

政制事務局政府總部的信頭

Our Ref: CAB C4/17/7

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23 June 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 4 June 1999

Thank you for your letters of 5 June and 16 June 1999, conveying the Bills Committee's request for information. Our response is set out in the paragraphs below -

Item (1)

- (a) *Members are very concerned that the provisions in the Bill should adequately cover all aspects of the transfer arrangements to avoid legal uncertainty or ambiguity which may lead to unnecessary litigation after the transfer.*

We confirm that the provisions of the Bill adequately deal with the transfer arrangements. As legal persons, the Provisional Municipal Councils (PMCs) have property, rights, liabilities and statutory functions. By virtue of clauses 4, 5 and 6 of the Bill, the PMCs' property, rights, and liabilities will be transferred to the Government. The effect of the transfer of the liabilities of the Councils to the Government is that the rights of third parties are preserved. The rights of third parties could have been at risk only if the Council had been abolished without making provision to take over and

continue existing contracts. The transfer of statutory functions are dealt with under clause 7.

- (b) *In particular, members asked about the validity of contracts and preservation of contractual rights after 31 December 1999. In this respect, they have requested the Administration to examine very carefully the legal effects of clauses 4, 5, and 6 concerning the transfer of property, rights and liabilities of the two PMCs to the Government.*

Clause 4 and 5(1) of the Bill read together preserve the validity of contracts and contractual rights. As from the appointed day, these contracts will have effect as if they were entered into with the Government. The legal rights and obligations of the contracting parties are not changed by the substitution of Government as the contracting party. The terms and conditions of the contracts are also not changed. Specifically, clause 5(3) expressly provides that the Government may be sued for those liabilities inherited from the PMCs and that they can be recovered from the Government. Clause 5(6) also provides that any legal claims against a Council may be continued or enforced against the Government. (See also the response to item (3) (b) below.)

- (c) *Specifically, members have asked whether clauses 4, 5 and 6 or other legislation can adequately deal with requests for re-negotiation of contracts or claims for compensation by parties to the contracts or by the third party affected by the transfer of contracts or property, on the grounds that the transfer of authority constitutes a change in contract conditions or circumstances. Members are concerned whether Government and the other party to the contract will have equal rights and obligations in continuing or discontinuing the contracts signed or under discussion by PMCs (or their executive departments).*

Parties to contracts with either Council have the right under the Bill to continue and enforce them against the Government. Similarly, the Government, by substituting the PMCs, has the right to continue the contracts and enforce them against the other contracting party. However, the Bill does not give either the Government or the other party the right to discontinue the contracts. The substitution of the Government for the PMCs does not give rise to a breach of a condition or other situation of loss for which compensation or damages are payable. If the law did not provide for the vesting of liabilities in the Government on the abolition of the Councils, a situation of loss would have arisen. The Bill gives neither the Government nor the other contracting party the right to “re-negotiate” the terms of the

contract as there is no necessity for such a provision in view of the fact that terms and conditions of the contract are not affected by the substitution of Government in place of the Council. Under the Bill the Government has the obligation to continue the Council's part of the contract and other party has the obligation to continue his part of the contract. This of course does not prevent parties from by agreement varying or rescinding the contract.

Item (2)

Members have requested for a list of contracts which are now under negotiation by the PMCs or their executive departments and which will likely take effect or continue in force after 31 December 1999.

The list is under preparation and will be forwarded separately.

Item (3)

- (a) *Miss Cyd Ho asked whether the Government can be sued by PMCs under clause 5(3) and (4).*

By virtue of Clauses 4, 5 and 6 of the Bill, the Government assumes all the property, rights and liabilities of the PMCs. Under Clause 5(3) and (4), a person who has a right of action against a Council can therefore sue the Government instead. Since the Council could not have had a right of action against itself, the situation contemplated by Ms Cyd Ho will not arise in practice. If a Council had a right of action against the Government before the appointed day, that will become extinguished as otherwise it would become a right of action of the Government against the Government. Furthermore if this Bill is enacted, the Councils will cease to exist and will thus not be in a position to sue anyone.

- (b) *Whether Government is currently exempted from certain obligations or liabilities under existing legislation.*

The Government is liable in tort and contract. Since the legal relationships of the Councils with other parties would have been based on tort or contract and not on statute, the question of whether or not the Government is exempted from liability under any statute or bound by any statute is not relevant. Also under the Bill the Government succeeds to the liabilities of the Councils. Clause 5(3) expressly provides that the Government can be sued on the liabilities incurred by the Councils. The fact that the Government would have been immune from liability in a similar situation is

not relevant as the liability was incurred by the Councils and the immunity was not available to the Councils.

Item (4)

- (a) *Members asked the Administration to clarify the arrangements for the use of “UC” and “RC” in car numbers after 31 December 1999.*

Regulation 11(2) and (3) of the Road Traffic (Registration and Licensing of Vehicles) Regulation (Cap.374 sub. leg.) reserve the marks consisting of the letters “UC” and “RC” to Provisional Urban Council (PUC) and Provisional Regional Council (ProRC) vehicles. As the Councils’ vehicles would become Government vehicles on 1 January 2000, we are planning to have the marks changed to “AM” as soon as possible after 31 December 1999. There is no legal implications or necessity to change all these marks before 31 December 1999.

- (b) *To clarify the transfer of intellectual property including the armorial bearings of PMCs, and the artistic work and publications/research findings of artists/companies employed by or having contracts with the PMCs.*

Clause 6(c) of the Bill specifically saves the rights held by the PMCs in relation to trade marks, copyright and other intellectual property. In other words, the Government becomes the owner of all intellectual property rights of the Councils. If the Councils had such rights in the armorial bearings, they become the property of the Government. In the event of infringement, the Government can enforce its rights under the appropriate legislation. For example, as owner of the copyright, the Government can take action for infringement under section 3 of the Copyright Ordinance (Chapter 528) read with Division II.

With regard to artistic works and publications/research findings of artists/companies employed by or having contracts with PMCs, the position after the appointed day depends on whether intellectual property rights subsisted in them. If the Council was the owner of the copyright as the employer, the person commissioning the work or under the relevant contract, then the Government acquires that ownership. If by the terms of an agreement with the other person, that person was the owner of the copyright, then the Government is bound by that agreement.

Delegation and authorization arrangements

As regards the delegation and authorization arrangements by the PMCs, a table showing the statutory powers and the categories of authorized officers under different sections of the Public Health and Municipal Services Ordinance (Cap. 132) will be forwarded to you separately.

Yours sincerely,

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