

LEGCO QUESTION NO. 14 (Written Reply)

Asked by: Dr Hon TANG Siu-tong

Date of meeting: 15 May 2002

Replied by: Secretary for Planning
and Lands

Question:

Under Section 4 of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) ("the Ordinance"), a person who is a lawful successor in the male line of an indigenous villager, upon inheriting a small house holding from his father as a lessee, is exempted from liability to pay Government rent of an amount equal to 3% of the rateable value of the land leased from the date of lease extension. However, if the small house had been given to him by his father while the latter was still alive, he would not be granted such an exemption. The provision has caused grievances among the affected indigenous villagers in the New Territories. In this connection, will the Government inform this Council:

- (a) whether, in formulating Item 2 of Annex III to the Joint Declaration on "Land Leases" and Article 122 of the Basic Law, an interpretation was given regarding the legislative intent of the provisions concerned or the definition of "successor";
- (b) of the number of cases, since the commencement of the Ordinance, in which indigenous villagers have become ineligible for such exemption from payment of Government rent because of their failure to meet the requirements of Section 4 of the Ordinance, and its percentage in those cases in which indigenous villagers should have been eligible for rent exemption before the Ordinance came into operation;
- (c) of the number of complaints received since the commencement of the Ordinance in respect of non-eligibility for rent exemption in the said circumstances and, among these complaints, the number of those in which the complainants subsequently applied to court for judicial reviews,

as well as the outcome of such reviews;

- (d) of the indigenous villager bodies which had been consulted at the drafting stage of the Ordinance, and their views on the Ordinance; and
- (e) whether, upon the implementation of the Ordinance, publicity efforts had been made to explain the legislation to those affected by Section 4 of the Ordinance; if so, of the details?

Reply :

Madam President,

- (a) Annex III to the Sino-British Joint Declaration on the Question of Hong Kong (the JD) sets out the provisions on how land leases in Hong Kong and other related matters should be dealt with during the transitional period and after the establishment of the Hong Kong Special Administrative Region. Item 2 of Annex III to the JD provides, inter alia, that in respect of certain rural holdings, the rent shall remain unchanged so long as the properties are held by persons and their lawful successors descended through the male line from indigenous villagers. Modelling on Item 2 of Annex III to the JD, similar provisions are set out in Article 122 of the Basic Law (BL 122).

The purpose of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) (the Ordinance) is to implement the principles of the JD and the Basic Law in respect of the liability to pay Government rent. It provides for the assessment and collection of Government rent on certain Government leases extending beyond 30 June 1997. To implement the aforesaid principles, a “lawful successor” is defined in the Ordinance to mean “a person, male or female, who on the death of an indigenous villager is or becomes entitled to an interest in the estate of the deceased by lawful succession and which person is a descendant through the male line of the deceased”. The Ordinance gives effect to the legislative intent as expressed in the relevant provisions of the Basic Law which implement the corresponding treaty obligations in the JD. The Ordinance is entirely consistent with the Basic Law and the relevant provisions of the JD.

- (b) Rent exemption is given in respect of interests in certain rural holdings. Since the commencement of the Ordinance, a total of 140,438 lots and tenements have been assessed. Among them, some 48,223 have been found not eligible for rent exemption.

Since the entering into force of the JD, there is no difference in the criteria for rent exemption before and after the commencement of the Ordinance. All along, only certain interests in land held by lawful successors of indigenous villagers descended from the male line are eligible for rent exemption. Therefore the question of “indigenous villagers who should have been eligible for rent exemption before the Ordinance came into operation” does not arise.

- (c) Since the coming into operation of the Ordinance, the Lands Department has received 1,627 applications for a review of the Director of Lands’ decision of rejecting rent exemption. The Ordinance provides a mechanism for any person, aggrieved by the decision of the Director of Lands, to appeal to the Lands Tribunal. There have been 65 appeals to the Lands Tribunal under the provisions of the Ordinance. Of these 65 cases, 50 have been withdrawn or discontinued, 12 cases have been heard and dismissed by the Lands Tribunal and three cases are pending hearing. No application for judicial review has been made.
- (d) The Administration had consulted Heung Yee Kuk (HYK) and the Rural Committees before the enactment of the Ordinance. In this respect, an information paper on the Bill, with answers to questions raised by HYK on rent exemption, was discussed at a meeting with HYK in March 1997. The issue of lawful successors was also explained in the aforesaid information paper. HYK did not raise any further question at the meeting.
- (e) Since the passing of the Bill by this Council in 1997, the Lands Department had prepared a publicity leaflet explaining the Ordinance (including the provision of section 4 of the Ordinance) and the exemption criteria with examples. These leaflets have been distributed to villagers and members of the public who make enquiries on the issue.