

Meeting of the Legislative Council on 5 June 2002
Second Reading of the Public Officers Pay Adjustment Bill
Speech by the Secretary for the Civil Service

Madam President,

I move that the Public Officers Pay Adjustment Bill be read a second time.

2. The purpose of the Bill is to give effect to the policy decision on this year's civil service pay reduction. On 28 May 2002, the Chief Executive in Council decided that civil service pay be reduced by 4.42 % for the directorate and the upper salary band, 1.64 % for the middle salary band and 1.58 % for the lower salary band with effect from 1 October 2002. In coming to this decision, the Administration has taken into consideration all relevant factors under the existing civil service pay adjustment mechanism including: the net pay trend indicators derived from the results of an independent private sector pay trend survey, the state of the economy of Hong Kong, budgetary considerations, changes in the cost of living, the staff sides' pay claims and civil service morale.

3. The magnitude of adjustment is, in our view, reasonable and modest. Over the past year, the economic activities in Hong Kong were in a downturn. For the third consecutive year, we have recorded deflation in the domestic economy. The labour market slackened visibly after mid-2001, with the unemployment rate reaching a record high in the first quarter of the year. At the same time, the Government is facing a

structural fiscal deficit problem, with an estimated consolidated deficit of \$63.3 billion and \$45.2 billion for 2001-02 and 2002-03 respectively. To tackle the fiscal deficit, the Government has set targets to strictly contain the annual growth of government expenditure. As regards the cost of living, for the year ending 31 March 2002, the Composite Consumer Price Index had declined by 1.8% over the same period in 2001. The other consumer price indexes have registered similar decreases. In addition, the results of this year's Pay Trend Survey indicate a general trend of downward pay adjustments in the private sector over the past year. Taking into consideration the factors above, as well as the pay claims of the staff sides of the four central consultative councils and civil service morale, the Government decided that civil service pay should be reduced.

4. I should stress that the Government has earlier committed, and the staff sides have hitherto urged the Government, to follow the established mechanism in handling this year's civil service pay adjustment. The pay reduction decision has not in any way deviated from this mechanism. The individual factors under the existing mechanism are capable of having positive and negative effects on civil service pay adjustment and it follows that the final decision can be pay increase as well as pay reduction. In our view, given the prevailing economic climate in Hong Kong, our stringent financial situation and the pay adjustment trend in the private sector, the Government's decision to reduce pay by 1.58 % to 4.47 % strictly in line with the net pay trend indicators is very reasonable. Upon the announcement of the decision,

the community at large and many civil servants consider the decision and the magnitude of pay reduction acceptable.

5. As a responsible government, it is incumbent upon us to ensure that our decision on civil service pay adjustment serves the overall interests of the community. We must therefore take necessary steps to implement the decision with certainty. I will move on to explain why legislation is the only safe means to implement with certainty our decision on a civil service pay reduction.

6. Our main reason for seeking to implement the pay reduction by legislation is that the contractual employment arrangements between the Government and the vast majority of serving civil servants do not contain an express provision authorizing the Government to reduce pay.

7. Specifically speaking, the employment arrangements for a civil servant are, at present, governed by the provisions set out in a letter of appointment and the Memorandum on Conditions of Service (MOCS) attached to the letter. While the standard MOCS applicable to civil servants provides that the Government reserves the right to alter any of the officer's terms of appointment and conditions of service should the Government consider this to be necessary, the employment contracts of most serving civil servants, except for a very small number of officers recruited since June 2000, do not contain any express provision authorizing pay reduction by the Government. The legal advice we obtained is that on the basis of decided cases, the courts are unlikely to

accept that this general power of variation could apply to such a fundamental term as the salary. It is possible that the Government would face legal challenges if it relies solely on this provision to implement the decision on a civil service pay reduction. Any civil servant can challenge the Government's decision in court. As matter of fact, some staff unions have already stated that they are considering to sue the Government for breach of contract by reducing civil service pay. Should the court decide in a single case that there is inadequate legal basis for the Government to reduce civil service pay, we would not be able to implement the decision on a pay reduction this year. In such an eventuality, the good governance of the Government and the stability of the civil service would be seriously affected. Thus legislation is the only way to implement with certainty the decision on a civil service pay reduction.

8. We do not agree with the view that the implementation of the decision on a civil service pay reduction is tantamount to depriving civil servants of their reasonable rights and expectations. As I have explained in some detail, the decision on a pay reduction this year has been made based on a pay adjustment mechanism which has been in use for over twenty years and has been accepted by all civil servants. Given the ambiguity in the contractual provision, we should seek a safe and sound solution to the matter rather than using this as an excuse to delay implementing the decision on a pay reduction. Otherwise, the public at large would criticize the Government for failing its responsibility. It would be detrimental to the overall interests of the civil service and the

community if our failure to implement the pay reduction led to the impression that civil servants were unwilling to share the burden with the rest of the community in time of difficulty or our inaction meant that our severe fiscal deficit could not be alleviated.

9. It is entirely proper for the Government to introduce the Public Service Pay Adjustment Bill, which serves to implement the decision on a civil service pay reduction, into the Legislative Council for Members' scrutiny. The employment relationship between the Government and civil servants concerns public law. The funds necessary to pay civil servants including additional provisions to pay increases in civil service under the salary adjustment mechanism, and the provisions for civil service pension have to be voted by the Legislative Council. Payment of civil service pensions is also governed by legislation. As civil service pay is funded by public money, the level of civil service pay would ultimately affect the amount of appropriation from the General Revenue. It is, therefore, reasonable and appropriate to put the legislation that seeks to implement this year's civil service pay adjustment to the Legislative Council for scrutiny.

10. The decision on a civil service pay reduction this year and the implementation of this decision by legislation are consistent with the provisions in the Basic Law.

11. Article 100 of the Basic Law provides that public servants in all Hong Kong government departments before the establishment of the

Hong Kong SAR “may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favorable than before.” The magnitude of the civil service pay reduction this year is fairly modest. Since nominal civil service salaries would not be lower than the level on 30 June 1997 after the pay reduction, there would be no question of breaching the provisions under Article 100. Furthermore, Article 103 of the Basic Law provides that Hong Kong’s previous system of management for the public service, including special bodies for advising on their pay and conditions, shall be maintained. The decision on a pay reduction has been made in strict accordance with the established mechanism. There is therefore no breach of the provisions under Article 103 either.

12. As regards Article 160 of the Basic Law, it provides that contracts, and rights and obligations valid under the laws previously in force in Hong Kong shall continue to be valid and be recognized and protected by the Hong Kong SAR, provided that they do not contravene the Basic Law. The contractual rights of civil servants employed on 30 June 1997 are protected by this provision. However, the pay of those who remain in Government employment has been increased since then and as the pay reduction would not lower their salaries to a level below that on 30 June 1997, their right to the salary as at that date would be fully recognized and protected. A view has been expressed that the rights protected by Article 160 of the Basic Law include a right not to have any legislative interference with a subsisting contract. We do not share this view. We consider that Article 160 is primarily a savings

provision to ensure that contractual rights do not fall away as a result of Reunification. Given that amendments consistent with the Basic Law can be made to laws previously in force, it would be difficult to argue that contractual rights cannot be modified by legislation.

13. The Public Officers Pay Adjustment Bill provides that the pay and allowances of public officers at different salary bands should be adjusted downward with effect from 1 October 2002 and specifies the relevant rates of adjustment. It further provides that the employment contracts of public officers expressly authorize the adjustments to their pay and allowances under the Bill. The adjustment is applicable to: (a) civil servants remunerated on the civil service pay scales and all civil servants whose pay is determined or adjusted in accordance with or by reference to such pay scales; (b) all ICAC officers remunerated on the ICAC pay scale and all ICAC officers whose pay is determined or adjusted in accordance with or by reference to that pay scale; (c) certain public officers who are neither civil servants nor ICAC officers but whose pay is determined or adjusted in accordance with or by reference to civil service pay scales or ICAC pay scale; and (d) the Director of Audit. The pay for the Director of Audit is governed by section 4(A) of the Audit Ordinance, which provides that the Chief Executive may, from time to time, increase the rate of salary of the Director of Audit by order published in the Gazette. In view of this provision, the decision to reduce the pay of the Director of Audit may only be implemented by statute.

14. The Bill includes an exemption provision to the effect that the adjustments specified in the Bill will not apply to public officers who are remunerated on starting salaries that are delinked from the annual civil service pay adjustment, and to judges and judicial officers. In other words, the pay of public officers remunerated on starting salaries as of 1 October 2002 would remain unchanged until such time when concerned officers qualify for an increment after which their salaries would be paid in accordance with their respective adjusted pay scales. As regards the exemption arrangement for judges and judicial officers, in recognition of the independent status of the Judiciary and the fact that the pay and conditions of service of the judges and judicial officers are determined separately from other civil servants, the Government has, since the latter half of last year, started discussing with the Judiciary the establishment of a new institutional structure and mechanism as well as the appropriate methodology for the determination and revision from time to time of the pay and conditions of service for judges and judicial officers. The latest progress is that the Chief Justice intends to make a proposal early next year to the Administration for consideration. When the new institutional structure, mechanism and methodology are in place, an assessment will be made within the new structure as to whether the pay reduction now proposed for civil servants should also be applied to judges and judicial officers and if so, from what date.

15. Madam President, the decision on this year's civil service pay adjustment, which has been made in accordance with the established mechanism, is fair and reasonable. It has taken full account of the views

of civil servant as well as the overall interest of the community. The purpose of the legislation is to ensure that we can implement the decision with certainty. The public at large generally supports the Government's decision this year to reduce civil service pay. Civil servants in general are also prepared to share the burden with the rest of the community at this time of difficulty. I appeal for Members' support for the Government's proposal and approve the Bill within the current legislative session so that the decision on a civil service pay reduction could take effect smoothly as planned.

16. Madam President, with these remarks, I appeal for Members' support for the Bill.