

立法會
Legislative Council

LC Paper No. CB(1)1249/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/SS/7/07/1

Subcommittee on Rating (Exemption) Order 2008

**Minutes of the first meeting
held on Wednesday, 19 March 2008, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Albert HO Chun-yan (Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon WONG Kwok-hing, MH
Hon TAM Heung-man
Hon Mrs Anson CHAN, GBM, JP

Members absent : Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS

Public officers attending : Financial Services and the Treasury Bureau

Mr Clement LEUNG
Deputy Secretary for Financial Services and the
Treasury (Treasury)

Mr Kenneth CHENG
Principal Assistant Secretary for Financial Services and
the Treasury (Treasury)

Rating and Valuation Department

Mr TANG Ping-kwong
Deputy Commissioner of Rating and Valuation

Department of Justice

Mr Michael LAM
Senior Assistant Law Draftsman

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)5

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Annette LAM
Senior Council Secretary (1)3

Ms Sharon CHAN
Legislative Assistant (1)8

I Election of Chairman

Mr Albert HO Chun-yan was nominated by Mrs Anson CHAN and the nomination was seconded by Mr CHAN Kam-lam. Mr HO accepted the nomination. There being no other nominations, Mr Albert HO Chun-yan was elected the Chairman of the Subcommittee.

II Meeting with the Administration

(LC Paper No. CB(1)1079/07-08(01) — Paper provided by the Administration

LC Paper No. LS57/07-08 — The Legal Service Division Report on the Order

L.N. 34 of 2008 — Rating (Exemption) Order 2008

LC Paper No. CB(1)1080/07-08 — Background brief on the Rating (Exemption) Order 2008 prepared by the Legislative Council Secretariat)

2. The Subcommittee deliberated (index of proceedings attached at Appendix).

3. The Subcommittee supported the policy objective of the rates exemption and also the Rating (Exemption) Order 2008 (the Order) made by the Chief Executive

in Council under section 36(2) of the Rating Ordinance (RO) (Cap. 116) to give effect to the proposal in paragraph 174 of the 2008-09 Budget to waive rates for four quarters of 2008-09, subject to a ceiling of \$5,000 per quarter for each rateable tenement. The Subcommittee agreed that the Order should come into operation on 1 April 2008.

4. The Subcommittee decided that some members' concern about whether the Hong Kong Housing Society (HKHS) and the Housing Authority (HA) should pass on the rates concession proposed in the 2008-09 budget to their tenants should more appropriately be followed up by the Panel on Housing and/or at the relevant session of the special meeting of the Finance Committee (FC) to examine the 2008-09 Estimates.

5. Representatives of the Financial Services and the Treasury Bureau (FSTB) agreed to convey members' concerns at paragraph 4 above to the Transport and Housing Bureau (T&HB) for follow-up.

(Post-meeting note: A letter from FSTB in response to members' concern has been circulated to members for information vide LC Paper No. CB(1)1109/07-08 issued on 20 March 2008. It was stated in the letter that as confirmed by the Housing Department, tenants paying additional or market rental were also entitled to the rates concession.)

III Any other business

6. There being no other business, the meeting ended at 11:36 am.

Council Business Division 1
Legislative Council Secretariat
14 April 2008

Subcommittee on Rating (Exemption) Order 2008
First meeting on Wednesday, 19 March 2008, at 10:45 am
in Conference Room B of the Legislative Council Building

| Time Marker | Speaker | Subject(s) | Action Required |
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| 000000 – 000323 | Mr Albert HO Mrs Anson CHAN Mr CHAN Kam-lam | Election of Chairman | |
| 000324 – 000831 | Chairman Administration | <p>(a) Opening remarks</p> <p>(b) Briefing by the Administration (LC Paper No. CB(1)1079/07-08(01)):</p> <p>(i) the background, implementation, financial implications and estimated benefits of the proposed rates exemption.</p> <p>(ii) The Administration's response to the two issues raised in the Subcommittee's letter of 10 March 2008 relating to-</p> <ul style="list-style-type: none"> • the arrangements, if any, for passing on the rates concession to the party who actually paid the rates; and • the arrangements and implications on rates payers in the event that the Order was amended or repealed before the expiry of the extended scrutiny period on 23 April 2008. | |

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| 000832 – 002044 | Mr WONG Kwok-hing Chairman Administration | <p>(a) Mr WONG Kwok-hing's concerns as follows:</p> <ul style="list-style-type: none">(i) whether disadvantaged groups such as low-income earners renting a bed-space or a cubicle could benefit from the rates concession;(ii) as revealed in his recent meeting with HKHS, while the rental for carpark facilities would be raised with effect from 1 April 2008, HKHS had not passed on the benefit of the rates waiver in 2007-08 to tenants renting the carpark spaces; and(iii) the arrangements, if any, to be put in place by the Government to ensure the policy objective of leaving wealth with the people would be achieved. <p>(b) Mr WONG Kwok-hing's view that HKHS, as a public body, should pass on the rates concession to its tenants and that legislative amendment should be made to ensure that the proposed rates concession would benefit the disadvantaged and the needy.</p> <p>(c) The Chairman's view that the issue of whether the HKHS would pass on the rates concession to its tenants should more appropriately be followed</p> | |

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| | | <p>up by the Panel on Housing. Where appropriate, related issues might be followed up at the relevant session of the special meeting of FC to examine the 2008-09 Estimates.</p> <p>(d) The Administration's explanation that:</p> <ul style="list-style-type: none"> (i) the objective of the rates concession was to reduce the tax burden on rates payers; (ii) generally speaking, a tenant who paid rates should be able to benefit from the waiver directly; (iii) currently, there was no provision under the RO or the Landlord and Tenant (Consolidation) Ordinance (Cap.7) requiring landlords to pass on the rates concession to their tenants. The actual arrangement would depend on the terms in the tenancy agreement; (iv) given the variety of tenancy agreements for different types of tenements, it was impracticable for the Government to make specific stipulation for each and every case; and (v) the Government should not intervene into contractual | |

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| | | <p>matters between landlords and tenants over their agreed arrangement for rates concession.</p> | |
| 002045 – 002950 | Mrs Anson CHAN Administration Chairman | <p>(a) In cases where the rent payable by the tenant was inclusive of rates, Mrs Anson CHAN was concerned whether the tenant could ascertain the amount of rates to be returned to him; and enquired about the redress mechanism in the event that the landlord refused to pass on the rates concession to the tenant concerned.</p> <p>(b) The Administration explained that:</p> <p>(i) in cases where the amount of Government rates and Government rent included in the rent payable by the tenant had not been clearly specified in the tenancy agreement, the tenant should seek clarification with his landlord. Direct dialogue between both parties was always encouraged;</p> <p>(ii) in addition to the annual valuation exercise, staff of the Rating and Valuation Department (RVD) would conduct site inspection at newly completed buildings and also upon receipt of notification of subsequent structural alterations to a</p> | |

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| | | <p>tenement. A demand note would be issued in respect of each tenement, including shops in a shopping arcade or office premises in a commercial building owned by a sole owner, insofar as the tenement was each under a separate tenancy. Enquiries and on-line checking could also be made with the RVD on the rateable value of a tenement.</p> <p>Government rates was charged at 5% of the rateable value of the property concerned; and</p> <p>(iii) disputes between the tenants and the landlords could be brought before the Lands Tribunal for adjudication.</p> <p>(c) The Chairman's view that the landlord was contractually bound to pass on the rates concession to the tenant if it was specified in the tenancy agreement that the Government rates and Government rent were payable by the tenant. The tenant might consider instituting civil proceedings against his landlord if the latter failed to pass on such concession.</p> | |
| 002951 – 003317 | Mr CHAN Kam-lam | Mr CHAN Kam-lam shared the Administration's view that the terms of the tenancy agreement as a contractual agreement between the landlord and the tenant should | |

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| | | <p>be respected. Given that the amount of Government rates and Government rent was subject to adjustments having regard to changes in rateable value of the property concerned, the party responsible for the payment of rates would also be liable to pay higher rates in case a higher rateable value was assessed.</p> | |
| 003318 – 004157 | <p>Mr WONG Kwok-hing Chairman Mr CHAN Kam-lam Mrs Anson CHAN Administration</p> | <p>(a) Mr WONG Kwok-hing's views that:</p> <ul style="list-style-type: none"> (i) HKHS and the Link Management Limited (the Link) should return the amounts of rates waived to their tenants; (ii) HA should also pass on the rates concession to those public housing tenants paying additional or market rental; and (iii) consideration should be given to inviting HKHS, HA and the relevant Bureau to attend another meeting of the Subcommittee to discuss (i) and (ii). <p>(b) The Chairman and Mr CHAN Kam-lam also considered that HA tenants paying additional rent should also enjoy the benefit of the rates waiver.</p> <p>(c) Mr CHAN Kam-lam and Mrs Anson CHAN supported the Chairman's view that the rates exemption should come into operation on 1 April 2008 and that it would be more</p> | |

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| | | <p>appropriate to follow up Mr WONG Kwok-hing's concerns about the entitlements, if any, of HKHS and HA tenants at the Panel on Housing and/or at the relevant session of the special meeting of the FC to examine the 2008-09 Estimates.</p> <p>(d) The Administration's views that:</p> <p>(i) the Administration was not in a position to comment on the Link's agreement with its tenants; and</p> <p>(ii) HA, being the landlord responsible for the payment of rates, was not contractually required to pass on the rates concession to their tenants. However, HA had made the policy decision to pass on the benefit of the rates waiver to its tenants through reducing the monthly rental by the amount of rates spread over a period of 12 months.</p> | |
| 004158 – 004624 | Miss TAM Heung-man Administration Assistant Legal Adviser | <p>(a) While supporting the rates concession in principle, Miss TAM Heung-man was concerned that tenants might not be able to benefit from the rates exemption.</p> <p>(b) Miss TAM Heung-man's suggestion to consider legislative amendments to provide that tenants were entitled to the rates concession, for example, in</p> | |

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| | | <p>respect of properties that were not occupied by the owner for self-use.</p> <p>(c) The Administration's stance against intervention by way of legislation into private contractual agreements between landlords and tenants. The relatively small number of enquiries received by RVD showed that both tenants and landlords had acquired experience over the years to work out mutually agreed arrangements as seven rates exemptions had been implemented in the past 10 years.</p> <p>(d) The Assistant Legal Adviser's explanation that section 36(2) of RO only provided for the Chief Executive in Council to declare by order any class of tenements, or parts thereof, or any part of Hong Kong to be exempted from the payment of rates wholly or in part. Miss TAM's suggested amendment (to be made under section 34 of the Interpretation and General Clauses Ordinance (Cap.1)) might not be consistent with the order-making power provided under section 36(2) of RO.</p> | |
| 004625 - 005535 | Chairman Mr WONG Kwok-hing Administration | <p>(a) Members noted that:</p> <p>(i) While the rates concession should be returned to the party who actually paid the rates, the specific arrangement would depend on the terms</p> | |

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| | | <p>as specified in the tenancy agreement;</p> <p>(ii) the valuation list and rateable value of properties were public records accessible by the public through enquiries and on-line checking with the RVD; and</p> <p>(iii) in the event that the landlord refused to return the rates waiver to the tenant who was the rates payer, the tenant might consider bringing civil litigation against the landlord.</p> <p>(b) At Mr WONG Kwok-hing's request, the Administration agreed to convey to T&HB for follow-up members' concern about whether HKHS and HA would pass on the rates concession to their tenants; and to provide a written reply in this regard.</p> | <p>Administration to provide a written confirmation in response to members' concerns (paragraph 5 of minutes)</p> |