

**For information
on 25 April 2017**

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

**Ex-gratia Allowance for Business Undertakings affected by
Government's Development Clearance Exercises**

Purpose

This paper sets out the Government's proposal to extend the current ex-gratia allowance (EGA) arrangement with a view to rationalising the current EGA arrangement for eligible business undertakings affected by the Government's development clearance exercises and addressing their genuine needs.

Proposal

2. We propose that, subject to the approval of the Finance Committee (FC) of the Legislative Council (LegCo), the current EGA arrangement for business undertakings be extended to cover the following types of business operations affected by the Government's development clearance exercises –

- (a) outdoor/open-air business operations on private agricultural land not in breach of the lease and operating for at least ten years immediately preceding the date of Pre-clearance Survey (PCS); and
- (b) business operations on private agricultural land permitted by short-term land instruments issued by the Lands Department (LandsD) (i.e. Waivers, Modification of Tenancy (MOT) Permits, Letters of Approval (Ls of A)) at least ten years immediately preceding the date of PCS and not in breach of the conditions of the short-term land instruments, as well as business operations on government land under short term tenancies (STTs) (excluding those sites let under Abbreviated Tender System¹) first granted at least ten years immediately preceding the date of PCS and not in breach of

¹ Abbreviated Tender System cases are granted through formal tender procedure with express terms on termination and renewal arrangement made known to all bidders. These cases are excluded from the proposal.

the STT conditions.

Justifications

3. Under the current EGA arrangement, whether a business undertaking is eligible for an EGA is premised on the status of the structure(s) from which the business operates. Specifically, eligible business operators on either private agricultural land or government land would be offered an EGA only if they operate from qualified structures (with or without ancillary outdoor/open-air portion supporting the business operation) that are permitted or tolerated under the squatter control policy². A brief background of the current EGA arrangement for business undertakings is at **Annex A**.

4. In other words, under the current EGA arrangement for business undertakings, business operations in the outdoor/open air without any qualified structures that are permitted or tolerated under the squatter control policy are at present not eligible for any EGA upon clearance, even though their business operations may not be in breach of the lease. Although these business operators have the right to make statutory claims for disturbance payments (i.e. business loss due to the removal of the business), which would be their only option under the current compensation regime, the statutory process is elaborate and time-consuming.

5. The ineligibility of business undertakings with outdoor/open-air business operations that are not disallowed under the leases for any EGA, vis-à-vis those eligible business undertakings with business operations in unauthorised but tolerated structures in breach of the lease conditions, is an anomaly in terms of coherence of the compensation arrangements in land clearance exercises. This apparent disparity is clearly not desirable from the perspective of facilitating clearance, and will need to be addressed such that the current EGA arrangement can be rationalised. This is particularly the case when it is expected that many of the land clearance exercises for major land development projects in the pipeline involve a substantial number of such business undertakings with outdoor/open-air business operations.

6. Separately, some business operations are on private agricultural land with structures permitted by Waivers, MOT Permits or Ls of A which are issued

² These structures include –

- (a) structures of specified non-domestic uses covered by the 1982 Squatter Structure Survey (SSS);
- (b) structures held under licences (i.e. Waivers, MOT Permits, Ls of A or STTs) issued before 1982; or
- (c) structures held under licences (i.e. Waivers, MOT Permits, Ls of A or STTs) issued after 1 June 1982, provided that the licences are derived from pre-1982 licences in respect of the structures to be cleared and without substantial changes to the conditions of the pre-1982 licences.

after 1982, or on government land under STTs directly granted after 1982 and have been renewed for many years on a quarterly basis. When the concerned private lots are to be resumed, LandsD would need to terminate the Waivers, MOT Permits or Ls of A on these private lots. Similarly, STTs on government land would be terminated and would not be renewed. No statutory compensation or EGA is payable.

7. While the Government has every right to terminate these short-term land instruments by giving the requisite notice without any liability on compensation, the arrangement fails to acknowledge the hardship caused to those business undertakings which have been in existence lawfully for an extended period of time operating under short-term land instruments issued by LandsD and having invested substantial amounts in the business operations over the years. From the perspective of the licencees and STT tenants, it would seem that they are at a disadvantage despite being in operation for a long time with proper short-term land instruments, yet they are not eligible for any EGA, while other business undertakings operating in unauthorised but tolerated structures registered in 1982 SSS may be eligible for an EGA.

8. In view of the considerations as described in paragraphs 4 to 7 above, we have critically reviewed the current EGA arrangement for business undertakings and propose that the offer of the EGA be extended to cover the business operations referred to in paragraph 2(a) and 2(b) above.

Eligibility

9. We propose that only eligible business undertakings that have operated for at least ten years immediately preceding the date of PCS be covered under the extended EGA arrangement for business undertakings. This is to prevent abuse and ensure prudent use of public money. The situation of business undertakings which started operation less than ten years immediately preceding the date of PCS may vary and some may not have suffered as much hardship by virtue of the fact that less hardware investment should have been involved. Such requirement is also essential and readily understandable in the case of those business operations operating on short-term land instruments issued by LandsD, because LandsD has the contractual right to terminate those land instruments by giving the requisite notices, without giving the operators any assistance or compensation. Applying the additional time bar criterion to such business operations would underscore the fact that “a contract is a contract” and any assistance should not be given lightly.

10. For business undertakings with less than ten years of operation immediately preceding the date of PCS, they may continue to be dealt with on a

case-by-case basis in accordance with the established statutory process, if eligible.

11. Some business undertakings operating in the outdoor/open air may carry some of its activities indoors in unauthorised structures on site. We will uphold the principle that business undertakings operating from unauthorised structures which are not tolerated under the current land regime will continue to be excluded for the purpose of the EGA. Specifically, we propose that the existence of any unauthorised structures on site should not in themselves render the undertakings ineligible for the EGA and that we would count just the outdoor/open-air portion for the purpose of offering the EGA.

Applicable EGA Rates

12. We propose that the prevailing rate for open area of workshops under the current EGA arrangement (i.e. at \$390 per square metres (m²), subject to annual updates in accordance with the same established practice) be adopted for the open areas of eligible business operations referred to in paragraph 2(a) and 2(b) above, subject to a minimum qualifying area of 20m² and a maximum payment ceiling of 5 000m² per business operation. Where the eligible business operations occupy eligible structures (including any qualified structures under the squatter control policy as set out in footnote 2 above or structures permitted under the relevant land instruments of business operations referred to in paragraph 2(b) above), we propose that the prevailing rate for covered area of workshops under the current EGA arrangement (i.e. at \$115,500 for the first 5 to 25m² and \$2,310 per m² thereafter, subject to annual updates in accordance with the same established practice and subject to a minimum qualifying area of 5m²) be adopted for the covered areas occupied by those structures. Further details are set out in **Annex B**.

Financial Implications

13. The proposal set out in paragraph 2 is subject to the approval of FC. The number of business undertakings, as well as the status of structures from which business undertakings operate and the length of business operations, affected by each Government development clearance project varies, and cannot be ascertained until after completion of the relevant PCS. It is not possible to provide an accurate quantitative assessment of the financial implications of the proposal at this stage.

Way Forward

14. Subject to Members' views, we intend to make a submission to FC to seek approval of the proposal. Subject to FC's approval, our intention is to apply the proposed extension of current EGA arrangement to all eligible business operations which have not yet received Government's compensation or EGAs as of 11 April 2017 in respect of all on-going and future land resumption and clearance exercises.

Advice Sought

15. Members are invited to offer views on the proposal.

**Development Bureau
Lands Department
April 2017**

**Current Ex-gratia Allowance Arrangement
for Shops and Workshops**

Background

Prior to January 1988, ex-gratia allowances (EGAs) for shops and workshops affected by clearances were based on the rents payable for Housing Authority estate shops and flatted factories capitalised over six months and twelve months respectively.

2. Following approval of the Finance Committee (FC) of the Legislative Council in January 1988 (FCC(87-88)29), EGAs for shops and workshops have been linked to the rents payable for premises in the private sector, capitalised over four months for shops and twelve months for workshops. It was stated that the rationale was to allow the operators a suitable period of time to re-establish their business and to provide them with a measure of compensation for any loss of business and any other costs incurred through removal. The initial area of a shop (10 square metre (m²)) or workshop (5 to 20m²) continued to attract an allowance at a higher rate. This was to provide an incentive for operators of small business undertakings to move voluntarily.

3. In July 1988, FC approved vide paper FCC(88-89)10 that the first tier of workshop area which attracted a higher rate be extended from 5 to 20 m² to 5 to 25 m². FC further approved that the amount to be paid in respect of the first 5 to 25 m² should be twice the standard rate in order to tally with the factor applied to shops. It was further approved that the authority to approve future changes in the allowances in accordance with the approved formulae was delegated to the Deputy Financial Secretary.

4. As regards the rates of the open area and covered area, the ratio has remained unchanged at 1:6.

Eligibility

5. The EGA is applicable upon clearance of the affected undertakings operating at the time of the Pre-clearance Survey (PCS) and their uses are covered by the 1982 Squatter Structure Survey. Undertakings operating in structures held under Short Term Tenancies or licences issued before 1982 may also be eligible. In December 2013, FC approved relaxing eligibility criteria to include undertakings operating in structures held under licences issued after 1 June 1982, provided that the licences are derived from pre-1982 licences in respect of the structures to be cleared and without substantial changes to the conditions of the pre-1982 licences.

Basis of Assessment

6. The prevailing rates for this EGA for shops and workshops are linked to the average rental of shops and flatted factories respectively in the private sector as advised by the Rating and Valuation Department capitalised over seven months for shops and fifteen months for workshops. Calculation of the amount of the eligible EGA is based on prevailing rates on the date of posting of the resumption notice for that project if resumption of private land is involved, or the date which is six months before the first scheduled clearance date for that project if only Government land is involved. The surveyed or licensed area of the structure or the occupied area at the time of PCS, whichever is the least, is adopted as the basis for computation of the EGA.

7. With effect from 1 September 2016, the current EGA rate for shops and workshops are as follows:

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|----------------|--------------------|--|
| (a) For shops: | (i) covered area – | \$19,420 per m ² for the first 10m ² and \$9,710 per m ² thereafter without maximum payment |
| | (ii) open area – | \$1,620 per m ² subject to a minimum qualifying area of 10m ² and a maximum payment of \$810,000 (i.e. 500m ²) |

- (b) For workshops: (i) covered area – \$115,500 for the first 5 to 25m² and \$2,310 per m² thereafter without maximum payment and subject to a minimum qualifying area of 5m²
- (ii) open area – \$390 per m² subject to a minimum qualifying area of 20m² and a maximum payment of \$390,000 (i.e. 1 000m²)

The EGA rates are updated annually in accordance with the established practice.

Applicable Ex-gratia Allowance Rates

We propose that –

- (a) for eligible outdoor/open-air business operations on private agricultural land –
 - (i) the rate for open area of workshops (i.e. prevailing rate at \$390 per square metres (m²)) be adopted for the open areas of the outdoor/open-air business operations, subject to a minimum qualifying area being 20m² and a maximum payment ceiling being 5 000m² per business operation; and
 - (ii) any business operations from structures on site be dealt with under the current ex-gratia allowance (EGA) arrangement for workshops, if eligible; and
- (b) for eligible business operations on private agricultural land permitted by short-term land instruments issued by the Lands Department and eligible business operations on government land under short-term tenancies (excluding those sites let under Abbreviated Tender System) –
 - (i) the rate for covered area of workshops (i.e. prevailing rate at \$115,500 for the first 5 to 25m² and \$2,310 per m² thereafter) be adopted for the areas occupied by structures permitted under the relevant land instruments, subject to a minimum qualifying area being 5m²; and
 - (ii) the rate for open area of workshops (i.e. prevailing rate at \$390 per m²) be adopted for the open areas not occupied by structures, subject to a minimum qualifying area being 20m² and a maximum payment

ceiling being 5 000m² per business operation.

The EGA rates are subject to annual updates in accordance with the same established practice for the current EGA for workshops.