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**Subcommittee on Poverty**

**Information note prepared by the Legislative Council Secretariat  
for the meeting on 7 July 2014**

**Policy implications brought about by judgment of  
Court of Final Appeal on residence requirement for  
Comprehensive Social Security Assistance**

The Administration revised, on 1 January 2004, the residence requirement for the Comprehensive Social Security Assistance ("CSSA") from one year to seven years. Under the revised requirement, Hong Kong residents aged below 18 were exempted from any prior residence requirements. To be eligible for CSSA, an adult applicant must have been a Hong Kong resident for at least seven years (i.e. the seven-year residence requirement); and must have resided in Hong Kong continuously for at least one year immediately before the date of application.

2. The Court of Final Appeal ("CFA") handed down its judgment on 17 December 2013 on an appeal lodged by a new arrival against the rejection of her application for CSSA. CFA ruled that the seven-year residence requirement was unconstitutional and that the Government should restore the one-year residence requirement which was in effect before 1 January 2004. The Administration has restored the one-year residence requirement according to the CFA's judgment with effect from the date the judgment was handed down. According to the Administration, the actual implication of lowering the CSSA residence requirement from seven years to one year will, to a very large extent, depend on the financial condition of new arrivals and their interest in applying for CSSA.

3. The policy implications brought about by the CFA's judgment on the residence requirement for CSSA have not been discussed by the relevant committees of the Council. Nevertheless, since the handing down of the CFA's judgment, three questions in relation to the impact of the change in the residence requirement for CSSA were raised at the Council meetings of 8 January, 22 January and 26 February 2014 respectively. At the special

meeting of the Finance Committee on 3 April 2014 to examine the estimates of expenditure for the financial year 2014-2015, a question was raised regarding the Administration's assessment of the impact of the CFA's judgment on the manpower and resources for processing CSSA applications. The questions and the Administration's replies are in **Appendices I to IV**.

4. At the Council meeting of 8 January 2014, a motion for adjournment was moved for the purpose of debating the impact of CFA's ruling that applicants for CSSA were not required to have resided in Hong Kong for seven years. Concerns were raised about whether the Government had studied in detail the impact of CFA's ruling on various social welfare measures and other public policies, and whether the Government was prepared for additional increase in welfare expenditure in the future. Some Members considered that the Government should take the opportunity to review its welfare policies. The reply by the Secretary for Labour and Welfare for the adjournment debate is in **Appendix V**.

5. The Subcommittee will discuss the subject of poverty of new arrivals (including policy implications brought about by the judgment of CFA on the residence requirement for CSSA) and receive views from deputations at its meeting on 7 July 2014.

Council Business Division 2  
Legislative Council Secretariat  
3 July 2014

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### **Residence Requirement for CSSA**

3. **MR JAMES TIEN** (in Cantonese): *President, the Court of Final Appeal (CFA) has earlier delivered its judgment on an appeal, lodged by a new arrival who came to settle in Hong Kong, against the rejection of her application for Comprehensive Social Security Assistance (CSSA), declaring that the requirement of seven-year residence in Hong Kong (residence requirement) stipulated by the Government for the CSSA Scheme was unconstitutional. As a result, the residence requirement must be restored to one year. Some members of the public have expressed the concern that the shortening of the residence requirement might have far reaching impact on Hong Kong, including a possible substantial increase in welfare expenditure. In this connection, will the Government inform this Council:*

- (1) *given that the Government has advised that it is comprehensively assessing the impact of CFA judgment, of the way in which such an assessment is being conducted and its specific scope, as well as when it will publish the assessment outcome;*
- (2) *given that Article 145 of the Basic Law specifies that "[o]n the basis of the previous social welfare system," the Government may "on its own, formulate policies on the development and improvement of this system in the light of the economic conditions and social needs", whether the Government will, in view of the shortening of the residence requirement under the CSSA Scheme, adjust its policies or adopt corresponding measures, for example, requesting the Mainland authorities to set "financially self-sufficient and possession of earning capacity" as one of the conditions for approving Mainlanders' applications for settlement in Hong Kong, so as to ensure proper use of public resources; if it will, of the details; if not, the reasons for that; and*
- (3) *whether it has studied if the shortening of the residence requirement under the CSSA Scheme will place a heavy financial burden on Hong*

*Kong, as well as the solution to that problem; if it has conducted such a study and the outcome indicates that seeking the interpretation of the relevant provisions of the Basic Law by the Standing Committee of the National People's Congress is the only solution, whether the Government will do so?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, my reply to Mr James TIEN's question is set out below:

(1) and (3)

The CFA handed down the judgment of a judicial review case on the residence requirement of the CSSA Scheme on 17 December 2013. The judgment declared that the "seven-year residence requirement" was unconstitutional and that the Government should restore the "one-year residence requirement" which was in effect before 1 January 2004.

The Social Welfare Department (SWD) will comply with the Court's judgment and process the applications according to the applicable procedures. The Government will not seek interpretation of the Basic Law from the Standing Committee of the National People's Congress.

As at the end of November 2013, there were a total of some 261 000 CSSA cases. The total number of recipients fell below 400 000, which was about 397 000. The caseload was the lowest since September 2002 and had been dropping for 32 months. This, to a certain extent, reflects that most Hong Kong people wish to be self-reliant. In addition, the Government has put in place a number of measures to enhance work incentive and alleviate poverty in recent years, including the statutory minimum wage, Work Incentive Transport Subsidy and programmes under the Community Care Fund. These measures, coupled with a robust economy resulting in a keen demand for labour and an increase in employment opportunities, help prevent our citizens from falling into the CSSA net.

In fact, since the implementation of the "seven-year residence requirement", the SWD has been exempting persons under the age of 18 from residence requirement under CSSA. In addition, the SWD may exercise discretion to grant CSSA to new arrivals aged 18 or above in cases of genuine hardship. Since the implementation of the "seven-year residence requirement" and until the end of October 2013, the SWD exercised discretion to approve over 14 000 applications. The Government's mechanism has all along been providing considerable flexibility.

The CSSA expenditure will increase owing to the relaxation of the residence requirement. In the three weeks since the CFA handed down the judgment and until 6 January this year, the SWD has received altogether 1 407 CSSA applications involving persons residing in Hong Kong for less than seven years.

The actual financial impact of the CFA judgment on the CSSA Scheme mainly depends on the financial situation of new arrivals and those who have resided in Hong Kong for some time, as well as their interest in applying for CSSA. In fact, the education level and family income of new arrivals have been on a rising trend. For instance, the proportion of new arrivals aged 15 and above who have attained secondary education level or above increased from 68% in 2001 to 85% in 2011. It is noteworthy that the proportion with post-secondary education level rose from 6% to 16%. Meanwhile, the median monthly domestic household income of households with member(s) residing in Hong Kong for less than seven years also increased by nearly 20%, from \$12,050 to \$14,070 over the same period. The Government could only more accurately estimate the effect of the CFA judgment on public finance after the new requirement has been in place for some time.

I have to point out that the CFA judgment was specific to the CSSA Scheme. It is clear that there are particular policy objectives and backgrounds for different welfare measures and public services (for example, public rental housing). The CFA did not lump together all Government assistance programmes. The CFA clearly pointed out that the judgment should not be applied generally to the application arrangements for other programmes.

- (2) There are suggestions to include the means of Mainland applicants as an eligibility criterion for One-way Permit (OWP). Pursuant to Article 22(4) of the Basic Law, for entry into Hong Kong, people from other parts of China must apply for approval. Mainland residents who wish to enter Hong Kong must apply for OWP from the Exit and Entry Administration Offices of the Public Security Bureau of the Mainland at the places of their household registration. The policy objective of the OWP Scheme is to allow Mainland residents to come to Hong Kong for family reunion in an orderly manner through approval by the Mainland authorities in accordance with the laws and regulations of the Mainland. In the OWP approval process, Mainland residents who meet the eligibility criteria laid down by the Mainland authorities may apply to come to settle in Hong Kong. The current quota is 150 per day. The Hong Kong Special Administrative Region Government does not see any justifications or needs to change the existing OWP Scheme to add other administrative screening criteria.

**MR JAMES TIEN** (in Cantonese): *President, for each and every immigration system in countries around the world, the power of vetting and approval is invariably vested with the host country. But as we all know, in the case of Hong Kong, the power of vetting and approving applications from Mainlanders for family reunion is vested with the Mainland authorities pursuant to the provision of the Basic Law. Nonetheless, in part (2) of the main reply, the Government stated that Mainlanders can come to Hong Kong so long as they comply with the requirements under the relevant laws and regulations of the Mainland and have the approval from the Mainland authorities. In this connection, we propose that the financial means of Mainland applicants should also be included as one of the conditions for approval, yet the Secretary just regarded it as a suggestion. Now I would like to ask the Secretary again whether the Government considers our proposal in order, and whether it will relay this proposal to the Mainland authorities so that the condition of "financially self-sufficient and possession of earning capacity" would also be considered in the approval process?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, my reply is crystal clear. I have stated clearly in the last sentence of my reply

that the SAR Government does not see any justifications or needs to change the existing OWP Scheme at this stage. This point is very clear.

**MR DENNIS KWOK** (in Cantonese): *President, I would like to follow up on part (2) of the Secretary's reply in relation to the Government's interpretation on Article 22(4) of the Basic Law. Does the Government consider that, insofar as the vetting and approval of applications is concerned, the SAR Government has no power at all, and it is up to the Central Authorities to decide how many Mainlanders can come to Hong Kong under Article 22(4) of the Basic Law, and who they are. I hope the Bureau can further elaborate on this point.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): *President, according to the stipulation of the Basic Law, the application, approval and issue of OWP fall within the remit of the Mainland authorities. This point is very clear. Under the policy objective of family reunion, the Mainland authorities have set out open and transparent eligibility criteria under the OWP Scheme, so that Mainlanders can apply for settlement in Hong Kong so long as they fulfil the criteria laid down by the relevant Mainland authorities. This point is also very clear, and I have nothing further to add.*

**MR FREDERICK FUNG** (in Cantonese): *President, can the Secretary clarify one point, that is, whether CSSA could be taken to mean the absolute poverty line from the Government's perspective? In other words, people falling below this line will have a very difficult life in Hong Kong, or they can hardly survive. At present, many new arrivals can also receive CSSA, including persons under the age of 18 who are exempted by the Government. Separately, the investment migrants need not receive CSSA. Finally, applicants of CSSA include the spouses of Hong Kong residents or their children over the age of 18. For these people, employment assistance would also be provided by the Government. Under such circumstances, will the Government consider it acceptable for people to apply for CSSA on the ground of absolute necessity for survival?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): *President, I thank Mr FUNG for the supplementary question. The objective of CSSA is to provide support for people with genuine livelihood difficulties to meet their basic*

needs, that is, to fulfil their basic livelihood requirements. This is really the most important point.

**MS CLAUDIA MO** (in Cantonese): *In the last sentence of the main reply, the Government states that it does not see any justifications or needs to change the screening criteria under the existing OWP Scheme. Why aren't there any justifications or needs? All along, we have pointed out that some Mainlanders have come to Hong Kong with false documents, through bogus marriages or even corruption, which has in fact stalled the approval of genuine family reunion cases. That is a real justification and need. Regarding the spirit of "one country, two systems", why is it necessary to have "two systems"? While exit permits are issued by the Mainland authorities, why does Hong Kong have no power of approval at all under the spirit of "one country, two systems" in respect of entry of Mainlanders?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, we must take into consideration several practical issues. I understand the reason for the question raised by Ms MO just now. But, first of all, Members must understand that the OWP Scheme has been implemented for a long time. Insofar as the actual figures are concerned, the majority of these cases (that is, 98%) involve persons coming to Hong Kong either for reunion with their spouses or reunion with their parents. The OWP Scheme is neither an immigration system nor an admission scheme for talents, but strictly a system for family union. Hence, it is vital for Members to understand this objective.

As I have pointed out just now, 98% of the new arrivals on the strength of OWP came to Hong Kong either for reunion with their spouses or reunion with their parents. The remaining cases are made up of unsupported elderly people, persons joining their children in Hong Kong or children who need to be taken care of by relatives. It is clear that the OWP Scheme is premised on family union. That is the first point.

Secondly, at present, 35% of the marriages registered in Hong Kong are those between Mainlanders and Hong Kong residents. Spouses of Hong Kong residents can apply for OWP for settlement in Hong Kong after four years, which is also a reasonable and justifiable arrangement premised on family union. Moreover, as Members know very well, the CFA judgment is specific to the



CSSA Scheme and not other matters. Therefore, under such circumstances, we do not see any needs or justifications to change the existing scheme.

**MR VINCENT FANG** (in Cantonese): *President, in its judgment, the CFA declared that the seven-year residence requirement for CSSA was unconstitutional.*

*I would like to ask whether the number of CSSA applicants would increase six-fold than the normal number. As new arrivals who have resided in Hong Kong for two years, three years, four years, five years and six years can also apply for CSSA from now on, would there be a significant increase in the number of applicants? In addition, whether CSSA recipients who have fulfilled the seven-year residence requirement would, on account of the Government's current breach of constitutionality, claim for retrospective CSSA payments for the preceding five or six years?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): Thank you, Mr FANG. Given Mr FANG's worry about the issue, he will move an adjournment debate later. I thank him for raising this question.

First of all, regarding the question of whether the number of CSSA applicants would increase significantly, we really need to observe the trend. But of course, the number will definitely increase. In time, we will be able to make an assessment on the increase of caseload. Hence, we need some time before a comprehensive assessment can be conducted, and we will brief Members of the outcome in due course. That is the first point.

Secondly, as I have pointed out in the main reply, the prevailing environment has changed significantly in certain aspects from the time when the seven-year residence requirement was first implemented in 2004. If Members would recall, during the SARS outbreak in 2003, Hong Kong's unemployment rate hit 8.6% with the number of unemployed persons standing at about 310 000. At present, the unemployment rate is 3.3%, signifying a state of full employment, with the number of unemployed persons at some 126 000. The environment has already changed significantly. Moreover, various measures to alleviate poverty and enhance work incentive including the statutory minimum wage, Work Incentive Transport Subsidy and programmes under the Community Care Fund

are non-existent at that time. Therefore, as the current environment and overall situation in society have already changed significantly from the past, we must make an assessment carefully.

Regarding the question of retrospectivity, the answer is that there will be no retrospectivity. This is definitely a matter looking into the future, without any question of retrospective effect.

**MR CHAN CHI-CHUEN** (in Cantonese): *President, after the CFA handed down its judgment in mid-December, there has been strong public reaction in society. As Mr James TIEN has mentioned, people are concerned whether the SAR Government would be put under a heavy financial burden, whether sufficient fiscal reserves are available, and whether the Government can assess the situation correctly? However, it seems that the Government is very much in command. In his main reply today, the Secretary is actually suggesting that there is no cause for alarm because the education level and median household income of new arrivals have been on a rising trend. In other words, the Government is telling Hong Kong people that the relevant expenditure will not increase significantly in future.*

*I would like to focus on the last sentence in part (2) of the main reply, viz "The Hong Kong Special Administrative Region Government does not see any justifications or needs ...". Why aren't there any justifications or needs? I hope the Secretary can give us a clear explanation because the Report of the Task Force on Population Policy in 2003 had pointed out the burden on public expenditure when the Government first extended the residence requirement from one year to seven years, and when stating its case to the CFA, the Administration claimed that the seven-year residence requirement was introduced to cut down welfare expenditure, so as to ensure the long-term sustainability of the social security system. That was how the Government presented the figures. But when Members ask the Government a legitimate question today, that is, whether it is necessary to include the financial means of applicants as a factor of consideration, the Government replies that there is neither the justification nor the need to do so. Is there any inconsistency with its original policy?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): *President, I have already given a clear account in my reply to Ms Claudia MO's question just*

now. Perhaps let me repeat it again. If Members analyse the objective facts carefully, they would notice that the current OWP Scheme is premised on family reunion, as 98% of the cases involve Mainlanders coming to Hong Kong for reunion with their spouses or children. Against this background, it is meaningless to include any economic factors because the target is still the same group of people, and they would be allowed to come to Hong Kong eventually. Firstly, this is a stipulation in the Basic Law. Secondly, Members should not forget that at present, 35% of the marriages registered in Hong Kong are those between Mainlanders and Hong Kong residents, and their spouses can apply for OWP to come to Hong Kong for settlement after four years. Incidentally, new arrivals on the strength of OWP are a source of population growth in Hong Kong because Mainlanders who come to Hong Kong on the daily quota of 150 places would become the main driving force of population growth in future. Hence, we should consider the matter from a wider perspective and refrain from taking a narrow-minded approach.

We are taking pragmatic steps in this matter. We will conduct an assessment in order to clearly ascertain the impact, and a full account will be provided to Members in due course. We will also ensure vigorous gate-keeping to prevent any abuse of the CSSA benefits. It is our aim to ensure the proper use of public resources.

**MR WU CHI-WAI** (in Cantonese): *President, the CSSA system is meant to support needy Hong Kong residents. Nonetheless, why are there so many grievances against it in recent years? As we note from the comments made by members of the public during our community visits, one reason is that many CSSA recipients may actually have a lot of undeclared assets in the Mainland. As such, members of the public would query whether these CSSA recipients in Hong Kong really have a genuine need for assistance.*

*Under the CSSA system, applicants are actually required to declare all their assets, including local and non-local assets. I would like to ask the Secretary whether the Government would, on account of such voice or view, tighten the checking on CSSA applications, especially in respect of non-local assets, so as to convince members of the public that CSSA recipients are indeed in need of assistance.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): Thanks to the member for raising his concern, which brings out the question on gate-keeping. I am very concerned about it myself, and my colleagues in the SWD are also monitoring the situation closely. We will always strive to ensure that public funds are used properly and will not be abused. In this connection, the SWD has set up a dedicated Special Investigation Section staffed by 120 officers to combat CSSA fraud cases. In addition, eight retired officers from the disciplined forces, notably the police, have been appointed as fraud investigation advisors. In fact, the occurrence of fraud cases has been quite stable in recent years.

In this respect, the public can report suspected fraudulent cases by calling our report hotline at 2332 0101 or by completing a mailing chit. In fact, many abusers have been caught and punished through reporting by the public. Over the past three years, the average number of CSSA abuse cases is 900-odd per year. Among the substantiated cases referred to the police for follow-up, many have been subsequently convicted. For instance, there are 184 cases of conviction in 2013-2014, and the defendants have been sentenced to imprisonment terms. Overall speaking, in every 1 000 CSSA cases, there might be irregularities in about 37 cases, or 0.37%, which would require our follow-up. Hence, we will definitely step up front-line inspection and particularly, there will be more stringent vetting in respect of assets. That is an area we will work on.

**MR WU CHI-WAI** (in Cantonese): *My question is about the investigation of assets in the Mainland. But it seems that this aspect is not covered in the Secretary's lengthy reply just now. Is there any co-operation between the Administration and the Mainland authorities to deal with this problem?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, there is indeed work in this regard. If necessary, we will contact the relevant Mainland authorities, enquire about the ownership of assets by the applicant concerned or conduct searches of the databases maintained by the relevant land resources and housing administrative bureau. As many countries would upload information on assets, land sale, and so on, onto the Internet, we can search through such records. Meanwhile, as I have said just now, there is a dedicated team with 120 staff members in the SWD responsible for combating abuses. In fact, of the 14 000 cases with exemption granted by the SWD on discretion over the years, we have conducted background checks on all the applicants before

approval given for CSSA payments. We have experience in handling cases involving Mainland assets as such cases have also come up in the past.

**MR PAUL TSE** (in Cantonese): *President, in paragraph 4 of his reply to parts (1) and (3) of the question, the Secretary mentioned that since the implementation of the "seven-year residence requirement", the SWD has exercised discretion to approve over 14 000 applications, even though this requirement was not met. I would like to know: What is the proportion of 14 000 applications in relation to the total number of applications, and what is the actual percentage? Notwithstanding the public's view, what is the Government's stand towards those people who have been deprived of protection under the law as a result of the Government's breach of constitutionality, even though they cannot claim any retrospective payments?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): *President, I thank Mr TSE for the supplementary question. Of these 14 000 approved applications, 8 000 cases involve applicants who are capable of work and being self-reliant. We will give them encouragement. Special assistance will only be provided if the applicants want to be self-reliant, instead of living on CSSA, but cannot do so due to some particular difficulties. From January 2004 to the end of October last year, a total of 36 000-odd cases have been received. We would explain to the rejected applicants the residence requirement, and 20 000-odd cases voluntarily withdraw their applications or their applications were rejected. With our vigorous gate-keeping, only about one third of the applications would be approved. While it is possible that these applicants might apply again in future, some of them have already fulfilled the seven-year residence requirement and hence, they need not apply for CSSA through this route.*

We will closely monitor the situation in the next few weeks. While 1 407 CSSA applications were received in the first three weeks, we have been observing the relevant trend. In the past few days, only 60-odd cases were received per day on average. The caseload is not huge. We will continue to monitor the situation and brief Members accordingly.

Regarding retrospective payments, the requirement is very clear. As a legal expert, Mr TSE should know it very well. Generally, there is no

retrospective period under these circumstances, and only future cases would be affected.

**MR JAMES TIEN** (in Cantonese): *President, even though the ground of family reunion is provided under the immigration system in all countries around the world, the host country would naturally welcome immigrants who are self-reliant or with the financial means, or would be supported by their own families. If it is obvious that they neither have any earning power nor means, or their families are incapable of supporting them when they come to Hong Kong — pardon me, I should say the host country — and they must live on social assistance, I do not think many countries would be willing to take them in.*

*Under the current immigration policy of countries like the United Kingdom, the United States and Canada, the financial means of an applicant is also a factor for consideration, that is, there is the requirement that the applicants or immigrants must not live on welfare benefits when they settle in the country. I would like to ask whether the Government is trying to overtake the Western countries with its current policy.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I thank Mr TIEN for the supplementary question. I totally understand Mr TIEN's concern. In fact, as I have said just now, Hong Kong's OWP system is somewhat different from the system in other places. The OWP system is strictly a system for family reunion, while under the immigration systems of overseas countries, a point-based system is used to assess the kinds of talents required locally. But the OWP system is strictly a system for family reunion on the basis of humanitarianism. Moreover, such an arrangement has been expressly provided in the Basic Law, and it is very difficult for us to make any substantial changes. Nonetheless, the Immigration Department and the Security Bureau would always listen to the public's views and relay the same to the corresponding Mainland authorities, so that the system can be improved constantly. For example, the requirement has been relaxed to allow grown-up children to come to Hong Kong. But overall speaking, Members must understand that this is strictly an arrangement for family reunion. It is very important for Members to understand this purpose.

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## Press Releases *22 January 2014*

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LCQ7: Impact of shortening of requirement of residence in Hong Kong for Comprehensive Social Security Assistance Scheme

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Following is a question by Dr Hon Priscilla Leung and a written reply by the Secretary for Labour and Welfare, Mr Matthew Cheung Kin-chung, in the Legislative Council today (January 22):

Question:

The Court of Final Appeal (CFA) has earlier handed down its judgment on an appeal case, declaring that the requirement of seven-year residence in Hong Kong (residence requirement) stipulated by the Government for the Comprehensive Social Security Assistance (CSSA) Scheme was unconstitutional. As a result, the residence requirement must be restored to one year, i.e. the requirement before January 1, 2004. The judgment has aroused extensive discussions in the community and quite a number of members of the public have expressed concern that the shortened residence requirement will attract a large number of Mainland people applying for settlement in Hong Kong who may apply for CSSA after one year, thus placing a heavy burden on the welfare expenditure of Hong Kong. In this connection, will the Government inform this Council:

(1) whether it has assessed the number of Mainland people who will be attracted by the shortened residence requirement for the CSSA Scheme to apply for settlement in Hong Kong, and whether it will introduce measures to deter Mainland people from obtaining approval for settlement in Hong Kong through engaging in bogus marriages; if so, of the details; if not, the reasons for that;

(2) given that the authorities have indicated that there will be an increase in the expenditure on the CSSA Scheme as a result of the shortening of the residence requirement, whether the authorities have plans to introduce targeted measures to ensure the continued stability and healthiness of the public finances of Hong Kong; if they have, of the details; if not, the reasons for that; and

(3) given that quite a number of members of the public have pointed out that before formulation, public policies of significant public interests such as welfare and population planning have all been thoroughly considered and examined by the Legislative Council and the executive authorities from various aspects such as the long-term interests of Hong Kong, fiscal sustainability, policy objectives and legal principles, etc., and extensive public consultation has often been conducted on them, but once such policies are ruled unconstitutional by CFA, they will become invalid or must be amended, which is a situation these members of the public consider as unsatisfactory, whether the Government has any improvement measures to ensure the stability and predictability of public administration?

Reply:

President,

My reply to Dr Hon Priscilla Leung's question is set out below:

(1) The policy objective of the One-way Permit (OWP) Scheme is to allow Mainland residents to come to Hong Kong for family reunion in an orderly manner. The current OWP quota is 150 per day. Whether or not new arrivals would apply for the Comprehensive Social Security Assistance (CSSA) mainly depends on the financial situation of their families and their interest in applying for CSSA.

In fact, the education level and family income of new arrivals have been on a rising trend. For instance, the proportion of persons from the Mainland residing in Hong Kong for less than seven years aged 15 and above who have attained secondary education level or above increased from 68% in 2001 to 85% in 2011; while the proportion with post-secondary education level rose from 6% to 16%. Meanwhile, the median monthly domestic household income of households with member(s) from the Mainland residing in Hong Kong for less than seven years increased by nearly 20%, from \$12,050 to \$14,070, over the same period.

To combat cases involving non-Hong Kong residents obtaining permission to stay in Hong Kong through bogus marriages, the Immigration Department's special task force has been gathering intelligence through various avenues and conducting thorough investigation into suspicious cases. Persons involved will be arrested and prosecuted. The Marriage Registries under the Department have also been paying special attention to suspicious cases.

(2) Fiscal prudence has been the guiding principle of the Hong Kong Special Administrative Region (HKSAR) Government on the management of public finances. Article 107 of the Basic Law stipulates that the HKSAR shall follow three principles in drawing up its budget: first, keeping the expenditure within the limits of revenues; second, striving to achieve a fiscal balance and avoid deficits; and third, keeping the budget commensurate with the growth rate of its gross domestic product. We must observe fiscal prudence. Meanwhile, we also adhere to the principles of pragmatism, commitment to society and sustainability in managing public finances.

The Government has put in place a number of measures to enhance work incentive and alleviate poverty in recent years, e.g. the Statutory Minimum Wage, Work Incentive Transport Subsidy and programmes under the Community Care Fund. These measures, coupled with a robust economy, a keen demand for labour and an increase in employment opportunities, have helped prevent our citizens from falling into the CSSA net.

Meanwhile, the Social Welfare Department has made every effort to guard against fraud and abuse of CSSA to ensure the effective use of public funds. Measures include establishing the fraud reporting mechanism, conducting in-depth investigations into suspected fraud cases as well as regular case reviews, and data matching with other Government departments and relevant organisations to verify the authenticity of case information.

As at the end of December 2013, there were about 261 000 CSSA cases. The total number of recipients fell below 400 000, which was about 395 000. The caseload was the lowest since September 2002 and had been dropping for 33 months. This, to a certain extent, reflects that most Hong Kong people wish to be self-reliant.

(3) In the process of formulating major welfare policies and



initiatives, the Government will conduct in-depth analysis and suitably consult the public in order to holistically consider all relevant factors, including policy and financial considerations, etc., and strike the right balance. The Government will continue to formulate policies and initiatives in accordance with this guiding principle.

Ends/Wednesday, January 22, 2014  
Issued at HKT 13:11

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## Press Releases *26 February 2014*

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LCQ16: Immigration policy and Comprehensive Social Security Assistance for new immigrants

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Following is a question by the Hon Paul Tse and a written reply by the Secretary for Labour and Welfare, Mr Matthew Cheung Kin-chung, in the Legislative Council today (February 26):

Question:

There are press comments that despite their vast territories and having natural resources which are far more abundant than Hong Kong, Switzerland, Britain, Canada and Taiwan have recently raised their immigration requirements, tightened their polices on welfare benefits for new immigrants, and even abolished with immediate effect their business migration programmes which have been implemented for many years, after such countries/places have considered factors such as the impacts of immigrants on the local economy and the livelihood of local people, as well as the harms probably outweighing the benefits brought by accepting immigrants. On the other hand, the Court of Final Appeal of Hong Kong (CFA) has ruled earlier in a case that the requirement for seven-year residence in Hong Kong (residence requirement) stipulated by the Government for the Comprehensive Social Security Assistance (CSSA) Scheme is unconstitutional and the residence requirement has to be restored to one year which was the requirement before January 1, 2004. Some members of the public are worried that allowing the new arrivals to apply for and receive CSSA will inevitably lead to a significant increase in welfare expenditure. In this connection, will the Government inform this Council:

(1) whether it will make reference to the practices of the aforesaid countries/places and draw up corresponding options for alleviating the pressure posed by the new arrivals on welfare expenditure, e.g. amending CSSA's residence requirement or imposing appropriate additional conditions by means of administrative orders, legislative amendments or enactment of legislation; if it will, of the details; if not, the reasons for that;

(2) of the policies and measures put in place to step up the checking of whether CSSA applicants possess assets outside Hong Kong of value exceeding the asset limits for applying for CSSA;

(3) of the total number of CSSA applications received by the Social Welfare Department since the aforesaid CFA judgement from applicants who have not yet resided in Hong Kong for seven years; and

(4) whether, in respect of cases similar to the aforesaid case which involve major social issues that are rather controversial, the Secretary for Justice will conduct studies and review on whether the adoption of a subjective "proportionality analysis" by judges as the basis for their rulings may give rise to the impression in the community of "judges making laws", or even the constitutional problem of the judiciary overriding the legislature, particularly when the legislature cannot, due to the political reality, rectify court rulings by means of enacting legislation even though such rulings have enormous repercussions

in society; and based on the results of the studies and review, draw up relevant policies or solutions to address the issues?

Reply:

President,

My reply to the Hon Paul Tse's question is set out below:

(1) and (3) The Social Welfare Department (SWD) complies with the judgment of the Court of Final Appeal (CFA) on the judicial review case on the residence requirement of the Comprehensive Social Security Assistance (CSSA) Scheme on December 17, 2013, and has already restored the "one-year residence requirement" which was in effect before January 1, 2004 in accordance with the judgment. Persons under the age of 18 will continue to be exempted from the residence requirement under CSSA. SWD will continue to process the applications according to the applicable procedures.

Whether or not new arrivals will apply for CSSA mainly depends on their financial situation and interest in applying for the Scheme. As a matter of fact, the education level and family income of new arrivals have been on a rising trend. For instance, the proportion of persons from the Mainland residing in Hong Kong for less than seven years aged 15 and above who have attained secondary education level or above increased from 68 per cent in 2001 to 85 per cent in 2011; while the proportion with post-secondary education level rose from 6 per cent to 16 per cent. Meanwhile, the median monthly domestic household income of households with member(s) from the Mainland residing in Hong Kong for less than seven years increased by nearly 20 per cent from \$12,050 to \$14,070 over the same period.

Since the CFA handed down the judgment on December 17, 2013 and until February 24, 2014, SWD has received altogether 3 112 CSSA applications involving persons residing in Hong Kong for less than seven years, i.e. on average 69 applications per working day.

The Government will continue to implement various measures to enhance work incentive and alleviate poverty, e.g. the Statutory Minimum Wage, Work Incentive Transport Subsidy and various programmes under the Community Care Fund. The Chief Executive announced in his 2014 Policy Address the Government's proposal of introducing a Low-income Working Family Allowance to encourage self-reliance amongst low-income families. More allowance will be granted to those who work more. Particular attention will be given to children and young people in low-income families to promote upward social mobility and break the vicious cycle of inter-generational poverty. These measures help prevent the new arrivals from falling into the CSSA net.

(2) In handling CSSA applications, SWD will interview the applicants and pay home visits in order to verify the information (e.g. assets outside Hong Kong) provided by the applicants and their family members, and remind applicants to make honest reports on their circumstances and of the serious consequences of cheating CSSA payment. The Fraud Investigation Teams of SWD conduct in-depth investigation into suspected fraud cases, verify the authenticity of case information and operate a special hotline to receive reports from the public. SWD will continue to implement measures to prevent and combat CSSA frauds as appropriate.

(4) According to the Basic Law, courts of the Hong Kong Special Administrative Region are vested with independent judicial power and power of final adjudication. The power of final adjudication is vested in the CFA. The Government respects and complies with the judgment of the CFA in the judicial review case on the residence requirement of the CSSA Scheme. The Government has also considered the effect of the judgment on other social welfare programmes. In this regard, the CFA clearly pointed out that the judgment was specific to the CSSA Scheme involved in that case and should not be applied generally to the application arrangements for other welfare programmes.

Ends/Wednesday, February 26, 2014  
Issued at HKT 13:40

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**CONTROLLING OFFICER'S REPLY**

<b>LWB(WW)0182</b>
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**(Question Serial No. 1896)**

Head: (170) Social Welfare Department

Subhead (No. & title): (-) Not Specified

Programme: (2) Social Security

Controlling Officer: Director of Social Welfare (Ms. Carol YIP)

Director of Bureau: Secretary for Labour and Welfare

Question (Member Question No. 38):

In view of the court judgment that the seven-year resident requirement for holders of one-way permit to be eligible to apply for the Comprehensive Social Security Assistance (CSSA) is unconstitutional, has the Social Welfare Department (SWD) assessed the impact on the manpower and resources for processing relevant applications in future? If yes, what are the results of the assessment? If no, what are the reasons? Has the Administration considered revising the residence requirement for the application of CSSA at the earliest possible time so as to fulfill the expectations of society?

Asked by: Hon. MO, Claudia

Reply:

The Court of Final Appeal (CFA) handed down its judgment on 17 December 2013 declaring the seven-year Hong Kong resident requirement under the CSSA Scheme unconstitutional. With effect from the same day, SWD has restored the pre-existing one-year residence requirement according to the judgment.

The actual implication of lowering the CSSA residence requirement from seven years to one year will, to a very large extent, depend on the financial condition of the new arrivals and their interest in applying for CSSA. Since CFA's judgment was handed down on 17 December 2013 and up to 26 March 2014, SWD received 3 923 applications from persons who have resided in Hong Kong for less than seven years. A longer time to observe the trend of number of new applications will be required to ascertain the implications more accurately. SWD will closely monitor the situation.

Additional posts will be created to strengthen support for administering the CSSA Scheme subject to the actual increase in CSSA caseload.

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**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I thank Mr Vincent FANG for tonight's motion and 16 Members for their valuable and insightful views on the ruling of the Court of Final Appeal (CFA) concerning the residence requirement of the Comprehensive Social Security Assistance (CSSA) and related matters. According to the CFA's ruling, the seven-year residence requirement is unconstitutional and the one-year residence requirement before 1 January 2004 should be restored.

As I pointed out in my reply to the oral question by Mr James TIEN yesterday morning, the Social Welfare Department (SWD) will tie in with the CFA's ruling and process the applications according to the applicable procedures in an expeditious manner. The Government will not request for an interpretation of the Basic Law by the Standing Committee of the National People's Congress in relation to the ruling on this case.

I would like to point out that in November last year, there were approximately 261 000 CSSA cases with the total number of recipients falling below 400 000 or around 397 000. The number of cases is the lowest since September 2002 and has been falling for 32 months.

Apart from providing the final safety net for people who are in financial difficulties, the Government has all along ensured that the social security system will enable the recipients to look to the future. To achieve this goal, the Government's approach is to encourage and assist able-bodied CSSA recipients to secure employment in order to move towards self-reliance.

In addition to the existing employment assistance services, the SWD will launch a pilot scheme in April this year for exploring the feasibility of providing financial incentives to further encourage the unemployed CSSA recipients to exert their utmost and leave the CSSA net, that is, to get employed. It is expected that 2 000 recipients will join the scheme.

The figures and measures I mentioned just now, to a certain extent, can reflect that the majority of Hong Kong people wish to improve their livelihood with their own efforts. In recent years, the Government has introduced a series of poverty alleviation measures and employment incentives, including the Statutory Minimum Wage, Work Incentive Transport Subsidy Scheme and various projects under the Community Care Fund. Coupled with the flourishing economy and strong demand for labour, employment opportunity has increased. Meanwhile, the Government has vigorously enhanced the training and employment support for new immigrants. All these initiatives will help prevent new immigrants and the general public from falling into the CSSA net.

To ensure the effective use of public funds, the SWD, on the other hand, has performed its gate-keeping role strictly. It endeavors to combat fraud and abuse of CSSA, including setting up a mechanism for the public to report fraud, conducting in-depth investigation into suspected fraud cases and regular case

reviews, as well as arranging data matching with other government departments and relevant organizations, including organizations outside Hong Kong, to verify the authenticity of data.

The SWD has also set up the Special Investigation Section, specialized in detecting fraud and abuse of social security benefits. In addition, eight retired officers from the discipline forces have been appointed as fraud investigation advisors. In 2012-2013, for instance, a total of 184 CSSA recipients were sentenced to imprisonment after being found guilty.

We are very concerned about the CFA's ruling on the judicial review case relating to the residence requirement for CSSA. I would like to point out that people under 18 years old have been exempted from the seven-year residence requirement since its implementation by the SWD in January 2004. The CFA has also indicated that the Government may continue to waive the residence requirement for the persons concerned. In addition, regarding the new arrivals who are 18 years old and above and are really facing difficulties, the SWD may exercise discretion and grant CSSA payment to them. In fact, from January 2004 to the end of October last year, the SWD has grant approval by discretion to 14 000-odd CSSA applications involving persons not fulfilling the seven-year residence requirement. The mechanism of the Government is always flexible.

To relax the residence requirement for CSSA from seven years to one year will increase the expending on the CSSA Scheme. As I said yesterday, we have received a total of 1 407 applications in the first three weeks. The actual impact of the Court's ruling on the relevant public spending largely depends on the financial situation of the new arrivals and new immigrants who have come to Hong Kong for some time and their desire to apply for CSSA. The Government will be able to make more accurate projection of the impact by the judgment on public finances after the new requirement has been implemented for a certain period of time.

However, there are several points which are worth noting. In the past 10-odd years, the education level and family income of new arrivals have been on the rise. For example, the proportion of new arrivals who are 15 years old or above and have been resided in Hong Kong for less than seven years having attained secondary education or above rose from 68% in 2001 to 85% in 2011. Moreover, new arrivals who possess tertiary education background increased from 6% in 2001 to 16%. As regards the monthly median household income,



the figure increased from \$12,050 in 2001 to \$14,070 in 2011, representing a 20% growth.

I must state that the CFA's decision is actually only directed at the CSSA Scheme. Everyone is clear that different welfare measures and public service programmes, such as public rental housing, are running under separate policy objectives, focuses and backgrounds. The CFA did not conflate every governmental assistance programmes, and in fact, the CFA made it explicit that the decision should not be widely applicable to the application arrangements of other schemes.

Furthermore, there are suggestions that the applicants' financial means should be made one of the criteria of assessing the eligibility for One-way Permit (OWP) and even the right to vet and approve OWP applications should be taken back. Under the Basic Law, the application, approval and issue of OWP fall within the remit of the Mainland authorities. Under the policy objective of family reunion, the Mainland authorities have set out open and transparent approval criteria.

Hong Kong and the Mainland have frequent economic and cultural exchanges and are closely related. In fact, in recent years, amongst the marriages registered in Hong Kong, about 35% are between Mainlanders and Hong Kong residents. Since the reunification, amongst the people who arrived in Hong Kong through the OWP system, 98%, which are the vast majority of cases, involved reunion with their spouses or parents. The minority of cases are reunion with children or unsupported children coming to Hong Kong to join their relatives. Therefore, the Hong Kong SAR Government considers that there is no need to change the existing OWP system.

President, as I have pointed out earlier, the Government will closely monitor the impact of the CFA's decision on public finances and will conduct a comprehensive assessment in order to make a comprehensive account. On the other hand, the Government will continue by various measures to encourage able-bodied CSSA recipients to become self-reliant, contribute to society and eventually leave the safety net.

President, I so submit.

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