

立法會
Legislative Council

LC Paper No. AS 208/99-00

Ref: AM 12/01/19

**Subcommittee on
Review of Operating Expenses for Members of the Legislative Council**

**Minutes of Meeting held on
Friday, 25 February 2000 at 3:15 pm
in Conference Room B of the Legislative Council Building**

Members Present : Hon Emily LAU Wai-hing, JP (Chairman)
Hon YEUNG Yiu-chung (Deputy Chairman)
Hon Fred LI Wah-ming, JP
Hon NG Leung-sing
Hon Christine LOH
Hon Ambrose LAU Hon Chuen, JP

Members Absent : Hon Cyd HO Sau-lan
Hon Bernard CHAN
Hon WONG Yung-kan
Hon Howard YOUNG, JP

Clerk in attendance : Mrs Anna LO
Principal Assistant Secretary (Administration)

Staff in attendance : Mr Ricky FUNG
Secretary General

Mr Jimmy MA
Legal Adviser

Mr Joseph KWONG
Accountant

Arrangements in respect of Members' remuneration and operating expenses reimbursement upon expiry of their term of office on 30 June 2000

(LC Paper No. AS 147/99-00)

The Chairman welcomed members to the meeting which was to discuss whether and how Members of the First HKSAR Legislative Council should be provided with financial support after the expiry of their term of office on 30 June 2000. She then referred to the letters from Hon Christine Loh and Hon Leung Yiu-chung (LC Paper No. AS 147/99-00 (03) and (04)), the representation from the Association of Personal Assistants for the Legislative Council Members of Hong Kong (LC Paper No. AS 147/99-00 (05)), and the papers prepared by the Secretariat (LC Paper AS 147/99-00 (01) and (02)). She reported that the Director of Administration had declined her invitation to the meeting because the Administration had not taken a position on the matter. To facilitate Members' consideration, the Administration had provided a paper outlining the issues (LC Paper No. AS 147/99-00 (06)).

Former practice

2. At the invitation of the Chairman, Mr Ricky Fung briefed Members on the remuneration and expenses reimbursements available to LegCo Members during the intervals between consecutive LegCo terms since 1991 (LC Paper No. AS 147/99-00(02)). He pointed out that, before July 1997, LegCo Members were paid remuneration and operating expenses reimbursements up to and including the next election day, notwithstanding the Council had been dissolved on an earlier date. He believed that it was important to determine whether there was any practical difference between "dissolution" and "end of term" if analogy was to be drawn between the present situation and the previous ones.

Difference between "Dissolution" and "End of Term"

3. The Chairman noted that the Administration had stressed that current LegCo Members had a fixed term of office, thus rendering it difficult to justify paying remuneration and expenses reimbursement to incumbent Members after their term of office had come to an end. She asked if the terminological difference between "end of term" and "dissolution" had any significance in supporting a deviation from the past practice. Mr Jimmy Ma considered that different terms were used because the Basic Law and the Hong Kong Royal Instructions were drafted according to different concepts. In reality, when LegCo was dissolved, the term of its Members also ended. In 1995, the Council was dissolved on 31 July 1995 by the then Governor under the Hong Kong Royal Instructions before nominations started for the general election on 17 September 1995. After 1 July 1997, the terms of LegCo were clearly stipulated in the Basic

Law against set periods of time, and a particular term of LegCo was given a date on which its term expired. The arrangement under which a term of LegCo expired was different from the dissolution of LegCo. Under Article 50 of the Basic Law, the HKSAR LegCo might only be dissolved under tightly defined circumstances; dissolution to pave the way for an upcoming election was not one of those circumstances. Mr Ma further advised that the circumstances of the constitutional and electoral arrangements in 1995 and 2000 were basically similar in that a general election was held during the time after the legislature had terminated its operation.

Warning for change in practice

4. The Chairman asked Mr Fung whether he was aware at the time when the Committee on Rules of Procedure discussed the preferred date for the commencement of the second LegCo term that there would be no remuneration and reimbursements for Members during the dissolution period. Mr Ricky Fung replied that when the Administration was consulted, it did not mention anything about the withdrawal of financial support during the prolonged gap between the first and second LegCo terms. Therefore, he had the impression that the financial arrangement in 1995 would apply after the expiry of Members' term of office and ancillary arrangements would be put in place accordingly.

Ex gratia payment

5. At the invitation of the Chairman, Mr Jimmy Ma confirmed that the paper from the Director of Administration (LC Paper No. AS 147/99-00(02)) was an accurate representation of the legal facts. He advised that the issue in hand was neither a legal nor a technical problem, but rather a policy matter to be handled in the light of practical considerations. If incumbent Members were continued to be paid after the end of their term, such payments would be ex gratia in nature. They would have to be approved either by means of an appropriation bill or in the form of a supplementary provision. He stressed that the law was silent on such payments.

6. The Chairman enquired whether Members' remuneration and expenses reimbursements during the dissolution period were provided for under the draft Estimates of 2000-01. Mr Ricky Fung replied that a full year's provision had been included; and the Finance Bureau had not raised any objection. Mr Jimmy Ma alerted the meeting that The Legislative Council Commission was only a paying agent, any such ex gratia payments would have to be approved through the legislative process he mentioned in paragraph 5.

Legal capacity of Members in fulfilling their other obligations

7. Mr Fred Li asked in what capacity Members would be called to an emergency session of the LegCo after the end of their term of office. Mr Jimmy Ma replied that under section 11 of the Legislative Council Ordinance (Cap. 542), "persons holding office as Members of the Legislative Council during the term of office of the Legislative Council which immediately precedes the beginning of the emergency session shall be deemed to be Members of the Legislative Council". In his opinion, this provision under the law did not offer itself as the determining factor in delineating the status of Members on such occasions. Nonetheless, he reiterated that all relevant factors could be put together for considering the current issue.

Public perception and law compliance

8. Referring to paragraph 11 of the paper from the Director of Administration, Mr Ng Leung-sing was concerned about the public's perception: the financial support provided to incumbent legislators during the election period might be construed as an unfair advantage over other candidates. He asked whether such financial support contravened any existing law. Citing the back-to-back arrangement and the likelihood of continuous payment of remuneration and reimbursements until election day in future terms of the LegCo, Mr Jimmy Ma saw no violation of any principle of existing legal provisions. He also quoted as an example the arrangement of the Provisional Legislative Council (PLC), where Council business ceased on 8 April 1998 for the purpose of the subsequent election on 24 May, and yet PLC Members were paid until the end of their term on 30 June 1998.

Overseas practices

9. The Chairman also pointed out that, according to the paper prepared by the Director of Administration, out of the five countries surveyed, only Singapore had a gap in between terms where legislators were not provided with any financial support. As incumbent legislators of the other four countries (namely Australia, Canada, the UK and the USA) were provided with financial support during their election period, such arrangements could be regarded as generally accepted.

Role of Independent Commission

10. Mr Ng Leung-sing also asked whether the Independent Commission on Remuneration for Members of the Executive Council and the Legislature of the HKSAR (the Independent Commission) had determined the date or event up to which current Members would be remunerated and reimbursed. Mr Jimmy Ma replied that the Independent Commission was a consultative body with no statutory power. Mr Ricky

LegCo
Secretariat

Fung added that normally the Chief Executive in Council would consider the recommendations of the Independent Commission and the Administration would then submit its financial proposals for the approval of the LegCo. The Chairman asked the Secretariat to obtain the terms of reference of the Independent Commission for the information of the Subcommittee. (see *Appendix*)

De-representation

11. Miss Christine Loh postulated that the people should not be de-represented at any time. Before new LegCo Members were elected, incumbent Members should attend to the needs of the people whenever requested. Mr Ng Leung-sing supported the idea and hoped that Members not seeking re-election could do the same. Miss Christine Loh was worried that even though Members were willing, they could not be reached if their offices had to be closed due to the withdrawal of government funding. It was agreed that the Subcommittee should appeal for Members' support to the proposal of serving one's constituents until election day, and an option should be provided to outgoing Members for them to decide when to close down their offices before election.

Financial implications

12. At the invitation of the Chairman to comment on the financial implications estimated by the Administration (paragraphs 19-20 of LC Paper No. AS 147/99-00(06)), Mr Joseph Kwong pointed out that it was a rather simplistic assessment, ignoring the possible savings in winding up, setting up and information technology expenses if Members were not forced to wind up their offices and set them up anew when re-elected. (Note: Under current rules, re-elected Members can only claim reimbursements up to 50% of the ceiling for setting up expenses reimbursement, and the balance of the information technology and communication equipment expenses reimbursement unclaimed during the first term of the LegCo. This rule is set on the assumption that a re-elected Member has an existing office to build on.) The Chairman agreed and queried the apparent contradiction between the underlying assumption for these reimbursement rules, which were made in July 1999, and the present view that Members' offices would not be financially supported during the period between the first and second LegCo terms.

Report to House Committee

LegCo
Secretariat

13. The Chairman requested the Secretariat to prepare a report for submission to the House Committee on 3 March 2000, so that Members' views could be reflected to the Administration before mid-March 2000.

Action

- 6 -

[Post-meeting note : The report was issued on 1 March 2000 (LC Paper No. AS 153/99-00)]

14. The meeting ended at 4:24 pm.

Legislative Council Secretariat
April 2000

G:\ADMIN\MEM-ALL\MINUTES\2000\MIN-2-25.DOC

(79)香港特別行政區
行政會議成員及立法會議員
薪津獨立委員會

**Independent Commission on Remuneration for the Members of the Executive Council
and the Legislature of the HKSAR**

(由行政長官委任 *Appointed by the Chief Executive*)

諮詢處 Enquiry: 香港雪廠街中區政府合署西座政務司司長辦公室行政署
Administration Wing, Chief Secretary for Administration's
Office, West Wing, Central Government Offices, Ice House Street,
Hong Kong.

黃保欣先生 Mr. WONG Po-yan, G.B.M., J.P.
劉兆佳教授 Professor LAU Siu-kai, J.P.
梁國輝先生 Mr. Thomas LEUNG Kwok-fai, J.P.

胡定旭先生 Mr. Anthony WU
陳炳煥先生 Mr. CHAN Bing-woon, S.B.S., J.P.
查懋聲先生 Mr. Payson CHA, J.P.

秘書 *Secretary*: 李秀鳳女士 Miss Natalie LI (政務主任(行政)1 Assistant Secretary
(Administration) 1) (電話 Tel.: 2810 2132)

職權範圍

以現有薪津制度為基礎，

- (一) 研究香港特別行政區行政會議成員及立法會議員的薪津制度，並考慮任何可能影響酬金及津貼水平的因素；
- (二) 就立法會議員的薪津制度進行定期檢討，例如每三至五年，通常為一屆立法會會期開始前的一年進行檢討；
- (三) 研究上述事項時，考慮身兼行政會議及立法會成員的人士，其應獲薪津的水平；以及
- (四) 就政府當局可能不時要求獨立薪津委員會研究與行政會議成員及立法會議員薪津制度有關的任何事項，向政府當局提供意見。

Terms of Reference

On the basis of the existing system,

- (1) to consider the system of remuneration for Members of the Executive Council and the Legislative Council of the HKSAR, taking into account any factor that may affect the level of such remuneration and allowances;
- (2) to carry out periodic review of the remuneration package for Members of the Legislative Council of the HKSAR, say once every three to five years and normally about a year before the start of a new Legislative Council term;
- (3) to consider the appropriate level of remuneration for those with multiple membership on the Executive Council and the Legislative Council of the HKSAR in deliberating on the above issues; and
- (4) to advise the Administration on any matter relating to the remuneration package for Members of the Executive Council and the Legislative Council of the HKSAR which the Administration may refer to the Independent Commission from time to time.