

For information

Legislative Council Panel on Financial Affairs

**Provision to Head 106 – Miscellaneous Services
Subhead 284 – Compensation in 2011-12**

PURPOSE

This paper informs Members that for budgeting purpose, the Administration will make a suitable provision under **Head 106 Miscellaneous Services Subhead 284 Compensation** (the Subhead) in the Draft Estimates for 2011-12 to cater for possible interest payments arising from the latest development of the appeals lodged by the Hongkong Electric Company Limited (HEC) against the Commissioner of Rating and Valuation's (CRV) assessments of the rateable values of its electricity supply system.

CURRENT SITUATION

2. On 2 July 2010, the Finance Committee (FC) of the Legislative Council approved a supplementary provision of \$80 million to the Subhead arising from the judgment handed down by the Lands Tribunal (LT) on 30 November 2009 allowing HEC's appeals and the decision handed down by the LT on 12 April 2010 awarding interest to HEC on the overpaid rates and Government rent.

3. Pending the determination of Government's appeal against the LT's judgment by the Court of Appeal (CA), in compliance with the LT's order and in order to reduce the Government's interest exposure, Government paid HEC the interest accrued on its overpaid rates and Government rent in the appeals for which the overpaid amounts could be agreed (i.e. for the years 2004-05, 2005-06, 2006-07 and 2007-08).

4. The CA handed down on 14 September 2010 its judgment overturning the LT's ruling. When applying the CA's judgment, CRV finds that there has been over-refund of rates and Government rent and over-payment of interest.

To protect public revenue, CRV is taking action to recover the over-refunded amount, and the associated interest on the over-refunded amount from HEC.

5. Nevertheless, as HEC has appealed to the Court of Final Appeal (CFA)¹ against CA's judgment, there is possibility that the CFA allows HEC's appeal and the Government then has to reverse the interest payment to HEC in 2011-12. This, coupled with other possible interest claims that may arise in 2011-12, calls for the need to make sufficient provision in the Subhead². Such accounting arrangement is in line with our stated position at the FC when we sought supplementary provision of \$80 million for the HEC case. We pointed out then that provision would be made in the Subhead in future years as appropriate for similar payments where circumstances warrant.

WAY FORWARD

6. The Government will include a suitable provision under **Head 106 Miscellaneous Services Subhead 284 Compensation** in the Draft Estimates for 2011-12 to cater for possible interest payments.

Financial Services and the Treasury Bureau February 2011

¹ The HEC's appeal against the CA's judgment has been fixed to be heard by the CFA on 17 May 2011 (with 18-20 May 2011 reserved). Our current assumption is that the CFA's judgment would be available within the financial year 2011-12.

² The payment of interest is chargeable to **Head 106 Miscellaneous Services Subhead 284 Compensation** as the Subhead is for settlement of claims made against Government.