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ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Declaration of Interests by Chief Executive and Members of Executive Council

1. **MR ALBERT HO** (in Cantonese): *President, the incumbent Chief Executive announced his resignation from DTZ on 24 November 2011 to stand in the Chief Executive election. It has recently been reported by some Australian media that a few days before his resignation took effect in December of the same year, the Chief Executive signed an agreement with UGL Limited (UGL), which was then planning to acquire DTZ, undertaking not to poach employees from or compete with DTZ as well as to act as referee and adviser to UGL, within two years after the acquisition was completed. Under the said agreement, the Chief Executive received a remuneration of £4 million in two tranches in December 2012 and December 2013 (that is, after he had taken office as the Chief Executive*

on 1 July 2012). In addition, it has been reported that the Chief Executive currently still holds shares in DTZ Japan (the Japanese branch of DTZ), and that the major shareholder of an important client of that company is also the major shareholder of a television company in Hong Kong. As such, some members of the public have queried whether there has been a conflict of interests in the vetting and approval of the applications for domestic free television programme service licences (free TV licences) on the part of the Chief Executive. In this connection, will the Government inform this Council:

- (1) *whether, under the existing mechanism for declaration of interests for the Chief Executive pursuant to Article 47 of the Basic Law, the Chief Executive is required to declare, upon assumption of office, to the Chief Justice of the Court of Final Appeal such remuneration which is receivable but has not yet been received by him under private agreements; if he is required to do so, of the relevant dates and contents of such declarations made in the past two years; if not, the reasons for that;*
- (2) *whether, under the existing mechanism for declaration of interests for Members of the Executive Council, the Chief Executive as the President of the Executive Council is required to declare at the beginning of his term of office and annually thereafter such remuneration received by him under private agreements; if he is required to do so, of the relevant dates and contents of such declarations made in the past two years; if not, the reasons for that; and*
- (3) *whether any declaration made by the Executive Council Members (including the President of the Executive Council) in the course of vetting the three applications for free TV licences in the past two years involved personal interests in that item under consideration; if so, of the details, and whether the Members concerned had withdrawn from the discussion for this reason?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, my reply to Mr Albert HO's question, after consulting the Chief Executive's Office, is as follows.

Mr C Y LEUNG was the Asia Pacific Director of DTZ before he stood for the Chief Executive election. He announced his resignation from DTZ on 24 November 2011. In view of his resignation, UGL, which was at that time acquiring DTZ, concluded with Mr LEUNG a resignation agreement on 2 December 2011. Under the agreement, UGL undertook to make payments to Mr LEUNG over a two-year period and to underwrite for DTZ the payment of outstanding agreed bonus to Mr LEUNG, subject to key personnel remaining with DTZ during the two years subsequent to Mr LEUNG's resignation. As pointed out by UGL, the agreement was simply a non-compete arrangement which was to ensure that Mr LEUNG would not move to a competitor, set up or promote any business in competition with DTZ, or poach any people from DTZ, and hence to ensure that the business retained its value after the acquisition by UGL. Such agreement was a confidential commercial arrangement and a standard business practice.

As evident from the above, the agreement and payments concerned arose from Mr LEUNG's resignation from DTZ, not any future service to be provided by him. Under the current system of declaration of interests by Members of the Executive Council, there is no requirement for Mr LEUNG to declare the said resignation agreement. Moreover, both Mr LEUNG's resignation from DTZ and conclusion of the agreement with UGL took place before he was elected as the Chief Executive, and at the material time, he had already resigned from the Executive Council.

As confirmed in UGL's public statement, Mr LEUNG has not provided any service to UGL after signing the resignation agreement.

My reply to the specific parts of the Member's question is as follows.

- (1) Article 47 of the Basic Law stipulates that the Chief Executive, on assuming office, shall declare his or her assets to the Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region (CJ), and that this declaration shall be put on record. On assuming office, the Chief Executive made such declaration to the CJ in accordance with the Basic Law. The term "assets" is not specifically defined under the Basic Law. The relevant declaration is confidential.

- (2) As President of the Executive Council, the Chief Executive observes the system of declaration of interests for the Executive Council Members, including the requirement for regular declarations. The Chief Executive has declared his registrable interests annually for public inspection. He has also made declarations on his financial interests annually on a confidential basis deposited with the Clerk to the Executive Council. As with other Executive Council Members, the Chief Executive would notify the Clerk to the Executive Council of any changes to the interests declared in accordance with the system.

Regarding the payments mentioned in the Member's question, as I have mentioned just now, there is no requirement for Mr LEUNG to declare such payments under the current system of declaration of interests by the Executive Council Members. Moreover, both Mr LEUNG's resignation from DTZ and conclusion of the agreement with UGL took place before he was elected as the Chief Executive, and at the material time, he had already resigned from the Executive Council.

Regarding DTZ shares held by the Chief Executive, the Chief Executive has transferred all his shares of DTZ Holdings Plc and its subsidiaries to a trust. The trustee is a practising accountant. The Chief Executive has declared such interests according to the system of declaration of interests by the Executive Council Members, and the relevant declaration has already been uploaded to the Executive Council website.

- (3) In line with the principle of confidentiality of the Executive Council, the Government does not disclose the content of the Executive Council discussion or the related declarations of interests. However, we would like to point out that the Government has put in place an effective system to check potential conflict of interests on the part of the Chief Executive and other Executive Council Members in dealing with the Executive Council business. The system includes the following:
- (i) the responsible bureau or department submitting an item to the Executive Council and the Clerk to the Executive Council

will, in exercising due diligence, examine whether the Chief Executive or any Executive Council Member may have an interest in the subject matter; and

- (ii) where available information shows that the Chief Executive or any Executive Council Member may have an exclusionary or declaratory interest in the matter, the Clerk to the Executive Council will, prior to the relevant Executive Council meeting, draw the Chief Executive's attention to that interest for the Chief Executive to consider whether the interest should be declared at the meeting and how the Executive Council discussion should be handled.

MR ALBERT HO (in Cantonese): *President, the Chief Secretary said in the main reply just now that the agreement signed between the Chief Executive and UGL was a resignation agreement; moreover, the agreement was concluded before the Chief Executive took office, and he had not provided any service to UGL subsequently. But regarding this resignation agreement, he had neither made any declaration to the Executive Council nor disclosed it publicly, not to mention that it is actually quite impossible to ascertain whether he has provided any service at all. I think the Chief Secretary must also admit to the hard fact that as far as its terms and conditions are concerned, the agreement is still valid. Leaving aside his obligation of not criticizing or obstructing UGL's acquisition of DTZ, the Chief Executive is still required to provide services to UGL as an adviser or referee under this agreement during its validity. His contractual obligations are still valid.*

Chief Secretary, based on your understanding of the spirit behind the relevant guidelines of the Executive Council, should Executive Council Members, particularly the Chief Executive as the President of the Executive Council, "serve two masters at the same time", that is, whether they should sit on the Executive Council while having ongoing contractual obligations? If they should not, should he have the agreement rescinded or terminated long ago so that he could state clearly that he was no longer contractually bound? If he could not rescind the agreement, is it because the sum of £4 million was a payment in arrears subject to his contractual performance? If this is not the case, why could he not terminate the said obligations?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I would like to respond to the two aspects of Mr Albert HO's question. First, as pointed out by Mr HO, under the "Additional Commitments" of the resignation agreement, Mr LEUNG had agreed to — as the agreement is in English, I will read out the original provision in English — "provide such assistance in the promotion of the UGL Group and the DTZ Group as UGL may reasonably require, including but not limited to acting as a referee and adviser from time to time". Nonetheless, I would like to draw Members' attention to the following remarks added specifically by Mr LEUNG to this provision when signing the resignation agreement, that is, "provided that such assistance does not create any conflict of interest".

As Mr LEUNG was elected as the Chief Executive in March 2012, he would not and should not provide the said assistance to UGL; and that is exactly the case. As confirmed by UGL in its statement, Mr LEUNG has not provided any service to UGL after signing the above agreement. Hence, given such circumstances, Mr LEUNG did not consider it necessary to rescind the agreement.

Second, regarding Mr HO's question about the declaration of interests by Members of the Executive Council, the Executive Council has a rigorous and effective system in this regard, specifying the registrable interests to be declared by Executive Council Members, including the President of the Executive Council, in relation to their personal interests. At present, registrable interests include items such as remunerated directorships; remunerated employments, offices, trades, profession, and so on; land and property owned. I will not read out the full list. Hence, all Executive Council Members should make declarations in accordance with these express provisions.

MR ALBERT HO (in Cantonese): *President, the Chief Secretary has not answered the core of my question, that is, as the President of the Executive Council, should the Chief Executive take up the work of the Chief Executive and the President of the Executive Council while having an ongoing commercial and contractual obligation? The obligation is to act as referee and adviser, which is specified in the contract. Is that what he should do? My focus is not about how he actually performs the said obligations.*

PRESIDENT (in Cantonese): The Chief Secretary has already answered Mr HO's question in the first part of her reply. Chief Secretary, do you have anything to add?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): I only want to reiterate that this special provision is not, as claimed by Mr HO, about services to be provided by the Chief Executive (or Mr LEUNG). As Mr LEUNG has indicated clearly, he would only provide those services provided that there was no conflict of interest. After he was elected as the Chief Executive, he clearly considered that he should not and would not provide any assistance or service to the company concerned. Hence, he did not consider it necessary to rescind the said agreement.

MS CLAUDIA MO (in Cantonese): *President, regarding this secret agreement, both the Board of DTZ and the principal bank, that is, the Royal Bank of Scotland, declared that they knew nothing about it. For the public, they have the perception that LEUNG Chun-ying has at least violated commercial integrity.*

Here is my supplementary question. LEUNG has actually received as much as £4 million, that is, some HK\$50 million, but as stated by the Chief Secretary, the term "assets" is not specifically defined under Article 47 of the Basic Law, hence this additional income amounting to as much as \$50 million is not regarded as assets, and no declaration is required. This gives people an impression that the Chief Secretary is holding a double standard in this matter. In our discussion about the constitutional reform, which provision under Article 45 of the Basic Law has mentioned or defined that civil nomination ...

PRESIDENT (in Cantonese): Ms MO, please ask your supplementary question.

MS CLAUDIA MO (in Cantonese): ... *would not be allowed? No, nothing has been said.*

PRESIDENT (in Cantonese): Please directly state your supplementary question.

MS CLAUDIA MO (in Cantonese): *By the Chief Secretary's account, does it mean that she holds a double standard in the interpretation of the Basic Law as regards the constitutional reform and the present scandal of LEUNG Chun-ying?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, before answering Ms MO's supplementary question, I must clarify two points.

She described the agreement as a secret agreement. She also said that the principal organizations involved, that is, DTZ and the Royal Bank of Scotland, were not aware of the agreement. I must clarify these two points. This is not a secret agreement, but a private business arrangement. Obviously, there is a difference between the two.

As to whether DTZ and the Royal Bank of Scotland were aware of this resignation agreement, UGL issued a statement on 9 October to clarify the matter. I will read out the relevant contents in English: "The vendor, the Royal Bank of Scotland, and their advisors were fully aware of UGL's intention to enter into an arrangement with Mr LEUNG and DTZ Holdings Plc played a significant role in initiating and negotiating those terms with Mr LEUNG."

Regarding Ms MO's question as to whether certain items of one's possession shall count as assets and hence, declaration is required, there is no such definition under the Basic Law. Notwithstanding the declaration requirements of the Executive Council Members, they are not required to declare their so-called personal assets in cash. As Members will also agree, the entire system is designed to strike a balance between personal privacy and public interests.

MS CLAUDIA MO (in Cantonese): *President, she has not answered my supplementary question, that is, which provision in the Basic Law has specifically defined civil nomination and provided that it would not be allowed?*

PRESIDENT (in Cantonese): Ms MO, your question is unrelated to the main question.

MS CLAUDIA MO (in Cantonese): *President, that is not so. What she said gave people the impression that the entire Government is holding a double standard.*

PRESIDENT (in Cantonese): Ms MO, you have expressed your views.

MR DENNIS KWOK (in Cantonese): *President, just now, the Chief Secretary mentioned in the second paragraph of the main reply that LEUNG Chun-ying resigned as Asia Pacific Director of DTZ on 24 November 2011. But there is an important point which the Chief Secretary has not mentioned in the main reply, that is, the notice issued by DTZ in the London Stock Exchange clearly stated that LEUNG Chun-ying formally resigned as Asia Pacific Director of DTZ in January 2012, and I repeat, January 2012. The original text reads as follows: "His resignation as Chairman of DTZ Asia Pacific will take effect at or before the end of January 2012." I have this document with me. If the Chief Secretary does not have a copy, I will gladly give it to her.*

President, the crux is that when LEUNG Chun-ying signed this so-called secret agreement, he was still the Asia Pacific Director of DTZ, and it was not until the following year, that is, in January 2012, that he formally left the post. In other words, when LEUNG Chun-ying signed this secret agreement, he was still an employee of DTZ and had to be subjected to the requirements under section 9 of the Prevention of Bribery Ordinance.

PRESIDENT (in Cantonese): Please ask your supplementary question.

MR DENNIS KWOK (in Cantonese): *President, my supplementary question is: Can the Chief Secretary simply tell me whether the Board of DTZ was aware of the situation when Mr LEUNG Chun-ying signed the agreement? I hope the Chief Secretary can give me a concise reply.*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I have already given a concise reply when I answered Ms MO's question.

MR DENNIS KWOK (in Cantonese): *President, the Chief Secretary has not answered my supplementary question. I asked her whether the Board of DTZ was aware of the secret agreement at the time when it was signed between LEUNG Chun-ying and UGL.*

PRESIDENT (in Cantonese): Chief Secretary, can you answer this follow up question directly?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): As I said, it has been mentioned in the statement issued by UGL that — I have already read out the original contents just now, and I repeat: "The vendor, the Royal Bank of Scotland, and their advisors were fully aware of UGL's intention to enter into an arrangement with Mr LEUNG and DTZ Holdings Plc played a significant role in initiating and negotiating those terms with Mr LEUNG." It states clearly that DTZ Holdings Plc was aware of the agreement and had played a role in negotiating the resignation agreement.

DR CHIANG LAI-WAN (in Cantonese): *President, as I see it, this matter is quite simple. Chief Secretary, as far as you know, or is there any evidence suggesting that LEUNG Chun-ying had obtained any income unlawfully prior to his assuming the post of the Chief Executive? I also hope the Chief Secretary can tell us whether there is any known case or any evidence to suggest that Mr LEUNG Chun-ying has, other than his principal job as the Chief Executive, provided any remunerated consultancy service to other enterprises or organizations over the past two years?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I cannot possibly have any idea about Mr LEUNG's personal finances. I also doubt if Mrs LEUNG has full knowledge about Mr LEUNG's financial situation. *(Laughter)*

Regarding the second part of the supplementary question, since he assumed office on 1 July 2012, the Chief Executive has been dedicated to his duties and is fully committed to the work of the Chief Executive of the Hong Kong Special Administrative Region. This is plain for all to see.

MR WU CHI-WAI (in Cantonese): *President, according to the agreement signed between LEUNG Chun-ying and UGL, LEUNG Chun-ying would receive a remuneration of £4 million if UGL's acquisition of DTZ was successful. But at that time, DTZ had evidently rejected another company's bid with an offer price £100 million higher than UGL's. Obviously, there was a conflict of interest on LEUNG Chun-ying's part as a then director of DTZ, and he had breached his fiduciary duties as a director. LEUNG Chun-ying not only questioned the ability of a state-owned enterprise in completing the relevant international transaction, but also breached his fiduciary duties as a director to protect the best interest of shareholders.*

I would like to ask the Chief Secretary: Under the integrity checking system under the civil service regulations, if a civil servant undergoing vetting is found to have breached certain commercial integrity obligations, and is suspected of putting his personal interests above the overall interest of a company, will the Government consider such offensive act acceptable?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): First of all, the sale of DTZ was decided by the Board of DTZ. Second, public officers or civil servants are of course subject to the regulation of different laws, especially the Prevention of Bribery Ordinance. However, whether a particular legislation or provision can apply to a certain case or situation, the judgment must be made on the basis of facts. Hence, regarding the particular case mentioned by Mr WU, I cannot make any comments in respect of the legal understanding, interpretation or even application of the relevant regulations.

MR WU CHI-WAI (in Cantonese): *President, I only asked the Chief Secretary whether the Government will accept a civil servant if his breach of commercial integrity has been found when undergoing integrity checking as part of the appraisal process?*

PRESIDENT (in Cantonese): Chief Secretary, do you have anything to add?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): I only want to add that we have established a stringent system on integrity checking.

PRESIDENT (in Cantonese): This Council has spent nearly 23 minutes on this question. Second question.

Measures to Enhance Food Safety

2. **MR STEVEN HO** (in Cantonese): *President, a few food safety incidents have occurred in Hong Kong recently, including one in which a chain eatery used expired meat products supplied by Shanghai Husi Food Company Limited, and another one in which many eateries and food manufacturers used substandard lard imported from Taiwan. Some members of the public have pointed out that the aforesaid chain eatery disseminated confusing information after the incident had been uncovered, and the food tracing mechanism currently in place also failed to trace the sources and distribution of the substandard lard expeditiously, thereby undermining their confidence in food safety. Such members of the public have also pointed out that while it is stipulated in the existing legislation that the Director of Food and Environmental Hygiene (DFEH) may demand food importers and distributors to submit transaction records which they are required to keep, no time limit for compliance is prescribed in the legislation and the penalty for contravention also lacks deterrent effect. In this connection, will the Government inform this Council:*

- (1) whether it will amend the existing legislation to require food importers and distributors to submit upon the authorities' request their transaction records within a specified time limit, and to increase the penalty for contravention; if it will, of the details; if not, the reasons for that;*
- (2) whether it will conduct a comprehensive review of the effectiveness of the food tracing mechanism, in particular the arrangements for information dissemination and the announcement of the list of eateries involved, so as to ensure that the mechanism can effectively help the authorities in handling food safety incidents; and*
- (3) given that the authorities have proposed to legislate to require importers and exporters of edible oils to provide official certificates issued by the place of origin of edible oils for random inspection by them, how the authorities will verify the authenticity of such certificates?*