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Panel on Development

Meeting on 29 May 2018

**Background brief on the proposed enhancements to
the general ex-gratia compensation and rehousing arrangements for
Government's development clearance exercises**

Purpose

This paper provides background information on the general ex-gratia compensation and rehousing ("C&R") arrangements for the Government's development clearance exercises,¹ and a summary of the major views and concerns expressed by Members of the Legislative Council ("LegCo") on the subject.

Background

Compensation and rehousing arrangements for Government's development clearance exercises

2. According to the Administration, when land is required to be resumed and cleared for development projects such as public works projects, affected households who are owners or legal tenants of private land may claim compensation (commonly referred to as "statutory compensation") in accordance with the relevant laws of Hong Kong (including Lands

¹ The Government's development clearance exercises include clearances required for public works projects (for which relevant works departments have submitted clearance applications to the Lands Department ("LandsD")), clearances related to statutory land resumption and clearances of government land to make way for Government's land disposal and other development purposes, but do not include enforcement-related clearances or emergency clearances.

Resumption Ordinance (Cap. 124), Roads (Works, Use and Compensation) Ordinance (Cap. 370), etc.). The entitlements to compensation, the procedures involved, as well as the basis and principles of assessing the compensation are set out in the relevant ordinances, while the authority for final determination of the compensation amounts under the ordinances rests with the Lands Tribunal.

3. Apart from statutory compensation, the Government offers ex-gratia allowance ("EGA") and ex-gratia land compensation to eligible affected parties. According to the Administration, EGAs are non-statutory payment to the people affected by acquisition projects and are intended to help minimize their hardship arising from land resumption and clearances. Various types of EGAs are available for eligible occupiers of legal/permitted domestic properties, genuine farmers, owners/occupiers of legal commercial properties, etc. Separately, with a view to enabling speedy payment of land compensation, the Government would offer to eligible affected landowners an ex-gratia land compensation as an alternative to statutory claims under the respective ordinances. The rates of the various types of EGAs and ex-gratia land compensation are revised by the Government upon the approval of the Finance Committee ("FC") from time to time, where appropriate.

4. Meanwhile, it has been the Government's stated objective that no one would be rendered homeless in clearance exercises. Pursuant to this objective, the Administration will arrange rehousing to public rental housing ("PRH")/ interim housing for eligible affected households, and/or grant them EGA according to their eligibility.

Special ex-gratia compensation and rehousing packages for specific development projects

5. In 2009 and 2011-2012, two special C&R packages were respectively introduced to facilitate smooth land resumption and clearance in relation to the Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link ("HKS of XRL") and the Liantang/Heung Yuen Wai Boundary Control Point ("BCP").² The special packages offered were of a one-off nature with application confined to the respective projects.

² Details of the special ex-gratia payments in relation to the HKS of XRL project are set out in [PWSC\(2009-10\)72](#), and that in relation to the Liantang/Heung Yuen Wai BCP project are in [PWSC\(2012-13\)27](#). The relevant funding proposals for the special ex-gratia payments were approved by FC on 10 January 2010 and 13 July 2012 respectively.

6. As regards the Kwu Tung North/Fanling North New Development Areas ("NDAs") and Hung Shui Kiu ("HSK") NDA that have been taken forward following the recommendations of the "Hong Kong 2030: Planning Vision and Strategy", the Administration has indicated that, in view of the strategic importance and clearance scale of these NDA projects, special ex-gratia compensation packages and special rehousing schemes have been proposed for the affected eligible households.³

Major views and concerns expressed by Members

7. The Panel on Development ("the Panel") has all along been monitoring issues relating to the C&R arrangements for eligible clearerees affected by the development clearance exercises. Members have also raised questions on the subject at meetings of LegCo and FC. The major views and concerns expressed by Members are summarized in the ensuing paragraphs.

Pre-clearance survey

8. Some Members were concerned about the time gap between the commencement of the planning on the development of a site and the clearance of the site, during which some occupants of the structures at the site might be forced by land owners to move out without any compensation. At present, occupants who were forced to leave the structures before the relevant Pre-Clearance Survey ("PCS") would not be able to receive any EGAs. In this regard, Members suggested that a freezing survey should be conducted to register the particulars of the occupants once the Administration started planning the development of a site, so that the occupants might have a chance to have a reasonable compensation from the Government even if they were evicted afterwards.

9. The Administration advised that PCS was generally conducted at the date when the development plan was published in the gazette or when the project was publicly announced. The purpose of PCS was to capture the occupation and status of the existing structures and business operations within an area planned for development at the time when Lands Department ("LandsD") commenced the survey. As compensation would not be available to any new occupation and business operation after the commencement of a PCS, PCS could reduce the incentives for a land owner to evict his/her tenants

³ Details of the compensation, allowances and rehousing arrangements are set out in the "[North East New Territories New Development Areas Project - Guide to General Ex-gratia Compensation and Special Ex-gratia Compensation for Land Resumptions and Clearances](#)" issued by LandsD in January 2014.

in the hope of getting more compensation. Yet, tenancy matters were something between the land owner and his/her tenants, and any announcement made by the Government for development or the conduct of PCS by the Government could not override this landlord and tenant relationship.

Arrangements for affected households

10. When Members discussed the Wang Chau Housing Development project and NDA projects in recent years, the C&R arrangements for the villagers affected by land clearance had often been a key point of contention. Some Members opined that the Administration should review and improve the arrangements in order to take better care of the needs of the people affected, including the immediate accommodation needs of those who were not eligible for public housing. Some Members enquired whether the Administration would consider compensating the affected residents more favourably, such as by according priority to their applications for PRH. Given that the level of the special cash EGA of \$600,000 for affected eligible households had remained unchanged for many years, some Members urged the Administration to review and adjust the allowance rate to help address the rehousing needs of the affected households.

11. Some Members called on the Administration to adopt a "rehouse first, develop later" approach in land resumption for development, and waive the income and asset test requirements for rehousing the affectees. They also urged the Administration to step up efforts in making suitable arrangements and closely communicate with all affected indigenous and non-indigenous villagers to avoid disputes.

12. The Administration advised that matters in relation to resumption of private land and clearance of government land for public purposes, including the C&R arrangements for eligible owners and households would be dealt with in accordance with the established mechanism. To ensure that precious PRH resources were used to assist those in genuine need, same as other PRH applicants, clearers had to meet the eligibility criteria laid down by the Hong Kong Housing Authority on income and assets. The Administration assured Members that it would continue to establish contacts with the affected residents to explain the arrangements.

13. In reply to a question at the Council meeting of 10 January 2018 on the C&R arrangements for villagers affected by development projects, the Administration indicated that the assessment of statutory compensation was based on the provisions under the relevant ordinances, whilst EGAs were calculated in accordance with the eligibility criteria and payment framework

endorsed by FC. Regarding whether the Administration would consider setting up a dedicated fund for development projects to expedite the disbursement of compensations to affected villagers, the Administration advised that it would pay compensation and EGAs to those eligible under the applicable Subheads created under Head 701 of the Capital Works Reserve Fund ("CWRP") through the block vote mechanism. The Administration currently had no plans to establish other dedicated funds apart from CWRP.

Arrangements for affected brownfields operations

14. In April 2017, the Administration announced a proposal to extend the EGA arrangement to eligible business undertakings affected by the Government's development clearance exercise ("extended EGA proposal"),⁴ and briefed the Panel in May 2017. When discussing the proposal, some members asked if the Administration would review the eligibility requirement of minimum 10-year operation at the same land lot under the extended EGA proposal to count also the years of operation before moving to another land lot within the same area. Given that sublessors who were not the business operators but had made investment on the brownfield sites would not be entitled to the extended EGA under the proposal, members called on the Administration to review the relevant arrangement.

15. The Administration advised that the minimum 10-year operation requirement was to prevent abuse and ensure prudent use of public money. Under the policy, business operating on the private lot concerned for less than 10 years would not be eligible even though the operator might have operated cumulatively for 10 years on different land lots over a 10-year timespan. That notwithstanding, cases not meeting the 10-year criterion would still be eligible for making statutory claims for disturbance payments. The 10-year criterion was consistent with the arrangements for occupants of 1982-surveyed⁵ or licensed domestic squatters affected by development clearance exercises, under which the occupants would be eligible for EGA if and only if they had occupied the said squatters for at least 10 years immediately preceding the date of PCS. The Administration indicated that it had stipulated in the short-term tenancy ("STT") conditions that sub-leasing was not allowed for the

⁴ Details of the proposal are set out in LC Paper No. [CB\(1\)801/16-17\(01\)](#).

⁵ In 1982, for squatter control purpose, the Housing Department conducted a territory-wide Squatter Control Survey ("SCS") on unleased and undeveloped Government land and leased agricultural land. Squatter structures registered in SCS are tolerated until they are involved in a clearance for development, environmental improvement or safety reasons. Any illegal structure or unauthorized extension built after 1 June 1982 are subject to enforcement and demolition action once discovered.

government land let out under STTs. Any STT tenants who were found in breach of the STT conditions (e.g. subleasing the land) would not be eligible for EGA.

16. In view of members' concern over the eligibility requirements of the extended EGA for business undertakings, the Administration has undertaken to revert to the Panel in the fourth quarter of the 2017-2018 financial year, upon reviewing the need to refine the extended EGA proposal.

Council questions

17. Three questions relating to the C&R arrangements for development clearance exercises were raised at the Council meetings of 31 May 2017, and 10 January and 28 March 2018. The relevant hyperlinks are in **Appendix II**.

Latest developments

18. On 10 May 2018, the Government announced the proposal to enhance the general ex-gratia C&R arrangements for eligible domestic occupants in squatters and business undertakings affected by Government's development clearance exercises. The proposal comprises the following key features:

- (a) from "project specific" packages to a unified as well as enhanced general ex-gratia C&R package which will be applicable to all future Government's development clearance exercises (irrespective of project scale);
- (b) to offer non-means tested rehousing for affected eligible squatter households in dedicated rehousing estates to be developed and managed by the Hong Kong Housing Society;
- (c) to suitably relax the eligibility criteria and increase the amount of cash EGAs;
- (d) to enable eligible households residing in 1982-surveyed/licenced non-domestic structures to benefit from non-means tested rehousing and ex-gratia compensation, subject to them meeting the specified prescribed requirements of the one-off voluntary registration exercise to be implemented by LandsD; and

- (e) to relax the eligibility criteria of applicable EGA for business undertakings on brownfields and in squatters.

19. A comparison of the key features of the prevailing general ex-gratia C&R arrangements and the proposed enhancements is given in **Appendix I**.

20. According to the Administration, subject to FC's approval, implementation of the enhanced general C&R package for domestic occupants in squatters and cases of businesses operating from squatters will be backdated to the date of announcement (i.e. 10 May 2018), while for business undertakings on brownfields will be backdated to 11 April 2017 (i.e. the date on which the Government announced the introduction of an EGA arrangement for open-air/outdoor business undertakings last year).

21. At the Panel meeting to be held on 29 May 2018, the Administration will brief members on the details of the proposed enhancements.

Relevant papers

22. A list of relevant papers with their hyperlinks is in **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
28 May 2018

**A comparison of the key features of the prevailing
general ex-gratia compensation and rehousing ("C&R") arrangements and
the proposed enhancements of the Government**

	General ex-gratia C&R arrangements	Proposed enhancements
Rehousing for domestic occupants in squatters	Means-tested rehousing to public rental housing ("PRH") of Hong Kong Housing Authority ("HKHA") for eligible households residing in surveyed/licensed domestic structures continuously for at least two years immediately preceding the date of Pre-clearance Survey ("PCS")	New non-means-tested rehousing to rental and subsidized sale flat units at Dedicated Estates to be built by Hong Kong Housing Society ("HKHS") for eligible households residing in surveyed/licensed domestic structures continuously for at least seven years immediately preceding the date of PCS ⁶ <i>(Note: the current means-tested rehousing option will be retained)</i>
Eligibility of Ex-gratia Allowance for Permitted Occupiers ("EGAPO")	Eligible households residing in surveyed/licensed structures continuously for at least 10 years immediately preceding the date of PCS	Eligible households residing in surveyed/licensed structures continuously for at least two years immediately preceding the date of PCS
Amounts of EGAPO	Ranging from about \$48,000 to \$600,000 , depending on the size of an eligible structure and the length of continuous residence of a household	Ranging from about \$60,000 to \$1,200,000 , depending on the size of an eligible structure and the length of continuous residence of a household

⁶ Transitional arrangements will be offered by making use of vacant units of HKHS's rental and HKHA's PRH estates before the Dedicated Estates are completed and ready for population intake (estimated to be in around 2023/2024 for the Dedicated Estates at Pak Wo Road, Fanling and Hung Shui Kiu New Development Area).

	General ex-gratia C&R arrangements	Proposed enhancements
Domestic occupants in surveyed/licensed non-domestic structures	Households residing in surveyed/licensed non-domestic structures turned into domestic use are not eligible for rehousing and EGAPo	Discretionary one-off voluntary registration will be conducted by Lands Department for households residing in surveyed/licensed non-domestic structures turned into domestic use, and those satisfying the relevant prescribed requirements may be considered eligible for relevant C&R arrangements in future
Eligibility of Domestic Removal Allowance ("DRA")	Only eligible households residing in surveyed/licensed domestic/non-domestic structures continuously for at least two years immediately preceding the date of PCS	All affected households covered by PCS and cleared by the Government
Amounts of DRA	Ranging from \$5,365 to \$20,251 , depending on the size of households	Ranging from \$9,410 to \$28,840 (at the prevailing level), depending on the size of households
Eligibility of EGAs for business undertakings	Outdoor/open-air business undertakings with minimum continuous operational period of at least 10 years immediately preceding the date of PCS (according to the proposed EGA arrangement for such business undertakings announced by the Administration in April 2017)	Outdoor/open-air business undertakings with minimum continuous operational period of at least seven years immediately preceding the date of PCS

Appendix II

Proposed enhancements to the general ex-gratia compensation and rehousing arrangements

List of relevant papers

Council/ Committee	Date of meeting	Paper
Panel on Development	22 July 2013	<p>Administration's paper on proposed enhancements to the general ex-gratia compensation and rehousing arrangements for development clearance exercises (LC Paper No. CB(1)1543/12-13(02))</p> <p>Administration's follow-up paper (LC Paper No. CB(1)315/13-14(01))</p> <p>Minutes of special meeting (LC Paper No. CB(1)640/13-14)</p>
Finance Committee	15 November 2013 and 6 December 2013	<p>Administration's paper on Capital Works Reserve Fund — Head 701 — Land Acquisition (a) Ex-gratia Allowance for Permitted Occupiers of Licensed Domestic Structures and Surveyed Domestic Squatter Structures Affected by Clearance (b) Domestic Removal Allowance (c) Ex-gratia Allowance for Shops, Workshops, Godowns, Slipways, Schools, Churches and Ornamental Fish Breeding Undertakings (d) Ex-gratia Allowance for the Clearance of Graves, Kam Taps and Shrines (LC Paper No. FCR(2013-14)33)</p> <p>Minutes of meetings on 15 November 2013 (LC Paper No. FC55/13-14) and 6 December 2013 (LC Paper No. FC50/13-14)</p>

Council/ Committee	Date of meeting	Paper
Panel on Development	23 May and 27 June 2017	<p>Administration's paper on ex-gratia allowance for business undertakings affected by the Government's development clearance exercises (LC Paper No. CB(1)801/16-17(01))</p> <p>Minutes of meetings on 23 May (LC Paper No. CB(1)1417/16-17) and 27 June 2017 (LC Paper No. CB(1)100/17-18)</p> <p>Administration's response (LC Paper Nos. CB(1)1202/16-17(01) and CB(1)1346/16-17(01)) to the motions carried at the meetings</p>
Panel on Housing	6 November 2017	<p>Administration's paper on Public Works Programme Item No. B780CL — Site formation and infrastructure works for public housing development at Wang Chau, Yuen Long (LC Paper No. CB(1)155/17-18(04))</p> <p>Minutes of meeting (LC Paper No. CB(1)416/17-18)</p> <p>Administration's response (LC Paper No. CB(1)308/17-18(01)) to issues raised by members and the two motions carried at the meeting</p> <p>Administration's response to the issues raised in the letter dated 30 November 2017 from Hon CHU Hoi-dick regarding "Head 711 project no. B780CL — Site formation and infrastructure works for public housing development at Wang Chau, Yuen Long" as set out in LC Paper No. CB(1)310/17-18(01) (LC Paper No. CB(1)435/17-18(01))</p>

Council/ Committee	Date of meeting	Paper
Panel on Development	20 December 2017 and 23 January 2018	<p>Administration's paper on implementation arrangements for Hung Shui Kiu New Development Area Project (LC Paper No. CB(1)817/16-17(08))</p> <p>Minutes of meetings on 20 December 2017 (LC Paper No. CB(1)718/17-18) and 23 January 2018 (LC Paper No. CB(1)826/17-18)</p> <p>Administration's response (LC Paper Nos. CB(1)828/17-18(01) and CB(1)807/17-18(01)) to issues raised by members and the motion carried at the meeting</p> <p>Administration's response to Dr Hon KWOK Ka-ki's papers on implementation arrangements for the Hung Shui Kiu New Development Area Project dated 29 December 2017 and 29 January 2018 as set out in LC Paper Nos. CB(1)405/17-18(01) and CB(1)545/17-18(01) (LC Paper No. CB(1)827/17-18(01))</p>

Hyperlinks to relevant Council Questions:

Date	Council Question
31 May 2017	Council question on rehousing of residents affected by land resumption and squatter clearance programmes
10 January 2018	Council question on compensation and rehousing arrangements for villagers affected by development projects
28 March 2018	Council question on compensations and rehousing for residents affected by North East New Territories NDAs Planning