

政制事務局政府總部的信頭

Our Ref: CAB C4/17/7

7 July 1999

Mrs Constance LI
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central

Dear Mrs Li,

**Bills Committee on
Provision of Municipal Services (Reorganization) Bill**

Follow-up to meeting on 25 June

Thank you for your letter of 29 June 1999, conveying the Bills Committee's request for information. Our response is set out in the paragraphs below.

A. Fees and Charges

- (a) *Mr Fred Li has suggested a "CPI-x" model in which LegCo can approve fees above a certain subsidy level.*

According to our understanding, the "CPI-x" model proposed by Mr Li is intended to set a guideline for fee adjustment. If the proposed increase in fees and charges for leisure and cultural services is below a certain prescribed rate (set according to a formulae of "CPI-x"%), the fees could be adjusted without seeking LegCo's approval. However, if the proposed increase is above that rate, LegCo's approval (in the form of positive resolution or negative vetting) would be required. The application of the "CPI-x" model is done on a global basis, not on individual fee levels.

We believe that determining the “x” in the “CPI-x” formulae is bound to be controversial and arbitrary as it is not possible to achieve a productivity gain of x% in all leisure and cultural services every year in the long run. Without such productivity gains, annual fee adjustments below the inflation rate are not sustainable unless the subsidy levels are steadily increased. As the current subsidy levels are already very high, a steady increase of subsidy levels is not justifiable, especially under the current budgetary situation. The “CPI-x” model is also difficult to apply to a deflationary economy where the CPI is a negative figure. If the “CPI-x” model is prescribed in law as the benchmark for fees and charges, we would run the same risk of the fees and charges becoming challengeable in court.

In the likelihood that the fee increase is above the prescribed “CPI-x” rate, LegCo’s approval would be required. As we explained earlier (see, for example, Paper No. CB(2)2204/98-99(01), given the large volume of fees and charges involved and their frequent setting/revision, it would be difficult to involve LegCo in vetting the fee levels. This would also seriously undermine the flexibility required for setting fees to maximize usage rates and to adapt to changes in market situations. We therefore have strong reservations about the “CPI-x” model.

- (b) *Mr Ambrose Cheung has requested information on the frequency of fee revisions approved by the municipal councils in the past three years.*

The frequency of fee revisions approved by the Councils in 1996/97, 1997/98 and 1998/99 is set out in the **Annex**. It should be noted that the frequency of fee revisions in 1998/99 was exceptionally low as the Provisional Municipal Councils (PMCs) decided to either freeze the fees or to reduce the fees for licences and permits across the board by 30%.

- (c) *Mr Tang Siu-tong has asked whether the District Councils will have a role in approving such fees.*

Given that the revision of most of the fees and charges concerned has territory-wide implications and is not confined to the facilities or services in a particular district, it may not be appropriate for District Councils to be involved in approving the fees.

B. Transfer of Property, Rights and Liabilities

- (a) *The Administration to provide details of a recent court decision in which the court held that a new owner could not recover rental arrears due to the previous owner.*

The case referred to is Standard Chartered Bank (Plaintiff) & Grow Up Trading Limited, Soundtop Industries Limited, Via Hong Kong Ready-To-Wear Company Limited (Defendants). (1999 CACV Nos.4, 5 & 6). The issue was whether the Plaintiff, who was the mortgagee of premises occupied by the defendants as tenants, was entitled to a warrant of distress in respect of arrears of rent payable by the defendants. The Plaintiff sought the warrant on the basis that the mortgagor had assigned to it rights to the rent payable by the defendants to the mortgagor. The Court of Appeal held that the Plaintiff was not entitled to a warrant of distress. The rationale was that under the common law only the landlord had the right to distrain for arrears of rent and that on the facts of the case the defendants had not accepted the Plaintiff (the mortgagee) as the landlord. From a legal perspective, the situation described above will not arise in the context of the reorganisation of municipal services as clause 5(1) of the Bill expressly provides that as from the appointed day contracts entered into with the PMCs will have effect as if entered into with the Government.

- (b) *The Administration to explain the possibility, and if so, the arrangements for a party to rescind contract upon the transfer of the contractual rights and liabilities to the Government, e.g. a donor may want to withdraw his agreement to donate certain antiquities items or artistic works for display in museums managed by an existing municipal council.*

As explained in our letter of 23 June 1999, the substitution of the Government in place of the PMCs does not affect the terms and conditions of the contracts. The legal position is similar to the substitution of the PMCs for the Municipal Councils on 1 July 1997. Once the Government is substituted for the PMCs as a party to the contract, ordinary contractual principles would apply to the contract. We do not foresee any cases where the other party would wish, or have reasons, to rescind the contracts. If such case does occur, we will consider them on a case by case basis.

- (c) *The Administration to clarify whether contracts or agreements signed by committees of the municipal councils, and if so whether these contracts etc. will have the same status as contracts signed by the councils.*

According to our understanding, all contracts and agreements are signed in the name of the Councils. No contracts or agreements have been signed by their committees.

- (d) *The Administration to ascertain whether any of the existing contracts signed by the municipal councils contain provisions against transfer of rights and liabilities.*

According to our understanding, some of the contracts signed by the PMCs (such as contracts commissioning performances by performing arts companies) do contain provisions against the assignment of rights and liabilities without the written consent of the other party. As noted in paragraph (b) above, we believe it is unlikely that the other party would wish to rescind the contract upon the transfer of the contractual rights and liabilities to the Government.

- (e) *The Administration to clarify whether existing legislation and the Bill can adequately deal with contractual relationship between the councils and other territories or governments after the transfer.*

According to our understanding, the PMCs do not have any contractual relationship with other territories or governments.

- (f) *The Administration to explain whether the employees of the municipal councils, who are protected by the Employment Ordinance (Chapter 57) under their existing contracts, will continue to enjoy such protection after the transfer. Also, will the Employment Ordinance and other employment related ordinances be binding on the Government in respect of those employees after the transfer.*

Clauses 4 and 5(1) of the Bill read together preserve the validity of contracts made or entered into by the Councils, including employment contracts. As from the appointed day, these contracts will have effect as if they were entered into with the Government. Any liabilities of the Councils under the contracts are recoverable from the Government. The fact that the Government would have been immune from liability in a similar situation is irrelevant. Although the Employment Ordinance is not binding on the Government, the employees' position will not be prejudiced. The terms and conditions of those employees whose service is still needed will be **no less favourable** than those provided for under the Employment Ordinance (Chapter 57) and Employees' Compensation Ordinance (Chapter 282).

Please let me know if any further information is required.

Yours sincerely,

(John C. Y. Leung)
for Secretary for Constitutional Affairs