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

Purpose

This paper reports on the deliberations of the Bills Committee on Public Officers Pay Adjustments (2004/2005) Bill.

Background

2. Civil service pay adjustment is considered annually by the Administration after taking into account all relevant factors under the existing pay adjustment mechanism including: the net Pay Trend Indicators (PTIs) derived from the results of the annual Pay Trend Survey (PTS), the state of the economy of Hong Kong, budgetary considerations, changes in the cost of living, the staff sides' pay claims and civil service morale.

3. To address the public comments about the shortcomings of the existing methodology of the annual PTS and public concern about a perceived pay disparity between the civil service and the private sector, the Task Force on Review of Civil Service Pay Policy and System¹ recommended in its Phase One Final Report issued in September 2002 that priority should be given in the short term to devising a practical framework and methodology for conducting a Pay Level Survey (PLS) and to reviewing the PTS methodology, and that meanwhile, the Administration should consider the appropriate interim measures for the annual civil service pay adjustment exercise. In September 2002, the Secretary for the Civil Service (SCS) set up a working group to discuss with the staff sides of the four central consultative councils and representatives of the four major service-wide civil service unions the approach to be adopted for the handling of the 2003 civil service pay adjustment exercise.

¹ In December 2001, the Government launched a comprehensive review of civil service pay policy and system with the assistance of the Standing Commission on Civil Service Salaries and Conditions of Service, the Standing Committee on Disciplined Services Salaries and Conditions of Service and the Standing Committee on Directorate Salaries and Conditions of Service. A Task Force was subsequently set up under the three advisory bodies to take forward the review.

4. As regards budgetary considerations, given the pressing need to tackle the fiscal deficit problem, the Chief Executive (CE) announced in his 2003 Policy Address the Government's target of cutting its operating expenditure by \$20 billion to \$200 billion by 2006-07. To achieve this target, the Government sought, amongst other measures, to control its expenditure on civil service pay and personnel-related expenses.

5. On 21 February 2003, SCS reached a consensus with the staff side representatives on the pay adjustment issue. Under the consensus, the pay pertaining to each pay point on the civil service pay scales would be restored to the level it was at, in dollar terms, on 30 June 1997. For all pay points at D3 and above or equivalent, the pay reduction would be effective from 1 January 2004. For all pay points below D3 or equivalent, the pay reduction would be implemented by two adjustments of broadly equal amount from 1 January 2004 and 1 January 2005 respectively.

6. On 25 February 2003, having regard to all relevant factors set out in paragraph 2 above, the CE in Council decided that the pay pertaining to each pay point on the civil service pay scales would be restored to the level it was at, in dollar terms, on 30 June 1997, in accordance with the timetable set out in paragraph 5 above. It also decided that the Administration should aim to introduce legislation into the Legislative Council (LegCo) as soon as possible to implement the above pay reductions. In addition, as a separate exercise, the Administration should in consultation with staff develop, on the basis of the existing mechanism, an improved civil service pay adjustment mechanism which should comprise the conduct of periodic PLSs to compare civil service pay levels with those in the private sector, the conduct of annual PTSs based on an improved methodology and an effective means for implementing both upward and downward adjustments. The aim is to complete the exercise, including the conduct of a PLS, within 2004. The CE in Council also decided that no annual PTS should be conducted for 2002-2003 and 2003-2004.

7. On 8 April 2003, the CE in Council decided that the pay reduction for civil servants which were to take effect from 1 January 2004 and 1 January 2005 should not be applied to judges and judicial officers, and that staff should be consulted on the draft Public Officers Pay Adjustments (2004/2005) Bill (the Bill).

8. Following staff consultation conducted by the Administration, the CE in Council decided on 13 May 2003 that the Bill should be introduced into LegCo.

The Bill

9. The Administration introduced the Bill into LegCo on 21 May 2003. The Bill seeks to implement the civil service pay reductions which are to take effect from 1 January 2004 and 1 January 2005 respectively. The estimated full-year savings on civil service salary expenses and subsidies to subvented organisations from 2005-2006, after full implementation of the pay reductions on 1 January 2004 and 1 January 2005, is \$7.3 billion.

The Bills Committee

10. The House Committee agreed at its meeting on 23 May 2003 to form a Bills Committee to study the Bill. The Bills Committee first met on 2 July 2003 and Hon TAM Yiu-chung was elected Chairman. The membership list of the Bills Committee is in **Appendix I**.

11. The Bills Committee held a total of five meetings. It met with seven organizations including the staff sides of some of the central consultative councils and representatives of some civil service unions, and received submissions from some of them as well as from the Hong Kong Bar Association (Bar Association) and two other civil service unions. The list of the organizations concerned is in **Appendix II**.

Deliberations of the Bills Committee

12. While the Bills Committee has no objection to the Administration's decision to reduce civil service pay in accordance with the existing pay adjustment mechanism, the Bills Committee has examined the following issues:

- (a) The need for the enactment of legislation to effect the pay reductions in 2004 and 2005;
- (b) Impact of the Bill on future civil service pay adjustments;
- (c) Pay protection for civil servants serving since before 1 July 1997;
- (d) Public officers who are/are not covered by the Bill;
- (e) Exclusion of judicial officers from the application of the Bill; and
- (f) Clarity of the provisions of the Bill to reflect items (b), (d) and (e) above.

Need for enactment of legislation to effect pay reductions in 2004 and 2005

13. The Bills Committee notes that in the 2002 civil service pay adjustment exercise, some members of the Bills Committee on the Public Officers Pay Adjustment Bill have expressed their views that it is inappropriate for the Administration to legislate on a one-off basis and have urged the Administration to introduce general enabling legislation on the civil service pay adjustment mechanism, providing the legal framework for implementing upward and downward pay adjustments. Against this background, some members of the current Bills Committee query why the Administration still proposes to enact legislation on a one-off basis to implement the civil service pay reductions in 2004 and 2005. Some other members consider that as the Administration has already reached a consensus with staff sides representatives on the pay reductions in 2004 and 2005, it is not necessary to implement the pay reductions through legislative means. In this connection, the Bills Committee notes that some civil service unions object to the legislative approach adopted by the

Administration to reduce civil service pay in 2004 and 2005, while one civil service union indicates that it has no objection to the legislative approach because of the fiscal deficit and public interest considerations.

14. The Bills Committee is advised by the Administration that while it is inherent in the established civil service pay adjustment mechanism that some of the 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 authorizing the Government to reduce pay. In the context of the 2002 civil service pay adjustment exercise, the Administration considered that legislation was the most appropriate way to implement with certainty a justified decision on a civil service pay reduction. Accordingly, the Public Officers Pay Adjustment Ordinance (POPA Ordinance) (Cap. 574) was enacted to implement the decision to reduce civil service pay from 1 October 2002. 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. The Administration 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. The Administration's aim is to complete the exercise within 2004. Since the first-stage pay reduction as decided by the CE in Council in February 2003 is intended to take effect from 1 January 2004, it would not be possible to rely on any effective means that may be introduced under the improved civil service pay adjustment mechanism for implementing the pay reduction decision. In order not to pre-empt the outcome of the ongoing deliberations on the improved pay adjustment mechanism, the Administration considers it appropriate to seek the enactment of a piece of one-off legislation to implement the 2004 and 2005 pay reductions.

15. In this connection, the Bills Committee considers it essential to examine the judgement handed down by the Court of First Instance (CFI) on 10 June 2003, which ruled in favour of the Government by dismissing the two lead applications for judicial review launched against it in respect of the POPA Ordinance. The Bills Committee has examined the court's interpretation of the restriction imposed by the Basic Law on civil service pay reduction, the implications of the court judgement on civil service pay adjustments, and the need for the current Bill in the light of the court judgement.

16. The Bills Committee notes that the CFI judgment addresses specifically the lawfulness of the POPA Ordinance which concerns the civil service pay reduction that took effect on 1 October 2002. The Bills Committee notes the relevant points made in the judgment, as follows:

- (a) The CE and the Executive itself cannot, by private contract, fetter in advance their constitutional duty to exercise their powers for the purposes of good governance. The use of legislation has, prior to the transfer of sovereignty, been ruled to be a lawful means by which civil service contracts of employment may be unilaterally varied. The authority in point is *Lam Yuk Ming and Others v. Attorney*

General [1980] HKLR 815, a decision of the Court of Appeal (Paragraphs 26 and 75 in the CFI judgement);

- (b) Prior to the transfer of sovereignty, there may not in fact have been legislative steps taken to bring about a reduction in pay for all civil servants as a class but that is not to say that the power did not exist. The court is satisfied that it did exist, most certainly where, after it was calculated in accordance with well-settled mechanisms, it was imposed across the civil service (Paragraph 84 in the CFI judgement);
- (c) Article 100² of the Basic Law is transitional in nature. It is intended to ensure continuity of employment so that no public servant suffers as a consequence of the transition itself. It is not intended to inhibit the introduction of new measures for the good governance of Hong Kong. As an article of constitution, the court rules that Article 100 is not worded in such rigid terms as to direct that pay, allowances and benefits may not for any reason, in terms of specific figures, fall below those bestowed on 30 June 1997 (Paragraphs 65, 66 and 87 in the CFI judgement);
- (d) Article 103³ of the Basic Law is also essentially transitional in nature. It cannot be interpreted in such a narrow way as to inhibit all introduction of new measures for the good governance of the public service and thereby for the good governance of Hong Kong. Article 103 provides that Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service shall be maintained. The court rules that a system is defined by the fact that it consists of parts, those separate parts coordinating to make the whole. Some of those separate parts may change, or be modified and replaced, but the system may continue as before. Whether the system does continue or is materially changed so that it becomes another system is to be determined by the degree of internal change (Paragraphs 67, 68 and 70 in the CFI judgement); and

² Article 100 of the Basic Law provides: "Public servants serving in all Hong Kong government departments, including the police department, before the establishment of the Hong Kong Special Administrative Region, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favorable than before."

³ Article 103 of the Basic Law provides : "...Hong Kong's previous system of ... employment ... and management for the public service, including special bodies for their appointment, pay and conditions of service, shall be maintained..."

- (e) Article 107⁴ of the Basic Law requires the Government to strive to achieve a fiscal balance. The court is satisfied that, in enacting legislation to reduce civil service salaries on a one-off basis, the Executive and the legislature were constrained not merely by budgetary prudence but in this case, in terms of Article 107, by broad constitutional restraints (Paragraph 178 in the CFI judgement).

17. The Bills Committee notes that the CFI rules that the POPA Ordinance has not breached any individual articles of the Basic Law that were argued before it. The judgment, however, does not give any specific guidance on the permissible scope of future civil service pay adjustments or future changes to the civil service pay system, insofar as these changes apply to officers serving in the Government as on 30 June 1997. Moreover, it does not specifically deal with the question of whether legislation is necessary to implement pay reduction. However, the court is satisfied that public officers have at all time, both before and after the transfer of sovereignty, been under the legitimate risk of having their contracts of service amended by way of legislation.

18. Hon Margaret NG considers that the real issue decided in the *Lam Yuk Ming case* (paragraph 16(a) above) is not whether the Government has power to reduce pay by legislation. She queries the need for the current Bill and considers that the Administration should implement its pay reduction decision through administrative means under the existing pay adjustment mechanism. The Administration maintains its view that legislation is necessary for implementing the pay reductions with certainty. Hon Margaret NG does not accept this view.

19. In examining the need for the Administration to implement civil service pay reduction through legislation and the feasibility of implementing pay reduction through alternative means, the Bills Committee notes that in respect of a civil service pay increase in previous years, the Administration has sought the approval of the Finance Committee (FC) for the pay increase. On the question of whether the FC's approval has legal effect in the case of pay increase as well as in the case of pay reduction, the Bills Committee is advised by the Administration that in the case of a decision to increase civil service pay during the financial year, the Administration will seek FC's approval to make upward adjustments to the civil service pay scales following which the Financial Secretary will under delegated authority approve any necessary supplementary provision for individual heads of expenditure to meet any additional expenditure which may arise from the civil service pay increase in excess of the approved provision. The approval of FC in such circumstance has the legal effect of authorising additional public expenditure as a result of a civil service pay increase. In the case of a civil service pay reduction, the question of additional expenditure, and thus the need for supplementary provision, does not arise. While the Administration may seek FC's approval of the adjusted civil service pay scales in the event of a civil service pay reduction, this step in itself would not enable the Administration to implement the pay reduction with certainty. This is because while FC's approval will carry legal effect insofar as the expenditure of funds is concerned, it is not legislation

⁴ Article 107 of the Basic Law provides: "The Hong Kong Special Administrative Region shall follow the principle of keeping the expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its gross domestic product."

and it would not have the effect of authorizing the application of the adjusted pay scales to individual civil servants, which would more appropriately be achieved by means of legislation. The employment arrangements for the majority of serving civil servants, as stipulated in their letters of appointment and the Memorandum on Conditions of Service (MOCS) attached thereto, do not contain an express provision authorising the Government to reduce pay. In the absence of such an express power, the Administration considers that the most appropriate way to implement a civil service pay reduction with certainty would be by way of legislation.

Impact of the Bill on future civil service pay adjustments
(Clauses 14 and 15)

20. The Bills Committee notes that some staff representatives are very concerned about the implications of clauses 14 and 15 of the Bill and request that the two clauses be deleted or improved. Clause 14 provides that "[t]he adjustments made by this Ordinance to the pay and the amounts of any allowances payable to public officers do not prohibit any adjustment being made to the pay or the amounts of allowances after 1 January 2005". Clause 15 provides that "[t]he contracts of employment of public officers are varied so as to expressly authorize the adjustments to the pay and the amounts of the allowances made by this Ordinance". The staff representatives consider that clauses 14 and 15, as currently drafted, might have the effect of authorizing the Administration to unilaterally change the employment contracts of civil servants to further reduce civil service pay in future after the pay reductions on 1 January 2004 and 1 January 2005.

21. The Bills Committee is advised by the Administration that clause 14 seeks to reflect the policy intention that the Bill does not itself authorize adjustments to the pay or the amounts of allowances payable to public officers after 1 January 2005, and the Bill is not intended to have the effect of changing the present arrangements for implementing future adjustments to the pay or the amounts of allowances payable to public officers after 1 January 2005. Under these present arrangements, legislation is not required for effecting upward pay adjustments. However, in the absence of the clarification as proposed under clause 14, the Bill may be interpreted as specifying levels of pay and allowances payable to public officers that are to prevail until amended by subsequent legislation. As regards clause 15, it seeks to vary the contracts of employment of public officers so that the contracts expressly authorize the adjustments made by the Bill. It specifically refers to adjustments "made by this Ordinance" and the provision does not itself authorize any future adjustments after 1 January 2005.

22. To address the concern expressed by the staff representatives, the Bills Committee requests the Administration to consider whether the drafting of clauses 14 and 15 could be improved to reflect its policy intention more clearly. The Administration then proposes to dispel any doubt over "authorizing future adjustments" by adding a new subclause (2) to clause 14, and to spell out more clearly the scope of "adjustments" covered by clause 15 by amending clause 15.

23. The Bills Committee notes that the Administration has then consulted the staff sides of the four central consultative councils and the four major service-wide staff unions on its proposed amendments to clauses 14 and 15. The staff sides of two central consultative councils and one major service-wide staff union have provided their feedback. Some of them consider that the Administration should state in the Bill that the Bill is one-off in nature and will be repealed after the pay reduction has taken effect, and that the Bill is for implementing a pay reduction of 3% each for 2004 and 2005 for concerned public officers. One staff union considers that the Administration should clarify whether after the restoration of civil service pay to the 1997 levels in dollar terms, the Government would further reduce the pay and the amounts of allowances payable to pensionable civil servants if the findings of the PLS indicate that there is room for further downward adjustments.

24. The Bills Committee notes the Administration's view that notwithstanding its one-off nature, the legislation cannot be repealed after the implementation of the second-stage pay reduction which is to take effect on 1 January 2005 because the pay and the amounts of allowances payable to public officers as adjusted by the relevant provisions under the Bill shall continue to be payable to concerned public officers until they are further adjusted under the prevailing pay adjustment mechanism. If the legislation is repealed immediately after 1 January 2005, the intended effect of clause 14 as set out in paragraph 21 above would be defeated and legislation will be required for effecting any upward pay adjustments after that date.

25. On the request that the legislation should specify the reduction of civil service pay by 3% with effect from 1 January 2004 and another 3% from 1 January 2005, the Bills Committee notes that neither the decision of the CE in Council nor the consensus proposal reached between the SCS and staff representatives in February 2003 referred to any specific percentage of adjustments to individual civil service pay points. The decision of the CE in Council was to restore the pay pertaining to each pay point to the level it was at on 30 June 1997 in dollar terms. This would result in the application of different adjustment percentages for different pay points. In this connection, the Bills Committee notes the Administration's advice that taking account of the annual adjustments since 1 July 1997, the dollar value of all civil service pay points below Directorate Pay Scale (DPS) Point 3 (D3) or equivalent will in effect be reduced by around 3% from 1 January 2004 and another 3% from 1 January 2005. The 3% pay reduction is, therefore, only a rough indication of the rate of adjustment to the dollar value of each of the pay points below D3 or equivalent following the pay reduction to be effected on 1 January 2004 and 1 January 2005 respectively. For clarity and accuracy, the Administration has prescribed all the adjusted pay scales in full in Schedules 1, 3, 4 and 5 to the Bill.

26. As regards the concern about whether civil service pay will be further adjusted downwards following the PLS, the Bills Committee notes that the Administration is now in the process of drawing up a methodology for the PLS, in consultation with the Steering Committee on Civil Service Pay Adjustment Mechanism and the Consultative Group on Civil Service Pay Adjustment Mechanism. The Administration will in due course consider how the survey results should be applied to the civil service. The Bills Committee is assured by the Administration that it will, in

doing so, follow the principle of fairness, reasonableness and lawfulness. It will also take full account of staff concerns as well as the overall interests of the community as a whole.

27. In the interest of clarity, the Administration has subsequently refined its proposed amendments to clauses 14 and 15, as follows:

"14. Future adjustments

(2) For the avoidance of doubt, this Ordinance does not authorize any adjustment to the pay or the amount of an allowance payable to a public officer other than the adjustments made by sections 4 to 13."

"15. Express authority for adjustments

The contracts of employment of public officers are varied so as to expressly authorize the adjustments to the pay and the amounts of the allowances made by sections 4 to 13."

28. The Bills Committee has no objection to these revised proposed amendments.

Pay protection for civil servants serving since before 1 July 1997

29. The Bills Committee is advised by the Administration that as at 30 June 2003, there were around 150 700 civil servants who had been serving since before 1 July 1997. The Bills Committee notes that a civil service union is of the view that the pay levels of this category of civil servants should not be further reduced after the proposed pay reductions in 2004 and 2005 in view of Article 100 of the Basic Law. The Bills Committee is assured by the Administration that any future pay adjustments must be consistent with the Basic Law. As far as civil servants who were serving immediately before 1 July 1997 are concerned, it is the current Administration's policy during its term of office not to reduce their pay below the levels as at 30 June 1997 in dollar terms.

Public officers who are/are not covered by the Bill

30. The Bills Committee notes that the Bill applies to the following categories of public officers:

- (a) civil servants on civil service pay scales (clause 4);
- (b) civil servants on personal salaries (clause 5);
- (c) civil servants on Hospital Authority (HA) pay scales (clause 6);
- (d) civil servants remunerated on delinked starting salaries who are offered appointment or promoted to a basic rank on or after 26 February 2003 (clauses 3(1)(a) and 7);

- (e) Officers of the Independent Commission Against Corruption (ICAC) (clauses 8 and 9);
- (f) Certain public officers who are not civil servants or ICAC officers (clause 11); and
- (g) The Director of Audit (clause 12).

*Adjustment of pay of civil servants on civil service pay scales
(Clause 4 and Schedule 1)*

31. The Bills Committee notes that Schedule 1 to the Bill sets out the 11 sets of adjusted civil service pay scales which are to take effect on 1 January 2004 and 1 January 2005 respectively. The existing DPS contains points 9 and 10 at the top, which were previously the respective pay points for the Financial Secretary and the Chief Secretary for the Administration. The existing Directorate (Legal) Pay Scale (DLS) contains point 7 at the top, which was previously the pay point for the Secretary for Justice. The Bills Committee notes that the Administration has not included these three pay points in the DPS and the DLS set out in Schedule 1 to the Bill since no serving civil servants are remunerated at these pay points following the deletion of the relevant civil service posts offset by the creation of Principal Official posts in July 2002 with the implementation of the Accountability System. However, despite the deletion of the relevant civil service posts, the three pay points still exist on the DPS and the DLS. For the sake of completeness, the Administration proposes that these three pay points should be added back to the DPS and DLS in Schedule 1 to the Bill. The Bills Committee has no objection to the proposed amendments.

*Adjustment of pay of civil servants on personal salaries
(Clause 5 and Schedule 2)*

32. The Bills Committee notes that clause 5 provides for the adjustment of the pay of the civil servants on personal salaries as set out in Schedule 2 to the Bill. The Bills Committee is advised by the Administration that a small number of civil servants in four ranks (namely Amah II, Carpark Attendant II, Explosive Depot Attendant and Estate Assistant) are on personal salaries, which do not relate to any pay point on any of the existing civil service pay scales. Hitherto, the pay of these officers has been adjusted in accordance with the relevant adjustment percentages for the relevant civil service salary bands. In accordance with the pay reduction decision made by CE in Council on 25 February 2003, the pay of these officers should be restored to the levels they were at on 30 June 1997 in dollar terms, by two adjustments of broadly equal amount to be implemented from 1 January 2004 and 1 January 2005 respectively.

*Adjustment of the Hospital Authority pay scales applicable to civil servants serving in HA
(Clause 6 and Schedule 3)*

33. The Bills Committee notes that clause 6 provides for the adjustment of the pay of the civil servants remunerated on the HA pay scales applicable to civil servants serving in HA. On the question of whether civil servants serving in HA are paid in

accordance with the civil service pay scales or the HA pay scales, the Bills Committee is advised by the Administration that when HA was set up in 1991 to take over the management and control of all public hospital services from the then Hospital Services Department (HSD), all related departmental and common grades posts in HSD were deleted and replaced by shadow posts created in the corresponding civil service ranks to accommodate civil servants working in HA. The pay scales of these shadow posts are equivalent to the pay scales of the corresponding civil service ranks. Civil servants concerned therefore continue to be remunerated on the relevant civil service pay scales. As spelt out in the letters issued to these civil servants in 1991 on the arrangements for them to work in the HA, they would retain their civil service terms and conditions of service and be subject to all rules and regulations issued by the Government. Accordingly, their pay has all along been adjusted in line with the annual civil service pay adjustment. For the current pay adjustment exercise, their pay will be adjusted in accordance with clause 4 of the Bill.

34. The Bills Committee is also advised by the Administration that under a Shadow Promotion Scheme which was established to preserve the promotion prospects of civil servants of the departmental and common grades working in HA, further shadow posts may be created to enable civil servants selected for promotion by HA to be promoted substantively within the civil service, offset by the deletion of corresponding shadow posts in the civil service ranks the concerned civil servants were in before promotion. Civil servants promoted under the Shadow Promotion Scheme are to be remunerated on the relevant HA pay scales as specified in their promotion letters. These officers maintain their civil service status upon promotion and their pay continues to be adjusted annually in accordance with the adjustment percentages for the relevant salary bands as with other civil servants working in HA. For the current pay adjustment exercise, their pay will be adjusted in accordance with clause 6 of the Bill.

35. As regards some members' concern about the source of authority for the Government to adjust the HA pay scales applicable to civil servants serving in HA, the Bills Committee is advised by the Administration that civil servants working in HA have been advised that they would retain their civil service terms and conditions of service and be subject to all rules and regulations issued by the Government. For the current pay adjustment exercise, the CE in Council's decision to restore the pay pertaining to each pay point to the level it was at on 30 June 1997 in dollar terms will result in different adjustment percentages for different civil service pay points. The previous approach of applying a uniform adjustment percentage to all pay points in each of the three salary bands is thus not feasible. For clarity and accuracy, the Administration has set out all the civil service pay scales/ICAC pay scale as adjusted from 1 January 2004 and 1 January 2005 respectively in Schedules 1, 4 and 5 to the Bill. For the same reason, the Administration has set out in Schedule 3 the HA pay scales applicable to relevant civil servants working in HA.

*Civil servants on delinked starting salary
(Clauses 3(1)(a), 7, 10 and Schedule 4)*

36. The Bills Committee notes that the CE in Council has decided on 25 February 2003 that the pay reductions in 2004 and 2005 should apply to officers remunerated on delinked starting salaries who are offered appointment on or after 26 February 2003. In other words, the pay reductions will not apply to officers remunerated on delinked starting salaries who are offered appointment before that date.

37. In this connection, the Bills Committee is advised by the Administration that following the 1999 Review on Civil Service Starting Salaries, the starting salaries of basic ranks in the civil service have been delinked from the annual civil service pay adjustment exercise with effect from 1 April 2000 and are subject to a separate adjustment mechanism. Under the delinking arrangement, the dollar value of the starting pay points of basic ranks remains unchanged notwithstanding any adjustments made to the dollar value of the pay points on various civil service pay scales as a result of the annual pay adjustment exercises. In effect, a separate set of civil service pay scales, described as the reference pay scales, are in place for the purpose of determining the entry pay for various civil service basic ranks. The nine reference pay scales are set out in Schedule 4 to the Bill.

38. For officers remunerated on delinked starting salaries who are offered appointment before 26 February 2003, the Bills Committee notes that their MOCS provides that their delinked salary is not linked to the annual pay adjustment mechanism. These officers will not be subject to the pay reduction decision so long as they remain on that delinked starting salary. Similarly, civil servants promoted to a basic rank on a delinked starting salary before 26 February 2003 will not be subject to the pay reduction decision. The above arrangements are provided for in clause 3(1)(a) of the Bill. However, once these officers move from the reference pay scale to the relevant civil service pay scale when they qualify for an increment, which will normally be after one year's service, they will be paid at the relevant pay point as adjusted from 1 January 2004 and 1 January 2005 respectively.

39. As regards officers remunerated on delinked starting salaries who are offered appointment on or after 26 February 2003, the Bills Committee is advised by the Administration that the application of the pay reductions in 2004 and 2005 to this category of officers would avoid a situation where they are paid more than officers at equivalent pay points on the regular civil service pay scales. For example, the monthly rate of pay pertaining to MPS Point 11 is currently \$16,210 and it will be reduced to \$15,713 with effect from 1 January 2004 in accordance with the pay reduction decision. The monthly rate of pay pertaining to Reference MPS Point 11 is currently \$16,095. If that rate remained unadjusted on 1 January 2004, an officer remunerated on a starting salary at Reference MPS Point 11 would be paid more than an officer at MPS Point 11.

Application of the Bill to different categories of public officers (other than civil servants or ICAC officers)
(Clause 11)

40. The Bill Committee notes that the Bill applies to certain public officers who are not civil servants or ICAC officers (clause 11). The term "public officer" is defined under section 3 of the Interpretation and General Clauses Ordinance (Cap.1) as "any person holding an office of emolument under the Government, whether such office be permanent or temporary". On the category and number of public officers covered by clause 11, the Bills Committee is advised by the Administration that:

- (a) clause 11(1) covers the public officers whose pay is determinable in accordance with or by reference to, directly or indirectly, a point on the civil service pay scales or the ICAC pay scale (e.g. Graduate Trainees appointed by departments under the Environment, Transport and Works Bureau before 19 July 2003). There are around 150 such officers;
- (b) clause 11(2) covers the public officers whose pay is adjustable in accordance with or by reference to, directly or indirectly, adjustments to the civil service pay scales or the ICAC pay scale (e.g. Ex-Council contract staff in Food and Environmental Hygiene Department). There are around 4 300 such officers;
- (c) clause 11(3) covers the public officers whose pay is adjustable on a biennial basis in accordance with or by reference to, directly or indirectly, adjustments to the civil service pay scales (e.g. members of Auxiliary Medical Service, Auxiliary members of the Civil Aid Service and Auxiliary members of the Government Flying Service). There are around 8 100 such officers; and
- (d) clause 11(4) covers the public officers whose pay is determinable and adjustable in accordance with or by reference, directly or indirectly, a point on the civil service pay scales or the ICAC pay scale (e.g. Curriculum Officers in Education and Manpower Bureau). There are around 600 such officers.

41. As regards public officers who are not covered by clause 11 and who are outside the scope of application of the Bill, the Bills Committee is advised by the Administration that public officers whose remuneration is not determinable or adjustable in accordance with or by reference to civil service pay are not subject to the pay reduction decision. In this connection, the Administration has quoted two examples. First, the Principal Officials under the Accountability System receive a remuneration package as approved by FC of LegCo in June 2002. Their remuneration package is not linked to civil service pay. With effect from 1 April 2003, the Principal Officials have voluntarily accepted a pay reduction by 10%. Secondly, the chairmen/vice-chairmen/members as the case may be of statutory/non-statutory bodies, boards and committees (e.g. Liquor Licensing Board, Labour Advisory Board, Telecommunications (Competition Provisions) Appeal Board, Insider Dealing

Tribunal, Independent Police Complaints Council) receive remuneration (in the form of a daily/monthly rate or a fixed rate for each meeting/hearing or an annual retainer) which is not determinable or adjustable in accordance with or by reference to civil service pay.

*Adjustment of the salary of the Director of Audit
(Clause 12)*

42. The Bills Committee notes that since October 1989, the salary of the Director of Audit post has been set at the level of DPS point 6 plus a quarter of the difference in the salary level between DPS point 6 and DPS point 7, having regard to the functional responsibilities of the post and other relevant factors. Over the years, the rate of salary of the post has been adjusted in line with the annual civil service pay adjustment to the DPS of the civil service. On the need to provide specifically in the Bill for the adjustment of the salary of the Director of Audit, the Bills Committee is advised by the Administration that under section 4(A) of the Audit Ordinance (Cap.122), the CE may, from time to time, increase the rate of salary of the Director of Audit by order published in the Gazette. Legal advice sought by the Administration is that given section 4(A) of the Audit Ordinance, it is necessary to provide a statutory reduction of the salary of the Director of Audit. Clause 12 reduces the salary of the Director of Audit to the level it was at on 30 June 1997.

Comprehensiveness of the Bill

43. Some members of the Bills Committee have expressed their concern on whether the Bill is able to cover all different categories of public officers to whom the pay reduction decision applies. They suggest that the Administration should consider the need to add a provision to the Bill to cater for any omissions. The Bills Committee is assured by the Administration that the Bill is able to cover all different categories of public officers concerned, and that various bureaux and departments have been consulted before the Bill was introduced into LegCo. The Administration does not see the need to add the proposed provision which might give rise to ambiguity in the scope of application of the Bill and thus cause staff concern.

*Percentage of pay adjustments
(Schedule 6)*

44. The Bills Committee notes that Schedule 6 to the Bill sets out the adjustment percentages for different salary bands appropriate to a public officer whose pay or the amounts of allowance are adjustable in accordance with or by reference to the adjustments made in respect of the civil service pay scales or the ICAC pay scale. The Bills Committee is advised by the Administration that the adjustment rates under item 4 of both Part 1 and Part 2 of the Schedule are intended to apply to officers whose pay is below D3 or equivalent, i.e. with a monthly salary currently below \$128,365, while the adjustment rates under item 5 of the Schedule are intended to apply to officers whose pay is at D3 and above or equivalent, i.e. with a monthly salary currently at \$128,365 or above. To reflect accurately the policy intention, the Administration proposes that the first column of items 4 and 5 in both Part 1 and Part 2 of Schedule 6 be amended to read as follows:-

- "4. Monthly salary on 31 December 2003 is above \$93,025 but below \$128,365
5. Monthly salary on 31 December 2003 is \$128,365 or above"

45. The Bills Committee has no objection to this proposed amendment.

Exclusion of judicial officers from the application of the Bill
(Clause 3(1)(b))

46. The Bills Committee notes that clause 3(1)(b) of the Bill seeks to exclude judges and judicial officers from the scope of application of the legislation. Under this subclause, the legislation does not apply to the pay or allowances of:

- (a) a judicial officer holding a judicial office specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (JORCO) (Cap.92) (**Appendix III**);
- (b) a judicial officer holding a judicial office known as Senior Deputy Registrar, High Court; or
- (c) a judicial officer appointed by the Chief Justice.

Registrar of the Court of Final Appeal

47. The Bills Committee notes that the Bar Association is concerned that clause 3(1)(b), as presently drafted, does not cover the Registrar, Court of Final Appeal (CFA). To rectify the situation, the Bar Association suggests that clause 3(1)(b) of the Bill and Schedule 1 to JORCO be amended by including the Registrar, CFA. In this connection, the Bills Committee is advised by the Administration that the post of Registrar, CFA is pitched at the rank of Senior Deputy Registrar, High Court. The pay and allowances payable to Registrar, CFA are determined in accordance with the pay and allowances payable to judicial officers at the rank of Senior Deputy Registrar, High Court, and the office of Registrar, CFA is not separately identified on the Judicial Service Pay Scale. As the Bill does not apply to the office of Senior Deputy Registrar, High Court pursuant to clause 3(1)(b)(i)(B), the pay and allowances payable to the office of Registrar, CFA will not be subject to the pay reduction specified in the Bill. However, in view of the comment of the Bar Association, the Administration proposes to amend clause 3(1)(b) to include in it the office of Registrar, CFA in order to put it beyond doubt that the post is excluded from the scope of application of the Bill. As regards the Bar Association's suggestion to amend Schedule 1 to JORCO, the Civil Service Bureau has referred the suggestion to the Judiciary, which will consult the Chief Justice on the appropriate amendment.

Members of the Lands Tribunal

48. The Bills Committee also notes that the Bar Association is concerned that clause 3(1)(b), as presently drafted, may not cover members of the Lands Tribunal appointed pursuant to section 4(4) of the Lands Tribunal Ordinance (LTO) (Cap.17). While the Administration considers that members of the Lands Tribunal appointed by CE pursuant to section 4(4) of LTO are included in Schedule 1 to JORCO and hence clause 3(1)(b)(i)(A) of the Bill, the Bar Association finds this assumption less than satisfactory. Given that the relevant part of Schedule 1 to JORCO, namely "Members of the Lands Tribunal (being a member who is in the full time service of the Government)", is qualified by the words within the brackets; and that "Government" is defined in section 3 of the Interpretation and General Clauses Ordinance as the "Government of the Hong Kong Special Administrative Region (HKSAR)"; and that the Government of the HKSAR is the "executive authorities of the Region" under Article 59 of the Basic Law of the HKSAR, the Bar Association therefore finds this assumption less than satisfactory, unless all the members of the Lands Tribunal appointed under section 4(4) of LTO are in fact in the full time service of the executive authorities of the HKSAR. The Bar Association further points out that if it is the case that all the members of the Lands Tribunal appointed under section 4(4) of LTO are not only members of a judicial body (namely the Lands Tribunal), but also persons in the full time service of the executive authorities of the HKSAR, then all such members have placed themselves in a serious conflict of interest (if not having been appointed unconstitutionally in violation of the principle of separation of powers under the Basic Law of the HKSAR), since the Lands Tribunal has to, from time to time, resolve disputes between the citizen and the executive authorities of the HKSAR. If such members are appointed only as members of the judicial body known as the Lands Tribunal and are not in the service of the executive authorities of the HKSAR, then such members should not be described in Schedule 1 to JORCO as being "in the full time service of the Government". Hon Margaret NG supports the Bar Association's view.

49. The Bills Committee requests the Administration to consider the Bar Association's view. The Administration points out that clause 3(1)(b) of the Bill is intended to exclude all judicial officers, including all full-time members of the Lands Tribunal, from the scope of application of the Bill. It is the Administration's view that this intention is clearly reflected in the subclause. The Administration also clarifies that the term "Government" in "Member of the Lands Tribunal (being a member who is in the full-time service of the Government)" in Schedule 1 to JORCO was adapted from the term "Crown" following the enactment of the Adaptation of Laws (Courts and Tribunal) Ordinance (the Adaptation Ordinance) in 1998. The term "Government" should be interpreted having regard to its history and the clear intent that the Adaptation Ordinance was not intended to affect the substance of any provision. In view of the Bar Association's comments, however, the Judiciary will consult the Chief Justice on the appropriate amendment to Schedule 1 to JORCO.

50. Hon Margaret NG however does not agree that the term "Government" in "Member of the Lands Tribunal (being a member who is in the full-time service of the Government)" in Schedule 1 to JORCO should be "interpreted having regard to its history" or the "clear intent" of the Adaptation Ordinance. For the purpose of clarity, she considers that the Administration should amend clause 3(1)(b). In view of the comments from the Bar Association and Hon Margaret NG, the Administration proposes amending clause 3(1)(b) to the effect that the Bill does not apply to the pay or allowances of "any other judicial officer appointed by CE or by the Chief Justice". As all full-time members of the Lands Tribunal are appointed by CE, the proposed amendment should put it beyond any doubt that such members are covered by clause 3 and are therefore excluded from the scope of application of the legislation. The Bills Committee (including Hon Margaret NG) and the Bar Association have no objection to this proposed amendment.

Committee Stage amendments

51. A full set of the draft Committee Stage Amendments (CSAs) to be moved by the Secretary for the Civil Service is in **Appendix IV**. The Bills Committee has no objection to the draft CSAs.

Recommendation

52. The Bills Committee has no objection to the Administration's proposal that the Second Reading debate on the Bill be resumed on 10 December 2003.

Advice sought

53. Members are invited to support the recommendation of the Bills Committee in paragraph 52 above.

《公職人員薪酬調整(2004年／2005年)條例草案》委員會
Bills Committee on
Public Officers Pay Adjustments (2004/2005) Bill

委員名單
Membership List

主席 Chairman	譚耀宗議員, GBS, JP	Hon TAM Yiu-chung, GBS, JP
委員 Members	朱幼麟議員, JP 何秀蘭議員 何鍾泰議員, JP 李卓人議員 吳亮星議員, JP 吳靄儀議員 周梁淑怡議員, GBS, JP 張文光議員 許長青議員, JP 陳國強議員, JP 陳智思議員, JP 黃宏發議員, JP 曾鈺成議員, GBS, JP 楊孝華議員, SBS, JP 楊耀忠議員, BBS 劉慧卿議員, JP 李鳳英議員, JP 麥國風議員 梁富華議員, MH, JP 勞永樂議員, JP 余若薇議員, SC, JP (總數：22名委員) (Total : 22 members)	Dr Hon David CHU Yu-lin, JP 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 CHAN Kwok-keung, JP Hon Bernard CHAN, JP Hon Andrew WONG Wang-fat, 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 Hon Michael MAK Kwok-fung Hon LEUNG Fu-wah, MH, JP Dr Hon LO Wing-lok, JP Hon Audrey EU Yuet-mee, SC, JP
秘書 Clerk	陳美卿小姐	Miss Salumi CHAN
法律顧問 Legal Adviser	鄭潔儀小姐	Miss Kitty CHENG
日期 Date	2003年7月2日 2 July 2003	

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

List of organizations submitted views on the Bill

- * 1. Disciplined Services Consultative Council (Staff Side)
- * 2. Police Force Council (Staff Side)
- * 3. Hong Kong Civil Servants General Union
- * 4. Government Model Scale I Staff General Union
- * 5. Government Disciplined Services General Union
- * 6. Hong Kong Federation of Civil Service Unions
- * 7. Hong Kong Confederation of Trade Unions
- 8. Hong Kong Bar Association
- 9. Senior Non-expatriate Officers Association
- 10. Hong Kong Chinese Civil Servants' Association

Remark:

“*” denotes those organizations the representatives of which have attended a Bills Committee meeting.

Appendix III

List of Judicial Officers specified in Schedule 1 of the Judicial Officers Recommendation Commission Ordinance (Cap.92)

Chief Justice (Added 79 of 1995 s. 50)
Judge of the Court of Final Appeal (Added 79 of 1995 s. 50)
Chief Judge of the High Court (Added 121 of 1997 s. 8)
Justice of Appeal (Added 42 of 1984 s. 2)
Judge of the Court of First Instance
Recorder of the Court of First Instance (Added 80 of 1994 s. 12)
Chief District Judge (Added L.N. 7 of 1995)
District Judge
Coroner (Added 49 of 1980 s. 8)
Chief Magistrate (Added L.N. 7 of 1995)
Principal Magistrate (Added L.N. 268 of 1986)
Magistrate
Special Magistrate (Added L.N. 268 of 1986)
President, Lands Tribunal
Presiding Officer, Lands Tribunal (Added 49 of 1982 s. 18)
Member of the Lands Tribunal
(being a member who is in the full-time service of the Government) (Added 42
of 1984 s. 2. Amended 25 of 1998 s. 2)
Principal Presiding Officer, Labour Tribunal (Added L.N. 7 of 1995)
Presiding Officer, Labour Tribunal
Principal Adjudicator, Small Claims Tribunal (Added L.N. 7 of 1995)
Adjudicator, Small Claims Tribunal (Added 79 of 1975 s. 40)
Registrar of the High Court
Deputy Registrar, High Court (Added L.N. 268 of 1986)
Assistant Registrar, High Court (Added L.N. 268 of 1986)
Registrar of the District Court (Added 28 of 2000 s. 45)
Deputy Registrar, District Court (Added 28 of 2000 s. 45)
Assistant Registrar, District Court (Added 28 of 2000 s. 45)

PUBLIC OFFICERS PAY ADJUSTMENTS (2004/2005) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for
the Civil Service

<u>Clause</u>	<u>Amendment Proposed</u>
3(1)	<p>By deleting paragraph (b) and substituting -</p> <p>"(b) the pay or allowances of -</p> <p>(i) a judicial officer holding a judicial office -</p> <p>(A) specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92);</p> <p>(B) known as Senior Deputy Registrar, High Court; or</p> <p>(C) known as Registrar, Court of Final Appeal; or</p> <p>(ii) any other judicial officer appointed by the Chief Executive or by the Chief Justice."</p>
14	<p>(a) By renumbering the clause as clause 14(1).</p> <p>(b) By adding -</p> <p>"(2) For the avoidance of doubt, this Ordinance does not authorize any adjustment to the pay or the amount of an</p>

allowance payable to a public officer other than the adjustments made by sections 4 to 13."

15 By deleting "this Ordinance" and substituting "sections 4 to 13".

Schedule 1 (a) In the Directorate Pay Scale, by adding -

"10	217,400	216,650	216,650
9	205,500	204,800	204,800"

before -

"8	181,700	181,050	181,050".
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(b) In the Directorate (Legal) Pay Scale, by adding -

"7	193,745	193,050	193,050"
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before -

"6	163,205	162,650	162,650".
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Schedule 6, Part 1 (a) In item 4, by deleting "not above" and substituting "below".

(b) In item 5, by deleting "above \$128,365" and substituting "\$128,365 or above".

Schedule 6, Part 2 (a) In item 4, by deleting "not above" and substituting "below".

(b) In item 5, by deleting "above \$128,365" and substituting "\$128,365 or above".