

**The Administration's reply of 22 January 2003
on issues raised by Heung Yee Kuk**

Exemption from the payment of Government rent

The legal basis of rent exemption

Pursuant to the relevant provisions of the Sino-British Joint Declaration on the Question of Hong Kong (JD), the Government Rent (Assessment and Collection) Ordinance, Cap. 515 (the Ordinance), was enacted in May 1997 to set out the arrangements for the assessment and collection of Government rent after 30 June 1997. Cap. 515 has provisions on rent exemption for indigenous villagers (IVs) in line with Annex III of the JD and Article 122 of the Basic Law (BL122).

Rent Exemption Criteria

2. Under section 4 of the Ordinance, all old schedule lots, village lots, small house lots or similar rural holdings held by IVs as at 30 June 1984 and which continue to be held by them or their lawful successors, are exempted from liability for Government rent (at 3% of rateable value from time to time). Exemption is also granted for interests held under:

- (i) a small house grant made to an IV after 30 June 1984; or
- (ii) resite house grants to an IV;

and such interests continue to be held by the IV or his lawful successor.

3. The Ordinance does not allow exemption for the following :

- (i) rural holdings, small house lots or resite house lots that have been acquired, not by lawful succession, from another person after 30 June 1984; or
- (ii) succession not through the male line, i.e. lots succeeded from the mother are not eligible; or
- (iii) properties owned by 'Tso' or 'Tong' with one or more non-IV members.

Administration's comments on concerns/suggestion raised by Councillors of HYK and LegCo Members on the issue

(a) Lawful successor under BL122

4. BL122 provides that "In the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on 30 June 1984 held by, or in the case of small houses granted after that date, where the property is granted to, a lessee descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, the previous rent shall remain unchanged so long as the property is held by that lessee or by one of his lawful successors in the male line".

5. On the interpretation of "lawful successor", section 2 of the Ordinance provides that "lawful successor" means a person, male or female, who on the death of an indigenous villager, is or becomes entitled to an interest in the estate of the deceased by lawful succession and is a descendant through the male line of the deceased." It is clear from the Ordinance that it is only upon the death of an IV that the person entitled to the estate of the deceased can qualify as a lawful successor.

6. Government's rejection of rent exemption claimed by IVs concerned who failed to meet the "lawful successor" requirement had been challenged in a number of Lands Tribunal cases. The Tribunal had ruled in Government's favour in all these cases. The Tribunal had confirmed that a lawful successor can only be established after the death of an indigenous villager, and that the Ordinance does not contravene BL122.

7. As mentioned in paragraph 5 above, under the Ordinance, a lawful successor can be a male or female, as long as that person is a descendant through the male line of the deceased. In other words, a female successor descended through the male line of the deceased IV is also eligible for rent exemption.

(b) Interpretation of BL122

8. HYK is of the view that the Administration should not interpret BL122 in a narrow sense, and that BL122 should be construed in conjunction with Article 40 of the Basic Law (BL40) which stipulates that the lawful traditional rights and interests of the inhabitants of the New Territories (NT) should be protected.

9. The Administration's view is that BL40 is a general provision regarding the protection of lawful traditional rights and interests of IVs. BL122 contains specific provisions as to the payment of rent. BL40 must be read subject to BL122, i.e. the general subject to the specific, not the other way round.

10. In view of the foregoing, the Administration considers that the Ordinance is in line with the Basic Law and does not consider that there is a need to amend the Ordinance.