

**Response of the Administration to the written submission from  
the Disciplined Services Consultative Council (Staff Side)**

The response of the Administration to the written submission from the staff side of the Disciplined Services Consultative Council (DSCC) is set out below.

**Consensus between the Administration and staff representatives**

2. In February this year, the Secretary for the Civil Service (SCS) reached a consensus proposal with staff representatives on the civil service pay adjustments that are to take effect from 1 January 2004 and 1 January 2005 respectively. SCS also reached a consensus with staff representatives that the Administration would aim to introduce legislation into the Legislative Council within 2003 to implement the pay reductions. Having considered the consensus proposal and other relevant factors, the Chief Executive in Council has decided that civil service pay should be restored to the levels as at 30 June 1997 in dollar terms by two adjustments to be implemented from 1 January 2004 and 1 January 2005 respectively. After consultation with staff representatives, including the staff side of DSCC, the Administration introduced the Public Officers Pay Adjustments (2004/2005) Bill (the Bill) into the Legislative Council on 21 May 2003 to implement the pay reduction decision.

**The need for the enactment of one-off legislation to effect the pay reductions in 2004 and 2005**

3. Although it is inherent in the established civil service pay adjustment mechanism that some of the consideration factors for determining the annual civil service pay adjustment may have a positive or negative impact on the size of the pay adjustment, the contractual employment arrangements between the Government and the vast majority of serving civil servants do not contain an express provision authorising the Government to reduce pay. Notwithstanding the consensus between the Administration and staff representatives on civil service pay reductions in 2004 and 2005, it is necessary to implement the pay reductions by way of legislation. In the context of the 2002 pay adjustment exercise, we considered that legislation was the most appropriate way to implement with certainty a justified decision on a civil service pay reduction. Accordingly, we sought the enactment of the Public Officers Pay Adjustment Ordinance (POPA Ordinance) to implement the decision to reduce civil service pay from 1 October 2002. The Court of First Instance has held the POPA Ordinance to be constitutional. We consider that legislation is again necessary for implementing the pay reductions in 2004 and

2005 with certainty.

### **The purpose of clause 14 and clause 15 of the Bill**

4. The staff side of DSCC commented that clause 14 and clause 15 of the Bill contravene the Basic Law. As a matter of constitutional principle, no legislation of Hong Kong may contravene the Basic Law. We are satisfied that the Bill, including these two provisions, are consistent with the Basic Law. Moreover, subject to minor textual amendments, each provision has its equivalent in the POPA Ordinance.

5. Clause 14 makes it clear that the current draft legislation does not mandate a statutory system for effecting future adjustments to the pay or the amounts of allowances payable to public officers after 1 January 2005. Under the provision, legislation would not be required to implement upward adjustments made after that date to the pay and the amounts of allowances payable to public officers. Without this provision, the legislation may be interpreted as specifying by statute the level of pay and allowances payable to public officers as adjusted by it, which would then continue to prevail after 1 January 2005 until amended by subsequent legislation. In such circumstance, a consequence would be that a future upward adjustment to pay and the amounts of allowances payable to public officers could only be implemented by legislation.

6. Clause 14 also underlines the one-off nature of the legislation, which caters specifically for the civil service pay adjustments that are to take effect from 1 January 2004 and 1 January 2005 respectively. As currently drafted, the provision does not itself authorise any future adjustments to the pay or the amounts of allowances payable to public officers after 1 January 2005. Any future pay adjustment would still need to be implemented in a manner that is lawful without recourse to clause 14.

7. In view of the foregoing, it is necessary to retain clause 14 in the Bill.

8. The purpose of clause 15 is to vary the contracts of employment of public officers so that the contracts expressly authorise the adjustments made by the Bill. It is necessary for the reason set out in paragraph 3 above. Clause 15 specifically refers to adjustments “made by this Ordinance” and the provision does not authorise any future adjustments after 1 January 2005.

### **The establishment of an improved civil service pay adjustment mechanism**

9. The Administration is now developing, in consultation with staff, an improved civil service pay adjustment mechanism which would comprise, among others, an effective means for implementing both upward and downward pay adjustments. We would consider, as part of that exercise, whether such means would need to be provided in law and, if so, whether

general enabling legislation would be preferable for the purpose. Our aim is to complete the exercise within 2004. Since the first-stage pay reduction as decided by the Chief Executive in Council in February 2003 is intended to take effect from 1 January 2004, it would not be possible for us to rely on any effective means that may be introduced under the improved civil service pay adjustment mechanism for implementing the pay reduction decision made in February 2003. In order not to pre-empt the outcome of the ongoing deliberations on the improved pay adjustment mechanism, we consider it appropriate to seek the enactment of a piece of one-off legislation to implement the 2004 and 2005 pay reductions.

### **Measures to tackle fiscal deficit**

10. We have noted the DSCC staff side's view on the need to consider revenue raising measures, along side measures to control government expenditure, to address the fiscal deficit.

Civil Service Bureau  
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