

LCQ2: Government's handling of statutory compensation claims related to land resumption

Following is a question by the Hon Albert Chan and a reply by the Secretary for Justice, Mr Rimsky Yuen, SC, in the Legislative Council today (March 26):

Question:

Some members of the public have pointed out that the Government, on the one hand, encourages the public to resolve disputes among them by arbitration or mediation but, on the other hand, resorts only to judicial proceedings in dealing with its disputes with the public (such as those on compensation for land resumption). Quite a number of members of the public cannot afford the high legal costs and hence have no choice but to accept the compensation proposals offered by the Government. Those members of the public have also pointed out that in Canada, an arbitration or mediation mechanism is in place for resolving disputes arising from land resumption by the Government, and they propose that the Hong Kong Government should follow the relevant practices. In this connection, will the Government inform this Council:

(a) of the reasons for not resolving by arbitration or mediation those disputes which involve land resumption by the Government;

(b) of the reasons for the Government taking different stances towards dispute resolution among members of the public and those between the Government and members of the public; and

(c) whether it will consider introducing an arbitration or mediation mechanism by way of a pilot scheme to deal with certain common disputes between members of the public and the Government; if it will, of the details; if not, the reasons for that?

Reply:

President,

My reply to the three parts of the question is as follows:

(a) Currently, the Government resumes private land for public purposes pursuant to the relevant laws of Hong Kong (including Lands Resumption Ordinance (Cap. 124), Roads (Works, Use and Compensation) Ordinance (Cap. 370), etc). The relevant ordinances provide for payment of compensation for the private land so resumed or the interest so affected (commonly referred to as "statutory compensation"). The entitlements to compensation, the procedures involved, as well as the basis and principles of assessment of the compensation are set out in the relevant ordinances, while the authority for final determination of compensation under the ordinances rests with the Lands Tribunal. In addition, the Government has also put in place a system of ex-gratia land compensation and allowances as an alternative to statutory compensation, with a view to minimising as much as possible the hardship faced by former owners and other affected parties. The assessment methods and eligibility criteria of the ex gratia allowance are established with the approval of the Legislative Council Finance Committee. Based on past experience, the above-mentioned ex-gratia compensation and allowance system has been working well. On the one hand, it has addressed the reasonable needs of the affected parties, and on the other hand, it has reduced the need to submit claims for statutory compensation. If the relevant parties do not accept the ex-gratia compensation offer made by the Government, they may make a claim for statutory compensation. Generally speaking, the Lands Department (LandsD) would negotiate with the former owners and other affected parties on matters related to the claims. The relevant parties may refer their claims to the Lands Tribunal for final determination of the amount of statutory compensation if agreement cannot be reached with the Government.

In other words, in assessing the amount of statutory compensation, LandsD is obliged to follow the principles set out in the respective ordinances and the court rulings made in relevant land resumption cases. Likewise, in assessing whether an individual is entitled to the ex-gratia allowances and in determining the actual amount of compensation, LandsD cannot deviate from the set of established principles and methods regarding the eligibility and criteria for the ex-gratia compensation and allowances. Under such circumstances, the scope of matters which can be submitted to arbitration or mediation is relatively limited. For that reason, arbitration and mediation may not necessarily enhance the flexibility of the Government's handling of the disputed matters related to statutory compensation

claims. Notwithstanding this, LandsD could consider requests for handling statutory compensation claims by mediation if claimants so request, but the mediation process and the agreement to mediate cannot affect the Government's and the Lands Tribunal's exercising of authority provided for under the law.

(b) The Administration is always keen to promote the use of arbitration and mediation as a means of disputes resolution, and has encouraged Bureaux and Departments to use these means for resolution of disputes involving the Government in appropriate circumstances.

In relation to mediation, Practice Direction 31 on Mediation and Practice Direction 18.1 on the Personal Injuries List issued by the Judiciary provide that parties to legal proceedings have to consider engaging in mediation for settlement of the relevant disputes. These two Practice Directions are effective from January 2010 and April 2009 respectively, and apply to the Government. Therefore, in respect of the civil proceedings to which these Practice Directions are applicable, the Government will comply with the Practice Directions, and actively engage in mediation with a view to settling the disputes concerned in appropriate circumstances. To this end, the Department of Justice has enhanced training, and will continue to work closely with other Bureaux and Departments to organise mediation training courses which target at their specific needs.

In relation to arbitration, there are at present provisions under some Ordinances (including the Tung Chung Cable Car Ordinance (Cap. 577) and the Eastern Harbour Crossing Ordinance (Cap. 215) etc.) which provide that if disputes arise in respect of the matters as specified under the relevant Ordinances, the Government and the concerned parties shall use arbitration to resolve their disputes. In the past, there were cases in which disputes were referred to arbitration pursuant to the Ordinances.

In addition, the Government has in fact adopted mediation or arbitration as dispute resolution mechanism in other fields. For example, the standard clauses under public works contracts and consultancy agreements, etc entered into by the Government provide that the contracting parties may resolve disputes by mediation or arbitration.

(c) Although arbitration and mediation are two of the effective means

of dispute resolution, they may not be applicable in all types of cases. In relation to some Government cases (such as judicial review applications) which involve important legal disputes or significant public interest, it is necessary to seek public and authoritative determination by the Courts, so as to lay down legal precedents and guidance for the Government's reference in handling future cases of similar nature.

Nevertheless, depending on the needs, the Government will consider introducing scheme for mediation or arbitration in appropriate contexts. As mentioned in the Policy Address 2014, in respect of lease modification applications submitted by private landowner, the Government will introduce a Pilot Scheme for Arbitration on Land Premium with a view to facilitating early agreement on land premium payable by way of arbitration so as to speed up land and housing supply. Further, the Steering Committee on Mediation, set up in late 2012, will monitor the implementation of the existing measures and consider new initiatives to promote and foster the development of mediation in Hong Kong.

Ends/Wednesday, March 26, 2014