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From : Clerk to the House Committee
To : Members of the House Committee

**Written Questions Raised by Hon Margaret NG
for Special House Committee Meeting on 19 April 2002**

I attach the Administration's response to the eight written questions raised by Hon Margaret NG concerning Government's policy on legislation and administrative measures for the special House Committee meeting on 19 April 2002.

2. The questions raised by Hon Margaret NG (LC Paper No. CB(2) 1503/01-02) were issued to Members vide LC Paper No. CB(2) 1578/01-02 dated 12 April 2002.

(Mrs Justina LAM)
Clerk to the House Committee

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Answers to Questions Raised by The Hon. Margaret NG

Q1: The Chief Secretary for Administration states that "we will legislate only if there is a genuine need to do so". Please explain what are the reasons the Administration regards as necessitating legislation. For example, why is it necessary to legislate for the civil service pay cut? Why is there still no legislation to extend the Prevention of Bribery Ordinance to the Chief Executive of the HKSAR?

A1: The major considerations of the Administration in determining whether to legislate for certain policy proposals have been set out in details in the Chief Secretary for Administration's letter of 7 February 2002 to the LegCo Panel on Administration of Justice and Legal Services ("LegCo AJLS Panel").

For such individual cases as the application of the Prevention of Bribery Ordinance, we explained to Members at the previous meetings of the Panel on Constitutional Affairs that in view of the unique constitutional status of the Chief Executive, we are carefully examining the relevant provisions of the Ordinance.

As regards civil service pay, the employment arrangements for civil servants are subject to the provisions stipulated in the letter of appointment and the memorandum on conditions of service attached thereto. The standard memorandum on conditions of service provides that the Administration reserves the right to alter any terms of appointment and/or conditions of service prescribed in the memorandum on conditions of service or the letter of appointment whenever it thinks fit.

On the issue of pay cut, our legal advice is that for the avoidance of doubt and ensuring smooth implementation, it is prudent to implement a civil service pay cut through legislation, if it is so decided.

Q2: In considering whether legislation is necessary, please explain how the need for transparency, recognition of the individual rights and freedoms and clear limitations within which the Government can lawfully exercise its power is taken into account.

A2: There are well-established procedures within the Government to ensure that the need for transparency and recognition of the individual rights and freedoms are taken into account. We have laid down clear guidance and requirements in this respect. For example, before a Head of Department or any other Government agency considers that new or amending legislation is required, he must first secure the support in principle from the appropriate Policy Secretary by demonstrating to the latter in a clear statement of the proposals in general terms, among other things, that :

- a) Legislation is necessary in the public interest and that other options such as voluntary agreements or non-statutory codes of practice cannot achieve the objective;
- b) All major implications of the proposal, including human rights and Basic Law, have been considered;
- c) The proposal is not inconsistent with the Basic Law;
- d) The views of other parties affected have been considered.

Q3: The Chief Secretary for Administration states that "if there is a genuine need to legislate there is no question of our resorting to administrative measures". Please explain why the Administration has been resorting increasingly to blanket provisions of power for the executive to use administrative means which are stipulated as "not subsidiary legislation" and therefore not open to the scrutiny of the legislature.

A3: At present we include in some legislation an express provision that certain instrument is not subsidiary legislation. This is an outcome of the discussions with the Panel on Constitutional Affairs in 1999. The purpose of the practice is to make it abundantly clear how the instrument in question should be dealt with (for example, whether the instrument need to be subject to LegCo's vetting). The Administration has no intention to bypass the scrutiny of LegCo. Members may further discuss this provision in the light of specific circumstances when scrutinizing bills containing such a provision.

Q4: There are many out-dated wide powers reserved to the Chief Executive left over by the colonial era. The most extraordinary efforts have been made to resist any diminishment of such powers, important or otherwise, whenever they arise in the course of legislative proposals. Often, the reply to query is that the executive has not exercised and will be unlikely to exercise the power, or will exercise the power only against bad people. Please explain whether it is the Administration's policy to enlarge, or at least maintain categorically such powers.

A4: Any legislation that confers powers on the Chief Executive shall be passed by the Legislature. Laws enacted before the reunification shall be in conformity with Article 8 of the Basic Law if they are to continue to have force of law. Vesting statutory powers under such legislation in the Chief Executive is fully in conformity with the legal requirements. At present the Administration has no plan to conduct a comprehensive review of such statutory powers.

Q5: The Chief Secretary for Administration appears to consider legislation potentially imposes costs on the community. Please explain whether this refers to the fact that every legislation which

appropriates power to the executive curtails the freedom of the public, or whether this refers to completely different costs. If the former is the case, please explain why increasingly (for example, in the Copyright (Amendment) Ordinance 2001, Karaoke Establishments Bill and Gambling (Amendment) Bill 2000) the proposed legislation consistently inflicts greater restriction on a wider public than is strictly necessary to achieve the purpose of the policy.

A5: Every policy proposal will inevitably have impacts, socially, politically and economically, on the life of the public and the operation of the Government. We shall, as much as possible, quantify the costs and impacts arising from policy proposals and strike the right balance. It has been our established practice to consult the relevant LegCo Panels and the parties concerned before implementing major policy proposals. Views from Members are welcome.

Q6: **It is the experience of a number of Bills Committees that bills under scrutiny are immature in conception, particularly with respect to the details regarding the concrete effect of implementation. Serious remedial measures then have to be found, involving emergency operations. Is the Chief Secretary for Administration aware of the problem? Can he explain the reasons why this has happened, and what measures are being taken to minimize recurrence, so as to ensure that the laws of the HKSAR are consistently of the highest standard?**

A6: The quality of legislation is of great importance. Legislation should have clear objective and should be well drafted. We should also be able to enforce it effectively. It has been our established practice to conduct detailed consultation, seeking the views of the trade and relevant LegCo Panels before we finalise our policy proposals. This would ensure an in-

depth analysis of the details and implications of the proposal before we introduce it into LegCo.

Q7: On the annual Legislative Programme, I am very disappointed to observe that the Land Title Bill has been taken off from the Programme. Given such a complex Bill involving every owner of property and potential purchaser in Hong Kong, further delay would expose the Bill to the risk of inadequate consultation and scrutiny. Can the Chief Secretary for Administration give a firm timetable regarding this Bill, and assure LegCo that there will be no slippage from that timetable?

A7: The Administration provides to the Chairman of the House Committee annually an indicative list of bills which we plan to introduce into LegCo. We have indicated clearly in providing the legislative programme that the list may need to be adjusted in the course of the legislative session. There could be cases where the Administration needs to introduce bills not on the list due to unforeseen circumstances, or instances where bills on the list might not be introduced under the estimated timeframe.

As to the Land Title Bill, the Bill involves a number of complex issues. To ensure that different views are taken into account as far as possible, we need to consult the parties concerned including legal professional bodies on the important principles involved. The quality of legislation is of great importance. This explains why more time than expected is required for drafting the bill and conducting consultation.

Q8: Still on legislative timetable and slippage, a provision to make the 16 Ordinances already identified by the Administration to be binding on state organs in Hong Kong has yet to be introduced. This matter has been outstanding for 4 years. The House Committee was last

reassured in June 2001 in the name of the Chief Secretary for Administration that the matter would be expedited. The Acting Secretary for Constitutional Affairs also informed the Panel on Administration of Justice and Legal Services at its meeting on 26 June 2001 that the Chief Secretary for Administration had given clear instruction that the relevant Policy Bureaux and departments should try their best to expedite action and speed up the legislative work as a matter of priority. Can the Chief Secretary for Administration inform us of the progress of this matter and explain the cause for the substantial delay?

A8: We are fully aware of Members' concerns. We are now actively working on a suitable application provision with a view to making the relevant Ordinances applicable to state organs in Hong Kong. In the meantime, the Central Government is being consulted. We are giving priority to the legislative work and will introduce the necessary legislative amendments into LegCo once the relevant provisions are ready.