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**Panel on Public Service
Meeting on 29 June 2009**

**Background brief on
2009-2010 civil service pay adjustment**

Purpose

This paper provides background information on the previous two occasions when legislation was enacted to effect a pay cut for the civil service in 2002 and 2003 respectively, and summarizes the major concerns expressed by Legislative Council (LegCo) Members during their scrutiny of the relevant pay adjustment bills.

Background

2. Under the existing civil service pay adjustment mechanism, civil service pay is checked against the prevailing market situation on a regular basis through three different surveys, namely (i) a pay trend survey (PTS) conducted every year to ascertain the year-on-year pay adjustment movements in the private sector; (ii) a starting salaries survey conducted every three years to compare civil service starting salaries with those of the private sector having similar academic qualifications and/or experience requirements; and (iii) a pay level survey conducted every six years to ascertain whether civil service pay is broadly comparable with private sector pay.

The PTS Mechanism

3. The annual PTS is commissioned by a tripartite Pay Trend Survey Committee (PTSC), comprising ten staff sides representatives from the four central consultative councils, three management representatives from the Administration, and three members of two advisory bodies on civil service salaries and conditions of service (namely the Standing Commission on Civil Service Salaries and Conditions of Service and the Standing Committee on Disciplined Services Salaries and Conditions of Service) who are non-officials

and non-civil servants. Under the supervision of PTSC, the annual PTS is conducted by the Pay Survey and Research Unit of the Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service.

4. The survey findings are collated and condensed into three gross pay trend indicators (PTI)s, one each for the upper, middle and lower salary bands. The payroll cost of increments incurred for civil servants in each salary band (expressed as a percentage of total salary payment for that particular salary band) is then deducted from the relevant gross PTI to arrive at the net PTI.

2002 civil service pay adjustment

5. In late April 2002, the Administration announced the findings of the 2001-2002 PTS. The net PTIs for the three non-directorate salary bands were

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2001-2002 net PTIs

Upper salary band (\$47,591 - \$97,325 a month)	-4.42%
Middle salary band (\$15,520 - \$47,590 a month)	-1.64%
Lower salary band (Below \$15,520 a month)	-1.58%

On 22 May 2002, the Chief Executive-in-Council (CE-in-Council) decided that an offer of a pay reduction of 4.42% for the directorate and the upper salary band, 1.64% for the middle salary band, and 1.58% for the lower salary band, with effect from 1 October 2002, should be put to the staff sides of the four central consultative councils. Having considered all relevant factors including the staff sides' views, the CE-in-Council decided on 28 May 2002 that civil service pay should be adjusted as originally proposed, and that the Public Officers Pay Adjustment Bill (the POPA Bill) should be introduced into LegCo.

POPA Bill

6. The POPA Bill aimed to implement the Government's decision to reduce civil service pay with effect from 1 October 2002. It provided that the pay and allowances of public officers at different salary bands should be adjusted downward with effect from 1 October 2002 and specified the relevant rates of adjustment. It further provided that the POPA Bill did not prohibit adjustments made after that date and that the employment contracts of public

officers were to be read as expressly authorizing the adjustments to their pay and allowances under the Bill.

7. Following the first reading of the POPA Bill on 5 June 2002, a Bills Committee was formed by LegCo to study the Bill. The Bills Committee met with the four central consultative councils (staff sides), major civil service unions and deputations from the subvented sector. While the Bills Committee had no objection to the Administration's decision to reduce civil service pay in accordance with the existing pay adjustment mechanism, members expressed concern on the following issues -

- (a) whether the existing pay adjustment mechanism allowed for pay reduction;
- (b) the need and propriety to implement civil service pay reduction by legislation;
- (c) alternatives to the legislative approach, e.g. the staff sides' request for the setting up of a Committee of Inquiry;
- (d) whether the POPA Bill would contravene Articles 100 and 103, 6 and 105, 39, and 160 of the Basic Law; and
- (e) implications of the POPA Bill on the subvented sector.

8. Having considered the views of the Administration and the staff sides as well as legal advice, some members of the Bills Committee remained concerned about whether there was a genuine need to implement the civil service pay reduction by legislation. Members requested the Administration to consider introducing a general enabling legislation on civil service pay adjustment mechanism to provide the legal framework for implementing upward and downward pay adjustments. Members considered this general enabling legislation more appropriate than the proposed one-off legislation to deal with the civil service pay reduction for 2002.

9. While the Administration agreed to give further thought to the suggestion, it considered that the proposed general enabling legislation and the POPA Bill were not mutually exclusive and that the most pressing issue at that time was the implementation of the pay reduction for 2002. Some members of the Bills Committee, however, maintained their view that the problem should be tackled by a comprehensive, rather than a piecemeal, approach.

10. The POPA Bill was passed by LegCo on 11 July 2002. To alleviate staff sides' concern about the impact of the Bill, the then CE and Secretary for Civil Service (SCS) wrote to all civil servants on 5 and 12 July 2002 respectively emphasizing that the Bill was a piece of one-off legislation to cater

specifically for the implementation of the 2002 civil service pay reduction only. The Government had no plan or intention to use this pay reduction legislation as a pretext for curtailing civil servants' pension benefits.

2003 civil service pay adjustment

11. Given the pressing need to tackle the budget deficit problem, the Administration in 2002-2003 set the target of cutting public expenditure to \$200 billion by 2006-2007. To achieve this target, the Administration sought to reduce the size of the civil service and its expenditure on civil service pay and allowances. The then SCS reached a consensus with representatives of the staff sides in February 2003 on the pay adjustment issue. Under the consensus, the dollar value of all civil service pay points would be restored to the levels as at 30 June 1997 in cash terms. For all pay points at Directorate Pay Scale Point 3 (D3) and above or equivalent, the pay reduction would be effective from 1 January 2004. For all pay points below D3 or equivalent, the pay reduction would be implemented by two adjustments of broadly equal amount from 1 January 2004 and 1 January 2005 respectively. On 25 February 2003, the CE-in-Council made a decision on civil service pay adjustment which was in line with this consensus. It also decided that the Administration should introduce the relevant bill into LegCo as soon as possible to implement the pay reduction.

Public Officers Pay Adjustments (2004/2005) Bill (POPA (2004/2005) Bill)

12. Following staff consultation, the Administration introduced the POPA (2004/2005) Bill into LegCo on 21 May 2003. The Bill sought to implement the civil service pay reductions which were to take effect from 1 January 2004 and 1 January 2005 respectively. The pay reductions proposed for civil servants for implementation under the Bill were to adjust the pay and the amounts of allowances payable to public officers by reducing them to the level they were at, in dollar terms, on 30 June 1997. The Bill was essentially modelled on the Public Officers Pay Adjustment Ordinance (Cap. 574) (POPA Ordinance).

Major concerns expressed by the Bills Committee on POPA (2004/2005) Bill

Need for enactment of legislation to effect pay reductions in 2004 and 2005

13. Some members of the Bills Committee followed up the view previously expressed by the Bills Committee on the POPA Bill that, instead of resorting to one-off legislation, the Administration should introduce general enabling legislation on the civil service pay adjustment mechanism to provide for upward and downward pay adjustments. These members queried why the Administration still proposed to enact legislation on a one-off basis to

implement the civil service pay reductions in 2004 and 2005. Some other members considered that as the Administration had already reached a consensus with the staff side representatives on the pay reductions in 2004 and 2005, it should not be necessary to implement the pay reductions through legislative means. They suggested implementation of the pay reduction decision through administrative means under the existing pay adjustment mechanism.

14. The Administration advised that the contractual employment arrangements between the Government and the vast majority of serving civil servants did not contain an express provision authorizing the Government to reduce pay. The Administration therefore considered that legislation was the most appropriate way to implement with certainty a justified decision on a civil service pay reduction. The Administration was currently also developing, in consultation with staff, an improved mechanism for civil service pay adjustment which would comprise, among others, effective means for implementing both upward and downward pay adjustments. The Administration would consider, as part of that exercise, whether such means would need to be provided in law and, if so, whether general enabling legislation would be preferable for the purpose. The Administration's aim was to complete the exercise within 2004. As the first-stage pay reduction was intended to take effect from 1 January 2004, it would not be possible to rely on any better means that might be introduced under the to-be-improved civil service pay adjustment mechanism for implementing the pay reduction decision. In order not to pre-empt the outcome of the ongoing deliberations on the improvements to be made to the pay adjustment mechanism, the Administration considered it appropriate to seek the enactment of a piece of one-off legislation to implement the 2004 and 2005 pay reductions.

Judicial reviews on the POPA Ordinance

15. The Bills Committee was gravely concerned about the outcomes of five applications for judicial review of the constitutionality of the POPA Ordinance (Cap. 574). On 10 June 2003, the Court of First Instance (CFI) handed down its judgment on the two lead applications for judicial review and ruled that the POPA Ordinance had not breached any individual articles of the Basic Law that were argued before it. According to the court ruling, the implementation of civil service pay reduction by legislation was constitutional. The gist of that judgment was set out in the Administration's paper, a copy of which is attached in **Appendix I** for members' ease of reference.

16. The applicants of two of the other three judicial review cases subsequently withdrew their applications. The remaining case was heard from 7 to 9 October 2003 and dismissed by CFI on 7 November 2003. A copy of the judgment (full version) handed down by CFI was provided to the Bills Committee for members' reference [LC Paper No. CB(1)301/03-04(02)].

Impact of the Bill on future civil service pay adjustments

17. To alleviate the staff sides' concern about the impact of the Bill, the Bills Committee suggested that the Administration should consider specifying in the Bill that the Bill was one-off in nature and would be repealed after the pay reduction had taken effect, and that the Bill sought to implement a pay reduction of 3% each for 2004 and 2005 for concerned public officers.

18. The Administration advised that notwithstanding its one-off nature, the legislation could not be repealed after the implementation of the second-stage pay reduction which was to take effect on 1 January 2005 because the pay and the amounts of allowances payable to public officers as adjusted by the relevant provisions under the Bill would continue to be payable to concerned public officers, until they were further adjusted under the prevailing pay adjustment mechanism.

19. On the request that the legislation should specify the reduction of civil service pay by 3% with effect from 1 January 2004 and another 3% from 1 January 2005, the Administration pointed out that neither the decision of the CE-in-Council nor the consensus proposal reached between SCS and staff representatives in February 2003 referred to any specific percentage of adjustments to individual civil service pay points. The decision of the CE-in-Council was to restore the pay pertaining to each pay point to the level it was at on 30 June 1997 in dollar terms. Taking account of the annual adjustments since 1 July 1997, the dollar value of all civil service pay points below D3 or equivalent would in effect be reduced by around 3% from 1 January 2004 and another 3% from 1 January 2005. For clarity and accuracy, the Administration had prescribed all the adjusted pay scales in full in Schedules 1, 3, 4 and 5 to the Bill.

20. The POPA (2004/2005) Bill was passed by LegCo on 10 December 2003.

Latest developments

2009-2010 civil service pay adjustment

21. Having considered the responses of the staff sides of the four central consultative councils to the pay offers on civil service pay adjustment for 2009-2010 and the relevant factors under the established mechanism, the CE-in-Council decided at its meeting on 23 June 2009 that -

- (a) civil service pay for the lower and middle salary bands should be frozen; and

- (b) civil service pay for the upper salary band and above should be reduced by 5.38%, subject to the proviso that no pay point in the upper salary band should be less than \$48,700 (i.e. \$300 above the upper limit of \$48,400 of the middle salary band).

The CE-in-Council also decided that the Public Officers Pay Adjustment Bill should be introduced into LegCo for implementing the above civil service pay reduction from a prospective date. The Administration intends to introduce the Bill into LegCo for First and Second Reading on 8 July 2009. In this connection, a LegCo Brief [File Ref. CSB/CR/PG/4-085-001/62] has been issued setting out the relevant details. The Panel has scheduled to discuss the issue at its meeting on 29 June 2009.

22. Disciplined services have recently expressed dissatisfaction that while the Administration has decided to implement the above pay adjustment, the way forward on the implementation of the recommendations made in the grade structure review reports, which were released in November 2008, was still left hanging in the air. In this connection, the Administration has advised that it will submit for the CE-in-Council's decision in September/October 2009 its recommended way forward on the grade structure review reports. Please refer to the minutes of the two Panel meetings on 15 December 2008 and 19 January 2009 for details of the discussion on the grade structure review.

Relevant papers

- 23. A list of relevant papers is in **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
25 June 2009

Judicial Review of the Public Officers Pay Adjustment Ordinance

A gist of the judgment handed down by the Court of First Instance on 10 June 2003

The Public Officers Pay Adjustment Ordinance (POPA Ordinance) was enacted in 2002 to implement the civil service pay reduction with effect from 1 October 2002. Two applications for judicial review were heard before the Court of First Instance (CFI) on 6-10 May 2003. The CFI handed down its judgment on these two cases on 10 June 2003.

2. The applicants in these two judicial review cases sought declarations that the POPA Ordinance, insofar as it seeks to impose a reduction in civil service pay scales, contravenes individual articles of the Basic Law and violates the principles of the Rule of Law and thereby the integrity of the Basic Law as a whole. A gist of the court judgment is set out below.

Articles 100 and 103

3. The court ruled that the POPA Ordinance does not permanently alter the terms and conditions of the contracts of service but rather it is to achieve an adjustment of civil service pay in a specific year in accordance with a long-established mechanism for calculating annual pay adjustments (paragraph 74), such mechanism being incorporated in the word “system” in Article 103 (paragraph 71). The POPA Ordinance therefore directly maintains a material part of the system (paragraph 73).

4. In respect of Article 100, the court ruled that public officers remain subject to conditions of service which, in respect of pay, remain unchanged in that it is to be determined in accordance with the long established pay adjustment mechanism (paragraphs 86 & 34). This mechanism has always contained the implication that pay adjustment may result in reductions (paragraph 165). Article 100 is therefore not contravened. Further, in terms of specific figures, Article 100 is not to be interpreted as to direct that pay, allowances and benefits may not fall below the 30 June 1997 levels (paragraph 87). In any event, the reductions brought about by the POPA Ordinance have not reduced the pay of public officers below those levels (paragraph 88).

Article 102

5. The court ruled that the POPA Ordinance, which does not in any way vary the terms and conditions of public service pensions, does not of itself offend Article 102. If the reduction of pay of public officers by the POPA Ordinance is lawful, any “knock on” effect on their future pension entitlements will itself be lawful (paragraph 99). Article 102 is therefore not contravened.

Article 35

6. The court ruled that the right of access to the courts is not absolute (paragraph 109). A balance is to be struck between the legitimate aim sought by the POPA Ordinance and the means used (paragraph 106). The court was satisfied that the enactment of the POPA Ordinance was proportionate to the legitimate aim of keeping public finance sustainable as directed by Article 107 (paragraphs 110 & 113). The court was also satisfied that, while the POPA Ordinance has had the result of preventing possible (but not existing) litigation, the purpose of it was to vary the terms of service contracts of public officers as a class of persons in accordance with the long established pay adjustment mechanism (paragraph 123). Article 35 is therefore not contravened.

Article 160

7. The court ruled that, just as was the case prior to the transfer of sovereignty, the Executive has the power to vary the rights and obligations of contracts of civil servants as a class by means of legislation after the transfer. This power to legislate is as much protected as the contracts of public officers (paragraphs 132 and 135). Article 160 is therefore not contravened.

Article 105

8. The court ruled that the POPA Ordinance has no retrospective effect and that it only reduces future pay which the public officers have not yet acquired as property and, as such, is not property capable of being protected by Article 105 (paragraphs 138 & 139). Article 105 is therefore not contravened.

Article 39

9. The court ruled that the possibility of a reduction is inherent in the existing annual pay adjustment mechanism and the use of that mechanism was a matter of settled public policy (paragraph 165) which formed the basis on which the request for the appointment of a Committee of Inquiry was rejected by the Executive.

10. Further, the court ruled that the articles concerned look to procedures for determining terms and conditions and not to how those terms and conditions, once determined, are to be implemented (paragraphs 166, 170 & 171(c)). The court was satisfied that the proposal to employ legislation to give general effect to the pay reduction is a matter of implementation outwith the articles concerned.

The Rule of Law

11. The court ruled that legislation may legitimately be directed at civil servants as a class (paragraphs 32, 175 & 176) and that all persons within the civil service of the same salary grade are treated equally. The POPA Ordinance ensured, amongst other things, both generality and equality of application (paragraph 177) to all within the civil service. Furthermore, the purpose of the POPA Ordinance was for the greater public good by maintaining civil service salaries at a level broadly in line with that of private sector employees (paragraph 178).

Appendix II

List of relevant papers

Committee	Relevant Link
Bills Committee on Public Officers Pay Adjustments Bill (7 June - 10 July 2002)	http://www.legco.gov.hk/yr01-02/english/bc/bc12/general/bc12.htm
Bills Committee on Public Officers Pay Adjustments (2004/2005) Bill (23 May - 10 Dec 2003)	http://www.legco.gov.hk/yr02-03/english/bc/bc13/general/bc13.htm