

**Meeting between LegCo Members and
Councillors of Heung Yee Kuk on 29 October 2002**

Issues relating to the exemption from the payment of Government rent

- (a) Concerns/suggestion raised by Councillors of HYK at the above meeting–
- (i) According to Councillors of HYK, Article 122 of the Basic Law (BL) and Annex 3 to the Sino-British Joint Declaration stipulated that exemption from payment of Government rent was applicable to interest of land held by indigenous villagers or by their lawful successors in the male line. However, the Administration held the view that for any person to be deemed a lawful successor, he must have inherited the interest of land through lawful succession. If a living indigenous villager transferred to his descendents the ownership of an interest under a lease as a gift, such a transfer of ownership was not deemed "lawful succession" and was therefore not exempted from liability to pay Government rent.
 - (ii) Councillors of HYK considered that the above interpretation adopted by the Administration failed to take into account the tradition in the New Territories (NT) that an indigenous villager might transfer the ownership of an interest to his descendent(s) while he was alive. HYK was of the view that the Administration should not interpret BL122 in a narrow sense. The divergent view between the Administration and HYK over the interpretation of BL122 could be narrowed if BL122 was construed in conjunction with BL40 which stipulated that the lawful traditional rights and interests of the indigenous inhabitants of NT should be protected. A narrow interpretation of "lawful succession" should not be adopted by the Administration as it was not uncommon that an indigenous villager would make known his lawful successors in the male line while he was alive. These successors should be within the meaning of "lawful successors" for the purpose of BL122.
 - (iii) Councillors of HYK pointed out that there had been a case of four lawful successors who had jointly inherited the interest of land through lawful succession. However, after they had divided the ownership of the inherited land among themselves, they were no longer regarded as lawful successors of the interest of land, and no exemption from payment of Government rent was granted.

Councillors of HYK said that the interest of land had in fact remained in the possession of the same four successors. The Administration should not adopt a narrow interpretation of BL122 in this case.

- (iv) Councillors of HYK also pointed out the HYK had raised the issue with the Administration for years. To address the problem, HYK suggested that the relevant legislation be amended to reflect the tradition in NT. However, no progress had been made so far.

(b) Issues raised by LegCo Members at the above meeting—

- (i) Some LegCo Members expressed reservation about the arrangement that exemption from payment of government rent was only applicable to lawful successors in the male line.
- (ii) Some LegCo Members considered that a female successor should be within the meaning of a lawful successor in the male line of the indigenous villagers, and should therefore also be exempt from the liability to pay Government rent.

(c) Issues for comments by the Administration

The Administration has been requested to comment on the concerns/suggestion raised by Councillors of HYK and LegCo Members in items (a) and (b) above. In particular, the Administration has been requested to explain further its interpretation of BL122.