

ITEM FOR FINANCE COMMITTEE

**HEAD 152 - GOVERNMENT SECRETARIAT :
TRADE AND INDUSTRY BUREAU
New Subhead "Honoraria for members of committees"**

Members are invited to -

- (a) approve the payment of honoraria to the Chairman and the Deputy Chairmen of the Review Body on Bid Challenges;
- (b) approve the creation of a new subhead "Honoraria for members of committees" under Head 152 Government Secretariat : Trade and Industry Bureau; and
- (c) delegate to the Secretary for the Treasury the power to approve future revisions of the rates for payment in accordance with the movement of the Composite Consumer Price Index.

PROBLEM

We need to establish an arrangement for payment of honoraria for the Chairman and Deputy Chairmen of the Review Body on Bid Challenges (the Review Body) to replace the temporary arrangement which has been in practice since January 1999.

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PROPOSAL

2. The Secretary for Trade and Industry (STI) proposes to remunerate the Chairman and Deputy Chairmen of the Review Body for their service in leading inquiries into alleged breaches of the World Trade Organization Agreement on Government Procurement (WTO GPA). It is proposed that an hourly rate between \$4,000 and \$5,000 be paid for the Chairman, and an hourly rate between \$2,000 and \$2,500 for the two Deputy Chairmen when either one performs the role of the Chairman in the latter's absence.

3. STI further proposes to delegate to the Secretary for the Treasury the authority to approve future revisions of the rates in accordance with the movement of the Composite Consumer Price Index.

JUSTIFICATION

Review Body on Bid Challenges

4. The Review Body is an impartial and independent body established in December 1998 to discharge Hong Kong's international obligations under the WTO GPA, i.e. to provide for non-discriminatory, timely, transparent and effective procedures enabling domestic or overseas suppliers to challenge alleged breaches of the WTO GPA by the procuring entities covered by Hong Kong's schedule of commitments. These procuring entities include various government bureaux and departments, and quasi-government bodies (viz. Kowloon-Canton Railway Corporation, Mass Transit Railway Corporation, Airport Authority, Hospital Authority and Hong Kong Housing Authority).

5. The Chairman of the Review Body is responsible for leading the Review Body to examine and hear challenges in accordance with the Rules of Operation of the Review Body which were devised on the basis of provisions of the WTO GPA. He is specifically charged with deciding whether there is a *prima facie* case to support a challenge. Where he finds that a *prima facie* case exists, he must convene a Panel, which normally comprises himself and two other panel members to inquire into and decide on the challenge. The Chairman will lead the Panel to consider the appropriate rapid interim measures to be taken to preserve the commercial opportunities pending a Panel decision on the validity of a challenge. He will also guide the Panel to recommend appropriate corrective measures should a challenge be found valid. In the event that the Chairman is not able to perform his role, one of the two Deputy Chairmen will stand in for him as acting Chairman.

6. It is essential that the Chairman of the Review Body should possess relevant experience and qualifications in order to shoulder the responsibilities outlined above. His legal credentials must be of the highest standard evidencing considerable past experience of a judicial or quasi-judicial nature. Ideally, in view of the complexity and value of some of the procurement contracts and the international nature of the parties that may be involved, the Chairman should also have extensive experience in international commercial arbitration. The two Deputy Chairmen, who serve as the acting Chairman when the latter is not available, should also be legally qualified.

7. In order to maintain the impartiality of the Review Body, we considered it inappropriate for civil servants to carry out the duties of the Body and therefore resorted to finding a candidate from private practice. We subsequently appointed a retired High Court Judge who is a practicing arbitrator with wide experience in international commercial arbitration as the Chairman for 12 months with effect from January 1999.

Honorarium for the Chairman and Deputy Chairmen

8. As the work of the Review Body was a new international commitment or obligation on Hong Kong's part, we reached an understanding with the procuring entities covered by the Agreement to review the bid challenge procedures one year after the Review Body came into being. It would be desirable to do the same with the appointment of the Chairman. We then decided to engage the Chairman on a temporary basis at an hourly rate of \$4,000 under non-civil service agreement terms for 12 months from January 1999. We have now gathered a more realistic assessment of the caseload of the Review Body and its operational requirement.

9. Having regard to the quasi-judicial nature of the Review Body, we consider it more appropriate to remunerate the Chairman and the Deputy Chairmen of the Review Body on an honorarium basis, in line with the practice of other appeal boards such as the Appeal Board (Air Pollution Control) and the Inland Revenue Board of Review. Since the examination and hearing of challenges require considerable expertise and experience on the part of the Chairman, we consider it appropriate to remunerate him having regard to the market rates for engaging legal professionals. Drawing reference to the fees for engaging outside legal professionals by the Government, we propose to pay an honorarium to the Chairman at an hourly rate between \$4,000 to \$5,000. Based on past experience, the time spent by the Chairman may be as few as two hours for a case. It is therefore considered more appropriate to remunerate the Chairman on an hourly basis.

10. For the Deputy Chairmen, we propose to pay them an hourly rate between \$2,000 to \$2,500 when they assume the role of the Chairman during his absence. It is considered appropriate to award a lower rate to the Deputy Chairmen taking into account the difference in qualifications, experiences and status between the Chairman and the Deputy Chairmen.

11. As for the remaining nine members of the Review Body, we do not propose to remunerate them at this stage considering that the major tasks of the Review Body will be conducted or closely guided by the Chairman, and the level of input required of the members will be relatively low. In the past 12 months, we have paid \$30,000 to the Chairman for his service to handle two cases of bid challenge whilst no payment has been made to the Deputy Chairmen so far.

12. These proposed rates are not intended to remunerate the work of legal practitioners of similar qualifications and experience engaged in full but they should represent a reasonable payment for the time spent by the Chairman and Deputy Chairmen of the Review Body. Members may wish to note that the Chairmen or Deputy Chairmen of some other Government boards and committees such as the Inland Revenue Board of Review, the Appeal Board Panel (Town Planning), the Appeal Board (Air Pollution Control) and the Security and Guarding Services Industry Authority, etc. are also receiving special rates of honorarium. Members may also wish to note that a range of fees with a narrow margin, instead of a fixed fee, is proposed to allow some degree of flexibility so that appropriate fee can be paid to future appointees having regard to their individual experience and qualifications.

13. To maintain the real value of the honoraria, STI proposes that the rates be reviewed regularly. In line with the practice applicable to other boards and committees, STI proposes that the Secretary for the Treasury be authorised to approve future revisions to the rates in accordance with the movement of the Composite Consumer Price Index.

FINANCIAL IMPLICATIONS

14. We do not expect the number of complaints to be received by the Review Body will increase significantly in view of the open, fair and transparent procurement system of Hong Kong. Assuming that there will be three appeal

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cases to be processed each year¹, and that the Chairman will on average spend 20 hours² in concluding a case, the financial implication for implementing the proposed special rates of honorarium is estimated to be no more than \$300,000 for a year. We will include sufficient provision in the 2000-01 draft Estimates for this purpose.

BACKGROUND INFORMATION

15. Members approved on 9 July 1980 and re-affirmed on 5 March 1993 that while service on Government boards and committees should be voluntary, no individual should suffer pecuniary embarrassment through public service, nor should Government be obtaining the services of highly qualified, professional persons “on the cheap” and that remuneration should normally be in respect of payment of expenses and/or for compensation for earnings forgone.

Trade and Industry Bureau
December 1999

¹ So far in 1999, the Review Body has only received two complaints. The Chairman only spent two hours in concluding the first case as it is outside the purview of the Review Body. The second case was withdrawn by the complainant three weeks after its submission. The Chairman spent 5.5 hours in processing the second case.

² The Panel is required, under the Rules of Operation of the Review Body, to handle complaints in a timely manner, i.e. to conclude a challenge within 90 days (and at most within 180 days). Hence we do not expect the time spent on each case will increase substantially. We therefore consider that it is reasonable to assume the Chairman will spend an average of 20 hours on each case.