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Panel on Public Service
Meeting on 16 January 2006

Background Brief
on review of fringe benefit type of civil service allowances

Purpose

This paper summarizes the background of the Administration's review of fringe benefit type of civil service allowances, and gives a brief account of the relevant issues of concerns expressed by Members at meetings of the Legislative Council (LegCo) and its committees.

Background

2. Allowances payable to civil servants can be broadly classified into two categories: fringe benefit type and non-fringe benefit type of allowances. The former category, which is offered to eligible officers as part of their terms of employment, mainly includes education allowances, housing and related allowances, and passage and related allowances. The latter category, which is related to the performance of duties, mainly includes acting allowances, overtime and related allowances, job-related allowances, subsistence allowances, travelling allowances and other miscellaneous allowances. This paper focuses on the review of the fringe benefit type of allowances.

3. Over the years, the Administration has taken steps to modernize the provision of fringe benefit type of allowances and cease the provision of some allowances for the new recruits joining the civil service after a specified date. For example, the provision of Overseas Education Allowance (OEA) and Local Education Allowance was ceased for new recruits appointed on or after 1 August 1996 and 1 June 2000 respectively. A summary of the changes made to individual fringe benefit type of allowances since 1990 is in **Appendix I**.

4. The need for a comprehensive review of civil service allowances arose after the Hong Kong economy had been badly hit by the Asian Financial turmoil in 1997. During the period of economic downturn, LegCo Members and the public urged the

Government to enhance the efficiency of the civil service and trim down its operating expenditure. The then Chief Executive, in his Question and Answer Session at LegCo on 14 January 1999, announced that a review and reform of the civil service management system would be conducted, including a review of the pay and fringe benefits of the civil service. Details of the reform were set out in the consultation document issued by the Civil Service Bureau (CSB) in March 1999. The purpose and scope of the reform were also mentioned by the Financial Secretary (FS) in his Budget Speech on 3 March 1999. On fringe benefit type of allowances, FS highlighted that the Administration would take immediate steps to formulate a new set of fringe benefits for new recruits.

5. The Director of Audit (D of A), in his Report No. 33 published in October 1999, reported on his observations and recommendations in relation to the administration of allowances in the civil service. Given the substantial expenditure involved in the payment of civil service allowances, D of A considered that a sound framework should be put in place to ensure that value for money was obtained in the administration of allowances. D of A recommended that the Secretary for the Civil Service (SCS) should consider implementing a programme to review regularly the justifications for individual allowances at the policy level and to take immediate action to discontinue the payment of an allowance if it was no longer justified. The Public Accounts Committee (PAC), in its Report No. 33 issued in February 2000, expressed serious dismay that the Administration had failed to abolish outdated civil service allowances, and urged SCS to take forward the D of A's recommendation to review regularly the justifications for civil service allowances at the policy level.

6. The D of A's observations and recommendations were generally welcomed by LegCo Members and the public. Given the need to tackle the fiscal deficit and that the expenditure on personnel-related expenses constituted a significant part of the Government's operating expenditure, Members and the public called for more effective measures to reduce the expenditure on civil service pay and fringe benefits. In this connection, concerns about the expenditure on fringe benefits were raised by Members at meetings of the LegCo, the Finance Committee (FC) and the Panel on Public Service (PS Panel). A list of the relevant meetings and papers from 2001 to 2005 is in **Appendix II**. In particular, Members were concerned about the increase in expenditure on education allowances and passage allowances. Members also urged the Administration to abolish the allowances which were not in line with present day circumstances, such as Air-conditioning Allowance.

7. In response to concerns of LegCo Members and the public and given the Government's commitment to achieving significant economy in its operating expenditure, CSB announced in March 2003 its plan to conduct a comprehensive review of civil service allowances, including those provided as fringe benefits. The objectives in pursuing the comprehensive review are three-fold, namely -

- (a) To ensure that payment of civil service allowances is in line with present day circumstances;

- (b) To enhance control over government expenditure on civil service allowances and to achieve substantive savings in this regard in the next few years; and
- (c) To identify scope for improving efficiency in the administration of civil service allowances.

8. The PS Panel was briefed at its meeting on 25 April 2003 on the Administration's plan to conduct the comprehensive review. The Panel was then updated on the progress of the comprehensive review of the fringe benefit type of allowances at its meetings on 19 April and 21 December 2004.

Comprehensive review of fringe benefit type of allowances

9. Generally speaking, the package of fringe benefits available to officers offered appointment on or after 1 June 2000 has been substantially trimmed down in step with present day circumstances. The Administration therefore focuses the current comprehensive review on identifying feasible ways to further rationalize the payment of various allowances to officers who are currently or potentially^{Note 1} eligible for these allowances as fringe benefits under their terms of employment.

10. As fringe benefit type of allowances are part of the conditions of service of civil servants, the legal, policy and other relevant considerations needed to be taken into full account in the review of the allowances. At the PS Panel meeting on 19 April 2004, the Panel was informed that in view of the complicated legal and policy considerations involved, the Administration decided to adopt a two-phase approach for the review. Phase one of the review would focus on change proposals that would affect relatively fewer civil servants or were less complicated, while phase two would focus on change proposals which would likely have a more extensive impact within the civil service (e.g. change proposals concerning education allowances and housing allowances).

11. A concern was raised by the PS Panel on whether changes of civil service allowances would contravene the provisions of the Basic Law. In this connection, the Panel sought the advice of the Legal Service Division (LSD) of the LegCo Secretariat on whether the Government had the authority to make changes to civil service allowances. LSD advised that in the absence of direct ruling made by the court on whether civil service allowances might be unilaterally altered by the Administration, no definitive conclusion in law could be made with regard to this particular question. Given that allowances, like pay, were generally regarded as terms of employment, LSD considered that analogy might be drawn from the case of *Lau Kwok Fai v.*

^{Note 1} The payment of fringe benefit type of allowance is normally pegged to an officer's salary point. Thus, an officer who is not currently receiving an allowance may become eligible for it at a future date through salary progression or promotion.

Secretary for Justice (HCAL 177/2002, 10 June 2003), a case which ruled on the lawfulness of the Public Officers Pay Adjustment (POPA) Ordinance (Cap. 574) and hinged on the Administration's authority to unilaterally reduce the pay of public officers. It was held in *Lau Kwok Fai's case* that the possibility of a reduction of civil service pay was inherent in both the mechanism and the principles relevant to that mechanism. LSD advised that if the same approach was taken, it seemed that the Administration's efforts to rationalize the various types of allowances, like pay, as terms of employment, were also part of the "system"^{Note 2} which the Basic Law sought to protect. Hence, it seemed that the Administration had the authority to make changes to duty-related and fringe benefit type of allowances which were part of the terms of employment of civil servants. In this connection, LSD also pointed out that from the information provided by the Administration to the PS Panel, various types of allowances, such as OEA, had been reviewed and/or changed in the past, dating back to the early 1990s. It seemed that reviews leading to increase or reduction of allowances of various natures had been part of the "system" of civil service in Hong Kong and arguably a condition of civil service employment before July 1997.

12. On 3 June 2004, the Administration issued a paper setting out the change proposals under phase one of the review for staff consultation. The proposals involved passage and related allowances, and housing-related allowances and benefits. However, the review was subsequently held in abeyance in view of the Government's appeal to the Court of Final Appeal (CFA) in relation to the pay adjustment legislation, which involved the Basic Law provisions regarding remuneration of civil servants^{Note 3}. While noting that the legal proceedings in respect of the pay adjustment legislation and the review of fringe benefit type of civil service allowances were two separate issues, the Administration considered it prudent to take forward the review when the CFA judgment was available. At the PS Panel meeting on 21 December 2004, members noted that the Administration would review the way forward for the review in the light of the latest developments.

13. On 13 July 2005, the CFA handed down its judgment which ruled in favour of the Government. Following the conclusion of the appeal, CSB revived the review of fringe benefit type of allowances and decided to consolidate the change proposals under phase one and phase two as a comprehensive exercise. Taking account of the CFA judgement, legal advice, the policy objectives of the review, and the feedback from staff during phase one of the review, CSB revised the entire package of change proposals.

Note 2 The term "system" refers to "Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service, including special bodies for their appointment, pay and conditions of service" mentioned in Article 103 of the Basic Law.

Note 3 On 29 November 2004, the Court of Appeal (CoA) by a majority allowed the appeals against the ruling of the Court of First Instance (CFI) in respect of the POPA Ordinance which was in favour of the Government. As the judgment of CoA was binding on CFI, CFI handed down a judgment on 4 February 2005 in respect of the judicial review applications relating to the Public Officers Pay Adjustments (2004/05) Ordinance (Cap. 580) (POPA (2004/05) Ordinance) that section 15 of the Ordinance was inconsistent with Article 100 of the Basic Law. The Government was granted leave to appeal to the CFA against CoA's decision of November 2004 and CFI's decision of February 2005.

14. In September 2005, the Administration issued a paper on the entire package of change proposals for staff consultation and for the PS Panel's information (LC Paper No. CB(1)2298/04-05 issued on 22 September 2005). The major change proposals are summarized as follows:

- (a) Education and related allowances
 - ***Education Allowance***: To freeze the allowance rates for existing claimants at the current levels and reduce the allowance rates for new claimants from the 2006-07 school year to the cash levels prevailing on 30 June 1997.
 - ***School Passage Allowance (SPA)***: To reduce the allowance rates to the rates as at 1 July 1998 (when SPA started to be provided in the form of a cash allowance instead of economy class air tickets) and to tighten up the payment rules for both existing and new claimants.

- (b) Passage and related allowances
 - ***Leave Passage Allowance (LPA) and Sea Baggage Allowance***: To retain the provision of these two allowances on their existing terms.
 - ***Travelling expenses in country of origin or place of study***: To freeze the allowance rates at the current levels for existing LPA claimants on overseas terms, and cease the allowance for all SPA claimants.

- (c) Housing and related allowances and benefits
 - ***Home Purchase Allowance and Home Financing Allowance***: Do not propose any changes.
 - ***Accommodation Allowance, Private Tenancy Allowance, Non-accountable Cash Allowance, Removal Allowance and the provision of hotel accommodation***: To streamline/rationalize the rate adjustment mechanism of these allowances.
 - ***Air-conditioning Allowance, Furniture and Domestic Appliances Allowances and Hotel Subsistence Allowance***: To abolish these three allowances.

15. The staff consultation period ended on 21 November 2005. The Administration will brief the PS Panel on the outcome of the staff consultation on 16 January 2006.

Members' major concerns expressed at previous meetings of LegCo and its committees

16. At previous meetings of the LegCo, PAC, FC and PS Panel, Members generally expressed support for the review of fringe benefit type of allowances to bring

the provision of the allowances in line with present day circumstances and to achieve savings in government expenditure. Some Members however have expressed concern on the impact of any reduction in the rates of allowances or tightening of payment criteria on the affected civil servants. Moreover, the Administration was suggested to consider extending the OEA scheme to cover places other than the United Kingdom, such as the Mainland.

Way forward

17. After briefing the PS Panel on 16 January 2006, the Administration will draw up its final proposals and seek the necessary approval from the FC before implementation. The Administration's target is to implement the new measures arising from the review as early as possible in 2006.

Council Business Division 1
Legislative Council Secretariat
13 January 2006

Appendix I

Outcome of reviews conducted in recent years on fringe benefits type of civil service allowances

Allowance	Date	Review outcome	Justifications/Remarks
Education allowances	1993/94 school year	<ul style="list-style-type: none"> - Revised the rates of Overseas Education Allowance into a two-tier system (i.e. junior school rates and senior school rates). - Lowered the maximum Government subsidy from 100% to 90%. 	To rationalize the system following the changes made to the Overseas Service Aid Scheme in the UK, which was the basis for the Overseas Education Allowance scheme at that time.
	1 August 1996	- Ceased payment of Overseas Education Allowance to new recruits offered appointment on or after 1 August 1996.	To be in line with present day circumstances. In view of the significant improvements in the quality and level of provision of education in Hong Kong over the years, including the expansion of the tertiary education sector and the increase in the number of international schools, the case for providing Overseas Education Allowance to civil servants has diminished.
	1 June 2000	- Ceased payment of Local Education Allowance to new recruits offered appointment on or after 1 June 2000.	To be in line with present day circumstances. Due to the improvements over the years to local education in Hong Kong, the provision of Local Education Allowance to civil servants is no longer justified.

Allowance	Date	Review outcome	Justifications/Remarks
Housing and housing-related allowances	1 October 1990	<ul style="list-style-type: none"> - Ceased payment of Private Tenancy Allowance for new recruits offered appointment on or after 1 October 1990. - Ceased payment of House Allowance for new recruits offered appointment on or after 1 October 1990. - Introduced the Home Financing Allowance for new recruits offered appointment on local terms on or after 1 October 1990. - Introduced the Accommodation Allowance for new recruits offered appointment on overseas terms on or after 1 October 1990. 	To promote home ownership among civil servants and to reduce the Government's long-term expenditure on housing benefits.
	1 January 1999	<ul style="list-style-type: none"> - Ceased payment of Accommodation Allowance for new recruits offered appointment on or after 1 January 1999. - Introduced a Rent Allowance for new recruits offered appointment on common agreement terms on or after 1 January 1999. 	To remove the differences in the terms of provision of housing benefits to officers on local terms and overseas terms.

Allowance	Date	Review outcome	Justifications/Remarks
	1 May 1999	<ul style="list-style-type: none"> - Ceased payment of Furniture and Domestic Appliances Allowances and Hotel Subsistence Allowance for new recruits offered appointment on or after 1 May 1999. 	Provision of these allowances is out of step with present day circumstances and the original reasons for providing these allowances are no longer valid.
		<ul style="list-style-type: none"> - Ceased payment of Air-conditioning Allowance for officers not yet promoted to the directorate rank before 1 May 1999. 	The allowance is not in line with present day circumstances.
	1 June 2000	<ul style="list-style-type: none"> - Ceased payment of Home Financing Allowance, Home Purchase Allowance and Rent Allowance for new recruits offered appointment on or after 1 June 2000. - Introduced a Non-accountable Cash Allowance for new recruits offered appointment on or after 1 June 2000. 	To simplify the administration of civil service housing benefits and to be more in line with the practice and arrangements in the private sector.
	1 July 2000	<ul style="list-style-type: none"> - Ceased payment of Furniture and Domestic Appliances Allowances for serving officers not occupying quarters who were offered appointment before 1.5.1999 and who received a substantive salary on MPS Points 34 to 44 (or equivalent) on or after 1.7.2000. 	The payment of these allowances is no longer justified under present day circumstances.

Allowance	Date	Review outcome	Justifications/Remarks
Passage and passage-related allowances	1 August 1996	- Ceased payment of School Passage Allowance, and the associated Unaccompanied Air Baggage Allowance and travelling expenses, for new recruits offered appointment on or after 1 August 1996.	Concurrent with the cessation of Overseas Education Allowance for new recruits.
	1 January 1999	- Ceased provision of Sea Baggage Allowance, Unaccompanied Air Baggage Allowance and travelling expenses (which are payable to officers on overseas terms and their family members on their final departure from the service) for new recruits offered appointment on or after 1 January 1999.	Overseas terms were no longer offered and common terms were introduced with effect from 1 January 1999.
	1 June 2000	- Ceased provision of Leave Passage Allowance to family members of officers offered appointment on or after 1 June 2000 when the officers become eligible for the allowance.	New terms were introduced, with the package of fringe benefits substantially trimmed down in step with present day circumstances.

(Source: Supplementary information provided by the Administration pursuant to members' request at the PS Panel meeting on 19 April 2004 (LC Paper No. CB(1)1788/03-04(01) issued on 11 May 2004).)

Review of fringe benefit type of allowances

List of relevant meetings and papers
(Position as at 13 January 2006)

Meeting	Paper
—	Director of Audit's Report No. 33 issued in October 1999 (<i>Chapter 8 on "Administration of allowances in the civil service"</i>)
—	Public Accounts Committee Report No. 33 issued in February 2000 (<i>Chapter 7 on "Administration of allowances in the civil service"</i>)
Special Finance Committee (FC) meeting on 23 March 2001 (session on Civil Service)	Minutes of the meeting (<i>Chapter XVIII of the FC's Report on the examination of the Estimates of Expenditure 2001-02 issued in June 2001</i>)
PS Panel meeting on 18 June 2001	Paper provided by the Administration on "Overseas Education Allowance (OEA) (<i>LC Paper No. CB(1)1486/00-01(04)</i>) Minutes of meeting (<i>LC Paper No. CB(1)461/01-02 — Agenda Item V</i>)
<u>Council meeting on 12 December 2001</u> Oral question raised by Hon James TIEN on remuneration and fringe benefits of civil servants	Hansard

Meeting	Paper
Special FC meeting on 26 March 2002 (session on Civil Service)	Minutes of the meeting <i>(Chapter XVIII of the FC's Report on the examination of the Estimates of Expenditure 2002-03 issued in June 2002)</i>
<u>Council meeting on 12 March 2003</u> Oral question raised by Hon CHOY So-yuk on Overseas Education Allowance	Hansard
Special FC meeting on 24 March 2003 (session on Civil Service)	Minutes of the meeting <i>(Chapter XIX of the FC's Report on the examination of the Estimates of Expenditure 2003-04 issued in June 2003)</i>
<u>Council meeting on 2 April 2003</u> Written question raised by Hon Abraham SHEK on fringe benefits for civil servants	Hansard
PS Panel meeting on 25 April 2003	Paper provided by the Administration on "Review of Civil Service Allowances" (LC Paper No. CB(1)1459/02-03(02)) Minutes of the meeting (LC Paper No. CB(1)1651/02-03 — Agenda Item III)
Special FC meeting on 29 March 2004 (session on Civil Service)	Minutes of the meeting <i>(Chapter XVIII of the FC's Report on the examination of the Estimates of Expenditure 2004-05 issued in June 2004)</i>
PS Panel meeting on 19 April 2004	Paper provided by the Administration on "Review of Civil Service Allowances" (LC Paper No. CB(1)1505/03-04(03))

Meeting	Paper
	<p>Supplementary information provided by the Administration on the outcome of major reviews conducted since 1990 on various civil service allowances (<i>LC Paper No. CB(1)1788/03-04(01) issued on 11 May 2004</i>)</p> <p>Supplementary information provided by the Administration on the latest position of the Administration's review of fringe benefit type of civil service allowances (<i>LC Paper No. CB(1)2137/03-04(01) issued in June 2004</i>)</p> <p>Information paper prepared by the Legal Service Division of the LegCo Secretariat on "Review of Civil Service Allowances" (<i>LC Paper No. CB(1)2446/03-04(01) issued on 19 July 2004</i>)</p> <p>Minutes of the meeting (<i>LC Paper No. CB(1)1787/03-04 — Agenda Item III</i>)</p>
PS Panel meeting on 21 December 2004	<p>Paper provided by the Administration on "Review of fringe benefit type of civil service allowances" (<i>LC Paper No. CB(1)494/04-05(04)</i>)</p> <p>Minutes of the meeting (<i>LC Paper No. CB(1)683/04-05 — Agenda Item V</i>)</p>
Special FC meeting on 11 April 2005 (session on Civil Service)	<p>Minutes of the meeting (<i>Chapter VI of the FC's Report on the examination of the Estimates of Expenditure 2005-06 issued in June 2005</i>)</p>

Meeting	Paper
—	Paper provided by the Administration on “Review of fringe benefit type of civil service allowances” (<i>LC Paper No. CB(1)2298/04-05 issued on 22 September 2005</i>)