

# 立法會

## *Legislative Council*

LC Paper No. CB(1)2576/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB1/PL/ PS/1

### **Panel on Public Service**

**Minutes of meeting**  
**held on Monday, 21 May 2012, at 10:45 am**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Chairman)  
Dr Hon PAN Pey-chyou (Deputy Chairman)  
Hon LEE Cheuk-yan  
Dr Hon Margaret NG  
Hon CHEUNG Man-kwong  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Hon LI Fung-ying, SBS, JP  
Hon WONG Sing-chi  
Hon IP Wai-ming, MH  
Hon LEUNG Kwok-hung

**Members absent** : Hon TAM Yiu-chung, GBS, JP  
Dr Hon LEUNG Ka-lau

**Public officers attending** : **Agenda item II and III**  
  
Miss Denise YUE, GBS, JP  
Secretary for the Civil Service  
  
Mr Raymond H C WONG, JP  
Permanent Secretary for the Civil Service  
  
Ms Shirley LAM, JP  
Deputy Secretary for the Civil Service 3

**Agenda item IV**

Miss Denise YUE, GBS, JP  
Secretary for the Civil Service

Mr Raymond WONG H C, JP  
Permanent Secretary for the Civil Service

Ms Selene TSOI  
Acting Deputy Secretary for the Civil Service 2

**Agenda item V**

Miss Denise YUE, GBS, JP  
Secretary for the Civil Service

Mr Raymond WONG H C, JP  
Permanent Secretary for the Civil Service

Mrs Ingrid YEUNG, JP  
Deputy Secretary for the Civil Service 1

**Clerk in attendance :** Ms Joanne MAK  
Chief Council Secretary (1)2

**Staff in attendance :** Mr YICK Wing-kin  
Assistant Legal Aid Adviser 8

Mr Simon CHEUNG  
Senior Council Secretary (1)9

Miss Iris CHEUNG  
Legislative Assistant (1)7

**I. Papers issued since last meeting**

(LC Paper No. CB(1)1606/11-12(01) -- Submission to the  
(*Chinese version only*) Independent Review

Committee for the Prevention and Handling of Potential Conflicts of Interests from the Hong Kong Food And Environmental Hygiene Supervisory Staffs Union

LC Paper No. CB(1)1678/11-12(01) -- Submission on Civil Service Pay Adjustment from the Police Force Council Staff Associations  
(*English version only*)

LC Paper No. CB(1)1718/11-12(01) -- Submission on the Administration's policy with regard to the calculation of salaries of government school teachers from the Education Employees General Union  
(*Chinese version only*)

LC Paper No. CB(1)1736/11-12(01) -- Submission on the recruitment of Treasury Accountants from the Accounting Officers Rights Concerns Group)  
(*English version only*)

Members were informed that the above papers had been issued since the last Panel meeting.

## **II. Date of next meeting and items for discussion**

(LC Paper No. CB(1)1819/11-12(01) -- List of outstanding items for discussion

LC Paper No. CB(1)1819/11-12(02) -- List of follow-up actions)

2. The Chairman advised members that the next regular Panel meeting would be held on 18 June 2012 to discuss –

(a) 2012-2013 Civil Service Pay Adjustment; and

(b) An updated overview of post-service outside work for directorate civil servants.

3. Dr PAN Pey-chyou pointed out that the issue of calculation of salaries of government school teachers had been placed on the list of outstanding issues for discussion for some time. He enquired if the issue could be discussed at the next Panel meeting in June 2012. Secretary for the Civil Service ("SCS") said that the Panel had held a public hearing on the issue some time ago, during which the Administration had explained in detail its policy on the issue. Civil Service Bureau ("CSB") would soon issue a reply to the four letters from the Education Employees General Union (LC Paper No. CB(1)1718/11-12(01)) which raised concern about the matter. She suggested that members could defer deciding if the issue needed to be discussed again at a Panel meeting after perusing the Administration's reply letter, which would be copied to members for reference. Members agreed.

4. Mr LEE Cheuk-yan enquired whether the re-organisation of the Government Secretariat proposed by the Chief Executive-elect ("CE-elect") would have an impact on the work of CSB, including whether the purview of remuneration matters concerning politically appointed officials ("PAOs") would be transferred to CSB. He considered that if the answer was in the affirmative, the relevant issues should be discussed at a Panel meeting.

5. SCS replied that the re-organisation of the Government Secretariat would not involve any reshuffling of portfolios between CSB and Constitutional and Mainland Affairs Bureau ("CMAB"). After the re-organisation, subject matters relating to the appointment, remuneration and post-service outside work of PAOs would continue to be under the purview of the CMAB. Mr LEE Cheuk-yan said that he did not see the rationale for the aforesaid management issues relating to PAOs and civil servants to remain under purview of two policy bureaux. He would take this up at meetings of the Subcommittee to Study the Proposed Legislative Amendments Relating to the Re-organisation of the Government Secretariat.

6. Mr LEE Cheuk-yan expressed concern that the results of the Pay Level Survey to be conducted in 2012 would have a negative impact on the salaries of junior civil servants. He enquired about the relationship between 2012-2013 civil service pay adjustment and Pay Level Survey. SCS replied that the Administration would brief members on the 2012-2013 civil service pay adjustment at the next Panel meeting on 18 June 2012.

### **III. Overview of civil service disciplinary matters**

(LC Paper No. CB(1)1819/11-12(03) -- Administration's paper

entitled "Overview of civil service disciplinary matters"

LC Paper No. CB(1)1819/11-12(04) -- Updated background brief entitled "Disciplinary mechanism and proposed amendments to Disciplined Service Legislation" prepared by the Legislative Council Secretariat)

7. At the invitation of the Chairman, SCS gave an overview of the civil service disciplinary mechanism, which was underpinned by "summary disciplinary actions" taken against minor misconduct and "formal disciplinary actions" targeting at more serious misconduct allegedly committed by civil servants. She said that the Administration had endeavoured to ensure that each disciplinary case was processed in accordance with the principles of natural justice and observance of procedural propriety. Safeguards were in place to ensure that a civil servant suspected of misconduct would be given a fair hearing and sufficient opportunities to defend himself/herself.

#### Statistics on summary disciplinary actions

8. Referring to paragraph 3 of the Administration's paper (LC Paper No. CB(1)1819/11-12(03)), Dr Margaret NG enquired about the number of cases in which summary disciplinary actions were instituted in the past five years against civil servants from the Hong Kong Police Force ("HKPF").

9. SCS replied that summary disciplinary actions were instituted in a total of 2 134 cases against civil servants in the past five years. As regards the breakdown for civil servants from HKPF, she undertook to provide the figures after the meeting.

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#### Appeals for legal representation in disciplinary hearings

10. Noting from paragraph 11 of the Administration's paper that where fairness so required, a civil servant suspected of misconduct would be permitted to have legal or other forms of representation at the hearing, Dr Margaret NG enquired about the up-to-date statistics relating to legal representation, namely the numbers of applications, approvals and rejections, as well as the numbers of successful and unsuccessful appeals for legal representation.

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11. SCS replied that as at 30 April 2012, there were four applications for legal representation from civilian staff who were subject to disciplinary proceedings under the Public Service (Administration) Order, and all were approved. As at 30 April 2012, there were 228 applications for legal representation involving civil servants who were subject to disciplinary proceedings under the relevant disciplined services legislation. Among these applications, 101 of them had been approved and about ten cases were still being processed. As regards the figures on successful appeals for legal representation, SCS undertook to provide them after the meeting.

12. Dr Margaret NG noted that when approval was given for an application for legal representation by an officer charged with disciplinary offences, separate legal representation would be provided to the prosecuting officer and the adjudicating tribunal at the relevant hearing. As one of the reasons put up by the Administration in the past for not allowing legal representation for the accused officer was that it would protract the conduct of disciplinary proceedings, she enquired about the impact of allowing legal representation on the conduct of disciplinary proceedings. The Chairman also enquired how the acquittal rate had changed since the ban on legal representation was lifted.

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13. On the impact of allowing legal representation on the conduct of disciplinary proceedings, SCS undertook to provide the relevant information to members after the meeting. As there were both convictions and acquittals among the concluded cases in which legal representation was allowed, SCS advised that it might be difficult to attribute the acquittal of a civil servant to the fact that he was legally represented.

14. In reply to the Chairman's enquiry, SCS said that civil servants subject to disciplinary proceedings were not eligible for legal aid or financial assistance from departmental welfare funds. The civil servants concerned and the Administration were responsible for their respective legal costs.

#### Punishments imposed on civil servants

15. Mr LEE Cheuk-yan noted that as shown in Table II in Annex B of the Administration's paper, there were 13 dismissal cases in the past five years for offences under the Prevention of Bribery Ordinance ("POBO") and the common law offence of Misconduct in Public Office. He enquired whether other forms of punishments would be imposed on civil servants convicted of these two offences.

16. SCS replied that apart from dismissal, other forms of punishments had been imposed on civil servants convicted of the above two offences. Members were informed vide her letter to the Clerk to the Panel dated 17 May 2012 (LC Paper No. CB(1)1938/11-12(01)) that for the 12 conviction cases under section 3 of POBO in the past five financial years, three officers were dismissed, three were compulsorily retired and six were punished by reprimand or severe reprimand with or without financial penalty; and for the nine conviction cases under the common law offence of Misconduct in Public Office in the past five financial years, three officers were dismissed, five were compulsorily retired with or without financial penalty and one was punished by reduction in rank.

17. Mr IP Wai-ming said that he was aware of a case in which the severe punishment of dismissal had been imposed on a civil servant convicted of obtaining a loan in the amount of \$500 from his subordinate. He enquired about the criteria adopted by the Administration in determining the punishments to be imposed on civil servants found guilty of misconduct or criminal offences.

18. SCS replied that in determining the punishments to be imposed, considerations would be given to the nature and gravity of the misconduct or criminal offence, the customary level of punishment for similar misconduct or criminal offences, the rank and service and disciplinary record of the civil servants concerned, etc. Since senior civil servants were expected to lead by example, a higher-ranking civil servant would normally receive a heavier punishment than a junior civil servant found guilty of the same misconduct or criminal offence. In reply to Mr IP Wai-ming's further enquiry, SCS said that as no disciplinary case was identical, it might be difficult for her to illustrate how the aforesaid criteria were applied to individual cases.

19. Mr LEE Cheuk-yan commented that it was unfair to civil servants that while there were 21 civil servants convicted, in the past five financial years, of the offence under section 3 of POBO or the common law offence of Misconduct in Public Office, no sanction would be imposed on the Chief Executive ("CE") for accepting hospitality offered by tycoons. He opined that in fairness to civil servants, fellow Members should support the motion to be moved at a Council meeting to impeach CE.

20. SCS responded that as CE was not a civil servant, she would not comment on his conduct, which was outside the scope of the agenda item under discussion.

21. Regarding the criterion that a higher-ranking civil servant would receive a heavier punishment, Mr LEUNG Kwok-hung queried how this criterion reconciled with the fact that CE and PAOs, who were at the top level of the Government, would not be punished at all for acceptance of hospitality. Mr LEUNG said that CE and PAOs should be persons of integrity if the Government was to govern effectively. He enquired if CSB would conduct a survey on whether civil servants felt frustrated by CE's acceptance of hospitality. SCS replied that the core values of probity and honesty were set out in the Civil Service Code promulgated in 2009 and she considered most civil servants cherished such values. She did not see a need to conduct the proposed survey.

22. As CE had been criticized for having inappropriately accepted hospitality offered by tycoons and a former Chief Secretary for Administration had been arrested in March 2012 for suspected corruption, and both of them were former civil servants, the Chairman doubted the effectiveness of CSB's effort in imparting a sense of probity in the civil service. SCS responded that while she would not comment on individual cases, she would urge members not to pass judgement before trial.

#### Views and concerns of civil servants on acceptance of hospitality by CE

23. Ms LI Fung-ying recalled that at the public hearing held on 14 April 2012, some deputations opined that it was unfair that civil servants were subject to stringent regulations on acceptance of advantages but CE was not subject to any such regulations. She enquired if SCS had relayed the views and concerns of members and civil servants to the top level of the Government.

24. SCS replied that she had already relayed the views and concerns expressed by civil service unions to the CE's Office and CMAB. She recalled that all deputations affirmed at the meeting that probity and integrity were the core values cherished by civil servants, and they supported the control regime for safeguarding such values in the civil service. Mr IP Wai-ming enquired if the views and concerns of civil service unions had been relayed to the CE-elect's Office ("CEEEO"). SCS replied that she had relayed the views and concerns only to CE's Office and CMAB, which were under the current Administration.

#### Criminal offences or misconduct committed by civil servants from disciplined services

25. Ms LI Fung-ying said that she and members of the public had the impression that incidents of members of disciplined services committing



criminal offences or misconduct were on the rise in recent years. She enquired whether this reflected problems in the management of the disciplined services or this was a result of a lowering of the entry requirements.

26. Referring to Annex A of the Administration's paper, SCS said that the total number of completed cases of disciplinary proceedings had declined gradually from 404 in 2007-2008 to 308 in 2011-2012. Nonetheless, she agreed that the wide coverage by the media of a few incidents of criminal offences or misconduct committed by civil servants from the disciplined services might give rise to the public perception mentioned by Ms LI. As recruitment exercises conducted in recent years by various disciplined services had received enthusiastic responses, disciplined services were able to recruit candidates of high quality. HKPF had also introduced a psychometric test to help provide additional information on candidates in the recruitment process. The Administration would spare no efforts in upholding an honest and clean civil service. According to the annual reports published by the Independent Commission Against Corruption in recent years, corruption in the civil service had not worsened.

#### **IV. Conditioned hours of work of the civil service**

(LC Paper No. CB(1)1819/11-12(05) -- Administration's paper entitled "Conditioned hours of work of the civil service"

LC Paper No. CB(1)1819/11-12(06) -- Copies of letters dated 30 April 2012 from Hong Kong Fire Services Department Staffs General Association to the Security Bureau and the Civil Service Bureau (Chinese version only)

LC Paper No. CB(1)1920/11-12(01) -- Submission from Hong Kong Government Lifeguards General Union (Chinese version only))

27. SCS briefed members on the Administration's paper (LC Paper No. CB(1)1819/11-12(05)), which set out the Administration's response to the views expressed by staff unions/associations on the conditioned hours of work

of different civil service grades at the Panel meeting held on 16 January 2012. There was no uniform conditioned hours of work in the civil service and the Administration considered it inappropriate to introduce a uniform conditioned hours of work across the board for all civil servants. Specific conditioned hours of work were laid down for different grades of civil servants according to the operational requirements of the respective grades and other relevant considerations. The stipulated conditioned hours of work had been duly taken into account by the Administration in determining the pay of different civil service grades. The Administration was open to any proposal to reduce the conditioned hours of work of a particular grade, subject to the three prerequisites of cost-neutrality, no additional manpower and maintaining the same level of service to the public ("the three prerequisites"). The Administration would also consider the implications of the proposal on the operation and manpower situation of the departments concerned, and other relevant factors.

#### Propriety of the three prerequisites

28. Mr LEE Cheuk-yan said that since any proposal to reduce conditioned hours of work would necessarily entail additional manpower and costs, and thus breach the three prerequisites, it was doubtful if the Administration was really open to any proposal to reduce conditioned hours of work of a particular grade. He opined that the Administration should abolish the three prerequisites and consider any proposal to reduce conditioned hours of work on its own merits. Mr IP Wai-ming commented that it would require a magician to achieve reduction in conditioned hours of work while meeting the three prerequisites.

29. SCS responded that there had been instances in the past where the conditioned hours of work of civil service grades were reduced while meeting the three prerequisites. For example, the conditioned hours of work of police officers and disciplined services staff in Customs and Excise Department had been reduced from 51 to 48 hours per week. The Correctional Services Department had commenced a trial scheme on reducing the working hours of its disciplined services staff from 49 to 48 hours per week under the three prerequisites with effect from July 2011.

#### Provision of meal breaks

30. Mr LEE Cheuk-yan considered that the Administration was discriminating against civil servants whose conditioned hours of work was 45 hours net per week ("45 hours-net"), most of them were from junior ranks, as the majority of other civilian grades were required to work 44 hours gross

per week ("44 hours-gross") only. The system of different conditioned hours of work for different civil service grades implemented decades ago was outdated. Mr IP Wai-ming said that it was a legacy of class discrimination practised in the colonial era that MOD 1 Scale staff members were subject to the 45 hours-net system.

31. Ms LI Fung-ying said that as meals were basic human needs, it was unreasonable for the Administration not to count meal breaks as hours of work for civil servants under the 45 hours-net system. She also considered it unacceptable that ambulancemen were given a meal break of 30 minutes only and that they had to remain on call during the meal breaks. She urged the Administration not to shirk its responsibility as an employer to give employees proper meal breaks. The Chairman added that staff unions of other disciplined services were sympathetic to the demand of ambulancemen for one-hour uninterrupted meal break.

32. SCS responded that the meal break arrangements of various disciplined services were determined by respective heads of departments having regard to specific operational needs. As regards the meal break arrangements for ambulancemen, the Fire Services Department ("FSD") had put in place flexible measures to improve the arrangements after discussion with the Staff Side. According to FSD, around 85% and 98% of the day and night shift ambulance crews respectively were able to take an uninterrupted 30-minute meal break within the relevant specified periods on average between January and March 2012. She understood that FSD management would continue to exchange views with staff representatives on the matter.

#### Provision of paid meal breaks

33. As the move by some employers to exclude the counting of meal breaks in the calculation of minimum wages had aroused wide public concern, Mr IP Wai-ming called on the Administration to review the practice of not counting meal breaks towards working hours.

34. Mr CHEUNG Man-kwong said that with the coming into operation of the Minimum Wage Ordinance, the Administration's policy of not providing paid meal breaks for civil servants under the 45-net conditioned hours system had become outdated. He considered that it would be fair for the Administration to provide paid meal breaks to such civil servants, even if doing so would mean an increase in expenditure.

35. SCS responded that civil servants were paid on a monthly instead of hourly basis. A civil servant under the gross conditioned hours system was

not regarded as performing overtime work nor eligible for overtime recompense if he/she was required to perform duties during his/her meal breaks. On the other hand, a civil servant under the 45 hours-net conditioned hours system was eligible for overtime recompense for performing duties during meal breaks. Unconvinced by SCS' explanation, Mr CHEUNG urged the Administration to review the policy, which he considered to be no longer reasonable.

#### Working hours of operational firemen

36. Mr LEUNG Kwok-hung criticized that the Administration was oblivious to the demand to reduce the working hours of operational firemen. He pointed out that the general public had high respect for firemen as their duties were to save people's lives and properties. It was hypocritical of the Administration to state that it was open to any proposal to reduce the conditioned hours of work but at the same time setting the prerequisite of cost-neutrality.

37. Acknowledging that the general public had high respect for the work of firemen, SCS praised them for holding fast to their posts. Yet, the conditioned hours of work and the danger faced by firemen at work had been taken into consideration in determining their pay. In the grade structure review for the disciplined services conducted in 2008, the Standing Committee on Disciplined Services Salaries and Conditions of Service advised that FSD should explore further with the staff and the Administration the feasibility of reducing the conditioned hours of work of firemen under the three prerequisites. The conditioned hours of work of operational firemen were 54 hours gross per week with a unique shift system of "24 hours on, 48 hours off". Generally speaking, each 24-hour shift comprised 11 hours of duties (including drills for fire fighting and rescue and station routines etc.), and 13 hours of standby, physical training, meal breaks and rest time.

38. Dr PAN Pey-chyou believed that the Administration's refusal to reduce the conditioned hours of work of operational firemen rooted in its erroneous concept that operational firemen were not fully on duty during the 13 standby hours during the period of "24 hours on". Yet, he considered that operational firemen should be regarded to be on duty during such hours as they were not allowed to leave fire stations and do whatever they like. As fire fighting and rescue duties of firemen were physically demanding, it was part of their work to keep themselves physically fit by undergoing physical training and sports activities during standby hours. He considered that the Administration should increase the manpower of FSD so as to reduce the conditioned hours of work of operational firemen.

39. SCS responded that although there might be a difference in the work intensity during the 13 standby hours and the other 11 hours with arranged duties in the 24-hour shifts, the Administration took into account all 24 hours in counting towards firemen's conditioned hours of 54 hours per week. At the Fire Services Departmental Consultative Committee meeting held on 17 May 2012, the management had briefed the staff side of the results of a staff opinion survey on a proposal to reduce the conditioned hours of work of operational firemen from 54 to 51 gross per week. As the majority of respondents were not in support of the proposal, the management had decided not to put the proposal on trial. The management would continue to explore with their staff feasible ways to gradually reduce the conditioned hours of work of operational firemen under the three prerequisites.

**V. Government's policy and practices on its employment of non-permanent residents of Hong Kong**

(LC Paper No. CB(1)1819/11-12(07) -- Administration's paper entitled "Government's policy and practices on the employment of non-permanent residents of Hong Kong"

LC Paper No. CB(1)1819/11-12(08) -- Background brief entitled "Government's policy and practices on its employment of non-permanent residents of Hong Kong" prepared by the Legislative Council Secretariat)

The employment of Project Officer in CEEO

40. Dr Margaret NG said that in a question asked on her behalf at the Council meeting on 9 May 2012, Hon Alan LEONG queried the propriety of the Administration's decision to split a Special Assistant post in CEEO into three posts, including a Project Officer post filled by Miss Ran CHEN, which did not exist in the paper on the establishment of CEEO submitted by the Administration to the Panel on Constitutional Affairs for its meeting on 16 January 2012. In reply to the question, the Administration had explained that the three posts were additional and they would not be offset by the

deletion of the Special Assistant post, which would remain vacant until its expiry on 30 June 2012. Dr NG considered that such an explanation given by the Administration was no more than glossing over its mistake. She queried why the three posts were created without authorization of the Finance Committee ("FC"), and expressed concern that the present case would become a precedent for controlling officers to create posts without the authorization of FC by not filling other posts approved by FC.

41. SCS explained that no discussion could be held with the CE-elect on the manpower arrangement of CEEO prior to the submission of the establishment paper to the Panel on Constitutional Affairs in January 2012 as election of the fourth-term CE was only held on 25 March 2012. Accordingly, the Administration could only make an estimation of the likely manpower requirement for the CEEO. The Administration had also specifically stated in the Panel paper that if the CE-elect found it necessary to increase the manpower of CEEO, the Administration would make suitable arrangements. Following the establishment of CEEO and having regard to the operational needs of CE-elect, CSB agreed to the engagement of three additional non-civil service contract ("NCSC") staff. As stated in the last paragraph of her reply to the Council question on 9 May 2012, the Special Assistant post in CEEO had not been split into several posts.

#### Appointment of Miss Ran CHEN as a Project Officer in CEEO

42. On the appointment of Miss Ran CHEN as a Project Officer in CEEO without conducting an open recruitment exercise, SCS drew members' attention to her reply to a question raised by Hon Fred LI Wah-ming at the Council meeting on 16 May 2012. In the reply, she explained that as the opening was for less than three months and work had to start immediately, there was insufficient time for conducting an open recruitment exercise to identify a suitable candidate. Besides, the duties involved included policy studies and speech drafting and the appointee had to be conversant with the CE-elect's policy manifesto and its underlying rationale. CEEO considered Miss CHEN a qualified candidate for the position because she had worked for CE-elect in his Election Campaign Office for more than six months. Having taken into account all relevant factors, including the operational needs of CEEO, the time constraint, the duties of the Project Officer position, the continuity between these duties and the work involved in formulating CE-elect's policy manifesto during his election campaign, CSB approved the employment of Miss CHEN. In reply to the Chairman's enquiry, SCS clarified that Miss CHEN was employed on NCSC terms and she was not a civil servant.

"Permanent resident" requirement of government employees in the Basic Law

43. Referring to the stipulation in Article 99 of the Basic Law ("BL 99") that public servants serving in all government departments of the Hong Kong Special Administrative Region ("Hong Kong SAR") had to be permanent residents of Hong Kong, except where otherwise provided for in Article 101, Dr Margaret NG enquired whether the appointment of Miss Ran CHEN, a non-permanent resident of Hong Kong, to a Project Officer post in CEEO was made pursuant to the Basic Law. SCS replied that the appointment was made pursuant to the Basic Law as the second part of Article 101 ("BL 101") stipulated that "[t]he Government of the Hong Kong Special Administrative Region may also employ British and other foreign nationals as advisers to government departments and, when required, may recruit qualified candidates from outside the Region to fill professional and technical posts in government departments ...".

44. Dr PAN Pey-chyou said that among the different types of staff currently working in B/Ds, namely civil servants, NCSC staff, agency workers and staff of contractors of outsourced services, not all of them were in existence when the Basic Law was promulgated. He enquired about the Administration's interpretation of the term "public servants" in BL 99.

45. SCS replied that "public servants" under BL 99, generally speaking, referred to those serving in government departments and having an employer-employee relationship with the Government. These included civil servants, NCSC staff and PAOs, but not agency workers and staff of contractors of outsourced services. Dr PAN enquired further about the legal basis of the Administration's interpretation of the meaning of "public servants" under BL 99. SCS replied that legal advice of the Department of Justice had been sought before she gave the interpretation above.

*Interpretation of "professional and technical post" in BL 101*

46. As the only requirement specified for the Project Officer post filled by Miss CHEN was to be conversant with CE-elect's policy manifesto its underlying rationale and the duties of the post-holder involved only policy studies and speech drafting, Dr Margaret NG enquired how the post could be regarded as a "professional and technical post" under BL 101. The Chairman said that she would have thought the "professional" posts referred to in BL 101 were those posts in fields like environmental protection, accounting etc.

47. SCS replied that as there was no prescribed definitions of "professional and technical posts", the terms should be construed according to its ordinary

meaning. She believed that as the post-holder had to be conversant with the policy manifesto of CE-elect and its underlying rationale, the Project Officer post in question could be regarded as a "professional and technical" post under BL 101.

48. Mr LEE Cheuk-yan considered that the employment of Miss Ran CHEN showed that the Administration was bending the rule by giving arbitrary interpretation of the expression "professional and technical posts" in BL 101 in order to meet the demand of CE-elect. Mr LEUNG Kwok-hung disagreed that the post filled by Miss Ran CHEN should be regarded as a professional and technical post given that many people including he himself were conversant with the policy manifesto of CE-elect. Mr WONG Sing-chi opined that the term "professional post" (or its Chinese rendition "專業") should refer to posts of commonly recognized professions, e.g. medical, engineering, which required the acquisition of a set of specialized knowledge and/or possession of professional qualifications, the practice of which was subject to a code of ethics promulgated by professional bodies, and sanctions might be imposed on practitioners for breach of code. As such, the post filled by Miss CHEN could hardly be regarded as a "professional and technical post". Also, as the Project Officer post would last for only three months, he did not believe that Miss CHEN was able to implement the policy initiatives in the manifesto of CE-elect.

49. SCS responded that neither the term "professional qualification" nor the Chinese rendition of the term "profession" ("專業") were found in the Basic Law. She reiterated that as there were no prescribed definitions of the terms "professional and technical" in the Basic Law, the terms should be construed according to their ordinary meaning. She also clarified that Miss CHEN was not responsible for implementing the policy initiatives in the manifesto of CE-elect.

50. On the invitation of the Chairman, Assistant Legal Adviser 8 ("ALA8") advised that BL 99 and BL 101 were interrelated. BL 101 set out two exceptions to the requirement of BL 99 on the employment of permanent residents of Hong Kong by government departments, namely (a) British and other foreign nationals previously serving in the public service in Hong Kong, or those holding permanent identity cards of Hong Kong SAR and (b) qualified candidates from outside Hong Kong to fill professional and technical posts in government departments. Definitions for the terms "professional" and "technical" were not provided in the Basic Law, and there were no relevant judicial authorities on the interpretation of the terms. According to the common law approach adopted by the Court of Final Appeal in the CHONG Fung Yuen and NG Ka Ling cases, the provisions in the Basic Law were to be



construed according to the language in the light of the purpose and context of the relevant provision, and the court would avoid a literal, technically narrow or rigid approach in interpretation of the provisions of Basis Law. ALA8 said that in the absence of definitions or judicial interpretation on the terms "professional" and "technical", he was not in a position to assert that the employment of Miss Ran CHEN was in breach of BL 101.

51. Dr Margaret NG commented that the absence of definitions for the terms "professional" and "technical" in the Basic Law did not mean that the Administration could interpret the terms in whatever way it wished. She expressed concern that the Administration's interpretation of the terms might open up a floodgate for employment of non-permanent residents of Hong Kong by the Administration.

52. The Chairman enquired if there were precedents of non-permanent residents being appointed as NCSC staff. SCS replied that only three cases had been approved in recent years as BL 101 specified a condition of "when required" for recruiting qualified candidates from outside Hong Kong to fill professional and technical posts in government departments. On request by the Chairman and Dr Margaret NG, SCS undertook to provide members with details of the three cases after the meeting.

Admin

## **VI. Any other business**

53. There being no other business, the meeting ended at 1:03 pm.

Council Business Division 1  
Legislative Council Secretariat  
13 September 2012