

LCQ5: Unclaimed land resumption compensation monies in respect of Tso/Tong lands

Following is a question by the Hon Kenneth Lau and a reply by the Secretary for Home Affairs, Mr Caspar Tsui, in the Legislative Council today (October 20):

Question:

Tso/Tong lands (commonly known as "ancestral land") in general refer to village lands in the New Territories which are owned by traditional organisations, namely clans, families or Tongs, and not by individual persons. It is learnt that after the resumption of quite a number of Tso/Tong lands by the Government through invoking the Lands Resumption Ordinance, the land resumption compensation monies have not been claimed by the Tso/Tong members concerned for various reasons. As a result, such monies have been held in the temporary custody of the Treasury. In this connection, will the Government inform this Council:

(1) of the number of Tsos/Tongs whose manager posts are currently vacant, and the total site area of the Tso/Tong lands held by such Tsos/Tongs, with a breakdown by District Council district;

(2) of the total amount of land resumption compensation monies disbursed by the Government since 1997 in respect of Tso/Tong lands; and

(3) of the current total amount of unclaimed land resumption compensation monies in respect of Tso/Tong lands, and the number of Tsos/Tongs involved; the respective amounts of such compensation monies being left unclaimed for the reasons of the Tso/Tong manager post being vacant, the Tso/Tong members failing to reach a consensus on the allotment of the compensation monies, and other issues (please specify); whether Tso/Tong members will, upon receiving their compensation monies, be paid at the same time the interest for the period of such monies having been held in the custody of the Treasury; if so, of the calculation method of the interest; if not, the reasons for that?

Reply:

President,

Having consulted the Development Bureau, my reply to the question raised by the Hon Kenneth Lau is as follows:

(1) Section 15 of the New Territories Ordinance (Cap. 97) (the New Territories Ordinance) stipulates that whenever any land is held from the Government under lease or other grant, agreement or licence in the name of a clan, family or tong, such clan, family or tong shall appoint a manager to represent it. Every such appointment shall be reported at the appropriate

District Offices in the New Territories, and the Secretary for Home Affairs on receiving such proof as he may require of such appointment shall, if he approves thereof, register the name of the said manager who shall, after giving such notices as may be prescribed, have full power to dispose of or in any way deal with the said land, subject to the consent of the Secretary for Home Affairs.

Tsos/tongs are by nature private organisations. The appointment of a manager is an internal business of a tso/tong. Although currently the Secretary for Home Affairs registers the name of the manager appointed by a tso/tong in accordance with the New Territories Ordinance, if a tso/tong has never contacted the relevant District Office, or has not notified the District Office of the matters on the appointment, resignation or death of the manager, the Government will not be able to learn about the situation of the concerned tso/tong, including whether the manager post of the tso/tong is vacant, whether there are lands held by the tso/tong, and the number, site area, and location of the lands held by the tso/tong. For the above reasons, we are unable to provide the information on the vacancies of tso/tong managers and the site area of the lands held.

(2) and (3) When private land is resumed, the Government will provide compensation to affected landowners in accordance with the provisions in the relevant legislation. Statutory compensation aside, the Government has also put in place an ex-gratia compensation system as an alternative arrangement and a simplified administrative mechanism for handling land compensation matters. The background of the landowner will not be considered when deciding whether to resume a piece of land and the calculation of the compensation amount, and the above mechanism is applicable to all private land needed to be resumed, including tso/tong land. In this circumstance, the Lands Department (LandsD) does not keep statistics on tso/tong land resumed and the relevant compensation amount since 1997 till now.

In general, before disbursement of compensation for resumed land, the LandsD will first make a compensation offer to the registered landowner. The LandsD will only disburse the compensation after the acceptance of such offer by the owner and confirmation of the legal title to land of such owner.

If the land resumed is land held by tso/tong, the LandsD has to act also in accordance with section 15 of the New Territories Ordinance when disbursing the compensation. If the land resumed is land held by tso/tong, yet all or some manager(s) of that tso/tong are vacant, it will be difficult for the Government to ascertain who holds the full power of the legal representative as conferred by the New Territories Ordinance to receive compensation on behalf of the tso/tong concerned. The amount of compensation unclaimed owing to the vacancies of all or some manager(s) of the tso/tong is around \$400 million (involving 49 tsos/tongs) as at September 27, 2021.

Separately, if there are no vacancies of manager(s) of the tso/tong but with objection from member(s) of that tso/tong for the manager(s) to receive the compensation, the LandsD will refer such objection to the District Office for liaison with the relevant tso/tong manager(s) for resolution, and compensation is only disbursed when the objections are

withdrawn. The amount of compensation unclaimed owing to the objection from member(s) of the tso/tong for the manager(s) to receive the compensation is around \$360 million (involving 21 tsos/tongs) as at September 27, 2021.

In other words, compensation unclaimed purely due to the two abovementioned reasons failing to comply with the special management arrangement of tso/tong land amounts to around \$760 million in total.

Similar to other land resumption cases, reasons relating to the management of tso/tong land aside, there is also compensation unclaimed due to reasons such as negotiation/appeal with the LandsD on compensation amount in progress, legal title to land pending confirmation, or the landowners or their legal representative(s) did not respond. These circumstances are not unique in tso/tong land cases. As at September 27, 2021, the amount of compensation unclaimed for tso/tong land resumed due to other reasons as mentioned above is around \$1.45 billion (involving 149 tsos/tongs).

The LandsD earmarks funding in the budget each year for the expense on compensation for the following year. The Lands Resumption Ordinance (the Ordinance) and other relevant legislations provide that, compensation for resumed land bears interest from the date on which the land reverts to the Government until the date on which the payment is made. As stipulated in the Ordinance, the interest rate must not be lower than the lowest of the interest rates paid on deposits at 24 hours' call by note-issuing banks. The interest rate currently adopted by the LandsD is generally the minimum requirement in the Ordinance.

Given the many voices in the community that the Government should review the New Territories Ordinance, the Chief Executive has announced earlier in the 2021 Policy Address that, in order to help unlock the development potential of tso/tong lands, the Secretary for Home Affairs will set up a working group within this year to review the existing tso/tong management mechanism in collaboration with the Development Bureau and the Heung Yee Kuk, and on the premise of respecting the tradition of tsos/tongs and protecting the legitimate interests of tso/tong members, put forward suggestions for improving the management of tsos/tongs and facilitating the sale of land by tsos/tongs. We hope to complete the review and formulate specific amendment proposals within one year.