

立法會
Legislative Council

LC Paper No. AS 153/99-00

Ref: AM 12/01/19

**Paper for the House Committee Meeting
on 3 March 2000**

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

Purpose

This paper reports on the recommendations of the Subcommittee on Review of Operating Expenses for Members of the Legislative Council on the arrangements in respect of Members' remuneration and operating expenses reimbursement upon expiry of their term of office on 30 June 2000.

Background

2. In the light of Members' interest on the issue of whether payment of Members' remuneration and operating expenses reimbursement during the period between the first and the second terms of the Legislative Council of the Hong Kong Special Administrative Region (HKSAR LegCo) should cease, the House Committee discussed and decided at its meeting on 18 February 2000 to refer the issue to the Subcommittee for consideration.

The Subcommittee

3. The Subcommittee held a meeting on 25 February 2000 to examine the issue. Written views were received from Hon Christine LOH, Hon LEUNG Yiu-chung, the Association of Personal Assistants of the Legislative Council Members of Hong Kong and the Administration – copies at Appendices I-IV.

Recommendation

4. Having considered the views of all parties and the arrangements for previous terms before and after 1997, the Subcommittee is of the consensus view that Members' remuneration and operating expenses reimbursement should continue to be paid after 30 June 2000 up to and including the election day on 10 September 2000. The rationale for its recommendation is set out in paragraphs 5-8 below.

5. Since 1988, up to and including the 1991-1995 LegCo term, Members were paid the full remuneration and reimbursements from the day following election up to and including the next election day. For example, 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 are clearly stipulated in the Basic Law against set periods of time which give a particular term of LegCo a date on which its term expires. The arrangement under which a term of LegCo expires is different from the dissolution of LegCo. Under Article 50 of the Basic Law, the HKSAR LegCo may only be dissolved under tightly defined circumstances : dissolution to pave the way for an upcoming election is not one of those circumstances. Our Legal Adviser advises that the circumstances of the constitutional and electoral arrangements in 1995 and 2000 are basically similar in that a general election is held during the time after the legislature has terminated its operation. There is no legal provision governing Members' remuneration and operating expenses reimbursement, except for the need for authorization for incurring such expenditure in accordance with the Public Finance Ordinance. Whether the payment should continue during the period between the first and the second terms of LegCo is a policy decision at this stage. If it is decided that the payment should continue, necessary legislative measures will be required.

6. All Members of the Legislative Council are representatives of a particular constituency. Many of their constituents will continue to send views to their elected Members and/or seek their assistance, pending the election of new Members. Members of the Subcommittee consider that there is an obligation for the outgoing Members to continue to serve their constituents until the incoming Members are elected. Practically it would be very difficult to do so without the support of an office. If the outgoing Members' offices have to be closed due to lack of funds during the period between the two terms, the constituents will be 'de-represented' during this period.

7. It is noted from the five countries (namely USA, Singapore, UK, Canada and Australia) surveyed by the Administration, only members of the Singaporean Parliament receive remuneration up to the end of their elected term of office; the incumbent legislators of the other four legislatures are remunerated up to the date of the next election. It is therefore evident that the more common practice in other countries is for members of their Parliament to continue to receive the entire remuneration package up to election day.

8. The Administration estimates that the maximum financial implication is about \$32 million, if all Members of the first term of LegCo were to continue to be remunerated during the period between the first and the second terms, in accordance with the existing remuneration and reimbursement package. The Subcommittee considers this an over-estimated figure because it has assumed unrealistically that none of the Members would be re-elected. As regards the re-elected Members, there would be substantial savings in the winding-up and setting-up expenses and expenses on information technology and computer equipment if payment was continued to be made to them.

Advice sought

9. The Subcommittee seeks the support of the House Committee to put forward its recommendation in paragraph 4 to the Administration.

Legislative Council Secretariat
1 March 2000

Mrs. Carrie Yau
Director of Administration
By Fax

Dear Carrie,

Re: LegCo Term and “De-representation” of Constituents

It was good speaking to you this morning. I understand that the Administration is considering whether when the LegCo term ends on 30 June 2000, all serving legislators’ offices should be closed, resulting in salaries and all payments being stopped for them to run their offices.

It appears that you have not considered the consequences should you take this decision. It would mean that from 1 July till 10 September, when a new legislature will be elected, constituents will be entirely unrepresented.

Many countries continue to fund serving legislators between the formal end of an elected term and the next election so that the people will continue to be represented. This is a matter of principle and not just a matter of causing inconvenience to legislative staff whose employers may be re-elected and yet they have to be released as the legislative office has to close.

As you had not considered that your decision could result in “de-representing” constituents, I urge you to take this perspective into account in making your final decision.

I also wish to re-emphasize that it would not be open to the Administration to argue that District Councillors could play a representative’s role since the two tiers cannot replace each other.

Yours sincerely,

Christine Loh

Cc: Ricky Fung – LegCo Secretariat
Dr. C. H. Leong – LegCo House Committee

(Translation of the Legislative Council Secretariat, for reference purpose)

(Letterhead: The Neighbourhood and Workers Service Centre
LEGCO Member, Leung Yiu-chung's Office)

23.2.2000

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

Dear Members,

**Arrangements in respect of Members' remuneration
upon expiry of their term of office**

Regarding the arrangements in respect of Members' remuneration and operating expenses reimbursement (referred to as "remuneration" hereafter) upon expiry of their current term of office on 30 June this year, I consider that normal remuneration for the period between 1 July 2000 and the election day on 10 September 2000 should be granted to Members as usual. The justifications to maintain the present remuneration arrangement before the election date are as follows:

1. According to section 11 of the Legislative Council Ordinance, the President must, at the request of the Chief Executive, convene an emergency session of the Legislative Council in case of emergencies during the period after the end of Members' term of office and before the election of the new Legislative Council. For the purpose of the above meeting, the persons holding office as Members before the end of the term shall be deemed to be Members of the Legislative Council at that time. As Members of the current term in fact still have to fulfil certain legal responsibilities and play a specific role after June this year, it is hence fully justifiable to continue granting them remuneration.
2. According to the practice of the Legislative Council before 1997, the original Legislative Council would first be dissolved before elections were held for another term of office. There was a period of almost two months from the time the Council was dissolved up till the election date. During such periods, it had

always been a practice to continue granting remuneration up till the election date to Members who were in office before the dissolution of the Council. Hence I consider it totally reasonable to follow the past practice.

3. At present, almost all Members employ at least three assistants and I believe quite a number of the incumbent Members intend to take part in the election. If they are forced to dismiss all their assistants in July this year, not only will those assistants lose their jobs with immediate effect, the incumbent Members may also lose some of their experienced and capable assistants, even if they are re-elected later. This would definitely undermine the work of the Members to a large extent.

Leung Yiu-chung

香港立法會議員助理協會

對本屆立法會議員任期屆滿後
薪津處理方式的意見

引言

現任立法會議員的任期將於本年六月底完結，但新一屆立法會的換屆選舉卻於 9 月 10 日才舉行¹，而預計新一屆立法會任期則於 2000 年 10 月才開始。至今，由本年 7 月 1 日至 9 月 30 日這三個月期間所出現的“過渡期”引申出來是否繼續給予現任議員每月酬金及各項工作開支償還款額（以下引稱為“議員薪津”）仍未有定案，此事已引起立法會議員、過百名議員助理以至傳媒的關注，而政府亦打算就此作出研究；為此，本會嘗試就以上問題提出我們的看法及建議。

過往處理慣例

2. 在進入討論須否及應否於“過渡期”繼續給予現任議員“薪津”以前，值得先回顧過往面對相類似情況時有關方面的處理慣例，同時我們亦希望藉此回應近期對過往處理慣例的一些誤解。

3. 香港特別行政區成立至今，基本上立法機關並未有出現任何“真空期”，即任何時間均存在 60 位（或接近 60 位）具立法機關議員身分的在職議員²；至於 1997 年 6 至 7 月間回歸前後，本港立法機關亦未曾出現“真空期”，因此可予參考的情況是回歸之前的做法。

4. 回歸以前的立法局，自 1985 年起引入由選舉產生的議員；而根據當時本港憲法文件³之一《皇室訓令》(Royal Instructions)第 XXVIII(1)條⁴規定，除總督可於任何時間解散立

¹ 行政長官已按照《立法會條例》第 6(1)條規定，指明 2000 年 9 月 10 日為選出第二屆立法會議員的換屆選舉的舉行日期（見 2000 年第 3 期憲報第 303 號公告，2000 年 1 月 21 日）。

² 1999 年 7 月至 1998 年 6 月間的立法機關議員為當時的臨時立法會議員，而當中由 1998 年 4 月初至 6 月底期間臨時立法會屬於休會階段，那段期間原來 60 位臨時立法會議員仍具議員身分；而由 1998 年 7 月至今，立法機關議員為第一屆立法會議員，當中於 1999 年 7 月中至 10 月初出現的休會期，並未中斷原有議員的身分。

³ 回歸之前屬於英國殖民地的香港，有關的憲法文件包括《英皇制誥》(Letters Patent)及《皇室訓令》(Royal Instructions)等兩項根據英國樞密院令(Orders in Council)引申到香港的法令。

⁴ 《皇室訓令》第 XXVIII 條於 1985 年 4 月 4 日加入為《皇室訓令》新增條文，其後曾分別於 1988 年 4 月 9 日、1991 年 5 月 21 日、1991 年 9 月 12 日及 1994 年 7 月 1 日先後作出修改。

法局外，整個立法局均須於上次選舉日 3 周年或 4 周年⁵到臨前的 60 日及到臨後的 30 日以內解散，具體日期由總督決定⁶。多年以來的實際經驗是，無論在 1985 年、1988 年、1991 年或 1995 年，總督的做法均是在有關年份選舉日到臨前先行將整個立法局解散才進行選舉，而立法局解散日與新一屆立法局選舉日相距大約為 45 至 60 日⁷。根據《皇室訓令》第 XXVIII(2) 條規定，立法局遭解散後原來議員將不再擁有任何立法局議席，即原來議員將不再擁有議員身分（雖然在緊急情況下該等原來議員會被召回立法局會議廳開會）；因此，法理上，至少由立法局被解散至新一屆立法局選舉日到臨的 45 至 60 日期間，存在一段時間的“過渡期”。

5. 我們曾聽到有意見指回歸以前的立法局是在新一屆選舉完成後才正式解散，而在選舉日前的個多兩個月時間只是“會期終結的休會”，因此那個多兩個月的“過渡期”時間內原來的立法局議員仍具議員身分；對此，我們不表認同，亦認為有關說法與法理不符。立法局每年會期的開始和終結受《皇室訓令》第 XXIA 條規管，而解散立法局則依據《皇室訓令》第 XXVIII 條規定，前後兩者法理依據及法律後果均有重要差異；舉例來例，於 1995 年 7 月，當時總督分別發出了《1995 年香港立法局 1994 至 95 年度會期終結公告》指定該年 7 月 31 日為立法局 1994 至 95 年度會期結終之日期⁸，同時也發出了《1995 年香港立法局解散令》指定同日為立法局解散的日期⁹，清楚顯示 1995 年 7 月底至 9 月中選舉期間原來立法局並不單是“會期終結休會”，同時更重要的是已遭“解散”。

6. 在立法局被“解散”（7 月底）至新一屆立法局選舉日（9 月中）的“過渡期”，一直以來的慣例是政府繼續向原來議員發放“薪津”，發放時間至選舉日為止，而新當選的立法局議員雖然要到新一個立法會期開始時（10 月初）才正式具備議員身分¹⁰，但由選舉結果公布日起連任議員及新當選議員均開始獲得發放“議員薪津”。這即表示，原來的立法局議員因立法局遭“解散”後的“過渡期”內雖然再不具議員身分，但仍獲得發放“議員薪津”；如

⁵ 1985 至 91 年間的立法局每次換屆選舉相距時間為 3 年，而 1991 年以後則改為 4 年。

⁶ 1994 年 7 月 1 日後《皇室訓令》第 XXVIII 條的條文內容為：

“XXVIII. (1) The Governor may at any time, by Order published in the Hong Kong Government Gazette, dissolve the Legislative Council:

Provided that the Legislative Council shall stand dissolved in the fourth year after the latest election for all the Members of the Legislative Council on such date as the Governor shall fix being a date not earlier than 60 days and not later than 30 days before the anniversary of that election (or if the election was held on more than one day, of the first day of that election).

(2) On the dissolution of the Council, all the Members shall vacate their seats:

Provided that if, for the consideration of any urgent business, the Governor shall appoint a time for a sitting of the Council after the dissolution but before the day appointed for the holding of an election for all the Members of the Legislative Council (as required by Clause XIIA of these Instructions), the persons holding office as Members of the Council immediately before such dissolution shall continue to sit as Members until the commencement of the day (or, if more than one, the first day) appointed for the holding of such elections.”

⁷ 以 1995 年情況為例，當時原有立法局根據《1995 年香港立法局解散令》於 7 月 31 日解散（見 1995 年第 29 期憲報第二號法律副刊第 349 號法律公告，1995 年 7 月 21 日），而新一屆立法局普選日期則根據《1995 年立法局（普選日期）公告》定為該年 9 月 17 日（見 1995 年第 29 期憲報第二號法律副刊第 350 號法律公告，1995 年 7 月 21 日）。

⁸ 見 1995 年第 29 期憲報第二號法律副刊第 348 號法律公告，1995 年 7 月 21 日。

⁹ 見註 7。

¹⁰ 參看前立法局主席黃宏發於 1995 年 10 月 18 日立法局會議上根據法律顧問意見就當選議員何時才正式具議員身分所作出的裁決。

某一原來議員在新一屆選舉中繼續當選，則其“議員薪津”將會連續不斷地獲得發放，縱使從法理上來說該議員在“過渡期”的兩個多月時間內並不具議員身分。

7. 同時，值得指出的是，由於連選連任的議員在選舉前後的“過渡期”內繼續獲得發放“議員薪津”，因此他們聘用的議員助理在“過渡期”前後被理解為連續受僱，助理的原有年資亦獲得繼續承認，令他們在日後遭遣散時可獲得由公帑支付以較長年資計算的遣散費。

應否繼續給予薪津的考慮

8. 給予議員“薪津”，目的自然是要協助議員履行議會事務及選區事務等工作，因此在議員任期屆滿或議會遭解散至新一屆立法會選舉日這“過渡期”內應否繼續給予議員“薪津”，是值得詳加研究的。值得指出的是，雖然特區立法會就任期屆滿與選舉日中間存在“過渡期”的情況可能只在今年出現，但因立法會被解散而出現的“過渡期”則是日後隨時可能出現的情況，故此有必要訂出一套完善而貫徹的處理準則¹¹。

9. 我們認為，考慮應否在“過渡期”繼續給予“議員薪津”時，應從過往慣例、法理及實際需要等角度作出評估；綜合來說，我們認為“過渡期”內原來議員應繼續獲發“議員薪津”至選舉日止，有關理由如下：

- 1) 今年將出現的“過渡期”情況與回歸以前情況相若，因此應遵循過往慣例；
- 2) “過渡期”內原來立法會議員仍須履行若干法定責任；
- 3) 停止發放“議員薪津”將會嚴重影響原來議員及有關助理的生計，亦破壞了議員辦事處的延續性；
- 4) 停止發放“議員薪津”將引發不少行政上的混亂；及
- 5) 停止發放“議員薪津”的同時會引致其他公帑開支，令政府可予節省的開支數額並不大。

遵循過往慣例

10. 今年 6 月底第一屆立法會「任期完結」，雖然與回歸以來立法局“解散”在法律字眼上有所不同，但我們認為，兩者所引致的法律後果、議會過渡期間原來議員的責任及所出現的實際情況均相若，因此政府當局實應遵循過例慣例繼續給予“議員薪津”。

11. 毫無疑問，第一屆立法會“任期完結”至經選舉產生的第二屆立法會任期開始的一段時間中，除了特殊情況要召開立法會緊急會議外，法理上“過渡期”內並無立法會議員存

¹¹ 根據《基本法》第五十條，行政長官可在特定情況下解散立法會，並在其後進行新一屆立法會選舉。

在，這情況與回歸以前立法局遭“解散”至新一屆立法會產生期間的情況一致。在“過渡期”間，無論是回歸以前或特區成立以後，原來議員均根據法律規定在緊急情況下須參與立法機關緊急會議，並享有議員權利和履行議員責任¹²，這點在回歸前後的情況是一致的。與實際上，無論是回歸前或今年中將出現的“過渡期”，均是在短時間內進行換屆選舉，而原來議員自然會有部分人繼續參選以期延續議員身分，亦必然同時有部分原來議員放棄參選；這情況在回歸前後所出現的議員“過渡期”情況也相若。

12. 既然今年出現的“過渡期”無論從所引致的法律後果、議會過渡期間原來議員的責任或所出現的實際情況均與回歸前（如 1995 年的情況）大同小異，因此我們認為除非過往的慣例做法被認為不合理而經過全面檢討、修正，否則政府當局應遵循過往慣例繼續給予本屆議員“薪津”。

13. 最後，值得指出的是，既然今年出現的“過渡期”情況與回歸以前情況相若，因此各方面的人士（包括現任議員、眾多議員助理及負責立法會行政事務的立法會秘書處等）均很可能對繼續發放“議員薪津”有合理預期；鑑於現時距離今年 6 月底只得 4 個多月的短時間，因此我們認為遵循慣例繼續給予“議員薪津”是最恰當的做法。

過渡期議員責任

14. 我們認為，雖然在今年 6 月底議員“任期完結”後原來議員已不再擁有議員身分，但這並不表示他們已沒有任何法定地位及責任。《立法會條例》第 11(1)條明確規定，“於立法會任期完結或解散後而於指明舉行選出立法會議員的換屆選舉的日期（如多於一日，則為首日）前的期間內，主席必須應行政長官的要求，召開立法會緊急會議”；同時，有關條例第 11(2)條進一步規定，“於緊接緊急會議開始前的立法會任期內擔任議員的人，（於召開緊急會議時）須當作為立法會議員”。可見，由任期完結至選舉時間，原來擔任議員的人仍有“候命”參與緊急立法會會議的責任；因此，我們認為，單以“任期完結”便立即取消原來議員的“薪津”，顯然是說不過去的。

15. 《立法會條例》第 11 條的規定，與回歸以前《皇室訓令》第 XXVIII(2)條¹³的規定是一致的，而這亦進一步強化我們認為應在“過渡期”繼續給予“議員薪津”的理據，因為前後兩者均要求原來議員在“過渡期”負起相同的法律責任和承擔相同的義務。

16. 既然“過渡期”內原來議員（無論其是否已打算參與換屆選舉）負有一定程度的法定責任及在召開緊急會議期內被理解為仍具議員身分，因此繼續給予他們“薪津”是合理的安排。再者，由於“過渡期”內原來議員是“候命”參與議會議事工作，因此絕對有必要提供

¹² 下文將詳細討論“過渡期”內原來議員的法定責任問題。

¹³ 見註 6。

“工作開支補貼”讓原來議員繼續聘請助理及延續辦事處的運作，令有關議員在有需要參與緊急會議作出決定時能有足夠的人手和行政支援，否則將會嚴重影響議員的議政質素。

16. 此外，值得指出的是，根據《1999年立法會（修訂）條例》（1999年第48號條例）第44條，選舉登記主任在第二屆立法會換屆選舉編製選舉委員會正式委員登記冊時，必須將在2000年6月30日擔任立法會議員的人登記為選舉委員會當然委員；因此，今年6月以後，已任滿的立法會議員仍以其“原來議員身分”負有作為選舉委員會當然委員參與選出6名立法會議員的責任¹⁴。

正視對助理的影響

17. 從實際情況的角度看，如在“過渡期”停止繼續發放“議員薪津”，則就算大部分原來議員有志繼續參選並有機會勝出再次成為立法會議員¹⁵，他們均無可避免在長達3個月的時間內受到重大影響，這對他們和他們聘用的助理均會造成極大不便。

18. 雖然現時並沒有要求立法會議員為全職議員，同時議員“酬金”並不同“薪金”；但不能忽視的事實是，現時確有部分議員視其立法會工作為全職工作，因此在“過渡期”停發“薪津”對他們財政狀況的影響是極大的。正如上文所指，由於原來議員在“過渡期”仍須候命參與議會工作，因此他們出外找工作維生也似乎不大實際；更重要的是，既然他們因有關身分而仍須在“過渡期”承擔某些法定責任，因此政府當局實有理由繼續給予“議員薪津”。

19. 假設大多數原來議員均有志繼續參選（我們相信這是合理的假設），他們顯然不願意於6月或任期完結時立即結束辦事處及遣散所有議員助理，因為日後如他們獲選連任而要從頭開始設立辦事處及重新招聘助理，便是嚴重影響他們的議員工作，亦不必要地破壞了該等議員在過去已建立的支援系統。

20. 對願意繼續留任協助原來議員從事議會工作的過百名議員助理，如因原來議員在“過渡期”因不獲發放“薪津”而被迫遭遣散，對他們日後的工作前景和財政狀況亦有極大影響。該等期望繼續擔任議員助理如在原來議員任滿後即時被遣散，他們由於缺乏工資保障，相信不得已要立即找其他工作維生；但如此一來，在3個月選舉後要走向原來議員助理的崗位，將會面對不少困難。如資深又願意繼續留任的議員助理單因為“過渡期”缺糧而被迫從此轉職

¹⁴ 雖然在另一方面，《1999年立法會（修訂）條例》第44(f)條規定如獲登記為選舉委員會當然委員的立法會議員其後不再是立法會議員，則該人即不再是選舉委員會當然委員，這似乎與法例要求在2000年6月30日擔任立法會議員的人成為選出第二屆立法會6名議員的選舉委員會當然委員的規定有所矛盾（有關選舉於2000年9月10日進行），但我們不擬就這問題再作深入討論。

¹⁵ 由於第二屆立法會的組成方式和選舉模式與第一屆立法會的情況大同小異（所不同的只是原來兩個臨時市政局功能界別改為飲食界及區議會界別，而其中4個選舉委員會議席改由地方選舉產生），因此我們預計很可能有超過一半現任議員會獲得連任。

，則不單是有關議員的損失，亦將會是整個議會問政質素的損害。

行政方面的混亂

21. 若政府當局堅持今年 6 月底議員任滿後即時停發“議員薪津”，則不但眾多議員助理工作會受到嚴重影響，連帶原來議員的辦事處等支援系統均會受到影響。舉例來說，現時不少議員均因其身分獲得房屋署批准在公共屋邨內設立辦事處，同時差不多所有議員亦因其身分獲立法會秘書處分配位於中區政府合署西翼或萬國寶通銀行大廈的辦事處；倘若在“過渡期”原來議員不獲給予“薪津”，則按理他們因議員身分而獲得使用的屋邨及中區辦事處也需要即時關閉及被要求遷出，但幾個月後他們可能當選連任而又有權重開那些辦事處，故此如被迫在任滿後立即關閉辦事處顯然會造成不少行政混亂和造成浪費。

22. 此外，現時議員亦因其身分而可以利用特定上限的公帑購置辦公室設施，而根據規定議員離任時應向立法會秘書處交還那些設施或以折舊價購買該等設施，通常在過程中需要立法會秘書處人員進行大量物資點算工作；如堅持在今年 6 月或議員任期完結時要立即進行有關歸還物資工作而幾個月後又可能會重新將該等物資發回連任的議員使用，則又可能會導致不必要的行政工作。

節省數額有限

23. 在“過渡期”停發“議員薪津”無疑會令政府節省一點開支，但與此同時，政府當局有責任根據規定即時向全體議員發放相等於一個月“工作開支償還款額”上限的數額作為議員結束辦事處津貼，亦必須向全體遭遣散的議員助理發放遣散費，更要在所有第二屆立法會議員就任後向他們發放開設辦事處津貼；我們相信，如這樣做，政府實際可節省的財政開支數額其實相當有限，而更重要的，是當中會出現因不必要地先結束、後重新開設辦事處而導致的資源浪費。

結論

24. 我們重申，無論從過往慣例、法理分析、實際問題、有效資源運作等角度看，於今年 7 月初至 9 月中的一段“過渡期”時間內繼續給予“議員薪津”，是恰當的做法。最後，必須指出的是，“議員薪津”只是政府給予的財政支援上限，議員在任何時間（不管是在今年 6 月底前或 6 月底後）如要領取酬金及申領任何一項“工作開支補貼”，他們均有責任向公眾解釋有關開支是用得其所，而傳媒及輿論亦可以擔當監察的角色。

2000 年 2 月

Remuneration Package for Members of the HKSAR Legislative Council

The Issue

We need to study whether and how Members of First HKSAR Legislative Council should be remunerated after the expiry of their term of office on 30 June 2000.

Background

2. The existing remuneration and reimbursement package for LegCo Members include two broad categories of payment –

- (a) monthly payments comprising three key elements :
 - (i) remuneration for LegCo Members;
 - (ii) reimbursement for office operation on an accountable basis; and
 - (iii) a non-accountable allowance for entertainment and travelling expenses;
- (b) reimbursement for non-recurrent expenses comprising
 - (i) a setting up allowance;
 - (ii) expenses on information technology and communication equipment; and
 - (iii) a winding up allowance.

A synopsis of the remuneration and reimbursement package presently received by LegCo Members is at Annex A.

Relevant Considerations

3. The following are relevant in considering the issue of remunerating incumbent LegCo Members after 30 June 2000.

I. Term of Office of LegCo

4. The length of the term of office of the LegCo is expressly stated in law – Chapter IV Article 69 of the Basic Law stipulates that the term of office of the LegCo of the HKSAR shall be four years, except the first term which shall be two years. The Legislative Council Ordinance provides that the term of office of the Legislative Council is as prescribed by Chapter IV of the Basic Law and that the first term of office of the LegCo is to begin on 1 July 1998.

5. Section 9(4) of the Legislative Council Ordinance further states that while the consideration of any bill or other business of the LegCo is not to be affected by the end of a session and may be resumed at any subsequent meeting, it is to lapse at the end of a term of office or on a dissolution of the LegCo. Hence, according to the law, all official businesses for the first SAR LegCo cease after 30 June 2000.

6. This notwithstanding, section 11 of the Legislative Council Ordinance states that former Members of the LegCo are deemed to be LegCo Members for the purpose of an emergency session, in the event that such a session is convened. Schedule 2 section 1(8)(b) also states that persons holding office on 30 June 2000 as Members of LegCo will be registered as ex-officio members of the Election Committee.

II. Existing Remuneration Arrangements

7. The Executive Council decided in March 1998, on the recommendation of the Independent Commission on Remuneration for Members of the Executive Council and the Legislature of the HKSAR, that LegCo Members should be remunerated for their services and receive a remuneration package from the beginning of a LegCo term until the end of the term.

III. Interval between the first and the second LegCo terms

8. The term of the office of the current First HKSAR LegCo will end on 30 June 2000. Elections for the Second HKSAR LegCo will be held on 10 September 2000 and the Second term of office of LegCo will commence after the election probably in October 2000. The arrangement this time is exceptional, and general elections for subsequent LegCos are expected to be held before the end of a LegCo term. That is to say, as from the Second SAR LegCo, subsequent terms will end and commence on a back-to-back basis.

IV. Practical Issues

(a) Implications for Members' offices and staff

9. If incumbent LegCo Members were expected to terminate their work with the expiry of their term of office as LegCo Member on 30 June 2000, Members would theoretically be expected to wind up their offices and lay off staff recruited in connection with their Council businesses. Provisions are made in the existing remuneration package for Members, who ceased to be Members, to be provided with reimbursements to wind up their operation, i.e. a fixed sum plus allowances for making actual severance payments to their staff. The disruption and unsettling effect to parties concerned brought about by the winding up of a LegCo Member's operation has raised concern.

(b) Implication for Members

10. Certain Members regard LegCo work as their main occupation. The current package therefore include a monthly remuneration for Members for their service. Cessation of this monthly remuneration would have to be carefully considered.

(c) Public Perception

11. Members of the First LegCo term may seek re-election to the Second LegCo. If they were continued to be remunerated after the end of their term of office and after Council businesses have in practical terms ceased, there would be the question of whether candidates seeking election in the same Elections may perceive this as an unfair advantage provided by the Government to incumbent LegCo Members seeking re-election.

V. *Constituency Representation*

12. All Members of LegCo are representatives of a particular constituency. Since the next election will not be held until 10 September, there is the question of whether the constituencies might be deprived of their representation if the office of Members were to cease after the expiry of their term on 30 June.

13. Pursuant to Annex I of the Basic Law, LegCo Members constitutes a sub-sector in the Election Committee and are among the 800 responsible for returning six Members to the second LegCo from this constituency. And the Legislative Council Ordinance makes provision to give effect to this (vide paragraph 6 above).

VI. *Overseas Practices*

14. Overseas legislatures surveyed indicate that different arrangements apply but can be broadly categorised into two types – one with their terms of office defined and Members remunerated according to their terms of office and the other with the incumbent legislators remunerated up to the date of the next election. Annex B outlines the arrangements for the remuneration of Members in various overseas legislatures.

15. In the US, legislators receive remuneration from the start of a term to the end of the relevant term. There is no time gap between any two terms : election is held during a term.

16. In Singapore, members of Parliament receive remuneration up to the end of their elected term of office. There is a gap between two terms of office, with election held one to two month after the end of an immediately preceding term. No remuneration is made during the period between the end of an elected term and election day.

17. In the UK and Canada, the Parliament is dissolved before election is held. In the UK, Members of Parliament will continue to receive part of the remuneration package, viz the salary and office cost allowance, from the date the Parliament is dissolved until the general election date. In Canada, Members of the Parliament continue to receive entire remuneration package up

to the day before the Day of Election.

18. In Australia, the remuneration arrangements for members of the House of Representatives and the Senate are different. In the House of Representatives, the arrangement is similar to that of the UK whereby the House will be dissolved and election held after the dissolution, with Members continuing to receive remuneration until the day before the election. The arrangement in the Senate, on the other hand, is similar to that in the US where senators receive remuneration from the start of their term on 1 July until the end of their term on 30 June six years later, with no time gap between any two terms of Senate and elections held during the term.

VII. Financial Implications

19. If all Members of the first LegCo term were asked to wind up their offices at the end of the first LegCo term, winding up expenses of about \$12.5 million would be entailed. There would also be setting up costs when the Second LegCo is formed. An estimate is not possible at this stage since we do not know how many incumbent Members would seek re-election and would be returned.

20. If all Members of the first LegCo were to continue to be remunerated during the period between the first and the second LegCo terms, in accordance with the existing remuneration and reimbursement package, the maximum financial implication is estimated to be about \$32 million.

Administration Wing
Chief Secretary for Administration's Office
February 2000

Annex A

Remuneration and Reimbursement Package for Members of the Legislative Council of the Hong Kong Special Administrative Region

- (a) Monthly remuneration of \$62,590^(Note).
- (b) Monthly operating expenses reimbursement and allowance comprising
 - (i) an “accountable expenses reimbursement for office operation” of up to \$101,290; and
 - (ii) a non-accountable allowance for “entertainment and travelling expenses” of up to \$14,460. Up to 50% of this allowance can be used by Members to meet staff expenses on an accountable basis, with the Government bearing the financial responsibility of the associated severance payments in future.
- (c) Other reimbursable operating expenses comprising –
 - (i) a setting up expenses reimbursement of up to \$150,000 for each LegCo Member per LegCo term to set up their offices (up to 50% of the expenses reimbursement for re-elected Members who have claimed the expenses reimbursement in the previous LegCo term for the purposes of renovation, removal, expansion and/or setting up of additional office(s)); and
 - (ii) an “information technology and communication equipment expenses reimbursement” of up to \$100,000 for each LegCo Member per LegCo term. This expenses reimbursement is to be drawn after the reimbursement for setting up expenses has been fully utilised. Members who draw on this expenses reimbursement within the first Special Administrative Region (SAR) LegCo term and who are re-elected in the second LegCo term will not be entitled to a fresh provision in the second LegCo term. They will only be eligible to

^(Note) **LegCo Members who also sit on the Executive Council will receive two-thirds of the salary components of the LegCo remuneration package. For Members who also serve on the District Councils, they receive the LegCo remuneration package in full (including the expenses reimbursements) with two-thirds of the honorarium for the other tier of representative government.**

draw on the unexpended portion under their entitlement during the first SAR LegCo term. All Members will be eligible to the full entitlement in the third term and thereafter.

- (d) Winding up expenses reimbursement comprising two parts –
- (i) a fixed amount equivalent to the “accountable expenses reimbursement for office operation” i.e. \$101,290, payable on a reimbursement basis, of which \$10,000 may be claimed against certified claims of expenses incurred, to enable Members to cover expenses incurred when they cease to be Members of the legislature, either because they decide not to stand for re-election or for reasons beyond their control such as death, serious injury, defeat in an election or the dissolution of the legislature; and
 - (ii) a separate amount with no pre-set ceiling, payable on the basis of the actual severance payment that needs to be paid to staff employed using the “accountable expenses reimbursement for office operation” and up to 50% of the allowance for “entertainment and travelling expenses”, and in accordance with the provisions of the Employment Ordinance. LegCo Members are eligible to compensate their staff who have worked for them for less than two years on a pro-rata basis at the rate of two-thirds of the employees’ last month’s salary for each year of service if Members have to cease office for reasons over which they have no control.
- (e) The LegCo President is entitled to a monthly remuneration of \$125,180, an annual entertainment expenses reimbursement of up to \$173,660 and the operating expenses reimbursements as other LegCo Members receive. The President’s Deputy, i.e. Chairman of the House Committee, is entitled to a monthly remuneration of \$93,890 and the operating expenses reimbursements as other LegCo Members receive.

The amounts under item (a), (b), (d)(i) above, the monthly remuneration and the annual entertainment expenses reimbursement of the LegCo President, and the monthly remuneration of the President’s Deputy are annually adjusted in October in accordance with the movement of the Consumer Price Index (C).

Arrangements on Remuneration for Members of the Legislature Practised in Overseas Countries

<u>Country</u>	Timing for holding election/ Period between terms	Period within which Members of the legislature receive remuneration
United States of America	The election will be held before the end of terms of office of the Congress. There is normally no time gap between two terms. In the rare circumstances where a time gap does exist, it will only last for a few days.	Members of Congress are remunerated in accordance with their relevant terms of office.
Singapore	The parliamentary election will only be held after the end of an elected term. The period between the end of an elected term and the election for the new term may extend from one to two months.	Parliament members are only entitled to remuneration within their relevant terms of office. Outgoing members do not enjoy any form of remuneration during the period between the end of their term and the next election.
United Kingdom	The parliament will be dissolved before the election for the parliament is held.	Members of parliament will continue to receive the salary and office cost allowance up to the election day. However, they will not receive transportation allowance for travelling between their constituencies and London during the period.
Canada	The parliament will be dissolved before the election is held.	Members of parliament will continue to receive remuneration up to the day before the Day of Election.

<u>Country</u>	Timing for holding election/ Period between terms	Period within which Members of the legislature receive remuneration
Australia	<p>House of Representatives: The House of Representatives will be dissolved and election will be held after the dissolution.</p> <p>Senate: The election for Senate will be held within one year before the places of the retiring Senators become vacant. There is no time gap between terms of Senate (the term of Senate starts on 1 July and ends on 30 June six years later).</p>	<p>House of Representatives: Members of the House of Representatives will continue to receive remuneration during the period between the dissolution of the House and the day before the election. Members of the new House will start to receive remuneration on the election day.</p> <p>Senate: Senators are remunerated in accordance with their relevant terms of office.</p>