

**President's ruling on
Committee Stage Amendments proposed by Hon LEE Wing-tat to the
Urban Renewal Authority Bill**

Introduction

Hon LEE Wing-tat has proposed to move various amendments to the above Bill at its Committee Stage. Among these are two amendments which seek to add to the Bill a new clause 25A (Ex gratia allowance) and a related new Schedule 2. The purpose of these two amendments are to provide that, in addition to the statutory compensation payable to an owner whose premises are resumed for the development project of the proposed Urban Renewal Authority (Authority), the owner may be paid an ex gratia allowance by the Authority in accordance with new Schedule 2 proposed by Mr LEE.

2. The Secretary for Planning and Lands has been invited to offer his comments on Mr LEE's amendments and Mr LEE has been invited to respond.

The Administration's view

3. The Secretary for Planning and Lands considers that the above two amendments proposed by Mr LEE have a charging effect within the meaning of Rule 57(6) of the Rules of Procedure. The Secretary states that the practical result of the amendments is that substantial expenditure by the Authority is inevitable, hence expenditure of public moneys will be inevitable given the statutory resourcing scheme of the Authority. In particular, under the proposed clause 10(1)(a) of the Bill, it is a statutory imperative that the resources of the Authority are to include money paid by the Government to the Authority and appropriated for that purpose by the Legislative Council. The

likelihood of a charging effect arising as a result of the amendments is so substantial that it cannot be ignored. The Secretary estimates that the additional payment in respect of the Authority's estimated 200 projects could be in the order of \$1 billion to \$2.5 billion at today's value.

4. The Secretary adds that the amendments have a charging effect notwithstanding that they provide that the payment of the allowance is discretionary, because a legislative proposal has charging effect even where it provides for an increase in expenditure that is only potentially liable to be incurred, i.e. even if the circumstances giving rise to the payment do not take place or the discretion to pay is not exercised.

Hon LEE Wing-tat's response

5. Mr LEE does not agree to the Secretary's view and states that Government is neither required by his proposed amendments to pay the proposed ex gratia allowance nor to increase its expenditure on the Authority. The proposed allowance is ex gratia and it is the Authority which has a potential liability to pay.

6. Under clause 3, the Authority is not part of the Government but a body corporate which is capable of suing and of being sued.

7. Furthermore, the Government is only one of the several sources of the Authority's funding, as provided in the proposed clause 10(1) of the Bill. Moreover, under clause 10(4), the Authority is equipped with the responsibility to exercise due care and diligence in handling its finances. Obviously, the Authority's expenditure is separate and distinct from that of the Government.

Advice of Counsel to the Legislature

8. Counsel to the Legislature advises that the Urban Renewal Authority to be established by the Urban Renewal Authority Bill after its passage into law bears all the hallmarks of an entity separate from the Government. However, the operation of the Authority would be subject to Government's power of control conferred upon it by the Bill, such as in clauses 10(3), 14(2), 14(4), 18, 19 and 28.

9. Indicators in the Bill which signify positively that the Authority is an entity separate from the Government include:

- (a) The Authority would be a body corporate of perpetual succession and shall in its own name be capable of suing and of being sued (clause 3(1) and (2)).
- (b) The Authority would not be regarded as a servant or agent of the government (clause 3(3)).
- (c) Under clause 15(1)(a), the Authority "shall be indebted to the Government in a sum equal to all money received by the Authority under section 10(1)(a)" i.e. money paid to the Authority by the Government. Although under clause 15(3) the Financial Secretary would have power to decide the manner such indebtedness may be discharged, it seems clear that the Bill intends that money appropriated for use by the Authority should be paid back to the General Revenue.

10. Counsel to the Legislature further advises that those provisions which would give Government some form of control over the Authority would not

impose upon the Government a legal obligation to pay the Authority or to seek appropriation for payment to the Authority. Clause 10(1) sets out where the sources of resources of the Authority would come from. Subclause (1)(a) would only provide a statutory basis for the Government to seek appropriation of funds for the Authority. It would not have the effect of imposing on the Government the statutory duty to prevent the Authority from becoming insolvent nor to bail it out if it does become insolvent.

11. As regards the legal effect of the proposed Committee Stage amendments, Counsel to the Legislature advises that the only clear substantive effect the amendments would have on the Authority is that when the Authority decides to pay ex-gratia allowance to an eligible owner, the amount of the allowance has to be calculated in accordance with the proposed Schedule 2.

My Opinion

12. I am satisfied that Mr LEE's proposed amendments seek to give the Authority the power and discretion to pay ex gratia allowance out of its resources. Such power could, therefore, only be reasonably exercised if the Authority's resources permit. I am not able to agree to the Secretary's suggestion that because the Government pays money to the Authority, the proposed amendments will inevitably incur expenditure of public moneys. The scheme providing for the resources of the Authority under the Bill does not impose a legal obligation on the Government to finance the Authority, including payment of the proposed ex gratia allowance. Moreover, where the Government wants to seek funding to pay money to the Authority under clause 10(1)(a), the permission of the Legislative Council is required. All these suggest to me that, whereas the proposed amendments would empower the Authority to exercise the discretion to pay an ex gratia allowance, it is not required by law to do so. In discharging its statutory duty to "exercise due

care and diligence in the handling of its finances" (clause 10(4)), the Authority will obviously need to have regard for its ability to pay such an allowance. If it fails to exercise such care and runs into financial difficulty, neither the Government nor the Legislative Council is obligated by law to salvage it.

Ruling

13. In the light of the views put forth by Mr LEE and the advice of the Counsel to the Legislature, and for the reasons explained above, I rule that the proposed amendments viz. new clause 25A and new Schedule 2, do not have a charging effect within the meaning of Rule 57(6) of the Rules of Procedure.

(Mrs Rita FAN)
President
Legislative Council

26 June 2000