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21 October 2003

The Hon NG Leung-sing, JP
Chairman
LegCo Subcommittee on
Members' Remuneration and
Operating Expenses Reimbursement
Legislative Council Building
8 Jackson Road, Central
Hong Kong

**Review of the Remuneration Package
for LegCo Members in the Third Term**

The Independent Commission on Remuneration of Members of the Executive Council and the Legislature of the HKSAR (the Independent Commission) has completed the review of the remuneration package for LegCo Members in the third LegCo term. The Independent Commission has also considered in that review the House Committee's request for the provision of a pension scheme for Members.

I am writing to inform you that having considered the Independent Commission's review report and recommendations, the Executive Council approved today that –

- (a) Remuneration Package for the Third LegCo Term
 - (i) the existing remuneration package for LegCo Members, as slightly modified by sub-paragraph (ii), should continue to apply in the third LegCo term.

- (ii) The existing requisite condition on the use of the allowance for the purchase of information technology and communication equipment (IT allowance), viz. for LegCo Members to claim the IT allowance only after their setting-up allowance has been exhausted, should be dispensed with.
- (b) Provision of Retirement Benefits for LegCo Members
- (i) The introduction of a retirement scheme for LegCo Members in the third LegCo term with Government contribution should not be supported.
 - (ii) The Administration should offer assistance, if necessary, to the LegCo Commission, should LegCo Members wish to procure a saving scheme with contributions from their remuneration or own resources.

I enclose a paper on the subject, together with a copy of the Independent Commission's review report. I stand ready to brief the Subcommittee and other interested Members on the Independent Commission's report at a time convenient to the Subcommittee. In this regard, we have arranged with the LegCo Secretariat for making available to all Members a copy of the report.

(Andrew H Y Wong)
Director of Administration

Encls.

c.c. Members
LegCo Subcommittee on
Members' Remuneration and
Operating Expenses Reimbursement

LegCo Subcommittee on Members' Remuneration and Operating Expenses Reimbursement

Remuneration Package for Legislative Council Members in the Third Term

PURPOSE

This paper informs Members of the outcome of the review of the “Remuneration package for Legislative Council (LegCo) Members in the third LegCo term” conducted by the Independent Commission on Remuneration for Members of the Executive Council and the Legislature of the HKSAR (the Independent Commission)¹. A copy of the Independent Commission’s Report is at **Annex A**.

RECOMMENDATIONS OF THE INDEPENDENT COMMISSION

2. Having considered the Independent Commission’s recommendations, the Executive Council approved on 21 October 2003 that–

- (a) **Remuneration Package for the Third LegCo Term**
 - (i) the existing remuneration package for LegCo Members, as slightly modified by sub-paragraph (ii), should continue to apply in the third LegCo term.
 - (ii) The existing requisite condition on the use of the allowance for the purchase of information technology and communication equipment (IT allowance), viz. for LegCo Members to claim the IT allowance only after their setting-up allowance has been exhausted, should be dispensed with.

¹ The Independent Commission is chaired by Mr WONG Po-yan, GBM, JP with Mr Vincent CHENG Hoi-chuen, JP, Mr CHUNG Pui-lam, Dr Thomas LEUNG Kwok-fai, BBS, JP, Professor LIU Pak-wai, SBS and Mr LUI Tim-leung, JP as members.

- (b) Provision of Retirement Benefits for LegCo Members
- (i) The introduction of a retirement scheme for LegCo Members in the third LegCo term with Government contribution should not be supported.
 - (ii) The Administration should offer assistance, if necessary, to the LegCo Commission, should LegCo Members wish to procure a saving scheme with contributions from their remuneration or own resources.

3. The remuneration package for LegCo Members in the third LegCo term as recommended by the Independent Commission is at Annex B.

BACKGROUND

4. The Independent Commission is appointed by the Chief Executive to determine the remuneration packages for ExCo and LegCo Members in the HKSAR. The Independent Commission considers the system of remuneration for LegCo Members and carries out periodic reviews of the remuneration package. To preserve the credibility of the remuneration system, it is an established practice that any substantial changes to the remuneration package proposed in one LegCo term should only be implemented in the following term. With the third term LegCo commencing in October 2004, the Independent Commission has completed the present review.

5. The Independent Commission met with the representatives of the LegCo Subcommittee on Members' Remuneration and Operating Expenses Reimbursement (the Remuneration Subcommittee) and other interested LegCo Members on 2 June 2003 to hear their views on the matters under review.

CONSIDERATION

Underlying Principles

6. The Independent Commission has affirmed the following principles as adopted by former Independent Commissions in conducting the present review –

- (a) LegCo membership is not a job, but a form of service to the public. There is hence no restriction on LegCo Members taking up full time employment alongside their LegCo duties, nor are they required to declare income derived from their full-time employment, if any;
- (b) the main objective of the remuneration package remains to make it possible for a broad spectrum of individuals from different sectors and walks of life of the community to serve the public in the capacity of LegCo Members;
- (c) irrespective of the election methods, LegCo Members should be entitled to the same remuneration package, as they are exercising the same constitutional powers/functions under the Basic Law; and
- (d) though the remuneration of LegCo Members is funded by the public coffers, LegCo Members do not have any employment relationship with the Government.

Review of the Remuneration Package

(A) Monthly Remuneration

(i) Level of Remuneration

7. The Independent Commission notes that the current level of Members' remuneration puts LegCo Members at the top 2.7% of salary earners in Hong Kong as at the second quarter of 2003. The Independent Commission has also considered overseas practices when evaluating the reasonableness of the existing remuneration level. In so doing, the Commission is conscious that no two legislatures are exactly alike in terms of the election methods, composition, mode of operation and functions. The package of allowances/benefits for legislators also varies. The Independent Commission notes that the existing remuneration package for LegCo Members still compares well with those of their counterparts in a number of major overseas jurisdictions². On this basis, the Commission is satisfied that the existing level of remuneration should be sufficient to meet the objective in paragraph 6(b)

² Among the seven selected overseas jurisdictions, the existing level of LegCo Members' remuneration is higher than those in New Zealand and Singapore, on par with that in the United Kingdom, and is lower than those in the United States, Japan, Canada and Australia.

above, viz. to attract people of modest means to come forward to stand for elections. The Commission therefore concludes that the existing level of remuneration is reasonable and should be maintained in the third term.

(ii) Adjustment mechanism

8. LegCo Members' remuneration has been adjusted annually in accordance with the movements of CPI(C) since 1991. The Independent Commission considers that CPI(C), which reflects price movements in the higher expenditure range³, remains an easily measurable and objective index for that purpose and should continue to be adopted in the third LegCo term.

(B) Annual Allowance for Accountable Office Operation Expenses (OOE) and Non-accountable Annual Allowance for Entertainment and Traveling Expenses (ETE)

(i) Level of allowances

9. The Independent Commission notes that the level of OOE provision was last increased in October 2001 by \$300,000 per annum (or about 26%). The overall utilization rate dropped in the full year immediately following the enhancement. In the full year from October 2001 to September 2002, only 25 out of 60 Members have used up their OOE allowance.

10. Regarding the request by some LegCo Members for further enhancement to the OOE provision, the Independent Commission notes that individual Members' expenditures on staff and offices vary significantly. This reinforces the Independent Commission's view, as observed by former Commissions, that it would be difficult, if not impossible, to set an objective yardstick on the optimum number of assistants and district offices for LegCo Members, having regard to their different background and modes of operation.

11. In addition, on the advice of the former Independent Commission, the Administration acceded to the LegCo Commission's request for an additional recurrent provision of \$11.5 million from the 2002-03 financial year onwards, for creating 14 new posts in the legal, research and Council

³ CPI(C) relates to the relatively high household expenditure which covers approximately 10% of total households in Hong Kong.

business divisions of the LegCo Secretariat to enhance the support for LegCo Members. The Independent Commission therefore considers that the request by individual LegCo Members to further enhance the OOE allowance should not be supported.

12. On the ETE allowance, the Independent Commission notes that with the extra OOE provision, LegCo Members were able to deploy a much smaller portion of their ETE allowance to meet staff expenses, allowing a greater portion for entertainment and travelling expenses.

13. In the light of these factors, the Independent Commission considers that the existing levels of the OOE and ETE allowances should adequately meet the operating expenses of most, if not all, LegCo Members, and recommends that the two allowances should be maintained at the existing levels for LegCo Members in the third LegCo term.

(ii) Adjustment mechanism

14. The levels of the two allowances are adjusted annually in accordance with CPI(C) movements, as in the case of the monthly remuneration. The Independent Commission considers that CPI(C) is an appropriate index for the purpose of the annual adjustment of LegCo Members' allowances and recommends that it should continue to be adopted in the third term.

(C) Setting-up and Winding-up Allowances

15. The Independent Commission notes the sizable margin of under-spending for the setting-up and winding-up allowances, when compared with the utilization rates of OOE and ETE allowances. The purchasing power of these two one-off provisions, which are not subject to annual adjustments in accordance with CPI(C)⁴, has in effect been enhanced as a result of deflation in the past few years. That said, the Independent Commission notes that some LegCo Members have claimed their full entitlements under the two provisions. Having regard to the genuine needs of Members, and that these allowances are reimbursed on an actual basis, the Independent Commission considers that the setting-up and winding-up allowances should be maintained at the same level for LegCo Members in the third LegCo term.

⁴ The levels of one-off provisions are determined by the Independent Commission before the commencement of a LegCo term for application throughout the entire LegCo term. Hence, such provisions are not subject to annual adjustments.

(D) IT allowance

(i) *Requisite condition*

16. The Independent Commission acknowledges some Members' view that the existing requisite condition on the use of the IT allowance may pose some rigidity to Members' deployment of resources. For example, individual Members may not wish to exhaust the setting-up allowance at the start of a LegCo term, in order that they may, if necessary, set up new district offices in the light of changing operational needs during the LegCo term. The requisite condition however requires Members to exhaust the setting-up allowance to defray all capital expenses, be they IT or non-IT related items, and irrespective of whether the balance in the account would be adequate to cover any future capital expenses on non-IT items.

17. Taking into consideration the above factors and without changing the ambit of the IT allowance (i.e. for expenses on IT and communication equipment only), the Independent Commission considers that the requisite condition should be removed, to provide LegCo Members in the third term with more flexibility in the use of the IT allowance. Under the new arrangement, LegCo Members may defray their expenses on IT with resources under both the setting-up and IT allowances in tandem, subject to the cap of the two provisions not being exceeded.

(ii) *Level of allowance*

18. The Independent Commission also observes that there is significant under-spending in the IT allowance since the commencement of the second LegCo term, as compared to the utilization rates of the OOE and ETE allowances. That said, the Independent Commission is mindful that the requisite condition on the use of the IT allowance may have an impact on its utilization rate. The Independent Commission therefore considers that the IT allowance for LegCo Members in the third LegCo term should be maintained at the existing level.

Provision of Retirement Benefits for LegCo Members

19. The Independent Commission considers that central to the question of whether retirement benefits should be provided to LegCo Members is how one perceives the nature of LegCo membership. On this fundamental issue, the Independent Commission notes that LegCo Members themselves have diverse views, as expressed in the findings of a

survey conducted by the LegCo Secretariat in July 2001, to gauge LegCo Members' views on a proposal to request the Administration to introduce a pension scheme for LegCo Members. Although the survey showed that out of a total of 54 Members responding, 33 supported the introduction of a pension scheme, LegCo Members' views on the nature of LegCo membership were divided. 17 Members considered that LegCo membership was purely an occupation; 21 considered the work of a LegCo Member a form of public service/office and 16 considered LegCo membership a mixture of both.

20. The Independent Commission considers that a retirement scheme for LegCo Members with Government contribution may only be justified if it is premised upon the consideration that LegCo membership is a full-time job. Under this notion, logically, the need would arise for LegCo Members to declare, and possibly for restrictions imposed on, their outside employment and earnings, as are the cases in some major overseas jurisdictions⁵. These declaration requirements and restrictions on outside employment and earnings may however discourage suitable candidates from coming forward to stand for LegCo elections, if they are already holding a professional job or a managerial position which they are reluctant to relinquish.

21. In the Hong Kong context, any outside job restriction may also have implications for those who intend to stand for re-election in functional constituency (FC). This is so as candidates for FC elections are required under the law to satisfy the Returning Officer that they have *a substantial connection* with the constituency concerned⁶. Currently, the majority of the 30 FC Members have declared jobs other than legislators as their occupations⁷. If there were outside job restrictions, individual Members may have difficulties in proving to the satisfaction of the Returning Officer that they are able to satisfy the "substantial connection" test before they can stand for re-election.

⁵ For example, in the United States, Members of Congress are required to declare outside employment and earnings derived and are barred from taking outside salaried jobs in certain professions. A cap is set for income from outside jobs. Some forms of declaration requirements or restrictions on taking specified outside job are found in other jurisdictions such as Canada and Australia.

⁶ For the purpose of the Legislative Council Ordinance (Cap. 542), the circumstances in which a person has a substantial connection with a functional constituency include, but are not limited to –

- (i) being a member, partner, officer or employee of a corporate elector of the constituency or a corporate member of such a corporate elector; or
- (ii) belonging to a class of persons specified as being electors of the constituency.

⁷ Source : Members' Biographies compiled by the LegCo Secretariat (November 2001).

22. The Independent Commission has considered a possible variation to the proposal, in providing retirement benefits only to non-FC Members. On parity ground, the Independent Commission does not consider it a viable option, as it runs counter to the principle that all LegCo Members, irrespective of how they are elected, should be treated equally in terms of remuneration package and other benefits (paragraph 6(c) above refers).

23. On balance, given the Independent Commission's view that LegCo membership is a public service, LegCo Members' diverse views on the nature of LegCo membership, plus the other considerations set out above, the Independent Commission is not convinced that the case is established at this stage for retirement benefits with Government contribution to be provided for LegCo Members in the third term. That notwithstanding, the Commission is prepared to revisit the issue when it next reviews the remuneration package of LegCo Members in 2007 for the fourth LegCo term, taking into account the circumstances at the time, and the outcome of the 2007 constitutional review.

Savings Plan for LegCo Members

24. Since the current level of LegCo Members' remuneration puts them at the top 2.7% salary earners in Hong Kong, the Independent Commission considers that LegCo Members should be able to make arrangement for their retirement using their existing remuneration. In this regard, the Independent Commission suggests that the LegCo Commission may consider procuring a saving scheme for LegCo Members on a voluntary basis, provided that LegCo Members' contributions to the scheme will come from their remuneration or other income sources (as opposed to their annual OOE and ETE allowances).

25. The Independent Commission considers that subject to LegCo's decision on the need for a saving scheme for LegCo Members and its preferred mode of implementation, the Administration should provide assistance, if necessary, to the LegCo Commission.

FINANCIAL AND STAFFING IMPLICATIONS

26. The removal of the existing requisite condition on the use of the IT allowance will only have insignificant financial implications.

Administration Wing
Chief Secretary for Administration's Office
October 2003

Annex A

A copy of this document is kept at the Legislative Council Library.
Please contact the Legislative Council Library if you wish to refer to this document.

**Remuneration Package for LegCo Members
in the Third LegCo Term
As Recommended by the Independent Commission**

(A) LegCo Members

- (a) A remuneration of \$55,220 per month, subject to annual adjustments in accordance with Consumer Price Index (C) (CPI(C)).
- (b) An annual allowance of up to \$1,356,940 for accountable expenses relating to office operation expenses (OOE), subject to annual adjustments in accordance with CPI(C).
- (c) A non-accountable annual allowance of up to \$153,070 for entertainment and travelling (ETE), subject to annual adjustments in accordance with CPI(C); up to 50% of the allowance can be used by Members to meet staff expenses on an accountable basis.
- (d) A one-off accountable allowance of up to \$150,000 for setting up offices for each LegCo term.
- (e) A one-off accountable allowance of up to \$100,000 for information technology and communications equipment expenses for each LegCo term
(Note : the requisite condition for LegCo Members to fully utilize the setting-up allowance before claiming the IT allowance will be dispensed with in the third LegCo term).
- (f) A one-off accountable allowance for winding-up when LegCo Members cease to be Members of the legislature comprising –
 - (i) A fixed amount equivalent to 1/12 of the annual “accountable expenses reimbursement for office operation”, payable on a reimbursement basis, of which \$10,000 may be claimed against certified claims of expenses without supporting documents, to cover office expenses incurred; and

- (ii) A separate amount, with no pre-set ceiling, to cover actual severance payment to be paid to staff.

(B) the LegCo President

- (a) a monthly remuneration equivalent to 2 times of a Member's remuneration \$110,440, subject to annual adjustments in accordance with CPI(C);
- (b) an additional entertainment allowance of up to \$153,210 per annum, subject to annual adjustments in accordance with CPI(C), on top of the ETE provision as other LegCo Members receive;
- (c) the OOE allowance and one-off provisions as other LegCo Members receive.

(C) the President's Deputy

- (a) a monthly remuneration equivalent to 1.5 times of a Member's remuneration \$82,840, subject to annual adjustments in accordance with CPI(C); and
- (b) the OOE and ETE allowances and one-off provisions as other LegCo Members receive.