

Legislative Council Panel on Constitutional Affairs

The Administration's response to matters raised at the meeting of the LegCo Panel on Constitutional Affairs on 17 March 2003 and at the House Committee meeting on 21 March 2003

This paper sets out the Administration's response to matters raised by Legislative Council Members at the meeting of the Panel on Constitutional Affairs on 17 March 2003 and at the House Committee meeting on 21 March 2003.

Meeting of the Panel on Constitutional Affairs on 17 March 2003

1. *The Chief Executive (CE) should make public the written reports submitted to him by the Financial Secretary (FS) on 10 and 13 March 2003.*

Copies of the two written reports have already been provided to the Panel on 21 March 2003.

2. *Did FS tender his resignation to CE in writing? If so, when did he do so?*

Please refer to the separate response provided by FS' Office.

3. *Did CE conduct an independent investigation before he gave his written criticism of FS on 15 March 2003? If so, could CE provide the Legislative Council (LegCo) with the entire set of the investigation report?*

CE had thoroughly considered the two written reports submitted by FS on 10 March 2003 and 13 March 2003, and the information in the chronology of events submitted to Members by FS at the Panel meeting on 17 March 2003, before issuing the formal criticism. CE

had taken legal advice and considered the relevant information and the circumstances of the case in full. The events that led to CE's conclusion and the factors taken into account have been set out in his letter of 15 March 2003 to FS.

4. *Does the Administration stipulate different levels of sanctions for violation of the Code for Principal Officials under the Accountability System (the Code)? If so, which level of sanction does CE's written criticism of FS belong to?*

The Code does not provide for different levels of sanctions for violations of the provisions therein. CE will decide on the appropriate sanction in the light of circumstances of individual cases.

5. *At the ExCo meeting on 5 March 2003, did any Member of the Executive Council (ExCo) declare that he had ordered a private car? Did any ExCo Member suggest amending the minutes of the ExCo meeting held on 5 March 2003 at the ExCo meeting of 11 March 2003?*

We have addressed these questions by way of the press statement issued by CE's Office on 18 March 2003 and the reply issued by the government spokesman in response to media enquiries on the same day. Copies of the two documents are at the Annex.

6. *Request that CE grant approval to ExCo Members to explain to the public the content of the discussion held at the ExCo meetings on 5 and 11 March 2003 in relation to the increase of First Registration Tax (FRT) for private cars.*

ExCo proceedings are confidential. We have nothing further to add to the Annex.

7. *Did any government official, including FS' Administrative Assistant*

and Press Secretary, know about the purchase of a private car by FS before the announcement of the increase in the FRT, and point out to him that it might involve conflict of interest?

It is the responsibility of principal officials to abide by the provisions of the Code for Principal Officials under the Accountability System. Civil servants do not have any responsibility in this regard.

Please also refer to the separate response provided by FS' Office.

8. *Did any salesman ask FS whether the FRT would be increased when the latter visited the showrooms and made enquiries about the vehicles?*

Please refer to the separate response provided by FS' Office.

9. *The Budget Strategy Group (BSG) discussed various items, including the proposal to increase the FRT as early as 31 October 2002. Why did FS only mention that the decision to increase the FRT was made in February 2003, but not that the BSG had considered the proposal to increase the FRT in end October 2002, when he met the press regarding the incident on 9 March 2003?*

Please refer to the separate response provided by FS' Office.

10. *On 14 January 2003, the BSG went through a list of 18 revenue measures/options recommended thus far and considered that some of the items, including the magnitude of increase of the FRT, should be further reviewed. Apart from the FRT, what are the other revenue items that should be further reviewed?*

Please refer to the separate response provided by FS' Office.

11. *Suggest CE to set up an independent investigation committee to*

inquire into the incident of the purchase of a private car by FS. A Judge should be appointed as Chairman of the independent investigation committee to lead the work of the committee.

As set out in the response issued by CE's Office on 21 March 2003, CE had given careful consideration to the matter, and had decided, in all the circumstances, not to appoint either a statutory or non-statutory committee.

12. *Suggest CE to pass the case to Secretary for Justice for consideration as to whether criminal prosecution is necessary.*

We do not see a need to refer the case to the investigatory authorities for investigation. However we note that a complaint has been lodged with the Independent Commission Against Corruption (ICAC). We expect ICAC will follow its established procedures in handling the complaint and that it will seek its own legal advice from the Department of Justice, if and when it sees the need to do so.

Meeting of the House Committee on 21 March 2003

1. *Did any Member of ExCo, apart from the Secretary for Health, Welfare and Food (SHWF), Dr E K Yeoh, declare at the ExCo meeting on 5 March 2003 that he had purchased a car?*

As pointed out by the Government spokesman on 18 March 2003, apart from SHWF, no other Member made a declaration at the ExCo meeting on 5 March 2003 as the new cars bought by other Members had already been registered.

2. *Which ExCo Member raised at the ExCo meeting held on 11 March 2003 the question as to whether it was necessary for SHWF, Dr E K Yeoh, to declare his order of a private car? Could the proceedings of the discussion be made public?*

The proceedings of ExCo are confidential. We have nothing to add to what is set out in the press statement issued by CE's Office on 18 March 2003 and the reply issued by the government spokesman in response to media enquiries on the same day (Annex).

3. *Why didn't FS explain in his two written reports to CE that he had not declared his interest at ExCo?*

Please refer to the separate response provided by FS' Office.

4. *FS submitted his first written report to CE on 10 March 2003. Why is the discussion of BSG on 14 January 2003 regarding the inclusion of FRT in the proposals of tax increase not included in the report?*

Please refer to the separate response provided by FS' Office.

5. *In the attachment of his first written report to CE on 10 March 2003, FS indicated that the BSG had agreed in principle on 31 October 2002 the proposal to introduce some changes to the FRT tax regime and tax rates. Why did FS mention only that the decision to increase the FRT was made in February 2003, but not the decision in October 2002, when he met the press on 9 March 2003?*

Please refer to the separate response provided by FS' Office.

6. *Did FS tender his resignation to CE in writing on the night of 10 March 2003? Could the resignation letter be made public? When did CE request FS to withdraw his resignation? When and by what means did FS withdraw his resignation?*

Please refer to the separate response provided by FS' Office.

7. *Why did not FS mention in his second report to CE of 13 March 2003 that he tendered his resignation formally on the night of 10 March 2003?*

Please refer to the separate response provided by FS' Office.

8. *When and in respect of what subjects did CE seek legal advice from SJ? Could the content of SJ's legal advice and conclusion be made public?*

CE had taken legal advice from the Department of Justice as to whether FS had breached the Code for Principal Officials under the Accountability System before coming to his conclusion and issuing the letter of 15 March 2003 to FS. In general, legal advice provided by the Department of Justice to the Government is subject to legal professional privilege. As a matter of principle, advice given to CE or the Government is not disclosed.

Constitutional Affairs Bureau
4 April 2003

CE's Office Statement

The spokesman for the Chief Executive's Office issued the following statement today (March 18):

"The Secretary for Health, Welfare and Food declared at the Executive Council meeting on March 5 that he had ordered a private car. At the time the car had not yet been registered.

"At the Executive Council meeting on March 11, no Members proposed that the minutes of the meeting on March 5 be amended. However, a Member raised the question as to whether it was necessary for the Secretary for Health, Welfare and Food to declare his order of a private car. After discussions, the Chief Executive agreed that as the car had not yet been registered, it was appropriate for him to declare."

End/Tuesday, March 18, 2003

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Government explains Exco Members' declaration of interest

In response to media enquiries about Executive Council Members' declaration of interest, a Government spokesman said tonight (March 18) that the Chief Executive, Mr Tung Chee Hwa, had already concluded that it was grossly negligent of the Financial Secretary, Mr Antony Leung, not to have declared according to the Code for Principal Officials under the Accountability System.

"Apart from the Secretary for Health, Welfare and Food, Dr E K Yeoh, no other Members declared at the Executive Council meeting on March 5 as the new cars bought by other Members had already been registered. The Executive Council's decision would not have any effect on them," the spokesman said.

End/Tuesday, March 18, 2003

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