

立法會 *Legislative Council*

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Information Note for the Finance Committee

Summary of deliberation of the Subcommittee on Members' Remuneration and Operating Expenses Reimbursement on the proposed remuneration package for Members of the Fifth LegCo

Purpose

This paper provides a summary of the deliberation of the Subcommittee on Members' Remuneration and Operating Expenses Reimbursement ("the Subcommittee") on the proposed remuneration package for Members of the Fifth Legislative Council ("LegCo"). The proposed package was endorsed by the Chief Executive-in-Council on 13 March 2012 having regard to the recommendations of the Independent Commission on Remuneration for Members of the Executive Council and the Legislature, and Officials under the Political Appointment System of the Hong Kong Special Administration Region ("the Independent Commission").

Background

2. In March 2011, the Subcommittee after a detailed study on the staffing resources and office support required by LegCo Members for the performance of their duties, and with the full support of the House Committee, put forward a package of proposals to the Independent Commission to enhance the level of the operating expenses reimbursements ("OER") to enable Members to employ and retain a team of good quality staff and to have the necessary support as well as the furniture and equipment to support the work of their offices. Major proposals of the Subcommittee are at **Appendix I**.

3. In February 2012, following consultation with Members on the monthly remuneration, the Subcommittee decided that it would not put forward any specific proposal for the monthly remuneration of Members of the Fifth LegCo. However, it reiterated that a long-term mechanism for determining LegCo Members' remuneration should be in place to avoid unnecessary arguments over the subject between the Administration and LegCo once every four years. The remuneration so determined should be able to reflect the important role of the Legislature and the constitutional status of LegCo Members under the Basic Law.

4. In March 2012, the Administration informed the Subcommittee that the Chief Executive-in-Council had accepted the recommendations of the Independent Commission regarding the remuneration package for Members of the Fifth LegCo. The major changes to the existing remuneration package for Members include the following:

- (a) the monthly remuneration of LegCo Members should be increased by 10%, from \$73,150 to \$80,470 per month;
- (b) the annual Office Operation Expenses Reimbursement ("OOER") should be increased by 20%, from \$1,719,290 to \$2,063,150 per annum;
- (c) surplus from a year's OOER entitlement should be allowed to roll over to the following year until the end of a LegCo term;
- (d) the existing level of the Setting Up Expenses Reimbursement ("SUER"), currently at \$150,000 per term (or \$75,000 per term for Members who have claimed setting up expenses in the previous term), and the Information Technology and Communication Equipment Expenses Reimbursement ("ITER"), currently at \$100,000 per term, should be maintained. However, the two allowances should be combined into one provision to allow LegCo Members more flexibility in using the two allowances; and
- (e) the recommendations above should be implemented with effect from 1 October 2012 upon the commencement of the Fifth LegCo.

5. In proposing the 20% increase in the OOER, the Administration points out that as observed from site visits to Members' district offices in July 2011, the Independent Commission considers that it may be fair to conclude that in general, Members may require a degree holder or an experienced staff to help

handle LegCo business with policy content and to supervise the operations of the offices. There may be more flexibility regarding the qualifications of the other assistants, who mainly deal with frontline work such as handling complaints and providing miscellaneous services to the constituencies.

6. To address the need of LegCo Members to retain experienced staff, the Independent Commission agrees that it would be reasonable to allow any surplus of a Member's OOER entitlement each year to roll over to the following year until the end of a LegCo term. This would facilitate LegCo Members to retain part of the OOER funding for salary increments and/or payment of gratuity at the end of the four-year term, if they choose to, with a view to retaining experienced staff.

Views of the Subcommittee and the Administration's response

7. Upon the announcement of the revised remuneration package in March 2012, the Subcommittee held two meetings to discuss the related matters with the Administration. It also received views from members of the public at one of the meetings, and seven deputations/individuals attended the meeting.

OOER and the need for a mid-term review

8. The Subcommittee generally opines that the Independent Commission and the Administration have not taken into account the factors and proposals set out in the Subcommittee report in March 2011. The Subcommittee considers that the proposed increase in OOER by 20% has not acknowledged the nature and complexity of Members' work today and the support required by Members to perform their constitutional functions under the Basic Law.

9. The Subcommittee holds the view that the staffing complement adopted by the Independent Commission as the basis for computing the 20% increase in OOER is inappropriate as there is a need for Members to engage more than one staff member with university background to assist them to examine public policies and proposed legislation. Given that staff in the district offices represent Members in dealing with the requests made by constituents in geographical constituencies, these staff should have sufficient education background and experience to understand the issues concerned and communicate with the Administration direct. The assumption that the work of these staff members is clerical in nature is wrong. The proposed 20% increase in OOER is therefore insufficient to address the high turnover of Members' staff and to retain staff with a reasonable salary package.

10. The Subcommittee is of the view that the review conducted by the Independent Commission is not objective enough. It fails to address the problem faced by Members in retaining a team of good quality staff. The resources available are not sufficient for Members to offer a reasonable salary to their staff. The Subcommittee notes that in overseas jurisdictions, while each of the legislatures may have its own historical background leading to the remuneration package available to its Members today, the determination of the level of remuneration for Members is commonly regarded as a political and controversial issue. Over the years, it has become necessary for some kind of independent bodies, mostly established by statute, to be formed to decide or to advise on Members' salary, allowances and other benefits having regard to a whole package of considerations.

11. In respect of the above, the Subcommittee notes that the last review of Members' remuneration in Canada was conducted on an ad hoc basis by a commission comprising two Members of the House of Commons, and the Chancellor of the University of Ottawa. In Australia and New Zealand, Members' remuneration is reviewed annually. For the UK, the review of Members' remuneration is required by law to be conducted either in the first year of each new Parliament or at any time the statutory Independent Parliamentary Standards Authority¹ considers appropriate. Having regard to the practices in overseas legislature and taking into account the needs of LegCo Members, the Subcommittee urges the Administration to devise an objective mechanism to review the remuneration package for LegCo Members, having regard to overseas experiences and the views expressed by Members and Members' Personal Assistants.

12. The Subcommittee notes that the Administration has argued that the remuneration package of LegCo Members should remain the same within the entire LegCo term, apart from the annual inflation adjustment in accordance with the CPI(C). Any substantial change to the package or fundamental changes to the existing framework will only take effect from the next LegCo term onwards to avoid any real or perceived conflict of interest. The Subcommittee cannot accept this argument. It considers that as the proposed remuneration package cannot address the problems faced by Members, there is a genuine and urgent need for a more in-depth review to be conducted by the Independent Commission shortly after the start of the next LegCo term, with reference to the actual needs and operational requirements of Members. To

¹ In 2009, following the outbreak of the expenses scandal relating to some Members, the Independent Parliamentary Standards Authority was set up under the *Parliamentary Standards Act* as an external regulator to restore public confidence in the way Members claim taxpayers' money. The Authority consists of five members appointed by the Queen on the advice of the House of Commons. Its membership is stipulated to include a former member of the House of Commons, a former judge and an auditor.

this end, the Subcommittee has requested the Administration to give an undertaking at the relevant Finance Committee meeting that there will be such a review of the OOER and any changes to the level of reimbursement should take effect during the term.

Severance payment and long service payment

13. At present, a LegCo Member may claim Winding Up Expenses Reimbursement ("WUER") when he/she ceases to be a LegCo Member, either because he/she does not seek re-election or for reasons over which he/she has no control (e.g. death, defeat in re-election or dissolution of LegCo). The current provision of the WUER is set at one-twelfth of the annual OOER (currently at \$143,274), plus actual severance payments with no pre-set ceiling.

14. However, if a Member's staff leaves in the middle of a term, the Member will have to pay for the severance payment or long service payment themselves in accordance with the Employment Ordinance (Cap 57). As the financial provision under OOER is normally insufficient to cover the day-to-day needs of Members' offices, Members usually have to bear such payments out of their own pockets. If the service of the staff is long and the amounts available² for offsetting are small, the amount of severance or long service payment could be quite substantial.

15. To ease the financial burden of Members, two reimbursement methods are proposed by the Subcommittee:

(a) *Reimbursement under WUER*

As severance pay is reimbursable under WUER, the Administration could allow the claiming of such payments as well as long service payments under WUER in advance of the Member's departure.

(b) *Funds set aside under OOER*

At present, a Member may set aside funds from his/her OOER to pay for staff benefits such as contract bonus, double-pay or end-of-agreement gratuity, which are payable at a future date. The funds set aside should be based on, and not exceed, the Member's

² Under sections 31I and 31Y of the Employment Ordinance, if an employer has paid to an employee a severance payment or long service payment in accordance with the Employment Ordinance and accrued benefits are held in a relevant mandatory provident fund ("MPF") scheme in respect of the employee, the employer may offset the severance payment and long service payment by the accrued benefits attributable to the employer's contribution made to the employee in the MPF scheme. Under the same sections, gratuities that are based on the employee's length of service may also be used to offset severance payments and long service payments.

contractual and other legal obligations towards his/her staff.

In the case of severance payment or long service payment, the Subcommittee is of the view that reference could be made to the setting aside of funds for contract double-pay or end-of-agreement gratuity. Under the set aside of fund arrangement (which was recommended by the Independent Commission in 1995 and agreed by the Administration), Members can submit claims to cover staff-related benefits before they are actually paid. Funds set aside at the end of each reimbursement month/year can be carried forward to the subsequent month/year until they are paid. In other words, funds set aside in a current term for double-pay can be carried forward to the next term until payment is due (which is usually before the Chinese New Year in the following year), if the Member is re-elected for the next term. If the Member has to leave office after election, he/she can settle the relevant contractual liabilities (namely gratuity, pension and other employment benefits) with the funds set aside. The same principle can apply to severance payment and long service payment.

16. In response to the Subcommittee's proposal, the Administration has confirmed in its reply dated 30 April 2012 (**Appendix II**) that WUER is to help Members wind up their business by covering severance payment and other expenses arising from the cessation of offices when Members choose not to stand for election or for reasons over which they have no control. Any severance payment or long service payment which Members pay out under circumstances other than those described above would be outside the ambit of WUER, and hence could only be reimbursed out of OOER. However, the Administration has no objection to allowing LegCo Members to set aside funds from their OOER for the purpose of payment of severance payment or long service payment, as in the case of the current arrangement for setting aside funds for other staff benefits, including contract bonus, double-pay or end-of-agreement gratuity, which are payable at a future date.

Setting Up Expenses Reimbursement ("SUER") and Information Technology and Communication Equipment Expenses Reimbursement ("ITER")

17. At present, while fixed assets and one-off setting up expenses could be charged to SUER and ITER as appropriate, the related operating and maintenance charges (such as repair and maintenance of fixed assets, meter charges for leasing photocopiers, toner for fax machines, subscriptions to anti-virus protection service, and fees for website hosting and maintenance) can only be reimbursed under the OOER. In order to allow greater flexibility for

Members to utilize the combined SUER and ITER, the Subcommittee has requested the Administration to consider allowing Members to claim the said operating and maintenance charges under the combined SUER and ITER.

18. In its reply to the Subcommittee (**Appendix II**), the Administration has also confirmed that it is appropriate for expenses incurred for maintenance and operation of information technology ("IT") and communication equipment to be claimable under ITER. Furthermore, operation, maintenance or repair costs of fixed assets will be claimable under the combined SUER and ITER in future.

Advice sought

19. Members are invited to note the contents of the paper.

Administration Division
Legislative Council Secretariat
May 2012

Major requests of the LegCo Subcommittee to increase various components of the Operating Expenses Reimbursement

The Subcommittee submitted its proposal in March 2011 to increase various components of the Operating Expenses Reimbursement. The major ones include the following -

- (a) to increase the Office Operation Expenses Reimbursement (“OOER”) by \$634,091 per annum, among which \$423,863 is to cater for expenses for engaging staff and for maintaining Members' offices; and the remaining \$210,228 is a new amount proposed to be separately kept and maintained by the LegCo Secretariat for the sole purpose of paying end-of-service gratuity to full-time staff engaged by LegCo Members;
- (b) based on past expenditure pattern that about 70% of the OOER is spent on staff salary, the LegCo Subcommittee proposes that 70% of the OOER should be adjusted annually in accordance with the civil service pay adjustment. The remaining 30% should continue to be adjusted in accordance with CPI(C);
- (c) to provide a new, separate allowance of \$204,000 per annum to enable Members to engage outside parties to conduct research and to lift the current restriction so that the political parties to which Members are affiliated can also be engaged to conduct such researches;
- (d) to merge the existing Setting Up Expenses Reimbursement (currently at \$150,000 per term or \$75,000 per term for those who have claimed the allowance in the previous term) and the Information Technology and Communication Equipment Expenses Reimbursement (currently at \$100,000 per term) into one single allowance and to increase the total amount to \$482,500 per term; and
- (e) to implement the above proposals within the current term, with effect from 1 October 2011.

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政務司司長辦公室轄下行政署



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30 April 2012

Secretary General
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Mr Joseph Kwong)

Dear Mr Kwong,

Subcommittee on Members' Remuneration and Operating Expenses Reimbursement

Thank you for your letter dated 24 April 2012. I set out in the ensuing paragraphs our views on the proposals therein as well as issues raised at the Subcommittee meeting held on 20 April 2012.

Severance payment and long service payment

The original intent of the Winding Up Expenses Reimbursement (WUER), as approved by the Finance Committee (FC), is to help LegCo Members wind up their business by covering severance payment and other expenses arising from the cessation of office when Members choose not to stand for election or for reasons over which they have no control. The current provision of the WUER is set at one-twelfth of the annual Office Operation Expenses Reimbursement (OOER), plus actual severance payments with no pre-set ceiling. Given the clear policy intent of WUER, any severance payment or long service payment which Members pay out under circumstances

other than those described above would be outside the ambit of WUER and hence could only be reimbursed out of OOER. With the proposed 20% increase in OOER and the proposed roll-over arrangement of OOER with effect from the Fifth term LegCo, we believe Members should have more room to plan ahead for possible usage of OOER if they foresee potential need for making severance payment or long service payment during their term of office.

You have rightly pointed out that in the "Response of the Commission on Remuneration for Members of the Legislative Council to Comments on the Report of the Former Commission" dated June 1995, the then Commission agreed, and the Administration accepted, that LegCo Members should be allowed to set aside funds from the then monthly general expenses allowance to pay for the provision of gratuity, pension and other employment benefits for LegCo Members' staff, provided that the LegCo Secretariat should work out detailed administrative arrangements for implementing the proposal. In this connection, we note that in accordance with the "A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council" (the Guide) issued by the LegCo Secretariat, a LegCo Member may set aside funds from his/her OOER to pay for staff benefits such as contract bonus, double-pay or end-of agreement gratuity, which are payable at a future date. The funds set aside should be based on, and not exceed, the Member's contractual and other legal obligations toward his/her staff. The funds will be paid to the Member without supporting documents. Upon actual payment of the funds set aside and/or departure of any staff member, the LegCo Member concerned needs to report that to the LegCo Secretariat, together with any excess funds, receipts and other supporting documents.

Following the above principle and the existing arrangement, we have no objection to allow LegCo Members to set aside funds from their OOER for the purpose of payment of severance payment or long service payment, as in the case of the current arrangement for setting aside funds for other staff benefits, including contract bonus, double-pay or end-of agreement gratuity, which are payable at a future date.

Information Technology and Communication Equipment Expenses Reimbursement

At present, LegCo Members may claim Information Technology and Communication Equipment Expenses Reimbursement (ITER) of up to \$100,000 per term to cover expenses for the purchase or upgrading of information technology (IT) and communication equipment. Currently, in

accordance with the Guide, only expenses incurred for the purchase or upgrading of IT and communication equipment; as well as one-off contracts (including contracts for the employment of consultants or training of staff for setting up websites and telecommunication equipment) can be claimed. The consequential operation and maintenance costs incurred are claimed under OOER.

The original intent of the ITER, as approved by FC, is to facilitate LegCo Members to maintain contact with the public through electronic means, in addition to the usual face to face meetings. The provision of reimbursement of IT and communication equipment expenses is to encourage Members to purchase/upgrade IT and communication equipment during their term of office. The relevant FC paper has not imposed restrictions to prohibit subsequent operation and maintenance expenses per se. Taking into account the spirit of the original intent for introducing the ITER, we consider it appropriate for expenses incurred for maintenance and operation of IT and communication equipment to be claimable under ITER. In other words, depending on their individual needs, Members could free up more resources under OOER, which would otherwise need to be spent on maintenance and operation expenses for IT and communication equipment, to cover other office operation expenses, including staff costs.

The combined provision for the Setting Up Expenses Reimbursement and the ITER with effect from the Fifth term

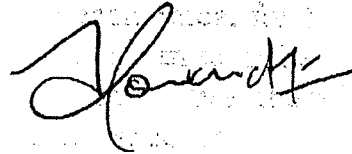
Under the Administration's proposal, the Setting Up Expenses Reimbursement (SUER) and ITER will be merged with effect from the Fifth term LegCo, but with no enhancement to the combined amount. In other words, the combined provision will become \$250,000 per term, or \$175,000 per term for those Members who have claimed any setting up expenses in the previous term. The objective of the proposed combination of the SUER and ITER with effect from the Fifth term is to provide more flexibility for Members to redeploy available resources from a less utilised area to a more heavily utilised area. However, the respective ambits applicable to the SUER and the ITER currently will continue to apply to the combined provision, namely, the Setting Up and Information Technology Expenses Reimbursement (SUITER), as a whole.

In your letter of 24 April, you further propose that Members should be allowed to claim operating and maintenance charges of fixed assets under SUITER in future. In this connection, you may wish to note that the original the

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intent of SUER, as approved by FC, is for capital expenses incurred for the setting up of offices. We appreciate that sometimes expenses for setting up offices may not be incurred on a one-off basis in day one and could take some time and related costs could be incurred in phases. In addition, given the change of times, we agree that it may be more economical for Members to use hire purchase to provide equipment in their offices than to make one-off capital purchase; or to repair rather than replace them. We therefore have no objection to your proposal for operation, maintenance or repair costs of fixed assets to be claimable under the SUITER in future. I trust the Secretariat will suitably amend the Guide to provide clarity in processing claims from Members.

Yours sincerely,



(Howard Lee)

for Director of Administration

c.c. Hon Emily Lau, JP, Chairman of the Subcommittee
Secretary General, Legislative Council Secretariat