

**LegCo Panel on Public Service
2002 Civil Service Pay Adjustment
Follow-up to the meeting on 23 May 2002 (2)**

Purpose

1. Subsequent to the Panel meeting held on 23 May 2002, the Hon. LEE Cheuk-yan has asked the Administration to provide supplementary information on its proposal to implement a civil service pay reduction, if finally decided, by legislation. The requested information is set out in this paper.

Requested information

Item (1) It was reported on 24 May 2002 in Ming Pao that the Government had sought legal advice from the legal profession in the United Kingdom on whether civil service pay reduction should be implemented by legislation. Will the Administration provide this Panel with the details of the legal advice, if any?

2. In line with the usual practice and legal professional privilege, we are unable to provide a copy of the legal advice from Leading Counsel. The advice is based on the authorities referred to in our response to item 2(b) in LC Paper No. CB(1)1832/01-02(02).

Item (2) The legal advice of the Administration was that according to the contracts signed between the Government and civil servants, the Government had no right to reduce civil service pay unilaterally, and therefore the civil service pay reduction had to be effected by legislation. In this connection, will the Administration inform this Panel whether the Government has ever altered unilaterally the terms of the contracts signed with the civil servants, other individuals or organizations, and prescribed in law that the other parties to the contracts are not entitled to compensation or damages and are not entitled to exercising any rights or remedies stated in the contracts?

3. There has been a previous occasion when legislation was enacted which had the effect of reducing civil service pay – the Hong Kong Government Service (Levy on Salaries) Ordinance 1936. That Ordinance did not include an express provision specifying that affected public officers would not be entitled to compensation or remedy. There have been recent examples of such legislation in other common law jurisdictions such as the Canadian

Province of Prince Edward Island's Public Sector Pay Reduction Act 1994 and the US State of Illinois' State Government Leaders' Salary Reduction Act 2002. The former contained express provisions that no compensation should be payable and that the reduction would not entitle a person to any other remedy.

Item (3) Given that the Administration has decided to alter the contracts of civil servants unilaterally by way of legislation, is this approach to handle contracts also applicable to other contracts signed by the Government? For instances, can the Government alter the terms of the Scheme of Control Agreement signed with the two power companies with a view to lowering the level of permitted return, and prescribing in law that the two power companies are not entitled to compensation or damages, and are not entitled to exercising any rights or remedies stated in the Agreement?

4. We have explained in LC Paper No. CB(1)1832/01-02(02) the reasons why it is necessary to seek the enactment of legislation to implement a civil service pay reduction. There is no direct read-across of our proposal in this regard to how other contracts signed by the Government should be handled.

5. The relationship between the Government and civil servants is a matter of both private and public law. The funds necessary to pay civil servants including additional provisions to pay increases in civil service salaries under the salary adjustment mechanism and to provide them with pensions have to be voted by the Legislative Council. Legislation provides for civil service pensions and imposes more stringent requirements on civil servants than on other citizens under the Prevention of Bribery Ordinance. It is therefore not inappropriate for the legislature to consider proposals to implement an adjustment of civil service pay, since ultimately the level of civil service pay affects the amount of the appropriation from the General Revenue.

6. While the Government's relationship with its employees is a matter of both private and public law, the Government also enters into contractual relations with companies and individuals entirely on a private law basis, for example, by granting leases of Government land. Those property rights may be affected by subsequent legislation which applies to the world at large, relating to such matters as town planning, environmental pollution and public hygiene; and in those circumstances, no compensation will be payable.

Item (4) The Administration has stated in its interpretation of the 1968 Agreement between the Hong Kong Government and the Main Staff Associations ("the Agreement") that "... the civil service associations pledge to observe any recommendations made by the independent Committee of Inquiry and accepted by the Government. Under such circumstances, members and non-members of the civil service

associations concerned will adhere to the decisions made and no individual civil servant will be permitted to make any personal choice unless it is so stipulated in the Agreement ...". In this connection, will the Administration inform this Panel:

- (a) whether the Agreement constitutes part of the contract with civil servants and is binding on both the Government and civil servants; and**
- (b) whether, in deciding to implement civil service pay reduction by legislation, it has taken the above Agreement and its interpretation of the Agreement into consideration?**

7. The 1968 Agreement only applies to certain staff associations. It is not part of the contract between the Government and civil servants so that if an agreement was reached between the Government and the associations which are parties to the agreement, that agreement would not bind individual civil servants. In view of this, the 1968 Agreement is not a relevant consideration in deciding on the implementation of the proposed pay reduction.

Civil Service Bureau
28 May 2002