

Legislative Council Panel on Constitutional Affairs

**Report by the Independent Commission on the
Remuneration Package and Post-office Arrangements
for the Chief Executive of the HKSAR**

Purpose

The Independent Commission on the Remuneration Package and Post-office Arrangements for the Chief Executive of the HKSAR (the Independent Commission) submitted its report to the Government on 9 June 2005. After consulting the Executive Council (ExCo) on 14 June, the recommendations have been accepted by the Administration as the basis for determining the arrangements relating to the office of the Chief Executive (CE). This paper seeks Members' views on the recommendations.

Background

2. The Independent Commission, chaired by Mr WONG Po-yan with Mr Vincent CHENG Hoi-chuen, Professor LIU Pak-wai and Dr Thomas LEUNG Kwok-fai as members, was set up in April this year to consider the following three issues:

- (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 to regulate a former CE's participation in political or commercial/professional activities after leaving office; and
- (c) whether a former CE should be provided with security protection, office accommodation and administrative support, as well as medical and dental care.

3. During the course of deliberations, the Independent Commission held two meetings with Members of the Legislative Council (LegCo) and attended a phone-in programme of the Radio Television Hong Kong to canvass public views on the above three issues. The Independent Commission also invited Mr TUNG Chee Hwa to share his views on how a

former CE could continue to make a contribution to the community and the range of activities that he might find himself involved in after leaving office in his capacity as a former CE. In early June, the Independent Commission completed its study and submitted its report to the Administration. A copy of the report was issued to Members through the LegCo Secretariat on 9 June.

Summary of Recommendations

4. The major recommendations of the Independent Commission, elaborated upon in paragraphs 5 – 26 below, are as follows:

- (a) the existing remuneration package should continue to be applicable to the new CE to be returned through the by-election, and that the new package, which will be an all-inclusive cash package with its total cost to the taxpayer set at 12.5% over the pay of the Chief Secretary for Administration (CS) (i.e. to be set currently at \$4.02 million per annum), should be implemented for the third term CE in July 2007;
- (b) a former CE will be subject to post-office employment control within three years after leaving office. During the first year, a former CE will be barred from taking up any employment or re-engaging in any commercial activities. In the following two years, he shall seek advice from an advisory committee before commencing any employment or commercial activities. Blanket exemption will be made for him to undertake appointments with the Central Authorities or the HKSAR Government, or academic or charitable bodies, or non-commercial regional/ international organisations during the three-year control period; and
- (c) a former CE will be provided with office accommodation in government premises, along with secretarial and administrative support, to help discharge promotional and protocol-related functions. The office will not be established to serve one particular former CE, but should be available for any former CE who is prepared to play an “ambassadorial role” for Hong Kong. A former CE will also be provided with a car and driver service. Depending on Police’s assessment, security protection

will be provided. A former CE will also enjoy access to protocol arrangements as well as medical and dental care.

Remuneration Package for the CE

Existing Remuneration Package

5. The existing remuneration package for the CE comprises the following elements:

- (a) a monthly pay of \$244,565;
- (b) a gratuity at the rate of 25% of total basic pay which is equivalent to \$61,141 per month;
- (c) an annual passage allowance, currently at the rate of \$39,630 per person, for CE and his spouse;
- (d) vacation leave of 55.5 days, subject to a maximum accumulation limit of 365 days;
- (e) a non-accountable entertainment allowance (\$729,600 per annum for 2005/06 or \$60,800 per month);
- (f) housing, free of any rental charge; and
- (g) free medical and dental care for the CE and his spouse, on the same basis as that provided to civil servants.

Total cash package with 12.5% as differential

6. In line with the remuneration arrangements for Principal Officials (POs) under the Accountability System, the Independent Commission recommends that the remuneration package for the CE should be changed to a total cash package with relevant benefits encashed. The Independent Commission further recommends capping the total cost of the new package at the level of the existing remuneration package, so that there would not entail any extra financial burden to the taxpayer. Using the existing rate, this translates into a total cash package of \$4,017,100 per annum (or \$334,758 per month), which is 12.5% more than the existing annual pay of the CS of \$3,570,120.

7. The Independent Commission considers that a reduced differential of 12.5% (as opposed to the traditional level of 25%) is appropriate. It is comparable to the corresponding differential in Singapore of 12.4% between the Prime Minister and Deputy Prime Minister.

8. On the above basis, the Independent Commission recommends that the new remuneration package should comprise the following elements:

- (a) cash remuneration at 12.5% over the pay of the CS (i.e. to be set currently at \$4,017,100 per annum or \$334,758 per month);
- (b) annual leave of 22 working days, subject to a maximum accumulation limit of 22 days. Any accumulated leave will be forfeited upon leaving office;
- (c) a non-accountable entertainment allowance at the existing rate to be subject to annual adjustment in accordance with established practice;
- (d) official residence, free of rental charge; and
- (e) medical and dental care on the same basis as before.

Official residence

9. The Independent Commission recommends that the Administration should identify a suitable location as a permanent official residence for the future CEs. If, for whatever reasons, the CE chooses not to move into the official residence provided by the Government, he will have to meet his accommodation needs out of his own means.

Implementation timetable

10. The Independent Commission recommends that the existing remuneration package will continue to be applicable to the new CE returned through the by-election, and that the new package will be implemented for the third term in July 2007.

Involvement in Political and Commercial/Professional Activities by Former CEs

Political activities

11. Noting that none of the countries/territories covered in the Administration's research imposes any restrictions on the political activities of former government heads, the Independent Commission recommends that restrictions other than the Basic Law requirement that the CE may serve for not more than two consecutive terms will not be appropriate or necessary.

Commercial/professional activities

12. The recommendations of the Independent Commission on the regulation of a former CE's post-office commercial/professional activities are designed to achieve two purposes: to guard against the improper use of official information and to formulate rules on the post-office employment activities.

Use of official information

13. The Independent Commission recommends that restrictions comparable to those currently applicable to a PO after leaving office should be drawn up for a former CE. These cover, in the main, that a former CE shall not use official information obtained while in office to benefit himself or to provide advice to outsiders if this gives the recipients an unfair advantage over others, and that a former CE shall not disclose classified information except with the Government's prior approval.

Post-office employment rules

14. Having regard to the existing post-office employment restrictions applicable to POs and senior civil servants, the Independent Commission recommends that a former CE should be subject to a control period of three years after leaving office as follows:

- (a) during the first year, a former CE will be barred from commencing any employment (either on a full-time or part-time basis), 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 exemptions are set out in (c) below;

- (b) in the following two years, other than the exemptions in (c) below, a former CE is required to seek advice from an advisory committee before re-engaging in employment, business or professional activities; and
- (c) during the three-year control period, blanket exemption will be made for a former CE to undertake appointment with:
 - (i) the Central Authorities or the HKSAR Government;
 - (ii) charitable, academic or other non-profit making organisations; and
 - (iii) non-commercial regional or international organisations.

15. The Independent Commission considers that a body similar to the existing Advisory Committee on Post-office Employment for Principal Officials should be set up to take on the task of advising former CEs on their plans to take up employment. In so doing, the advisory committee shall have regard to two broad principles:

- (a) to prevent conflict of interest; and
- (b) to avoid negative public perception.

The Independent Commission further recommends that a former CE shall not, for example, enter into employment with or become a director of companies with land or property development being part of their business or companies awarded with franchises approved by the ExCo during the CE's tenure. Nor should he represent any person in connection with any proceedings or negotiation against or with the Government, or engage in any lobbying activities on matters relating to the Government.

Enforceability of restrictions

16. The Independent Commission recommends that a written undertaking in the form of an agreement under seal signed by the CE signifying agreement to abide by the restrictions would be adequate to protect the public interest. Such an agreement will be legally enforceable. Nonetheless, the Independent Commission considers it inconceivable that a person who has been elected to the highest public office in Hong Kong

would breach his undertaking. In case of non-compliance, though, the Independent Commission believes that in a city as open and transparent as Hong Kong, the real and more effective sanction rests with the revelation of the wrongdoing, which would be swiftly followed by public censure through the news media and the LegCo.

Implementation timetable

17. The Independent Commission recommends that the above restrictions should be applicable to subsequent CEs, including the CE to be returned through the by-election.

Applicability to Mr TUNG Chee Hwa

18. Mr Tung has already pledged in public that he would continue to serve the country and Hong Kong after leaving office and that he would not engage in any activities that would give rise to any possible conflict of interest. The Independent Commission considers that a written undertaking signed by Mr Tung that he will abide by the proposed post-office restrictions will provide further reassurance to the public. The Independent Commission recommends that Mr Tung should be consulted on whether or not he is prepared to sign such an undertaking.

Services for Former CEs

19. The Independent Commission recommends that the following package of post-office service should be made available to a former CE:

- (a) office accommodation and administrative support;
- (b) protocol and related arrangements;
- (c) security protection, including bodyguard services and security system for his residence;
- (d) a car with driver; and
- (e) medical and dental care.

Office accommodation and administrative support

20. A former CE could continue to serve the country and Hong Kong after leaving office in the following respects :

- (a) making use of the international connections acquired while in office to play an “ambassadorial role” for the country and Hong Kong;
- (b) playing a bridging role between Hong Kong and the Mainland on matters affecting the two places; and
- (c) engaging in other activities with the aim of promoting the interests of the local community.

The Independent Commission recommends that an office in government premises be set up to serve former CEs and to enable them to discharge promotional and protocol-related functions. The office will not be established to serve one particular former CE, but should be available for any former CE who is prepared to play an “ambassadorial role” for Hong Kong. The office should provide secretarial and administrative support for making suitable public and social appointments, and handling correspondence.

Car with driver

21. The Independent Commission recommends that the office should provide a car with driver for serving a former CE. This service will be withdrawn if the former CE has taken up gainful employment in the private sector or has re-engaged in commercial activities which provides a vehicle with chauffeur services.

Protocol and related arrangements

22. The Independent Commission recommends that a former CE should be accorded the formal title “Former Chief Executive of the HKSAR” (香港特別行政區前任行政長官) with the tenure forming part of the formal title, abbreviated as “Former CE” (前任行政長官) with the years of tenure. The Independent Commission further recommends that a former CE and his spouse be granted access to VIP facilities at the Hong Kong International Airport. These protocol arrangements will be made available to a former CE on a life-long basis, regardless of whether he has

taken up gainful employment in the private sector or has re-engaged in commercial activities.

Security protection

23. The Independent Commission recommends that a former CE should be provided with security protection. The provision and continuation of bodyguard services and residential security system will be subject to the security assessment by the Police from time to time, regardless of whether a former CE has taken up gainful employment in the private sector or has re-engaged in commercial activities.

Medical and dental care

24. The Independent Commission recommends that a former CE should be offered medical and dental care on a life-long basis in line with that provided to civil service pensioners.

Implementation timetable

25. The Independent Commission recommends that the post-office services should be made available to a former CE upon departure from office, regardless of the duration of his service with the Government unless he has been removed by the Central People's Government pursuant to an impeachment motion passed by LegCo. The services are not available to a former acting CE.

26. The Independent Commission recommends that the package of services should be put in place as soon as practicable and that the appropriateness of the package should be kept under review.

The Administration's Follow-up Action

27. After seeking the advice of the ExCo, the Administration has decided to adopt in principle the report of the Independent Commission and its recommendations as the basis for determining the remuneration and other arrangements relating to the office of the CE. In the light of this Panel's feedback on the recommendations in the report, we will seek approval from the Finance Committee as appropriate.

Advice Sought

28. Members are requested to give their views on the proposals set out in paragraphs 5 to 26 of this paper.

Constitutional Affairs Bureau
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