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**Notes on the Special Briefing for Finance Committee Members
on Friday, 1 February 2002, at 3:05 pm
in the Chamber of the Legislative Council Building**

Members present:

Dr Hon Philip WONG Yu-hong, Chairman of the Finance Committee (Convenor)
Hon NG Leung-sing, JP, Deputy Chairman of the Finance Committee
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Eric LI Ka-cheung, JP
Hon Fred LI Wah-ming, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-yee, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Yuen-han, JP
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon LAU Wong-fat, GBS, JP
Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon CHOY So-yuk

Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Hon Frederick FUNG Kin-kee
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon MA Fung-kwok

Public officers attending:

Miss Denise YUE, GBS, JP	Secretary for the Treasury
Mr Stanley YING, JP	Deputy Secretary for the Treasury
Mr K K LAM	Principal Executive Officer (General), Finance Bureau
Mr Gary YEUNG	Principal Assistant Secretary for Planning and Lands
Mr A K PATON, JP	Assistant Director of Lands
Mr Benson MAK	Principal Land Executive, Lands Department
Mrs Ingrid YEUNG	Principal Assistant Secretary for the Environment and Food
Mr K K LIU	Deputy Director of Agriculture, Fisheries and Conservation
Dr S F LEUNG	Senior Fisheries Officer, Agriculture, Fisheries and Conservation Department
Ms Joey LAM	Principal Assistant Secretary for Housing
Mr K S LEE	Chief Housing Manager, Housing Department
Miss Janice TSE	Principal Assistant Secretary for the Treasury

Staff in attendance:

Ms Pauline NG	Assistant Secretary General 1
Miss Polly YEUNG	Chief Assistant Secretary (1)3
Miss Yvonne YU	Senior Assistant Secretary (1)4

The Convenor informed Members that the briefing was held in response to members' request at the Finance Committee (FC) meeting on 8 June 2001.

2. At the Convenor's invitation, the Principal Assistant Secretary for Planning and Lands (PAS(PL)) briefed Members on the information note on "Ex-gratia Allowances (EGAs) relating to Land Resumption, Clearance and Marine Works in Hong Kong Waters" (LC Paper No. FC34/01-02) and provided the following supplementary information in respect of the arrangements concerned:

- (a) EGA, which was mainly a non statutory payment made on an administrative basis to different affected persons having regard to different circumstances. It aimed at providing assistance to persons affected by land resumption, clearance and public works. A few EGAs served as alternative payment for statutory claims for the affected legal land owners or occupiers to save them time and efforts in making statutory claims.
- (b) The Planning and Lands Bureau, the Environment and Food Bureau and the Housing Bureau, and the respective departments under their purview, namely the Lands Department (Lands D), the Agriculture, Fisheries and Conservation Department (AFCD) and the Housing Department (HD), were responsible for formulating and implementing policies relating to EGA. In general, EGA could be classified into the following five categories:
 - (i) EGAs relating to resumption of private land;
 - (ii) EGAs relating to resumption of domestic, commercial and industrial properties;
 - (iii) EGAs payable to primary producers affected by resumption and clearance or marine works;
 - (iv) EGAs relating to clearance of squatter/cottage areas; and
 - (v) EGA relating to clearance of graves, Kam Taps and shrines in the New Territories.
- (c) Other than approving the target recipients, eligibility criteria and calculation basis for each type of EGA, FC also authorized the Administration to review and revise the individual rates of compensation for the components within each EGA formula.

3. The Convenor questioned the co-existence of EGAs and statutory compensation. In response, PAS(PL) explained that among the persons affected by clearance and resumption, those who were not legal land owners or occupiers might not be eligible for statutory compensation. With the provision of EGAs, the Administration could offer some financial assistance to assist persons affected by clearances to relocate to other areas having regard to individual circumstances. On the other hand, if the affected persons were land owners or legal occupiers, they were entitled to claim for statutory compensation. Under some circumstances, the

Administration would offer EGAs to the affected land owners or occupiers as a more speedy alternative to statutory compensation.

4. Miss CHAN Yuen-han was concerned whether there was sufficient time for Members to complete deliberation on the subject at the briefing. In response, the Convenor advised that the briefing was arranged at FC members' request made in June last year. As he anticipated that the preceding FC meeting starting at 2:30 pm could be concluded within an hour, he decided to hold the briefing immediately after the FC meeting to make the best use of time. However, the Convenor also agreed that if discussion could not be completed at the briefing, he might consider fixing another date to continue the discussion.

Domestic removal allowance

5. Citing the clearance of squatter areas as an example, Miss CHAN Yuen-han pointed out that there was normally a time lapse between the announcement of clearance and its implementation. Given that the needs for domestic removal allowance (DRA) would change with circumstances, she enquired whether the Administration would improve the arrangements in the light of operational experience. The Convenor considered that the question involved policy issues and should be discussed at the Housing Panel in further detail. In this connection, the Principal Assistant Secretary for Housing (PAS(H)) explained that the formula for calculating DRA was approved by FC of the Legislative Council in 1988. The main purpose of DRA was to assist affected occupiers with removal. While the coverage of the allowance basically remained unchanged, the Administration had adjusted the rates annually in the light of price movements.

6. Mr Fred LI considered that DRA failed to meet actual needs. In response, the Chief Housing Manager, Housing Department (CHM(HD)) pointed out that this type of EGA was payable to cover the costs of removing and installing telephone lines, basic fitting-out and domestic removal. In determining the rates concerned, the Administration had made reference to the charges of local fixed telecommunications network services operators and 10 removal companies. On fitting-out costs, they were based on the costs of basic and general fitting-out works of public housing units. Annual rate adjustments would be made with reference to consumer price indices. He supplemented that in calculating DRA, the Administration would also take into account the costs of removing and installing electric meters and water meters.

Zonal compensation for private land in the New Territories

7. Mr LAU Wong-fat advised that the ex-gratia zonal compensation system for resumption of land in the New Territories (NT), which was first adopted by the Administration in 1978, had been in operation for over 20 years. He pointed out that the zonal compensation system was established because planned developments in NT were mostly within New Town Development Areas (NTDA). The compensation rates of different zones corresponded to their proximity to

NTDA as the central point. The farther the distance, the lower the rates. Nevertheless, in recent years, the planned development of NT had become very similar to that of Hong Kong Island and Kowloon. The inclusion of NT into the scope of the Town Planning Ordinance (Cap. 131) in 1991 rendered the original planning concept obsolete. In addition, under Article 105 of the Basic Law, the Hong Kong Special Administrative Region should, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. Such compensation should correspond to the real value of the property concerned at the time and should be freely convertible and paid without undue delay. In view of this, Mr LAU considered the existing zonal compensation system out-dated and it was necessary to conduct a review to avoid substantial litigations arising from the claims.

8. PAS(PL) responded that the ex-gratia zonal compensation system for resumption of land in NT simply provided an alternative compensation arrangement for the affected land owners. Those who were not satisfied with the ex-gratia zonal compensation offered by the Administration were entitled to claim statutory compensation.

9. Echoing Mr LAU Wong-fat's views, Mr TAM Yiu-ching opined that the ex-gratia zonal compensation system had become obsolete and it was high time to consider whether a review was warranted. He pointed out that while the affected persons could make statutory claims, complicated legal proceedings were usually involved. During his meetings with NT residents, he was aware that they often failed to understand the Administration's rationale in determining the rates of ex-gratia compensation. For example, they did not understand the reasons given by the Administration for offering different compensation rates for two pieces of adjoining land.

10. In response, the Assistant Director of Lands (AD(L)) advised that in determining the compensation rates, the Administration would take into account the existing and potential use of the land, its location and proximity to NTDA. The main purpose of the zonal compensation system was to divide NT into four compensation zones with different compensation rates (of which Zone A had the highest compensation rate), thus enabling the affected persons to receive EGA expeditiously through this simple compensation mechanism. AD(L) supplemented that the zonal compensation system had operated effectively for many years. The rates concerned would be reviewed twice a year to reflect changing circumstances. He reiterated that if the affected persons were not satisfied with the zoning of their land to which a lower compensation would apply, or had found the compensation inadequate, they could submit statutory claims.

11. As regards the offer of different compensation rates to two pieces of adjoining land, AD(L) advised that while Zone A was the NTDA, the land outside NTDA was divided into Zones B, C and D. Nevertheless, he pointed out that a line must be drawn somewhere in a zoning exercise.

12. Dr TANG Siu-tong enquired whether Zone A rate would be offered if NT land was resumed for infrastructural projects with territory-wide benefit, such as Route 3, Route 10, Western Corridor or Deep Bay Link. AD(L) responded that a Government committee would consider and decide on the appropriate zones for infrastructural projects. The committee was chaired by the Secretary for Planning and Lands and its members included representatives of relevant bureaux and departments such as the Director of Highways, the Director of Planning, the Director of Lands and the Director of Territory Development. In accordance with the established criteria, the committee would classify NTDA and those areas affected by essential projects with territory-wide significance as Zone A. However, the proposed infrastructural facilities might not necessarily increase the value of each and every piece of land in the vicinity. He assured Members that the Administration would take all relevant factors into consideration and conduct regular reviews.

EGA for village removals in the New Territories

13. In response to Dr TANG Siu-tong's enquiry about the EGA for village removals in NT, PAS(PL) advised that this type of EGA would be offered when village houses owned by indigenous villagers in NT were resumed. Eligible villagers might, where available, choose to accept either a government-built resite house, a building site plus a building allowance, or a cash payment (house allowance). If an indigenous villager chose a government-built resite house, he would no longer be eligible to apply for building a small house under the small house policy. However, his descendants could still identify suitable private sites and apply for permission to build small houses.

Application of Comprehensive Means Tests to persons affected by resumption and clearance

14. Mr TAM Yiu-chung pointed out that while the Government's resumption and clearance operations often deprived the affected persons of their homes, they were still required to pass the Comprehensive Means Test in order to be eligible for allocation of public housing. He considered such policy unfair to the affected persons. Mr TAM said that Heung Yee Kuk also shared his views and opined that in carrying out resumption and clearance operations, the Administration should not compulsorily require the affected persons to pass the Comprehensive Means Test of the Hong Kong Housing Authority (HA). Instead, a more flexible alternative should be explored.

15. In response, PAS(H) advised that it was express Government policy to ensure that nobody would become homeless as a result of clearance operations. In order to achieve this objective, the Administration provided various rehousing arrangements to clearers, of which public rental housing was the most favoured option. She explained that as public rental housing was heavily subsidized by public funds, it was necessary to ensure that it was only available to families with genuine housing needs. Against this background, in 1988, HA decided to apply

the Comprehensive Means Test to all applicants for public rental housing, including families affected by squatter clearance. Public rental housing would only be allocated upon confirmation of the affected households' means eligibility alongside other criteria. Those who did not pass the Comprehensive Means Test would be offered alternative rehousing arrangements, such as rental flats operated by the Housing Society, flats under the Home Ownership Scheme, home purchase loans or Interim Housing, having regard to their eligibility and individual circumstances.

16. In response to Mr TAM Yiu-chung's further enquiry, PAS(H) explained that while land owners affected by land resumption were entitled to statutory compensation, squatters had no title to the land they occupied although they were tolerated on site. She stressed that public rental housing was to cater for families with genuine need for recurrent housing assistance as defined by the Comprehensive Means Test. It was not a compensation for clearance.

EGAs payable to primary producers

17. In response to Mr WONG Yun-kan's enquiry about the EGAs payable to primary producers, the Principal Assistant Secretary for the Environment and Food (PAS(EF)) advised that as the basis for the formulation of the EGAs involved broad principles of compensation, the Administration would not make annual adjustment. For illustration, she pointed out that in calculating the EGAs for affected farms, the per capita based rate would be adopted in cases where the number of poultry was small (i.e. less than 1 000). On the contrary, if a large number of poultry (i.e. not less than 1 000) was being raised in the farm, the building area based rate would be applied instead. However, the Administration would review once a year the rates of EGA applicable to different types of livestock raised in the farms affected.

18. In response to Mr WONG Yun-kan's query about the reasons why the EGAs payable to the pig raising industry could not be calculated on a per capita basis, the Deputy Director of Agriculture, Fisheries and Conservation advised that given the standardized operation and commercial nature of local pig farms, the Administration would only refer to the building area of the farm when calculating the EGAs for pigs, rather than adopting a per capita based rate as in the case of poultry farms. Mr WONG pointed out that such arrangements were unfair to the pig raising industry. He considered that the Administration should conduct a review and consult the industry accordingly.

19. Mr WONG Yun-kan suggested that in determining the EGAs for various types of poultry, livestock and fish, the Administration should fully consult the industry concerned. In response, PAS(EF) advised that AFCD had all along monitored market prices closely. She believed that AFCD had good knowledge of the market and the EGA rates for various types of poultry, livestock and fish had fully reflected the latest market prices. She explained that as consultation took time, the prices so gauged might not fully reflect the prevailing market prices.

Admin The Convenor held the view that although it might not be feasible for the Administration to consult the industry on this matter through formal channels, consultation through informal channels might be considered.

Ex-gratia crop compensation

Admin 20. Mr Albert CHAN advised that during his recent meetings with the West Rail and Lands D, he was given to understand that the Administration had issued a paper in 1998 which set out the change in calculation basis of ex-gratia crop compensation from a per crop based rate to a farm area based rate. He requested the Administration to provide the paper which set out such a change after the meeting.

EGAs for owners of Class III vessels

21. In response to Mr WONG Yun-kan's enquiry about the EGAs payable to owners of Class III vessels, PAS(PL) advised that when implementing reclamation works in Shaukiwan in the 90s, Government had paid this type of allowance to owners of Class III vessels to cover the replacement costs of their mooring equipment. This was the only reclamation works for which the Administration had released this type of allowance. In the foreseeable future, about three owners of Class III vessels in the Central Reclamation site might be entitled to this type of allowance. The Administration would review the allowance on a need basis.

EGAs relating to resumption of legal commercial and industrial properties

22. Pointing out that the EGAs relating to resumption of legal commercial and industrial properties had not been adjusted for many years, Mr Albert CHAN considered that there was an urgent need to fully review all compensation components and conduct an extensive consultation exercise. He cited the resumption of Wah Kai Industrial Centre in Tsuen Wan as an example and commented that if the Administration failed to conduct an early review of the allowance concerned, it had to face even stronger opposition of this kind in future. In response, PAS(PL) explained that as claim cases relating to Wah Kai Industrial Centre were still being processed and some would be decided by the Lands Tribunal, the Administration considered that it was not the right time to make changes to the existing EGA for industrial properties. Mr Albert CHAN did not subscribe to the Administration's explanation. He pointed out that the Administration had advised earlier that the relevant review would be completed in the end of 2001. In addition, it had also reviewed the rate of Home Purchase Allowance when relevant hearings were in progress. As such, he urged the Administration to re-consider reviewing the EGA rates relating to resumption of legal commercial and industrial properties.

EGAs for shops and workshops

23. Mr Fred LI pointed out that during the Diamond Hill Squatter Area Clearance operation, the affected clearerees were dissatisfied with the way that their EGAs was determined. The Administration had categorized their shops as workshops to which a lower EGA would apply. As regards EGA for workshops, Mr LI enquired about the basis for defining "workshop" as having a covered area with a minimum qualifying area of 5 m². In response, CHM(HD) explained that past Government records indicated that workshops normally occupied more space. Very few workshops were less than 5 m² in area. Moreover, workshops which occupied less than 5 m² of space were seldom used for production purposes. Notwithstanding, under special circumstances, the Administration would exercise discretion in determining the EGA payable.

24. Citing the Diamond Hill Squatter Area and the Tung Tau Cottage Area as examples, Miss CHAN Yuen-han pointed out that problems bound to arise in defining "shops" and "workshops" during the Government's clearance operations. This would not only make it difficult for affected operators to raise the capital required for re-establishing their businesses but also put the frontline staff of the HD in a very difficult position. Since there would be further clearance operations in future, she was worried that more vigorous opposition would be encountered. She urged that the Administration should pay particular attention to the issue.

Admin

Procedures for land resumption and clearance operations

25. To facilitate more substantive discussion, Mr LEUNG Yiu-chung requested the Administration to make reference to the records of past resumption and clearance operations in NT and urban areas and provide information setting out the various requests made by all affected residents, business operators and farmers, as well as the Administration's respective responses, together with the reasons if such requests were rejected. The Convenor advised that detailed discussion on specific areas should be referred to relevant Panels. In this connection, PAS(H) advised that as in the case of past resumption and clearance operations, HD had held detailed discussion directly with the affected persons to understand their respective needs so that appropriate rehousing arrangements could be made on the basis of the consensus so achieved.

26. Mr LEUNG Yiu-chung pointed out that land resumption and clearance operations often involved lengthy processes. In some cases, it took seven to eight years from the announcement of the programme to actual implementation. During the interim period, the affected persons were restricted from undertaking any transactions and their renovation expenses in respect of the land or the property concerned would become abortive. In response, AD(L) said that the Lands Resumption Ordinance (Cap. 124) stipulated the statutory requirements and procedures to be followed by the Administration for the resumption of land for public uses. This Ordinance stipulated that the notice affixed to the land should state the date on which it had been so affixed and that the land would be resumed

on the expiration of one month from such date, unless the Chief Executive had authorized the giving of a longer period of notice, in which case the longer period should be stated. Moreover, the Roads (Works, Use and Compensation) Ordinance (Cap. 370) also provided for the publication of proposals as to works in relation to roads, objections to the proposals, authority to carry out the works and for the use of roads, powers in relation to the works on and the use of roads, compensation and connected matters. Similar to the Land Resumption Ordinance, there were provisions in the Roads (Works, Use and Compensation) Ordinance on the statutory requirements and procedures for resuming land for road works.

27. Mr LEUNG Yiu-chung said that although the Administration had all along emphasized that affected persons who were not satisfied with the EGAs offered could make statutory claims, not all affected persons could afford the high litigation fees. As such, Mr LEUNG opined that in view of the compulsory nature of the land resumption and clearance operations, the Administration should adopt a compassionate approach and review all the existing EGAs to cater for the needs of the affected persons as far as possible. In response, AD(L) explained that the claims submitted to the Lands Tribunal by the affected persons could also include the costs reasonably incurred in or paid for employing persons to act in a professional capacity in connection with the claims. The litigation fees were decided by the presiding officers of the Lands Tribunal and the Administration could not interfere. Generally speaking, if a claimant was successful in obtaining higher compensation than the Administration had offered him, it would be normal for his litigation fees to also be awarded by the Lands Tribunal.

Admin

28. In response to the Convenor's suggestion, the Administration agreed that the relevant Panels could discuss in detail the EGA arrangements relating to their respective policy areas where necessary. Mr LEUNG Yiu-chung requested the Administration to provide detailed information to the relevant Panels in due course to facilitate their discussion.

29. Mr Abraham SHEK advised that in principle, he supported the resumption of land for implementing sustainable development and public works projects. However, in conducting land resumption exercise, the Administration should not only follow the requirements imposed by law, it should also handle the requests of the affected persons in a reasonable manner. In this way, a balance could be struck between the well-being of the community as a whole and the personal interests of the affected persons. He shared Mr LEUNG Yiu-chung's view and considered that the Administration should conduct a comprehensive review of the existing EGA system.

30. The briefing ended at 4:30 pm.