

財經事務及庫務局



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**FINANCIAL SERVICES AND THE  
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14 February 2017

Clerk to Public Works Subcommittee  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road, Central  
Hong Kong  
(Attn: Ms Sharon Chung)

Dear Ms Chung,

### **Inquiry on Capital Works Reserve Fund**

I refer to the letter from the Hon Eddie Chu Hoi-dick to the Chairman of the Public Works Subcommittee of 10 February 2017 concerning the subject. Per the Chairman's request, please find the Government's response to the issues raised in the Hon Chu's letter at **Annex**.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Jasmine Choi'.

( Jasmine Choi )  
for Secretary for Financial Services  
and the Treasury

c.c.

Department of Justice  
Lands Department  
Development Bureau

(Attn.: Dr Boyce Yung)  
(Attn.: Mr Tony Moyung)  
(Attn.: Mr John Kwong)

**Government's Views on Issues Raised by the Hon Eddie Chu on  
Capital Works Reserve Fund**

**Legal effect of delegation made by the Legislative Council before  
1 July 1997**

A resolution was made and passed by the Legislative Council (LegCo) on 20 January 1982 to establish the Capital Works Reserve Fund (CWRF) with effect from 1 April 1982 pursuant to section 29 of the Public Finance Ordinance (Cap 2). The CWRF resolution (Cap 2A) is subsidiary legislation or subordinate legislation according to section 3 of the Interpretation and General Clauses Ordinance (Cap 1).

2. Article 8 of the Basic Law provides that “[t]he laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained...”. According to section 7 of the Hong Kong Reunification Ordinance (Instrument A601), “[t]he laws previously in force in Hong Kong, that is the common law, rules of equity, Ordinances, subsidiary legislation and customary law, which have been adopted as the laws of the HKSAR, shall continue to apply.” Further, according to section 26 of the same ordinance, “[a]ll powers and duties delegated to a public officer which were in force immediately before 1 July 1997 shall, where a corresponding power of delegation (whether express or implied) exists on and after that date, be deemed to have been delegated to the corresponding public officer in the HKSAR.”

3. Paragraph 2 above should have clarified why the CWRF resolution (Cap 2A) and the relevant previous delegation made by the LegCo before 1 July 1997 continue to take effect after 1 July 1997. It does not appear that section 34 of the Interpretation and General Clauses Ordinance (Cap 1) and the resolution passed by the LegCo on 17 December 1997 mentioned in the Hon Eddie Chu's letter of 10 February 2017 are relevant to the continuity of the CWRF resolution (Cap 2A) or the relevant previous delegation made by the LegCo before and after 1 July 1997.

**Definition of a Category D item**

4. According to the decision of the Finance Committee (FC) on 9 March 1983 where Members approved the delegation of financial powers in accordance with the LegCo resolution made on 20 January 1982 as referred to in paragraph 1, in so far as Category D items are concerned, the condition, exception and limitation approved by the FC for creation of new Category D items in the Public Works Programme is that the project estimate of the Category D item does not exceed \$1.5 million. There was no condition, exception or limitation attached as to how a

Category D item should be defined.

5. The Government administers the CWRP block allocations strictly in accordance with FC's delegation. Apart from the financial ceiling per item (which is \$30 million at present for 21 of the 26 subheads in total), the relevant vote controllers would also ensure that the Category D item is consistent with the scope of the subhead as approved by the FC. Relevant vote controllers are conscious that they should not implement larger projects using funds from the block allocations by artificially splitting a project into either smaller projects or phases or stages. For transparency and accountability, the Government deposits with the LegCo Secretariat a full list of items proposed to be funded under CWRP block allocations in parallel with the funding paper each year. Besides, the Government presents quarterly expenditure reports, and annual reports to Public Works Subcommittee to account for the difference between the actual programme and the indicative one presented to Members for approving the funding allocation. Further, the FC approves the annual provision of the CWRP block allocations in accordance with the CWRP resolution (Cap 2A) made by LegCo, the question of CWRP block allocations depriving LegCo of its powers to approve public expenditure under Article 73 of the Basic Law does not arise.

#### **Financial ceiling for Subheads 1004CA and 1100CA**

6. The FC approved the creation of **Subhead 1004CA** and **Subhead 1100CA** on 7 February 1996 vide PWSC(95-96)86. The two subheads are created to pay, essentially, compensation for land acquisition and clearance-related allowances. The scope of each of the subheads, as approved by the FC, does not contain a per-item financial ceiling. While PWSC(95-96)86 did not specify the reason, the arrangement is justified as the statutory claim could not be precisely assessed until it is agreed with the claimants or determined by the Lands Tribunal, and the ex-gratia allowances are calculated in accordance with the formulae endorsed by the FC.

#### **Change of LegCo term and delegation**

7. The Government administers the CWRP strictly in accordance with the CWRP resolution (Cap 2A) and FC's delegated authority. A capital works project takes a long time from planning to completion. It would cause undue disruption to the capital works programme (CWP) if the FC was to decide its delegation once every LegCo term.

8. As the Government has explained, the establishment of CWRP block allocations is to allow FC to focus on handling higher-value capital works projects. The Government intends to press ahead with 9 600 Category D items in 2017-18, of which some 8 300 are ongoing items. Apart from individual small-scale improvement works, the block allocations mechanism also complements the implementation of the

CWP by acquiring sites needed for capital works and by proceeding with the necessary pre-construction preparatory work (including feasibility studies, design and site investigation, etc.). The Government is unable to decide whether and how a capital works project should proceed without such pre-construction preparation. In fact, the undertaking of such pre-construction preparation by means of Category D items is crucial for providing FC with proper information to deliberate on the upgrading of the main works of a project to Category A and will **not** pre-empt FC's decision on the main works itself in any way.