1997

(1) Any person who claims that his interest, right or easement in or over such foreshore and sea-bed will be injuriously affected by the reclamation may deliver to the Director a written claim stating the sum of money which he is willing to accept in full and final settlement of his claim together with such particulars as he may possess to substantiate the claim and shall furnish to the Director such accounts, documents and further particulars as the Director may request him to furnish, in support of the claim.

(2) A claim under subsection (1) shall be made before the expiry of the time specified in the notice served by the Director and published under section 9(1) in respect of the reclamation.

(3) Where any costs or remuneration are reasonably incurred or paid by a claimant in employing persons to act in a professional capacity in connexion with a claim under subsection (1), such claim may include a claim for such costs or remuneration.

(Enacted 1985)

SECT 13

Settlement of claim VerDate:30/06/1997

(1) In relation to every reclamation the Director shall before the expiry of 6 months from the date when the written claim is delivered to him or, if he has requested further particulars under section 12(1), before the expiry of 6 months from the date when they are furnished under that section, consider whether or not the claimant is a person having an interest, right or easement in or over any foreshore and sea-bed that will be injuriously affected by the reclamation and shall serve notice on the claimant in writing stating that he-

(a) admits the whole claim; or

(b) rejects the whole claim; or

(c) admits a specified part and rejects the remainder,

and shall where he rejects the whole claim, or admits a specified part and rejects the remainder, as the case may be, give an adequate statement of his reasons for the rejection.

(2) If the Director admits the whole claim, or admits a specified part and rejects the remainder, he may agree with the claimant as to the amount of compensation to be paid to the claimant in full and final settlement of the whole claim or a specified part, as the case may be.

(3) Where-

(a) the Director rejects the claim in whole or in part; or

(b) after the expiry of 7 months from the date when the written claim is delivered to the Director or, if he has requested further particulars under section 12(1), after the expiry of 7 months from the date when they are furnished under that section, the Director and the claimant do not agree as to the amount of compensation,

the Director or the claimant may refer the claim to the Lands Tribunal to determine in accordance with this Ordinance and the Lands Tribunal Ordinance (Cap 17), the amount of compensation to be paid.

(4) In determining a claim referred to it under subsection (3) in respect of a reclamation, the Lands Tribunal shall-

(a) hear any evidence which the Director or the claimant may wish to tender and, if so requested, hear counsel or a solicitor on behalf of the party making the request; and

(b) determine the amount of compensation payable by the Government to the claimant in respect of any interest, right or easement of the claimant in or over any foreshore or sea-bed injuriously affected by the reclamation in full and final settlement of the claim.

(5) Notice of a reference under subsection (3) shall be served by the Director or the claimant, as the case may be, on the other party to the proceedings, before the expiry of 7 days from the date when it is referred.

(6) A claim shall not be referred to the Lands Tribunal under subsection (3), unless it is referred before the expiry of 1 year from the date of the notice served under subsection (1) or within such longer period as the Lands Tribunal may in any case allow, but the total period for the purposes of this subsection shall not exceed 6 years from that date.(Enacted 1985)

SECT 14

Provisional payment pending determination of compensation VerDate:12/04/2001

(1) The Director may, pending the determination by the Lands Tribunal of the compensation payable 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 of publication of the notice of authorization in the Gazette under section 9(1)(b) relating to the reclamation in question, until the date on which the payment is made, calculated on a daily basis according to subsection (1A). (Amended 6 of 2001 s. 3)

(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. 3)

(2) Any payment made by the Director under subsection (1) shall be without prejudice to the claim for compensation under this Ordinance or the submission under this Ordinance of the matter to the Lands Tribunal for determination of the amount of compensation to be paid, or the determination thereof by it under this Ordinance but the amount of compensation payable by virtue of such determination shall be reduced by the amount of such payment.

(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.

(4) Where the amount of any payment made by the Director under subsection (1) exceeds the amount of the compensation payable by virtue of a determination by the Lands Tribunal, the amount of the excess shall be recoverable by the Director as a civil debt.

(Enacted 1985)

Notes:

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.

SECT 15

Payment of compensation and interest VerDate:12/04/2001

(1) All sums of money payable as compensation under this Ordinance together with interest thereon and all costs and remuneration awarded against the Government, shall be paid out of the general revenue.

(Amended 62 of 2000 s. 3)

(2) At any time after an agreement under section 13(2) or a determination by the Lands Tribunal of the amount of compensation payable under this Ordinance, the Director may by notice published in the Gazette require the person entitled to the compensation to collect it by the date and at the place specified in the notice.

(3) Subject to section 14(3), any sum of money payable as compensation by virtue of an agreement under section 13(2) or a determination of the Lands Tribunal under this Ordinance shall bear interest from the date of publication of the notice of authorization in the Gazette under section 9(1)(b) relating to the reclamation in question, until the date specified in the notice published under subsection (2) of this section but no interest shall be payable in respect of the amount of any costs or remuneration.

(4) Subject to subsection (4A), 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. 3)

(4A) The rate of interest fixed under subsection (4)-

(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. 3)

(5) If no claim is made for the payment out of the compensation money at the place and by the date specified in the notice published under subsection (2), the Director shall pay such money to the Director of Accounting Services.

(6) The money paid to the Director of Accounting Services under subsection (5) or any part of it may, before the expiry of 5 years from the date specified in the notice published under subsection (2), be claimed by the person entitled thereto and upon such claim being substantiated shall be paid to the person so entitled.

(7) On the expiry of the period of 5 years referred to in subsection (6) the money or such part of it as remains unpaid shall be transferred to the general revenue.
(Enacted 1985)

Notes:

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.

SECT 16

Payment when person entitled cannot be found, etc. VerDate:30/06/1997

When the person entitled to compensation is absent from Hong Kong or cannot be found or, before the expiry of 6 months from the date when the amount of compensation is agreed under section 13(2) or determined by the Lands Tribunal under this Ordinance, makes no claim to the same, or is in the opinion of the Director unable to give an effectual discharge for the same, the Director may direct that payment of the compensation shall be made to such other person on behalf of the person entitled as he shall think proper, subject to such conditions as he thinks fit, and the receipt of such other person shall be a valid and effectual discharge for the same in the same manner as if payment had been made to the person entitled.
(Enacted 1985)

SECT 17

Saving of rights of Government VerDate:01/07/1997

Adaptation amendments retroactively made - see 29 of 1998 s. 105

Nothing in this Ordinance shall be deemed to be in derogation of any of the powers or rights of the Government in respect of the foreshore and sea-bed or of the waters of Hong Kong.

(Enacted 1985. Amended 29 of 1998 s. 105)

SECT 18

Service of notices by Director VerDate:30/06/1997

Any notice required to be served by the Director upon any person under this Ordinance may be served by serving a copy personally or by registered post addressed to the last known place of business or residence of the person to be served.

(Enacted 1985)

SECT 19

(Omitted as spent) VerDate:30/06/1997

(Omitted as spent)

(Enacted 1985)

SECT 20

Transitional VerDate:03/04/1998

(1) Notwithstanding the repeal of the Public Reclamations and Works Ordinance (Cap 113, 1984 Ed.), that Ordinance shall continue to apply to any reclamation or proposed reclamation or other works of a public nature in respect of which a notice had been published under section 2 of that Ordinance before the commencement of this Ordinance.

(2) Notwithstanding the repeal of the Foreshores and Sea Bed Ordinance (Cap 127, 1984 Ed.), that Ordinance shall continue to apply to any Crown lease in respect of which a notice had been published under section 4 of that Ordinance before the commencement of this Ordinance.

(3) Where immediately before the commencement of the Foreshore and Sea-bed (Reclamations) (Amendment) Ordinance 1998 (17 of 1998), a notice had been published under section 5 in respect of a proposed reclamation, the period of 9 months as specified in section 8(1) shall be calculated as from-

(a) the commencement of that Ordinance; or

(b) the expiry of the time for the making of objections under section 6, whichever is the later. (Added 17 of 1998 s. 3)

(Enacted 1985)