

財經事務及庫務局



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28 February 2018

Ms Anita Sit
Clerk to Finance Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Sit,

**Special Meeting of Finance Committee
Follow-up to meeting on 28 November 2017**

The Finance Committee requested the Government to provide the following information and responses arising from its special meeting held on 28 November 2017:

- (i) The opening speech by the Secretary for Financial Services and the Treasury; and
- (ii) Responses from the Government in respect of paragraph 19(b) of the 'Information note prepared by Legal Services Division on the legal and constitutional framework relating to the approval of funding for the purposes of the Government's capital works programme and related issues' (LC Paper No. LS 12/17-18).

Please find at Annexes I and II the requested information and responses of the Government in relation to (i) and (ii) above for reference.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Hsia', with a stylized flourish at the end.

(Ms Margaret Hsia)
for Secretary for Financial Services
and the Treasury

**Secretary for Financial Services and the Treasury's opening speech
on the Capital Works Reserve Fund block allocations mechanism
at the Legislative Council's Finance Committee special meeting**

Chairman,

I wish to first explain the general principle concerning the establishment of the Capital Works Reserve Fund (CWRF) block allocations mechanism before responding to the questions raised by the Hon Chu Hoi-dick.

All along, the Government has been committed to the implementation of public works projects to promote economic development and improve people's livelihood. The block allocations mechanism has existed for a long time to enable the Government to promptly respond to the evolving demand of the community in taking forward thousands of minor works projects and pre-construction activities every year.

In accordance with the Resolution passed by the Legislative Council (LegCo) on the establishment of the CWRF, the Financial Secretary (FS) is responsible for administering the CWRF. The block allocations mechanism is premised on the Resolution setting up the CWRF, under which the Government creates specific subheads and obtains proper authorisation from the legislature so that the Government may effectively implement thousands of important but smaller-scale projects every year.

The administrative work and resource allocation deliberation involved in the operation of the block allocations mechanism is voluminous and complex, covering project prioritisation, project management, contract and account management and etc. As such, the Government has always been the proponent for formulating the mechanism at the outset to the creation of new subheads as well as other amendments over the years. The Government's proposals would then be submitted to the legislature for deliberation and approval. This is to ensure that the mechanism is pragmatic, practicable and will not impede the CWRF's operation, while fully respecting and recognising the functions of the legislature in deliberating and approving proposals for amendments.

Moreover, the block allocations mechanism also enables the Finance Committee (FC) to focus its time and resources on vetting more important and higher valued projects and is therefore considered as a pragmatic and effective approach.

In administering and expending moneys from the CWRF, the Government has all along been acting in strict accordance with the authority delegated by the FC. The existing delegation of authority has provided certainty, clarity and practicability to enable the Government to comply with all the conditions and limitations imposed by the FC while administering the CWRF in an effective manner, thereby ensuring the proper use of funding provision and fulfilling the CWRF's purpose of financing the implementation of the capital works programme.

Regarding the Hon Chu's proposals on the block allocations mechanism, we have previously provided an information note to the FC. We would like to elaborate on some of the points as mentioned in the information note.

Principle involved in reviewing the mechanism

According to the Government's understanding, the Hon Chu proposes to review and revise the existing block allocations mechanism in order to seize the initiative to impose conditions, limitations or exceptions as to how the Government may use the funds approved under the block allocations mechanism. We consider this unacceptable as it deviates from the constitutional principle in public finance.

Although the CWRF Resolution does not specify that proposals to impose conditions, limitations or exceptions must come from the Government, the Resolution was made under the Public Finance Ordinance (PFO) (Cap. 2, Laws of Hong Kong) and the PFO must comply with the constitutional requirements of the Basic Law (BL). Hence, we should take into account the relevant BL and PFO provisions when interpreting the relevant provisions under the Resolution.

According to BL Article 62(4), the Government of the Hong Kong Special Administrative Region (HKSAR) has the powers and functions to draw up and introduce budgets and final accounts. Moreover, BL Articles 73(2) and 73(3) provide that the LegCo has the powers and functions to examine and approve budgets introduced by the government, and to approve taxation and public expenditure.

Under Section 8(1) of the PFO, no changes shall be made to the approved estimates of expenditure except with the approval of the FC upon a proposal of the Financial Secretary (FS).

Besides, paragraph 27 of the Finance Committee Procedure and paragraph 25 of the Public Works Subcommittee Procedure clearly state that proposals to change the approved Estimates of Expenditure must come from the FS, and members cannot amend the FS' proposals which must be discussed and voted on as they stand.

The above provisions and arrangements clearly and consistently reflect the HKSAR's constitutional principle in public finance which is for the Government to propose and for the legislature to dispose. The same principle is also spelt out in LC Paper No. LS12/17-18 prepared by the Legal Service Division of the LegCo Secretariat.

Given that the operation of the block allocations mechanism involves voluminous and complex administrative work and resource allocation deliberation, any change to the mechanism will bring far-reaching implications which may seriously affect the effective administration of the CWRF and implementation of the capital works programme. Hence, the said principle for the Government to propose and for the FC to dispose must therefore be adhered to. In fact, as mentioned above, the formulation of the mechanism from the outset and the proposals to make amendments over the years were all proposed by the Government and submitted to the legislature for deliberation and approval. This is a long-standing convention and practice that fully complies with the said principle. If amendments to the block allocations mechanism can be proposed by any person or institution other than the Government, there is no guarantee that the amendments will be practicable. The CWRF Resolution provides that the FS is responsible for administering the CWRF. If the exercise of this responsibility is subject to the provision that the legislature may change the approved delegation of powers from time to time, it is totally unfair to the administrator of the CWRF and is not conducive to the smooth and effective operation of the CWRF.

Apart from the matter of principle, the Government opines that the current block allocations arrangement provides certainty, clarity and practicability and hence we do not intend to make any changes. As such, we should not consider the Hon Chu's proposals.

The Hon Chu proposed to confirm or revise the details of

delegation of authority by the FC periodically. This would mean that the delegated authority may be subject to changes from time to time.

The uncertainty over the delegation and the extent to which it may be changed may hamper the Government's ability to effectively and continuously administer the block allocations subheads under the CWRF.

Such uncertainty will also affect the Government's planning and implementation of thousands of projects and items each year, which may in turn affect the business planning of the construction industry, in particular the small and medium-sized enterprises which depend mainly on bidding items funded by the block allocations.

If contractors encounter difficulties in business planning, this may trickle down to affect the livelihood of workers employed by these contractors.

The Hon Chu also proposed to subject individual block allocations items considered "controversial" to further examination. We consider that this proposal will undermine the very purpose of introducing block allocations mechanism.

The block allocations arrangement aims to allow reasonable flexibility for the Government to take forward thousands of important smaller-scale projects in the course of a year. It also facilitates the FC to focus its time and resources on vetting more important and higher valued projects. When seeking funding approval from the FC, the Government endeavours to provide a snapshot list of projects planned to be implemented in the coming year under individual block allocations subheads. However, to cater for legitimate needs that arise in the course of the year, new projects not in the snapshot list may be created from time to time whereas planned projects in the list may not be implemented eventually.

The Hon Chu's proposal implies that the Government will have to keep the FC informed of any changes to the snapshot list of projects during the year, lest it will be difficult for the FC to discuss whether certain items are controversial. The proposal is in effect asking the FC to review each and every item that the Government creates under delegated authority. Not only will it defeat the purpose of the mechanism, but also be impracticable given that the FC's agenda is persistently overloaded. This will slow down thousands of minor works

projects and pre-construction activities and in turn delay the delivery of capital works projects to meet the various needs and demands of the community in a timely manner.

In view of the above, the Government does not agree with the Hon Chu's proposals.

END

**Follow-up on the Special Meeting of the Finance Committee
on 28 November 2017**

The Finance Committee requested the Government to provide responses in respect of paragraph 19(b) of the ‘Information note prepared by Legal Services Division on the legal and constitutional framework relating to the approval of funding for the purposes of the Government’s capital works programme and related issues’ (LC Paper No. LS 12/17-18). Paragraph 19(b) of the said information note stated that “*whether it is necessary to impose a financial limit for projects under three subheads relating to land acquisition and landslip preventive measures mentioned in paragraph 8 above (the paper)*”. The Government’s response is set out below:

Land acquisition subheads under the CWRF

2. Under Head 701 – Land Acquisition of the Capital Works Reserve Fund, there are two block allocations subheads, namely Subhead 1004CA “*Compensation for surrenders and resumptions: miscellaneous*” and Subhead 1100CA “*Compensation and ex-gratia allowances in respect of projects in the Public Works Programme*”. These subheads are created for meeting the expenditure on compensation and ex-gratia allowances (EGAs) incurred in land acquisition and clearance to dovetail with the implementation of public works projects.

3. There is no project estimate ceiling (i.e. financial ceiling) for items to be created under the authority delegated by the Finance Committee (FC) to controlling officers under Subheads 1004CA and 1100CA because items covered by these two subheads are created for payment of statutory compensation and EGAs –

- (i) statutory compensation in relation to land acquisition is assessed in accordance with the relevant ordinance(s). If the Government and the claimant cannot reach an agreement, resolution by the Lands Tribunal may be required.
- (ii) EGA is calculated in accordance with the formulae endorsed by the FC. If practical considerations warrant a deviation from the established arrangements, the Government will seek special funding from the FC on a case-by-case basis.

In other words, in making payment of statutory compensation and EGAs for land acquisition, it is subject to legal provisions, resolution by the Lands Tribunal or formulae endorsed by the FC. These factors are beyond the control of the controlling officer.

4. Besides, the Government may also encounter different situations and difficulties in the actual course of land acquisition and payment of land resumption compensation and EGAs. For instance, the Government may not be able to contact some of the former land owners as they may have emigrated or passed away. As such, despite the Government's endeavour in making estimations, it is difficult to determine the actual amount of compensation and the exact time at which it will be disbursed to former land owners or their lawful successors.

5. The current arrangement of imposing no financial ceiling for items under Head 701 Subheads 1004CA and 1100CA is a reasonable and pragmatic approach. Given the above uncertainties, if the items under Subheads 1004CA and 1100CA are subject to financial ceilings, the Government may have to seek the FC's approval for individual land acquisition items that exceed the ceiling. This is tantamount to requesting the FC to re-consider the statutory compensation payable by the Government under the law, and EGAs calculated under the FC's approved mechanism. Besides, if financial ceilings are imposed on items under these subheads, given that it is difficult to determine the actual amount of compensation and the exact time at which it will be disbursed to former land owners, to avoid the need to seek an increase in the approved project estimate (APE) and/or a supplementary provision to cover the compensation or EGAs during the year, the Government may have to set aside a larger sum of contingency in the estimate to ensure timely disbursement of compensation or EGAs to the claimants. In doing so, the Government will not be able to use the additional provision flexibly in other areas that require public funding. Moreover, in case the expenditure under such item exceeds the APE, even if the Government seeks the FC's approval for an increase in the APE in advance, the lead time required may still cause delay in compensation payment or give rise to additional interest expenses, and result in unfair situations whereby claimants under the same item may receive payments at different paces.

6. Notwithstanding the above, there is concern that the Government may trigger the land resumption and clearance process before securing the funding approval of FC for the relevant works projects. In accordance with the existing practice, the relevant

government department would normally **earmark** funding under the relevant CWRP block allocations subheads for compensation expenses or EGA for resumption and clearance exercises which may incur expenditure within the coming financial year. The purpose is to enable the Government to make timely disbursement to the claimants in the following year when the circumstances so require. These items are included in the list of block allocations items provided to FC/Public Works Subcommittee (PWSC) along with the annual block allocations funding submission. There is no lack of transparency. However, it is possible that the block allocations items for land acquisition may be approved ahead of FC's approval for the relevant works projects.

7. Some Members are concerned that this may create a fait accompli, pre-empting FC's consideration and approval of the capital works projects.

8. In the past few years, the resumption notice for most of the land resumption cases were gazetted **after** obtaining FC's funding approval of the main works projects. Only a few cases (5 out of 33) required early trigger of the resumption process. They were mainly for facilitating early assessment of the eligibility for compensation/EGA/rehousing for individual households/business undertakings and early discussions on the removal arrangements.

9. To alleviate Members' concern and to affirm FC's authority in approving capital works projects, the Government makes the following commitments –

- (i) As a general practice, the Government will not proceed with land resumption and clearance until funding approval is obtained, from either FC or the authority acting under delegated authority, for the commencement of public works triggering the need for the resumption and clearance; and
- (ii) Should there be circumstances warranting a departure from the above general practice for any individual projects, the Government will consult the relevant LegCo Panel on the particular case beforehand.

Subhead on Landslip preventive measures

10. As regards Subhead 5001BX “Landslip preventive measures” under Head 705 – Civil Engineering, it was created for funding landslip preventive works and related studies. Currently, no financial ceiling is set for individual items under this Subhead.

11. As landslip preventive works help safeguard public safety, it is considered inappropriate to set an arbitrary financial ceiling for such items, lest the Government’s ability to manage landslip risks will be seriously hampered.

12. Generally, the greater the known landslip risks, the higher the cost of landslip preventive works will be. If the Government is constrained by the financial ceiling and needs to seek separate approval from the FC for large scale landslip preventive works, it may miss the best timing for risk management. If accidents happen while such projects are pending approval, the consequences can be disastrous. In order to ensure public safety, the approval process for landslip preventive works should be as streamlined as possible and should not be subject to any arbitrary financial ceiling.

13. Overall, in view of the above, the Government considers it inappropriate to impose financial ceilings for items under Subheads 1004CA and 1100CA under Head 701, and Subhead 5001BX under Head 705. However, as mentioned above, the Government would commit that as a general practice, the Government will not proceed with land resumption and clearance until funding approval is obtained for the commencement of public works triggering the need for the resumption and clearance.