

**Response of the Administration to the written submission from
the Hong Kong Civil Servants General Union**

The response of the Administration to the written submission from the Hong Kong Civil Servants General Union (HKCSGU) in September 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 HKCSGU, 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. In its submission in September, the HKCSGU expressed concern that with clause 14 and clause 15 in the Bill, the Administration may further reduce the pay and allowances of civil servants at will in future. They were also concerned that the Administration might unilaterally change the employment contracts of civil servants, thus affecting the protection afforded to them under the law. In response to similar concerns expressed to us by HKCSGU at a meeting with SCS in end August 2003, we have clarified that these two provisions do not have such effect. We are satisfied that the Bill is 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 HKCSGU suggested that clause 14 should be amended by specifying that the adjustments under the legislation apply only to 2004 and 2005. This proposed amendment may be interpreted as restoring, after 2005, the level of pay and the amounts of allowances payable to public officers to the levels they were immediately before 1 January 2004. This would go against the intention of the Chief Executive in Council's decision made in February 2003.

9. 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.

Future adjustments of civil service pay

10. The HKCSGU suggested that modeled on the Judiciary’s proposals for judicial pay, legislation should be enacted to prohibit any further pay reduction for civil servants on pensionable terms. We should clarify that the proposal submitted earlier by the Chief Justice to the Administration on a new institutional structure, mechanism and methodology for the determination and revision from time to time of the pay and conditions of service for judges and judicial officers do not bear any direct relevance to civil service pay adjustment. These proposals are now being considered by the Administration and no decision has yet been taken on the matter. Insofar as civil service pay is concerned, it may be adjusted upwards or downwards under the existing pay adjustment mechanism. The Administration is now developing, in consultation with staff, including the HKCSGU, 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.

Civil Service Bureau
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