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**Paper for the Bills Committee on
Public Officers Pay Adjustment Bill**

Follow-up to seventh meeting on 25 June 2002

Proposed definition of "civil servant"

This paper sets out Legal Adviser's view on the Administration's proposed definition of "civil servant" as presented to the Bills Committee at its meeting held on 25 June 2002 vide the Administration's paper (File reference: LC Paper No. CB (1) 2121/01-02(01)). The proposed definition is introduced in the interest of clarity.

The proposed definition of "civil servant"

2. The Administration's proposed definition reads as follows:

""civil servant" means a person employed by the Government on civil service terms of appointment to a civil service rank;"

The proposed definition would only achieve the purpose of clarifying the meaning of the term if the main characteristics provided in it are concepts that are reasonably clear and certain in their meanings or can be translated into or related to something reasonably identifiable at the time of enactment of the Bill; and if the definition cannot be interpreted to include persons not intended to be covered.

3. The main characteristics of the term "civil servant" as provided in the proposed definition are:

- (a) the "civil servant" is a person;
- (b) he is employed by the Government;
- (c) the employment is on civil service terms of appointment; and
- (d) he is employed to work in a civil service rank.

4. According to Paragraph 2 of the Administration's paper, "there are many different sets of civil service terms of appointment" as defined in the Civil Service Regulations and that the relevant terms of appointment are "clearly set out in the offer of appointment". This statement suggests that in order to determine whether a person is or is not employed on civil service terms of appointment it could be done by reference to some pre-existing facts. These facts should contain evidence pertinent to prove whether an employer and employee relationship exists between the parties concerned.

5. There is no explanation in the Administration's paper as to what "civil service rank" means and how that term should be understood in the proposed definition. Upon enquiry by Legal Adviser, the Deputy Secretary for the Civil Service (2) has explained that a person employed on civil service terms of appointment by the Government, without exception, takes up a post in a specified civil service rank of a specified civil service grade. A civil service grade comprises one or more ranks each of which denotes different levels of responsibilities within the same grade. Individuals employed by the Government on terms other than civil service terms do not occupy posts in a civil service rank. According to the Deputy Secretary, although the Government does not publicly promulgate a full list of civil service ranks, the existence of a civil service rank can be readily determined with certainty by reference to official documents such as Establishment Subcommittee papers.

Conclusion

6. On the basis of the above, it seems that the proposed definition would provide a practical definition clear enough to identify the persons who are civil servants for the purposes of the Bill. However, in order not to lose the important concept that a civil servant is a public officer who, by definition, holds an office of emolument under the Government, and for the sake of consistency (see definition for "ICAC officer" in clause 2 of the Bill), Legal Adviser has suggested to the Administration that the proposed definition should contain that important concept. The Administration has agreed to the suggestion and has undertaken to suitably revise the proposed definition.

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