

**立法會**  
***Legislative Council***

LC Paper No. CB(1)122/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/13/02

**Bills Committee on  
Public Officers Pay Adjustments (2004/2005) Bill**

**Minutes of third meeting held on  
Friday, 10 October 2003 at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)  
Hon Cyd HO Sau-lan  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon LEE Cheuk-yan  
Hon NG Leung-sing, JP  
Hon Margaret NG  
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon CHEUNG Man-kwong  
Hon HUI Cheung-ching, JP  
Hon Bernard CHAN, JP  
Hon Andrew WONG Wang-fat, JP  
Hon Michael MAK Kwok-fung  
Hon LEUNG Fu-wah, MH, JP  
Hon Audrey EU Yuet-mee, SC, JP

**Members absent** : Dr Hon David CHU Yu-lin, JP  
Hon CHAN Kwok-keung, JP  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Howard YOUNG, SBS, JP  
Hon YEUNG Yiu-chung, BBS  
Hon Emily LAU Wai-hing, JP  
Hon LI Fung-ying, JP  
Dr Hon LO Wing-lok, JP

**Public officers attending** : Mrs Jessie TING, JP  
Deputy Secretary for the Civil Service (2)

Mr Ian WINGFIELD, GBS, JP  
Law Officer  
Department of Justice

Mr David MORRIS  
Deputy Law Draftsman  
Department of Justice

Mr Eddie MAK  
Principal Assistant Secretary for the Civil Service  
(Pay & Leave)

Ms Betty CHEUNG  
Senior Government Counsel  
Department of Justice

**Clerk in attendance** : Miss Salumi CHAN  
Chief Assistant Secretary (1)5

**Staff in attendance** : Miss Kitty CHENG  
Assistant Legal Adviser 5

Ms Rosalind MA  
Senior Assistant Secretary (1)8

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**I. Confirmation of minutes of meeting**  
(LC Paper No. CB(1)2528/02-03 — Minutes of second meeting held  
on 17 September 2003)

The minutes of the meeting held on 17 September 2003 were confirmed.

**II. Meeting with the Administration**

(LC Paper No. CB(1)2427/02-03(08)

— “Follow-up to the first meeting on 2 July 2003” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2427/02-03(09)

— Paper provided by the Administration on “Impact of the pay reduction decision on civil servants on delinked starting salary”

LC Paper No. CB(1)2427/02-03(10)

— Paper provided by the Administration on “Application to different categories of public officers (other than civil servants or ICAC officers)”

LC Paper No. CB(1)2552/02-03(01)

— “Follow-up to the second meeting on 17 September 2003” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2552/02-03(02)

— Letter dated 6 October 2003 from the Administration with the following papers:

— Annex A: Proposed Committee Stage Amendments to Clause 14 and Clause 15

— Annex B: Judicial Reviews on the Public Officers Pay Adjustment Ordinance (Cap. 574)

LC Paper No. CB(1)2552/02-03(03)

— Paper prepared by the Assistant Legal Adviser in response to the Administration’s paper on “Judicial Reviews on the Public Officers Pay Adjustment Ordinance (Cap. 574)”

- Appendix to LC Paper No. CB(1)2116/02-03(01) — Judgement handed down by the Court of First Instance on 10 June 2003 on two applications for judicial review against the Public Officers Pay Adjustment Ordinance (Cap. 574)
- LC Paper No. CB(1)2455/02-03(01) — Response of the Administration to the written submission from Hong Kong Bar Association
- LC Paper No. CB(1)17/03-04(01) — Submission dated 6 October 2003 from the Hong Kong Bar Association on LC Paper No. CB(1)2455/02-03(01))

2. The Bills Committee noted the following submission tabled at the meeting:

- Submission dated 6 October 2003 from the Hong Kong Bar Association on the paper on “Response of the Administration to the written submission from Hong Kong Bar Association (LC Paper No. CB(1)2455/02-03(01))”.

*(Post-meeting note: The submission tabled at the meeting was issued to members vide LC Paper No. CB(1)55/03-04 on 10 October 2003.)*

3. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

Admin 4. At the request of the Bills Committee, the Administration agreed to take the following actions:

- (a) In examining the need for the Government to implement civil service pay reduction through legislation and the feasibility of implementing pay reduction through alternative means, a member pointed out that in respect of civil service pay increase in previous years, the Administration had sought the approval of the Finance Committee (FC) for the pay increase. In response to the member, the Administration advised that the Government could not implement a civil service pay reduction with certainty solely by seeking the approval of FC as such an approach did not address the issue that the employment arrangements between the

Government and the majority of serving civil servants did not contain an express provision authorizing the Government to reduce pay. To facilitate the Bills Committee's consideration of the issue, the Administration was requested to provide a paper to explain the mechanism for the Administration to seek FC's approval for civil service pay adjustment, and whether the FC's approval had legal effect and legislative effect in the case of pay increase and in the case of pay reduction. The Administration was also requested to make reference to the functions of FC as were conferred upon the committee by the Public Finance Ordinance (Cap. 2);

- (b) Regarding the complaint lodged by the Hong Kong Confederation of Trade Unions to the International Labour Organization (ILO) that the enactment of the Public Officers Pay Adjustment Ordinance (POPA Ordinance) (Cap. 574) was in violation of the International Labour Convention no. 151, the Administration was requested to brief the Bills Committee on the up-to-date progress of the case, in particular, whether the Administration had provided its response to ILO in relation to the complaint;
- (c) Regarding the Administration's proposed amendments to clauses 14 and 15, the Administration was requested to report the outcome of staff consultation to the Bills Committee at its meeting on 24 October 2003; and
- (d) Regarding the further submission dated 6 October 2003 from the Hong Kong Bar Association, the Administration was requested to provide a written response for the Bills Committee's consideration at its meeting on 24 October 2003.

#### Follow-up actions to be taken by the Assistant Legal Adviser

5. With reference to the decision of the Court of Appeal on the *Lam Yuk Ming and Others v. Attorney General* [1980] HKLR 815 (Lam Yuk Ming case) quoted in paragraph 81 of the judgment of the Court of First Instance (CFI) on the judicial reviews of the POPA Ordinance (Cap. 574), Miss Margaret NG considered that the real issue decided in the case was whether the Government's use of legislative means to change the Colonial Regulations could override the employment contracts of civil servants, but not that whether the Government had power to reduce pay by legislation. Miss NG suggested and members agreed that the Assistant Legal Adviser (ALA) be invited to consider whether that was the case.

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6. ALA was also requested to examine the proposed Committee Stage Amendments to clauses 14 and 15 provided by the Administration at Annex A to its letter dated 6 October 2003 (LC Paper No. CB(1)2552/02-03(02)) and advise the Bills

ALA5

Committee on the drafting of the proposed amendments.

Date of next meeting

7. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 24 October 2003 at 8:30 am.

**III. Any other business**

8. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1  
Legislative Council Secretariat  
22 October 2003

**Proceedings of the third meeting of the  
Bills Committee on Public Officers Pay Adjustments (2004/2005) Bill  
on Friday, 10 October 2003 at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
<b>Agenda Item I - Confirmation of minutes of meeting</b>			
000000-000326	Chairman	Confirmation of minutes of meeting on 17 September 2003	
<b>Agenda Item II - Meeting with the Administration</b>  <i>Part A: Matters arising from the first meeting on 2 July 2003</i>			
000327-001850	Chairman Administration	Briefing by the Administration on the following papers:  (a) Impact of the pay reduction decision on civil servants on delinked starting salary (LC Paper No. CB(1)2427/02-03(09))  (b) Application to different categories of public officers (other than civil servants or ICAC officers) (LC Paper No. CB(1)2427/02-03(10))	

Time	Speaker	Subject(s)	Action required
<i>Part B: Matters arising from the second meeting on 17 September 2003</i>			
001851-003120	Chairman Administration	Briefing by the Administration on the paper on “Judicial Reviews on the Public Officers Pay Adjustment Ordinance (Cap. 574)” (Annex B to LC Paper No. CB(1)2552/02-03(02))	
003121-005115	Chairman Miss Margaret NG Administration	<p>(a) Whether it was necessary for the Government to implement the civil service pay reduction in 2004 and 2005 by legislation given the court judgment on the judicial reviews against the POPA Ordinance (Cap. 574)</p> <p>(b) Whether the Government could implement civil service pay reduction through administrative means</p> <p>(c) Progress of development of an improved civil service pay adjustment mechanism</p>	
005116-005644	Chairman Assistant Legal Adviser	Briefing by the Assistant Legal Adviser on her paper prepared in response to the Administration’s paper on “Judicial Reviews on the Public Officers Pay Adjustment Ordinance (Cap. 574)” (LC Paper No. CB(1)2552/02-03(03))	



Time	Speaker	Subject(s)	Action required
005645-010753	Chairman Mr NG Leung-sing Administration	<p>(a) Reason and propriety for the Administration to undertake that during its term of office, it would not reduce the pay of civil servants who were serving immediately before 1 July 1997 below the levels as at 30 June 1997 in dollar terms</p> <p>(b) Whether the undertaking in (a) above would impose unnecessary constraints on future measures to be taken by the Administration to cut down its operating expenditure</p> <p>(LC Paper No. CB(1)2552/02-03(02))</p>	
010754-010946	Chairman Miss Margaret NG Assistant Legal Adviser	Implications of the court judgment on the Lam Yuk Ming case on the powers of the Government to amend the contracts of its employees by legislation	
010947-012142	Chairman Mr Andrew WONG Administration	<p>(a) Feasibility of implementing pay reduction through administrative means, in particular, through seeking approval of FC on the pay reduction</p> <p>(b) Whether the FC's approval had legal effect and legislative effect in</p>	Administration to provide the required information under paragraph 4(a) of the minutes

Time	Speaker	Subject(s)	Action required
		the case of pay increase and in the case of pay reduction	
012143-012708	Miss Margaret NG Assistant Legal Adviser Chairman	(a) To consider the question that the real issue decided in the Lam Yuk Ming case was whether the Government's use of legislative means to change the Colonial Regulation could override the employment contracts of civil servants, but not that whether the Government had power to reduce pay by legislation  (b) Need for the Administration to implement civil service pay reduction through legislation	Assistant Legal Adviser 5 to take follow up action as requested under paragraph 5 of the minutes
012709-013218	Mrs Selina CHOW	Supported the legislative approach for implementing the pay reduction decision with certainty, as the decision was a consensus reached between the Administration and civil service staff unions	
013219-013529	Chairman Mr Andrew WONG	Whether the FC's approval had legal effect and legislative effect in the case of pay increase and in the case of pay reduction	
013530-013937	Miss Margaret NG	(a) Disagreed that legislation was necessary for implementing pay	

Time	Speaker	Subject(s)	Action required
		<p>reduction decision with certainty</p> <p>(b) The Administration should implement pay reduction through administrative means, adhering strictly to the principle of good governance and going through reasonable procedures, including staff consultation</p>	
013938-014146	Mr LEE Cheuk-yan Administration	<p>(a) The enactment of the POPA Ordinance (Cap. 574) was in violation of the International Labour Convention no. 151</p> <p>(b) Up-to-date progress of the complaint lodged by the Hong Kong Confederation of Trade Unions to ILO on (a) above</p>	Administration to provide the required information under paragraph 4(b) of the minutes
014147-014337	Mr HUI Cheung-ching	Development of an improved civil service pay adjustment mechanism would facilitate the implementation of both upward and downward pay adjustments by administrative means	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
014338-015141	Chairman Administration	Proposed Committee Stage Amendments to Clauses 14 and 15 provided by the Administration (Annex A to LC Paper No. CB(1)2552/02-03(02))	Administration and the Assistant Legal Adviser 5 to take follow up actions as requested under paragraphs 4(c) and 6 of the minutes respectively
015142-015207	Chairman Miss Margaret NG	Further submission from the Hong Kong Bar Association (LC Paper No. CB(1)17/03-04(01))	Administration to provide response to the submission as requested under paragraph 4(d) of the minutes
015208-015320	Chairman	The Bills Committee to start clause-by-clause examination of the Bill at the next meeting	
015321-015437	Mr Andrew WONG	Functions of FC as were conferred upon the committee by the Public Finance Ordinance (Cap 2)	Administration to provide the required information under paragraph 4(a) of the minutes
015438-015458	Chairman	Date of next meeting	