

ITEM FOR FINANCE COMMITTEE

HEAD 154 – GOVERNMENT SECRETARIAT : ENVIRONMENT AND FOOD BUREAU

Subhead 149 General departmental expenses

Members are invited to approve the proposed remuneration package for the Chairman of the Environmental Impact Assessment Appeal Board, appointed to hear the appeal case on the Sheung Shui to Lok Ma Chau Spur Line project.

PROBLEM

We need to remunerate the Chairman appointed to chair the Environmental Impact Assessment (EIA) Appeal Board (the Appeal Board) to hear the appeal lodged by the Kowloon-Canton Railway Corporation (KCRC) against the decision of the Director of Environmental Protection (DEP) to reject the EIA report submitted for the Sheung Shui to Lok Ma Chau Spur Line (Spur Line) and refuse to issue an environmental permit.

PROPOSAL

2. We propose that the remuneration for the Chairman appointed to chair the Appeal Board on the Spur Line case should consist of an honorarium for the time spent on the case, at a daily rate of \$7,025¹, and the fee of \$8,870 for writing the decision. Since the person appointed to chair the Appeal Board is not resident in Hong Kong, we will also provide a return air fare (estimated at \$48,000) and an estimated allowance of \$1,600 a night for hotel accommodation.

/JUSTIFICATION

¹ This is comparable to the pay he would receive were he sitting as a Judge in the Court of Final Appeal. It covers time spent on the case as well as in hearings.

JUSTIFICATION

3. The EIA Ordinance (Cap. 499) provides that all project proponents of designated projects² must submit an EIA report to the DEP to assess the potential impact of a proposed project on the environment during its construction and operation, and to propose mitigation measures to avoid, reduce or remedy the adverse impact. Work cannot start until and unless the DEP has approved the EIA report and has issued the environmental permit.

4. Under the EIA Ordinance, aggrieved project proponents can appeal to an EIA Appeal Board, which should comprise at least three members from the EIA Appeal Board panel (the Appeal Board panel), one of whom must be either the Chairman or Deputy Chairman of the Appeal Board panel. The Chairman and Deputy Chairman of the Appeal Board panel must be persons qualified for appointment as a District Court Judge. One of them would normally serve as Chairman of the Appeal Board set up to determine an appeal case. The work of the Chairman of the Appeal Board includes preparation before the hearing, chairing the hearing and writing the decision after the hearing.

5. Upon receipt of the KCRC's notice of appeal against DEP's decision to reject the EIA report and not to issue an environmental permit for the Spur Line project, the Chairman of the Appeal Board panel declared that he had expressed a personal opinion on this subject before the appeal had been lodged, and that he disqualified himself from sitting as the Chairman of the Appeal Board on this appeal case. The Deputy Chairman of the Appeal Board panel subsequently also disengaged himself.

6. Under the EIA Ordinance, if both the Chairman and the Deputy Chairman of the Appeal Board panel are precluded from exercising their functions, the Chief Executive (CE) may appoint a person qualified for appointment as a District Court Judge to act as Chairman and to exercise and perform all the functions of the Chairman during the period of his appointment. In identifying candidates for such appointment by the CE, we have sought the advice of the Judiciary. Having regard to its present heavy workload, the Judiciary advised that it would not be in a position to release a serving judge at the level of District Court Judge or above.

7. Given the above, and having regard to the weight of the case, a non-permanent Hong Kong Judge of the Court of Final Appeal (CFA) was considered

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² Designated projects are projects listed in Schedules 2 and 3 of the EIA Ordinance that are required to undergo an environmental impact assessment process. These projects could only start work after having obtained an environmental permit from the DEP.

an appropriate choice and one particular CFA Judge was recommended on the basis of his experience and availability. The Judiciary is content with the proposal. Accordingly, the CE has exercised his authority under the EIA Ordinance and appointed this CFA Judge to chair the Appeal Board to handle the Spur Line case. In announcing the appointment we have said that we would consult the Legislative Council Panel on Environmental Affairs on the remuneration package for the Chairman of this Appeal Board and seek approval from the Finance Committee (FC).

8. Because the Chairman appointed to hear the Spur Line case is not resident in Hong Kong, we propose that he should be provided with the proposed return air fare and allowance for hotel accommodation. As for honorarium, the proposed daily rate of \$7,025 is based on the pay a CFA Judge receives, which covers time spent in hearings as well as on the case. The proposed fee of \$8,870 for writing the case is the same as in other remuneration packages previously approved by Members for the other environment-related appeal boards (please see paragraph 12 below).

FINANCIAL IMPLICATIONS

9. The exact financial implications of the proposal depends on the time taken to complete the case. It is difficult, before the Chairman has been able to assess the information provided by the appellant and the DEP, to give a firm estimate as to the time that the appeal hearing may take. For illustration, on the working assumption that the case takes up to two months, the financial implications for implementing the proposal are -

	Estimated cost
	\$
(a) Two-months' pay (\$7,025 x 60 days)	421,500
(b) Fee for writing the decision	8,870
(c) Hotel accommodation (\$1,600 x 60 days)	96,000
(d) Air fare (business class UK -HK- UK)	48,000
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	574,370
	Say 580,000

The actual amount of the remuneration may exceed or fall below the figure suggested above, depending on the actual duration of the appeal proceedings.

10. The Environment and Food Bureau has sufficient provision in the 2000-01 Estimates to meet the cost of the proposal.

/BACKGROUND

BACKGROUND INFORMATION

11. On 5 March 1993, Members agreed vide FCR(92-93)148 that the principles adopted since 1980 for remunerating non-official members serving on all boards and committees set up by the Government should continue to apply. The general principle was that such service is voluntary and normally un-remunerated. Where remuneration is considered appropriate having regard to the merits of an individual case, it should normally be in respect of payment of expenses and/or for compensation for earnings forgone.

12. Members approved on 6 March 1992 vide FCR(91-92)169 the payment of an honorarium³ to the Chairman of the three appeal boards appointed under the Air Pollution Control Ordinance, the Water Pollution Control Ordinance and the Noise Control Ordinance. Vide FCR(94-95)45 and FCR(95-96)63, Members approved on 8 July 1994 and 27 October 1995 the payment of an honorarium³ to the Chairman of the appeal board appointed under the Waste Disposal Ordinance and the Dumping at Sea Ordinance respectively.

13. We issued a press release on 15 December 2000 announcing the appointment of the Chairman of the EIA Appeal Board by the CE. We will consult the Legislative Council Panel on Environmental Affairs on the proposed remuneration for the Chairman on 2 January 2001.

14. The term of office of the current EIA Appeal Board panel will expire on 31 March 2001. The Environment and Food Bureau is now conducting a review of the membership of the EIA Appeal Board panel and the remuneration package for the Chairman in the light of the experience gained in the Spur Line case. We will revert separately to FC, if necessary, on the general remuneration package for the Chairman of the EIA Appeal Board panel. The Spur Line project is the only appeal case being handled by the EIA Appeal Board panel at the moment. We have not received any other appeal cases under the EIA Ordinance.

Environment and Food Bureau
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³ The Chairman of the other environmental appeal boards is a person qualified to act as a District Court Judge. The remuneration package comprises an annual retainer of \$86,520 (since the person is not appointed just for a particular case but is expected to be available for any case that may come up), a fee of \$4,440 for each sitting of an appeal board hearing, and a fee of \$8,870 for writing a decision.