

立法會 *Legislative Council*

LC Paper No CB(2)1958/04-05(03)

Ref. : CB2/PL/CA

Panel on Constitutional Affairs

Background brief for meeting on 20 June 2005

Remuneration package and post-office arrangements for the Chief Executive

Purpose

Issues relating to the remuneration package and post-office arrangements for the Chief Executive (CE) were discussed by Members of the Legislative Council (LegCo) in the past. This paper provides background information and summarises the past discussions of Members since the first term LegCo.

Remuneration package of CE

Appointment of independent commission chaired by Mr WONG Po-yan before 1997

2. Before the reunification in July 1997, an independent commission, chaired by Mr WONG Po-yan, was appointed to examine the remuneration package of the first term CE. The independent commission recommended a remuneration package which was modeled on that of the Governor and was accepted by the Government. Given the special constitutional status of CE, no employment contract was entered into between the Government and CE.

Introduction of the accountability system for principal officials

3. In announcing the framework of the new accountability system for principal officials (POs) at the Council meeting on 17 April 2002, CE said that “the remuneration of the second term CE will remain basically at the present level, and will be adjusted necessarily according to the current mechanism. It will not be increased due to the introduction of the Accountability System. I suggest that the remuneration package for the third term CE should be considered by an independent committee.”

4. The implementation of the accountability system for POs in July 2002 has resulted in an anomaly in the pay structure for CE and POs, i.e. CE receives a lower salary than POs, although in practice, the cash value of CE's remuneration package, which includes a 25% gratuity, passage allowance and more leave, exceeds that of the POs.

5. At a meeting of the Subcommittee to Study the Proposed System of Accountability of Principal Officials and Related Issues in May 2002, a member commented that the remuneration of CE should not be lower than that of POs, in order to reflect the status of CE and maintain relativity with POs. Another member suggested that the remuneration of POs should be reduced, instead of increasing that of CE.

6. In its Twelve-month Report on Implementation of the Accountability System for Principal Officials submitted to the Panel in July 2003, the Administration advised members that it would pursue and revert to LegCo, as appropriate, the review of the remuneration for the third term CE. In November 2004, the Administration advised the Panel that its priority was to deal with the methods for selecting CE in 2007 and for forming LegCo in 2008. When the overall direction for the electoral methods for 2007 and 2008 had been set, it would deal with this issue.

Appointment of Independent Commission on Remuneration Package and Post-office Arrangement for the Chief Executive of the HKSAR

7. On 7 April 2005, the Administration announced the setting up of the Independent Commission on Remuneration Package and Post-office Arrangement for the Chief Executive of the HKSAR (the Independent Commission). The Independent Commission is chaired by Mr WONG Po-yan and consists of three other members. The terms of reference of the Independent Commission are to consider and make recommendations on –

- (a) whether the remuneration package for the CE should be re-designed such that it would be commensurate with his responsibilities and status as the head of the HKSAR;
- (b) whether rules should be drawn up and applicable to a former CE in respect of his participation in political or commercial/professional activities after leaving office;
- (c) whether provisions should be made for a former CE in respect of personal security, office accommodation and administrative support, as well as medical and dental care for him and his spouse; and
- (d) any matter relating to the above issues which the Administration may refer to the Independent Commission from time to time.

8. The Panel was briefed on the establishment of the Independent Commission at its meeting on 18 April 2005. Some members had queried the timing for the Administration to conduct a review on the remuneration of CE and whether the new remuneration package would apply to the new CE. As the new CE would serve the remainder term of Mr TUNG Chee-hwa, these members pointed out that it would be illogical to have different remuneration packages for the two CEs serving the same term.

9. The Administration explained that when the accountability system was implemented, Mr TUNG Chee-hwa decided not to align his remuneration package together with POs, but to conduct a review at a later stage. Following the resignation of Mr TUNG, it was decided that the Independent Commission should be tasked to review among other issues, the need to re-design the remuneration package for CE. As to whether the new CE's remuneration package would be re-designed, it would be subject to the Independent Commission's recommendations and the acceptance of the recommendations by the Administration. The Administration assured members that, as far as possible, the review would not seek to increase the burden of taxpayers.

10. The Independent Commission published its report on 9 June 2005. The Administration will brief the Panel on its proposals at the meeting on 20 June 2005.

Restrictions on activities of former heads of government and former senior members of government

Council question and past discussion by Members

11. In response to a LegCo question at the Council meeting on 7 March 2001, the Administration had replied that there was no legislation in Hong Kong which imposed restriction on the commercial or political activities that were undertaken by a former holder of the office of CE within or outside Hong Kong after his departure from office. The Panel had discussed the issue of restrictions on activities of former heads of government and former senior members of government at five meetings in 2001 and 2002. In the course of its discussion, the Panel had taken into account the following –

- (a) the Research Report on “Restrictions on Activities of Former Heads of Government and Former Senior Members of Government” and Supplementary Information Notes prepared by the Research and Library Services Division of LegCo. The countries and places studied in the Research Report included France, the United Kingdom (UK), the United States (US), California and Ontario;
- (b) the findings of the Administration's preliminary research on the arrangements applicable to heads of government after they stepped down from office in some overseas countries, namely, Australia, Belgium, Canada, Germany, Japan, New Zealand, UK and US; and
- (c) the views of the academics attending the Panel meeting on 18 February 2002 that the need for introducing post-office restrictions was both necessary and urgent, and that it was desirable to have all the requirements and restrictions in place and made known to the public before the second term CE took up his office in July 2002.

12. Members noted that in the countries and places covered in the Research Report, heads of government/political appointees/civil servants were subject to post-office restrictions on their activities to avoid conflict of interest. The restrictions generally took the form of statutes, express rules and guidelines. In addition, convention, media comments and public reactions would also have the effect of deterring unethical behaviour of these persons.

13. Members considered that a monitoring mechanism was necessary for the purpose of regulating post-office activities of CE, in order to prevent a CE from abusing his power or position for personal interests or gain in future. However, some members considered that comparing CE with heads of overseas governments who were directly elected through universal suffrage was not appropriate. It would be more appropriate to make reference to the existing arrangements applicable to senior civil servants. Reference should also be made to the experience of the People's Republic of China.

14. The Administration advised members that given CE's unique constitutional position, it might not be appropriate to apply to CE the existing arrangements applicable to senior civil servants. In working out a mechanism, the Administration would take note of the underlying spirit and principles of the arrangements applicable to heads of governments in overseas countries. Whatever restrictions would be introduced in future, the clear principle was that they should not result in deterring able and dedicated people from joining the government and making contributions to Hong Kong.

15. Some members were in favour of implementing a statutory mechanism for regulating post-office activities of former CEs and senior members of government. Some members requested the Administration, in working out a mechanism, to consider the appropriate authority for conducting investigation into a suspected case of violation of post-office restrictions by CE and senior members of government, and for enforcing sanctions for violation of post-office restrictions. Some members considered that irrespective of whether the proposed arrangement would be implemented by administrative arrangements, convention or legislation, the Administration must obtain LegCo's support and approval. The Administration should allow a reasonable period of time for discussion and consultation with LegCo.

16. The Panel had repeatedly urged the Administration to promulgate rules applicable to CE in respect of post-office activities before the second term CE assumed office on 1 July 2002. The Administration advised the Panel at its meeting on 18 March 2002 that the issue would be considered in a separate context from that relating to senior members of government.

17. In November 2004, the Administration advised the Panel that its priority was to deal with the methods for selecting CE in 2007 and for forming LegCo in 2008. When the overall direction for the electoral methods for 2007 and 2008 had been set, it would deal with this issue.

Establishment of the Advisory Committee on Post-Office Employment for Principal Officials under the Accountability System

18. The accountability system for POs was implemented on 1 July 2002. The Code for POs published in the gazette on 28 June 2002 has set out the post-office arrangements applicable to POs as follows –

“Within one year after stepping down from office, principal officials shall seek the advice of a committee appointed for this purpose by the Chief Executive before commencing any employment, becoming a director or a partner in any business or profession or starting any business or profession on his own account or with others. The proceedings of the committee shall be kept confidential but the advice given shall be made public.

Within one year after stepping down from office, principal officials shall not represent any person in connection with any claim, action, demand, proceedings, transaction or negotiation against or with the Government.

Within one year after stepping down from office, principal officials shall not engage in any lobbying activities on matters relating to the Government.”

19. On 15 April 2005, the Government issued a press release to announce the establishment of the Advisory Committee on Post-Office Employment for Principal Officials under the Accountability System. The Advisory Committee is chaired by Honourable Mr Justice PANG Kin-kee, Judge of the Court of the First Instance of the High Court and consists of two other members. The terms of reference of the Advisory Committee are –

- (a) to draw up the principles and criteria to be adopted for the purpose of advising former POs under the accountability system on their post-office employment or appointment; and
- (b) on the basis of the principles and criteria adopted, to consider and advise former POs on post-office employment or appointment.

Appointment of Independent Commission on Remuneration Package and Post-office Arrangement for the Chief Executive of the HKSAR

20. When the Panel was briefed on the establishment of the Independent Commission at its meeting on 18 April 2005, members had asked whether the rules to be drawn up by the Independent Commission could be imposed on Mr TUNG Chee-hwa. The Administration explained that any rules on post-office activities to be implemented would apply to future CEs only. It was unfair and difficult to impose the restrictions on Mr TUNG retrospectively. Nevertheless, Mr TUNG had publicly announced that he would not participate in business activities and would only serve the country and Hong Kong in future.

21. Members asked about the authority and the process for deciding whether or not the Independent Commission's recommendations should be accepted. The Administration responded that the proposals recommended by the Independent Commission would be submitted to the Executive Council for consideration. The Executive Council would take into account all relevant factors such as public interest, resource implications, and whether the new arrangements would be effective, before deciding whether or not to accept the recommendations. Any substantial expenditure arising from the new arrangements would also require the funding approval of LegCo.

Official residence of CE

22. Members noted that the Government House had been used as the office cum residence of former Governors. Mr TUNG Chee-hwa, however, chose to rent a flat as his official residence. Some members considered that the Government should establish a long term policy on the official residence for future CEs.

23. The Administration advised that there was no plan and no provision to build a new official residence for the new CE, and the Government House was the only available option. The Administration assured members that approval of LegCo would be sought as appropriate if there was any substantial new expenditure.

LegCo question and motion debate

24. At the Council meeting on 7 March 2001, Hon Cyd HO raised a question concerning the restriction of the activities undertaken by and the provision of retirement protection for a former holder of the office of CE after his departure from office.

25. At the Council meeting on 2 February 2005, Hon CHEUNG Man-kwong moved a motion on "Monitoring the post-retirement employment of the Chief Executive, principal officials under the accountability system and civil servants at directorate level with private-sector organisations" for debate in the Council. The motion, as amended by Hon TAM Yiu-chung, was carried.

Relevant papers

26. A list of relevant papers which are available on the LegCo website is in **Appendix**.

Remuneration package and post-office arrangements for the Chief Executive
Relevant Papers/Documents

<u>Council/Committee meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion/Council Question</u>
Legislative Council	7 March 2001	Written question on "Arrangements for former holder of office of Chief Executive after departure from office" raised by Hon Cyd HO Sau-lan [Hansard]
Panel on Constitutional Affairs	19 March 2001	Minutes of meeting [LC Paper No. CB(2)1542/00-01]
Panel on Constitutional Affairs	17 July 2001	Paper on "Arrangements applicable to heads of Governments after stepping down from office" provided by the Administration [LC Paper No. CB(2)2042/00-01(04)]
		Minutes of meeting [LC Paper No. CB(2)2222/00-01]
Panel on Constitutional Affairs	21 January 2002	Research Report on "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government" prepared by the Research and Library Services Division [RP02/01-02]
		Supplementary Information Note on Research Report on "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government" prepared by the Research and Library Services Division [LC Paper No. CB(2)1081/01-02(04)]
		Supplementary Information Note on "Post-Office Restrictions on Activities of Government Officials in the People's Republic of China" prepared by the Research and Library Services Division [IN21/01-02]

<u>Council/Committee meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion/Council Question</u>
		Minutes of meeting [LC Paper No. CB(2)1189/01-02]
Panel on Constitutional Affairs	18 February 2002	Submission from Mr Wilson WONG, Assistant Professor Department of Government and Public Administration, The Chinese University of Hong Kong [LC Paper No. CB(2)1081/01-02(02)]
		Submission from Professor Frank FU, Dean of Faculty of Social Sciences, Hong Kong Baptist University [LC Paper No. CB(2)1081/01-02(03)]
		Minutes of meeting [LC Paper No. CB(2)1334/01-02]
Panel on Constitutional Affairs	18 March 2002	Minutes of meeting [LC Paper No. CB(2)1602/01-02]
Legislative Council	17 April 2002	Address by the Chief Executive on the framework of new accountability system [Hansard]
Subcommittee to study the proposed accountability system for principal officials and related issues	21 May 2002	Minutes of meeting [LC Paper No. CB(2)2736/01-02]
Legislative Council	2 February 2005	Motion on "Monitoring the post-retirement employment of the Chief Executive, principal officials under the accountability system and civil servants at directorate level with private-sector organisations" moved by Hon CHEUNG Man-kwong [Hansard]

<u>Council/Committee meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion/Council Question</u>
Press Release	7 April 2005	Announcement by the Administration on the establishment of the Independent Commission on Remuneration Package and Post-office Appointments for the Chief Executive of HKSAR [LC Paper No. CB(2)1252/04-05(02)]
Press Release	15 April 2005	Announcement by the Administration on the establishment of the Advisory Committee on Post-office Employment for Principal Officials under the Accountability System [LC Paper No. CB(2)1302/04-05(01)]
Panel on Constitutional Affairs	18 April 2005	Paper on "Establishment of the Independent Commission on Remuneration Package and Post-Office Arrangements for the Chief Executive of the HKSAR" provided by the Administration [LC Paper No. CB(2)1252/04-05(01)]
		Minutes of meeting [LC Paper No. CB(2)1955/04-05]