

**Report of the
Independent Commission on
Remuneration Package and
Post-office Arrangements for the
Chief Executive of the HKSAR**

June 2005

Table of Contents

Chapter

1. Introduction

Background, Terms of Reference and Membership of the Independent Commission

Basic Principles

Practices Elsewhere and Applicability to Hong Kong

Meetings with Members of the Legislative Council and Attending RTHK Radio Programme

Meeting with Mr Tung Chee Hwa

2. Remuneration Package for the Chief Executive

Introduction

Background

Major Considerations

The Independent Commission's Proposal

Implementation Timetable

Adjustment Mechanism

Other Related Issues Considered by the Independent Commission

Chapter

3. Involvement in Political and Commercial/Professional Activities by Former Chief Executives

Introduction

Existing Arrangements Applicable to Principal Officials under the Accountability System

Major Considerations

The Independent Commission's Proposal

Enforceability of Restrictions

Applicability to Mr Tung Chee Hwa

Implementation Timetable

4. Services for Former Chief Executives

Introduction

Major Considerations

The Independent Commission's Proposal

Implementation Timetable

5. Summary of Recommendations

Remuneration Package for the Chief Executive

Involvement in Political and Commercial/Professional Activities by Former Chief Executives

Services for Former Chief Executives

Acknowledgements

CHAPTER 1: INTRODUCTION

Background, Terms of Reference and Membership of the Independent Commission

- 1.1 The Independent Commission on the Remuneration Package and Post-Office Arrangements for the Chief Executive of the HKSAR (the Independent Commission) was appointed by the HKSAR Government to consider and make recommendations on the remuneration package and post-office arrangements for the Chief Executive (CE) as well as other related matters. The term of appointment is for one year commencing on 7 April 2005. The terms of reference of the Independent Commission and its membership are at **Appendix A** and **Appendix B** respectively.
- 1.2 The Administration has requested the Independent Commission to submit recommendations to the Administration in about two month's time.
- 1.3 Since April 2005, the Independent Commission has met six times to discuss the issues concerned.
- 1.4 To gauge the views of the public on the issues under study, the Independent Commission held two meetings with Members of the Legislative Council (LegCo) and attended a phone-in programme of the Radio Television Hong Kong (RTHK).

1.5 The Independent Commission also invited Mr Tung Chee Hwa to share his views on how a former CE could continue to make a contribution to the community and the range of activities that he might find himself involved in after leaving office in his capacity as a former CE.

Basic Principles

1.6 The Independent Commission has adopted the following basic principles in its deliberation:

- (a) the Independent Commission aims at institutionalising a long-term arrangement which will be applicable to the CE of subsequent terms. The recommendations of the Independent Commission should be able to cater for different circumstances irrespective of who is appointed to the position of the CE;
- (b) the CE is the head of the HKSAR and represents the Region. He is also the head of the HKSAR Government. The new arrangements should be commensurate with his status and responsibilities as the holder of the highest public office in the HKSAR. There is also an overriding need to preserve the dignity of the office and to maintain and enhance public confidence in its integrity and credibility;

- (c) the Independent Commission seeks to balance various factors in formulating the recommendations – while it is of utmost importance from the public interest point of view to guard against conflict of interest and negative public perception, it is equally important that any measures will not place unreasonable restrictions on the basic rights of a former CE and prevent him from continuing to make a contribution to the community; and
- (d) the Independent Commission is aware of the high standards expected of the CE by the community. It will take heed of the community aspirations on the integrity of the office of the CE in drawing up the new arrangements. It will also be mindful of containing any extra costs arising from the proposals to a reasonable level. Safeguards will be put in place to ensure proper use of public resources.

Practices Elsewhere and Applicability to Hong Kong

1.7 In deliberating on the post-office restrictions and services for a former CE, the Independent Commission has considered the practices in a number of countries/territories in other parts of the world at both the national and provincial level (**Appendix C**). The Independent Commission has the following observations about the relevant practices in these countries/territories:

- (a) restrictions on political activities undertaken by former heads of government in the countries/territories¹ studied are uncommon: in the 12 countries/territories covered in the research, none imposes any restrictions on a former head of government's involvement in political activities (other than the restriction relating to the maximum duration for which a person can remain as head of government);
- (b) in five out of the above 12 countries/territories², there are no rules governing the commercial activities of former heads of government. For those with restrictions in place, they generally relate to the use of confidential information obtained while in office, appointment to or employment with private sector corporations which may place the former head of government in a position of conflict of interest, switching sides in proceedings against the government and making representations to employees of government departments. It is not common for the countries/territories to impose a sweeping restriction on the employment or commercial activities engaged by a former government head after leaving office. The only country with such a restriction is the United Kingdom. Former Prime Ministers have to seek the advice of a committee, if they

¹ The 12 countries/territories covered in the research are Australia, Belgium, Canada, Germany, Japan, New Zealand, People's Republic of China (including the Mainland provinces), United Kingdom, United States, California, New South Wales and Ontario.

² The five countries/territories are Australia, Germany, Japan, New Zealand and the United States.

wish to take up employment within two years after they left office;

- (c) post-office services and benefits for former heads of government are common in the 12 countries/territories studied. Such services and benefits include monetary benefit in the form of pension/annuity/allowance, office accommodation and staff, travelling expenses, medical and dental care, a car and driver and security protection. Monetary benefit is provided in all of the countries/territories studied and in 11 of them, such benefit is provided on a life-long basis; and
- (d) provision of post-office services and benefits to former heads of government in most countries/territories under study is not subject to any pre-conditions. In all the countries/territories, commercial/professional activities undertaken by former heads of government after leaving office do not affect their entitlement to such services and benefits. None of the countries/territories covered by our research has guidelines or regulations governing the provision of such services and benefits.

1.8 While acknowledging that the information gathered provided a useful reference, the Independent Commission considers that any arrangements relating to the CE must have regard to Hong Kong's unique political, social and economic setting and that the practices in other parts of the world are not necessarily applicable to Hong Kong.

Meeting with Members of the Legislative Council and Attending RTHK Radio Programme

1.9 The Independent Commission understands that the remuneration package and post-office arrangements for the CE is a matter of public interest. To ensure that its proposals will receive broad-based support within the community, the Independent Commission has followed closely the public views expressed through media reports/commentaries and meetings of the relevant committee/panel of the LegCo.

1.10 The Independent Commission has placed particular importance on the views of the LegCo Members. Despite working under a very tight schedule, the Independent Commission invited all Members of the LegCo to meetings on 14 and 21 May 2005 to exchange views on the issues involved. A total of nine LegCo members attended the meetings. Some LegCo Members have also provided the Independent Commission with written submissions. Their submissions are attached at **Appendix D**.

1.11 The views of the Members of the LegCo are summarised below.

(a) Remuneration package for the CE

- (i) Most of the LegCo Members who have commented on the issue hold the view that the structure of the remuneration package for the CE should be aligned with that for the

Principal Officials (POs) under the Accountability System and that there should be a relativity of no more than 25% between the remuneration of the CE and the pay of the Chief Secretary for the Administration (CS). Most of them consider that the new package should be implemented as from July 2007.

(b) CE's involvement in political and commercial/professional activities after leaving office

- (i) Most of the LegCo Members who have expressed views on the issue consider it unnecessary to impose any restrictions on a former CE's involvement in political and charitable activities after leaving office.
- (ii) In respect of commercial/professional activities, LegCo Members generally share the view that a CE should be subject to post-office restrictions which are more stringent than that for POs and senior civil servants. However, their views on the duration and form of such restrictions are diverse.
- (iii) The majority of the LegCo Members are of the view that the new arrangements should apply to Mr Tung Chee Hwa.

(c) Services for former CE

- (i) Members' views on whether a former CE should be provided with services such as office accommodation and administrative support are also diverse. While some of them consider it appropriate to provide such services to meet a former CE's needs, others consider it unnecessary to provide a former CE with these services. Some suggest that the services should be provided for a specific duration.
- (ii) Most of the Members agree to provide a former CE with security protection on a need basis.

1.12 The Chairman and a member of the Independent Commission attended a RTHK phone-in programme on 19 May 2005 to listen to public views on the three issues. Ten calls from members of the public were taken and they expressed the following views:

- (a) most of them agreed that the CE's remuneration package should be re-structured, and that the new package should be implemented in July 2007 when the third term CE assumed office. However, two callers were of the view that the new package should be implemented as soon as possible;
- (b) some callers pointed out that the Administration should ensure that the public resources would be put to their proper use when contemplating the services to be provided to a former CE; and

- (c) others suggested that the services for a former CE should be provided to meet his needs and a mechanism should be put in place to review the provision of services from time to time.

Meeting with Mr Tung Chee Hwa

1.13 At the invitation of the Independent Commission, Mr Tung shared with members his views that a former CE could continue to serve the country and Hong Kong after leaving office. In essence, a former CE could, if called upon to do so:

- (a) make use of the international connections acquired while in office and play an “ambassadorial role” for the country and Hong Kong;
- (b) play a bridging role between Hong Kong and the Mainland on matters affecting the two places; and
- (c) engage in other activities with the aim of promoting the interests of the local community.

CHAPTER 2: REMUNERATION PACKAGE FOR THE CHIEF EXECUTIVE

Introduction

2.1 The Independent Commission will consider in this chapter whether the remuneration package for the CE should be re-structured, and if so, how.

Background

2.2 The existing remuneration package for the CE comprises the following elements:

- (a) a monthly remuneration of \$244,565;
- (b) a gratuity at the rate of 25% of total basic remuneration which is equivalent to \$61,141 per month;
- (c) an annual passage allowance, currently at the rate of \$39,630 per person, for CE and his spouse;
- (d) vacation leave of 55.5 days, subject to a maximum accumulation limit of 365 days;

- (e) a non-accountable entertainment allowance, currently at the rate of \$729,600 per annum or \$60,800 per month;
- (f) housing, free of any rental charge; and
- (g) free medical and dental care for the CE and his spouse, on the same basis as that provided to civil servants.

2.3 The present package for the CE was modelled on that for previous Governors, which was based on a pay differential of 25% over the salary of the CS, and the concept of a long annual leave and passage provision for returning to the United Kingdom for vacation. The arrangement, which has not been reviewed in the past eight years, is no longer appropriate for a locally elected CE holding the most important public office in Hong Kong.

2.4 Furthermore, the package is out of tune with that of the POs holding political appointment in terms of remuneration structure and cash value. Had the former CE not decided for personal reasons not to make any change to the remuneration package of CE, the package would have been brought in line with that of the politically appointed POs when the Accountability System was introduced in July 2002. As a consequence, the take-home pay of the CE (\$2.93 million per annum) is now lower than the total cash package of the CS (\$3.57 million per annum) or the Financial Secretary (FS) (\$3.45 million per annum), although the total cost of the CE's package to the public purse is higher.

Major Considerations

2.5 In reviewing the remuneration package for the CE, the Independent Commission considers that the following factors are relevant.

- (a) Level of remuneration for the CE should be commensurate with his responsibilities and status as the head of the HKSAR

The CE occupies a special constitutional position. Under the Basic Law, the CE is the head of the HKSAR and represents the Region. As the head of the HKSAR Government, the CE exercises a wide range of powers and functions, which include implementing the Basic Law and other laws applicable to HKSAR, signing bills and budgets passed by the LegCo and promulgating laws, deciding on government policies, recommending POs for appointment or removal by the Central People's Government (CPG), appointing or removing judges and public officers, implementing CPG's directives, conducting external affairs, and approving the introduction of motions regarding revenues or expenditure to LegCo. The CE should be properly remunerated for the breadth and complexity of the responsibilities vested in him.

- (b) Remuneration package for the CE should be re-structured and aligned with that of the politically appointed POs, and bear a suitable relativity with the pay of the CS

The CE and the POs under the Accountability System are accountable for the governance of Hong Kong. Under the Accountability System, the politically appointed POs are remunerated with a total cash package¹. The Independent Commission considers that there is a case to bring the remuneration structure of the CE in line with that of his POs, such that the new package will be a monthly pay with relevant benefits encashed. Such an arrangement is simple in structure and easy to administer. The level of remuneration for the CE can then be determined by applying a suitable differential over the pay of the CS to acknowledge the difference in ranking and scope of responsibilities.

¹ The current monthly remuneration of the three Secretaries of Departments and 11 Directors of Bureaux are as follows:

	<u>monthly cash remuneration</u>
Chief Secretary for Administration	\$297,510 (FS's salary x 103.5%)
Financial Secretary (FS)	\$287,450 (SJ's salary x 103.5%)
Secretary for Justice (SJ)	\$277,730 (DoB's salary x 103.5%)
Directors of Bureaux (DoB)	\$268,305

- (c) Although appointment to the office of the CE will bring other rewards, the remuneration should be reasonably competitive so as not to deter suitable candidates from seeking the office of CE

It should be recognised that the position of the CE demands unreserved commitment on the part of the incumbent, that the post holder will have no other income from employment during the tenure of service, and that he is likely to have personal or family financial obligations that must be maintained. Accordingly, the remuneration package should be set at a reasonable and realistic level to enable competent candidates to seek that public office, though the Independent Commission accepts that tracking private sector pay levels is not entirely practical in Hong Kong.

The Independent Commission's Proposal

2.6 In the light of the considerations set out in paragraph 2.5 above, the Independent Commission recommends that the remuneration package for the CE should be re-structured to meet the following conditions:

- (a) to alter the remuneration structure of the CE to an all-inclusive cash package similar to that of the POs;

- (b) to eliminate the existing anomaly that CE is having a lower take-home pay than the total cash package of CS or FS and reinstate a suitable relativity between the remuneration of the CE and that of CS;
- (c) to rationalise the impractical non-cash elements in the existing package (by, for example, reducing the annual leave of 55.5 days to 22 working days, which is identical to the existing entitlement of POs); and
- (d) in implementing (a), (b) and (c) above, to cap the total cost to the taxpayer at the same level as the existing package (excluding entertainment allowance, housing as well as medical and dental care).

2.7 Capping the total cost of the new package at the existing level will yield annual cash remuneration of about \$4,017,100² or \$334,758 per month. This works out to be about 12.5% more than the existing annual pay of CS of \$3,570,120. The CE will no longer be entitled to gratuity or passage allowance.

² Total cost to the taxpayer of CE's existing remuneration package:

	<u>Amount per annum</u>
Cash remuneration	\$2,934,780
Gratuity	\$733,695
Leave passage allowance	\$79,260
Encashed value of 33.5 days' untaken leave	\$269,357
(assuming that the annual taken leave is 22 days and that the outstanding leave balance of 33.5 days will be encashed)	\$4,017,092

2.8 The Independent Commission has reviewed the pay differentials between a head of government and the next in rank in other parts of the world and agreed that a differential of 12.5% is reasonable³. The Independent Commission has noted that this represents a sizable reduction from the traditional differential of 25%, but found that the extent of downward adjustment is comparable to the arrangements for politically appointed POs — when the Accountability System was introduced in July 2002, the pay differentials between CS, FS, Secretary for Justice (SJ) and Directors of Bureau (DoB) were reduced almost by half⁴.

2.9 Although annual remuneration of about \$4.02 million may be on the high side in terms of international standards, it is a well known fact that the general remuneration level of the most senior executives in major Hong Kong corporations is consistently higher than that of other advanced economies. Within the Hong Kong community, the remuneration of the CE can hardly be regarded as competitive when compared with key positions in the private sector. It is also lower than the pay of senior executives in some public sector bodies.

³ The pay differentials between a head of government and next in rank in other parts of the world are: Australia (26.8%), Canada (35.1%), Finland (20.0%), Japan (36.9%), Macau (33.3%), Netherlands (0%), New Zealand (67.6%), Singapore (12.4%), United Kingdom (37.9%), and United States (114.7%).

⁴

<u>Pay differential between</u>	<u>Before July 2002</u>	<u>After July 2002</u>
CS and FS	5.8%	3.5%
FS and SJ	6.1%	3.5%
SJ and DoB	6.6%	3.5%

2.10 On the above basis, the new remuneration package for the CE will be as follows:

- (a) cash remuneration of \$4,017,100 per annum (or \$334,758 per month);
- (b) annual leave of 22 working days, subject to a maximum accumulation limit of 22 days. Any accumulated leave will be forfeited upon leaving office;
- (c) a non-accountable entertainment allowance at the existing rate to be subject to annual adjustment in accordance with established practice;
- (d) official residence, free of rental charge; and
- (e) medical and dental care on the same basis as before.

2.11 The Independent Commission has noted the recent discussion within the community on the provision of an official residence for the new CE. While reaffirming the existing policy that the CE should be provided with an official residence, free of rental charge, the Independent Commission recommends that the Administration should identify a suitable location as a permanent official residence for the future CEs. If, for whatever reasons, the CE chooses not to move into the official residence provided by the Government, he will have to meet his accommodation needs out of his own means.

Implementation Timetable

2.12 The Independent Commission has heard arguments both in favour of and against revising the remuneration package in the middle of the current five-year term. Those in favour have argued that the former CE made his own decision to keep his remuneration package unchanged, and his successor does not necessarily have to follow. If the remuneration structure of the CE is now rationalised, they see no reason why the implementation has to be deferred. Those against an immediate change have pointed out that the new CE returned through the by-election will only serve out the remainder of his predecessor's five-year term, and therefore the existing remuneration package should continue to apply.

2.13 The Independent Commission considers that the arguments of both sides are finely balanced. However, taking a broad perspective, the Independent Commission considers that there is a stronger case for implementing the new package in July 2007. This is in line with the established practice in LegCo that any substantial change to the remuneration package for LegCo Members proposed in one LegCo term will only be implemented in the following term. The Independent Commission, therefore, recommends that the existing remuneration package should continue to be applicable to the new CE returned through the by-election, and that the new package will be implemented for the third term CE in July 2007.

Adjustment Mechanism

2.14 In April 2001 and October 2002, the remuneration of the CE was adjusted by +4.99% and -4.42% respectively in line with the civil service pay. In April 2003, the CE and his politically appointed POs decided voluntarily to reduce their pay by 10% to demonstrate the willingness of the political tier to share hard times with the community.

2.15 The new remuneration package of the CE is not linked with civil service salaries. As a matter of policy, it will no longer be appropriate for CE's remuneration to be adjusted in line with the civil service pay, although the Independent Commission appreciates that at times the CE and his POs may take a political decision to reduce their remuneration in accordance with the civil service pay cut as was the case in April 2003. To ensure that the remuneration of the CE reflects the prevailing political and economic realities, the Independent Commission recommends that the remuneration of the CE (and the POs under the Accountability System) should be reviewed from time to time by an independent body.

Other Related Issues Considered by the Independent Commission

2.16 The Independent Commission has considered the merits of including a pension element in the remuneration package of the CE. Arguments in favour of providing life-long pension benefits include the

consideration that we should make provision for a former CE to enable him to maintain a standard of living commensurate with his status as a former CE. The practice of providing some form of monetary benefits to former heads of government is common in the countries/territories covered in our survey. These countries/territories are characterised by the fact that their heads of government are mostly professional politicians. Hong Kong, however, has a rather different political setting. The CE may be drawn from more diverse backgrounds.

2.17 Having regard to the fact that the idea of providing the CE with pension benefits will unlikely be supported by the community, the Independent Commission considers that the issue should be revisited in future.

CHAPTER 3: INVOLVEMENT IN POLITICAL AND COMMERCIAL/PROFESSIONAL ACTIVITIES BY FORMER CHIEF EXECUTIVES

Introduction

3.1 Concern has been expressed that in view of the importance of the position of the CE, the considerable influence and authority he commands and the range of sensitive information which comes to his knowledge while in office, arrangements should be put in place to avoid any conflict of interest after he leaves office. The Independent Commission will explore in this chapter whether rules should be drawn up to regulate a former CE's participation in political or commercial/professional activities after leaving office.

Existing Arrangements Applicable to Principal Officials under the Accountability System

3.2 The CE and the POs under the Accountability System are the governing team of the HKSAR Government. At present, within one year after stepping down from office, politically appointed POs are required to seek the advice of the Advisory Committee on Post-office Employment for Principal Officials before commencing any employment, becoming a director or a partner in any business or profession, or starting any business or profession on his own account or with others. The advice of the Advisory Committee will be made

public. In respect of participation in political activities after leaving office, POs are not subject to any restrictions.

Major Considerations

3.3 In determining whether any rules applicable to former CEs should be drawn up, the Independent Commission considers that the following factors are relevant.

- (a) Maintenance of public trust in the integrity of the most important public office in Hong Kong is an overriding necessity

The CE is returned by election and appointed by the CPG to be the head of the HKSAR and the HKSAR Government respectively. The Independent Commission has no reason to believe that the integrity of the person who has been entrusted with the important task of governing Hong Kong will be in doubt after leaving office. Nor does the Independent Commission see any reason to question the ability and judgement of a former CE in steering himself away from any possible conflict of interest situations after leaving office.

Notwithstanding the above, the Independent Commission considers that there is a need for an open and transparent system to be put in place to prevent any perception of possible conflict of interest arising from the post-office activities of a former CE. There are two major considerations here. Firstly, members of

the public have a general expectation that former CEs should continue to uphold the highest standards after leaving office. The Independent Commission believes that both the public and a former CE would welcome a clearly stated set of rules on what is and is not acceptable. Secondly, the office of the CE is the highest public office in HKSAR. There is an overriding need to preserve public trust and to uphold the dignity and integrity of the office.

- (b) Post-office restrictions for former CEs should be more stringent than those currently applicable to POs under the Accountability System

The Independent Commission considers this approach justifiable, as a CE is in charge of the full range of policy issues and has wider access to sensitive or confidential information while in office. His powers and responsibilities exceed those of his POs. A more restrictive approach will also meet the public expectation that former CEs should be subject to greater post-office employment controls in terms of duration and stringency.

- (c) Post-office restrictions should be premised on the principle of reasonableness and fairness

The Independent Commission seeks to balance various factors including:

- (i) the overriding need to maintain and enhance public confidence in the office of the CE;
- (ii) the standards of conduct expected of a former CE by the community;
- (iii) a former CE's continued contribution in terms of his expertise and experience to the community; and
- (iv) a former CE's right to pursue employment after leaving office.

Applying these factors, the Independent Commission considers that a former CE should not be restricted for an exceedingly long period from taking up employment after leaving office. Nor should he be prevented from continuing to make a contribution to the country and Hong Kong, if there is clearly no conflict of interest.

There have been suggestions that a former CE should be barred permanently from returning to the private sector. The Independent Commission has reservations about this blanket restriction for two main reasons. Firstly, such a stringent requirement will have the adverse effect of deterring suitable candidates with a private sector background from seeking the office of the CE. A CE may not wish to retire permanently after leaving office, and may wish to return to the private sector, or to

resume the practice of a profession. Secondly, the acceptance of employment outside the Government by a former CE and the public interest are not necessarily in conflict with each other. Indeed, given the knowledge and experience of a former CE, it would be in Hong Kong's interests if he could continue to contribute to the community after leaving office provided that there is no conflict of interest.

The Independent Commission's Proposal

Political activities

3.4 Under Article 46 of the Basic Law, a CE may serve for not more than two consecutive terms. Noting that none of the countries/territories covered in our study imposes any restrictions on the political activities of former heads of government, the Independent Commission recommends that restrictions other than the above Basic Law requirement will not be appropriate or necessary.

Commercial/professional activities

3.5 The Independent Commission has reviewed the practices elsewhere in the world. Of the seven countries/territories with some form of restrictions imposed on the commercial/professional activities of their former heads of government, most have adopted the approach of listing out the prohibited activities. The scope of these prohibited activities is relatively limited, covering, in the main, switching sides in litigation against the government, giving advice to outsiders using official

information and making representations to government departments. In the case of the United Kingdom, any post-office employment plan of its Prime Minister has to be vetted by an advisory committee. This is, in fact, the approach currently adopted for the POs under the Accountability System.

3.6 While agreeing that the above mentioned areas such as the interests of the Government in court proceedings and the disclosure of official information should be protected, the Independent Commission does not favour the listing approach adopted by the majority of the countries/territories under study, as it will be impossible to provide an exhaustive list of prohibited acts that can keep up with the constantly changing environment of Hong Kong.

3.7 Two major concerns have been repeatedly raised in the Independent Commission's consultation with the LegCo Members: to guard against the improper use of official information and to formulate rules on the post-office employment activities. The Independent Commission agrees that its recommendations should aim at preventing any perception of conflict of interest in these two areas.

Use of Official Information

3.8 On the use of official information, the Independent Commission recommends that the following restrictions applicable to a former CE should be drawn up :

- (a) a former CE shall not use his former official position or any information made available to him during his term of office that has not yet been known to the public to benefit himself or any other persons, financially or otherwise. Further, he shall not use information which he has access to while in office to provide advice to any person if this will give the recipient an unfair advantage over any other persons; and
- (b) except with the prior approval of the Government, a former CE shall not use, divulge or communicate to any person any classified or market sensitive information, if that has come to his knowledge during his term of office. The form of disclosure includes publication in a speech, lecture, radio or television broadcast or in the press or in book form or otherwise.

Post-office Employment Rules: Three-Year Control Period

3.9 Having regard to the existing post-office employment restrictions applicable to POs and senior civil servants¹, the Independent Commission recommends that a former CE should be subject to a control period of three years after leaving office.

¹ Under the existing post-service employment control system for civil servants, officers on pensionable terms are subject to the prior permission requirement for two years after retirement. For officers at AOSGA1(D8), the control period is three years. Currently, there is also a minimum sanitisation period of six months for pensionable directorate officers during which paid employment is prohibited except in cases where there are very special considerations and there is clearly no conflict of interest. The period may be shortened or lengthened depending on the circumstances of individual cases. The policy on post-service employment of former directorate civil servants is currently under review.

- (a) During the first year, a former CE will be barred from commencing any employment (either on a full-time or part-time basis), becoming a director or a partner in any business or profession, or starting any business or profession on his own account or with others. The exemptions are set out in paragraph 3.10 below.
- (b) In the following two years, other than the exemptions set out in paragraph 3.10 below, a former CE is required to seek advice from an advisory committee before re-engaging in employment, business or professional activities.

3.10 During the first year after leaving office, a former CE shall undergo an automatic waiting period which is effectively an outright ban against employment or commercial activities. The proposed waiting period recognises the special position of the CE within the Government, the breadth of his powers and responsibilities and the range of official information he has had access to. There will be blanket exemption for him to accept, on a full-time or part-time basis, appointments in non-commercial organisations as follows:

- (a) appointments made by the Central Authorities or the HKSAR Government;
- (b) appointments to charitable, academic or other non-profit-making organisations; and

- (c) appointments to non-commercial regional or international organisations.

The Independent Commission considers that whether or not to accept an appointment in a non-commercial organisation should be primarily a matter left to the good sense of a former CE. If in doubt or if there is any other appointment not covered in the above categories which is considered to be in the public interest, he should consult an advisory committee. He is required to inform the incumbent Administration of any such appointment, remunerated or otherwise, accepted and undertaken by him. A register will be kept and made available for public inspection upon request.

3.11 During the second and third years, apart from the appointments in non-commercial organisations set out in paragraph 3.10 above, a former CE may also commence any employment, become a director or a partner in any business or profession, or start any business or profession on his own account or with others after seeking the advice of an advisory committee. In vetting the post-office employment plans of a former CE, the advisory committee shall have regard to two broad principles: to prevent conflict of interest and to avoid negative public perception. The Independent Commission further recommends to the advisory committee that a former CE shall not:

- (a) enter into employment with or become a director of companies with land or property development being part of their business

or companies awarded with franchises approved by the Executive Council during the CE's tenure;

- (b) represent any person in connection with any claim, action, demand, proceedings, transaction or negotiation against or with the Government;
- (c) engage in any lobbying activities on matters relating to the Government;
- (d) enter into employment with or become a director of companies which are involved in on-going litigation with the Government; and
- (e) be involved personally in the bidding for any government land, property, projects, contracts or franchises.

3.12 The Independent Commission recommends that a body similar to the existing Advisory Committee on Post-office Employment for Principal Officials should be set up to take on the task of advising former CEs on their plans to take up employment, and advising them on the suitability of appointments in non-commercial organisations mentioned in paragraph 3.10 above. Such a committee will operate on an advisory basis. The Independent Commission further recommends that the advice given by the advisory committee should be published, for example, as soon as a former CE has taken up a private sector job which the advisory committee has scrutinised. There would be no

announcement if a former CE decided not to go ahead with his plans after hearing the views of the advisory committee: to do otherwise would be an unjustified intrusion into personal privacy. The Independent Commission believes that an open and transparent advisory system while protecting the personal privacy of a former CE will allow interchange of talents between the public and private sectors. At the same time, it will secure public confidence and CE's compliance.

3.13 In terms of the duration and stringency of controls, the above proposed three-year employment rule surpasses the arrangements in those countries/territories which have adopted similar post-office employment restrictions for its former government leaders. In the United Kingdom, for example, the Prime Minister is required to seek advice from an advisory committee before accepting any outside employment within two years after leaving office and he is normally expected not to take up employment within the first three months of this two-year period.

3.14 The Independent Commission has taken note of the argument that a restrictive system will discourage talented people from seeking the office of CE. In the commercial world, restrictions on freedom of future employment are normally complemented by monetary compensation, but the Independent Commission acknowledges that this is unlikely to be accepted by members of the public in the case of the CE. We consider, however, that the risk of discouraging candidates from seeking appointment to the CE's office will be

minimal if the restrictions are limited to a reasonable period and the rules are sensibly applied. The Independent Commission also shares the view that there should be as much interchange of talent as possible between the public and private sectors. We believe that a flexible system, which curtails employment plans only when they might threaten public confidence, would not prevent those benefits from being realised.

Enforceability of Restrictions

3.15 The Independent Commission recommends that a written undertaking in the form of an agreement under seal signed by each CE on taking up office², signifying agreement to abide by the restrictions would be adequate to protect the public interest. Such an agreement will be enforceable. Nonetheless, the Independent Commission considers it inconceivable that a person who has been elected to the highest public office in Hong Kong would breach his undertaking. In case of non-compliance, though, the Independent Commission believes that in a city as open and transparent as Hong Kong, the real and more effective sanction rests with the revelation of the wrongdoing, which would be swiftly followed by public censure through the news media and the LegCo. Public censure would be a powerful incentive for a former CE to abide by the agreement.

² This should be arranged as soon as possible for the CE to be returned through the by-election.

Applicability to Mr Tung Chee Hwa

3.16 The Independent Commission welcomes the pledge made by Mr Tung Chee Hwa in public that he would not engage in any activities that would give rise to any possible conflict of interest after leaving office. However, the Independent Commission considers that a written undertaking signed by Mr Tung that he will abide by the proposed post-office restrictions will provide further reassurance to the public. The Independent Commission recommends that Mr Tung should be consulted on whether or not he is prepared to sign such an undertaking.

Implementation Timetable

3.17 The Independent Commission recommends that the above restrictions on post-office employment should be applied to subsequent CEs, including the CE to be returned through the by-election following Mr Tung's resignation.

CHAPTER 4: SERVICES FOR FORMER CHIEF EXECUTIVES

Introduction

4.1 Before reunification, the Governors would leave Hong Kong and return to the United Kingdom after completing their tenure of service with the then Hong Kong Government. The question of making post-office arrangements for them did not arise. Now that the CE is a locally elected person, there is a need to consider whether provisions should be made for a former CE after leaving office. The Independent Commission will consider the issue in this chapter.

Major Considerations

4.2 In considering whether post-office services should be provided to a former CE, the Independent Commission considers that the following factors are relevant.

- (a) After leaving office, a former CE should be accorded the status and respect that a person who has held the most important public position in Hong Kong deserves

There is currently no provision for a former CE in recognition of the services he has rendered to Hong Kong during his tenure. Post-office arrangements, in the form of monetary benefit, office

accommodation and staff, travelling expenses, medical and dental care, car and driver as well as security protection, are common for former government leaders in other parts of the world as our research findings show. While the scope and duration of the services to be provided to a former CE can be matters for further discussion, the Independent Commission considers that as a matter of principle, a former CE should be accorded certain core post-office services. This is a sign of respect. It ensures that a former CE maintains the status that a person who has held such a high office deserves. It has been argued that if a former CE accepts an appointment of the Central Authorities as in the case of Mr Tung, such an appointment will bring with it a number of privileges. However, the Independent Commission is of the view that a former CE, as a former leader of Hong Kong, is fully entitled to receive formal recognition and respect in the Special Administrative Region he has governed.

- (b) Provision of services for a former CE has the additional advantage of helping him play the role of an “ambassador” for the benefit of the country and Hong Kong if called upon to do so

A former CE has considerable experience in public life. It is in the public interest that he can move into other areas of public life and continue to contribute to the well-being of Hong Kong after leaving office. Furthermore, a CE while in Government has the opportunity to develop contacts with heads of government in other places through Hong Kong’s active

participation in international organisations and conferences. Hong Kong has maintained its fine tradition of being an outward-looking international city. After reunification, the CE continues to participate in international conferences such as APEC and WTO alongside with other heads of state. This arrangement is unique to Hong Kong as a Special Administrative Region of the country and is not available to other Mainland provinces.

The Independent Commission shares the view that it will work to the advantage of the country and Hong Kong, if a former CE can make use of his international connections to undertake an “ambassadorial role” in enhancing the profile of the country and Hong Kong, and promoting our interests nationally and internationally. If a former CE is called upon to engage in these “ambassadorial activities”, the Independent Commission considers that the Government should provide him with the necessary support services.

- (c) Other former heads of government at the provincial level elsewhere in the world are provided with services after leaving office

Taking heed of the public views that the treatment for former heads of national government should not be taken as the benchmark in deciding what sort of post-office services should be made available to a former CE, the Independent Commission

has looked into the practices of selected governments at the sub-national level. The Independent Commission notes that generally speaking, a former provincial governor in the Mainland is provided with a pension, security protection, medical care, a car, office accommodation and a secretary on a life-long basis. We also note that in New South Wales, Australia, a former provincial head is entitled to a pension, a car with driver, air travel allowances as well as office accommodation and administrative support on a life-long basis.

- (d) Package of services for a former CE has to be publicly defensible, and that public money has to be well spent

The Independent Commission shares the view that public resources should be expended in a prudent and reasonable manner. The package of services to be made available for a former CE should only contain the elements that are commensurate with his status as a former head of a Special Administrative Region and that are necessary to support him to discharge his “ambassadorial duties”. A proper mechanism should also be instituted to provide clearly under what circumstances a particular service should be provided or otherwise.

The Independent Commission's Proposal

4.3 In the light of the considerations in paragraph 4.2 above, the Independent Commission recommends that the following package of post-office services should be made available to a former CE:

- (a) office accommodation and administrative support (paragraphs 4.4 to 4.6 below);
- (b) protocol and related arrangements (paragraph 4.8 below);
- (c) security protection, including bodyguard services and security system for his residence (paragraph 4.9 below);
- (d) a car with driver (paragraph 4.7 below); and
- (e) medical and dental care (paragraph 4.10 below).

Details about each of the above services are provided in the ensuing paragraphs.

Office Accommodation and Administrative Support

4.4 The Independent Commission envisages that a former CE will be called upon to undertake two main types of “ambassadorial activities”:

- (a) to meet the Mainland and overseas dignitaries visiting Hong Kong; and
- (b) to address the Mainland or international audiences through conferences, speaking engagements or other fora.

As for (a) above, every year, many prominent officials from the Mainland and overseas visit or transit through Hong Kong. Most of these Mainland and foreign visitors will welcome a meeting with a former CE. As for (b) above, a former CE can complement the promotional efforts of the incumbent Administration to travel outside Hong Kong under government sponsorship to renew and strengthen our links with the Mainland provinces and our international partners.

4.5 The functions envisaged above are promotional and protocol-related in nature. The Independent Commission recommends that an office in existing government premises be set up to serve former CEs and to enable them to discharge these protocol functions. The office will not be established to serve one particular former CE, but should be available for any former CE who is prepared to play an “ambassadorial role” for Hong Kong.

4.6 The office will provide a proper place for receiving foreign, Mainland and local dignitaries. A former CE can give local and overseas media interviews at the office and deal with paper work. The office should provide secretarial and administrative support for making suitable public and social appointments, and handling correspondence.

Car with Driver

4.7 The Independent Commission further recommends that the office should provide a car with driver for serving a former CE. The service will be withdrawn if a former CE has taken up gainful employment in the private sector or has re-engaged in commercial activities, which provides a car with chauffeur services.

Protocol and Related Arrangements

4.8 The Independent Commission recommends that a former CE should be accorded the formal title “Former Chief Executive of the HKSAR” (香港特別行政區前任行政長官) with the tenure forming part of the formal title, abbreviated as “Former CE” (前任行政長官) with the years of tenure. He can use the HKSAR emblem on business cards, stationery, websites and other articles in accordance with the law and established government guidelines. The Independent Commission further recommends that a former CE and his spouse be granted access to VIP facilities at the Hong Kong International Airport. These protocol arrangements will be made available to a former CE on a life-long basis, regardless of whether he has taken up gainful employment in the private sector or has re-engaged in commercial activities.

Security Protection

4.9 As a former CE will likely continue to maintain a public profile after leaving office due to his former official position, the Independent Commission considers that the Government should safeguard the personal security of a former CE. The Independent Commission recommends that a former CE should be provided with security protection. The provision and continuation of bodyguard services and residential security system will be subject to the security assessment by the Police from time to time, regardless of whether a former CE has taken up gainful employment in the private sector or has re-engaged in commercial activities.

Medical and Dental Care

4.10 The Independent Commission recommends that a former CE should be offered medical and dental care on a life-long basis in line with that provided to civil service pensioners¹.

Implementation Timetable

4.11 The Independent Commission recommends that the above services should be made available to a former CE upon departure from office, regardless of the duration of his service with the Government unless he has been removed by the Central People's Government pursuant to an

¹ The coverage should include a former CE, his spouse and children who are unmarried and under the age of 21.

impeachment motion passed by LegCo. The above services are not available to a former acting CE.

4.12 The Independent Commission recommends that the above package of post-office services should be put in place as soon as practicable. Noting that the provision of post-office services for former CEs is a new requirement, the Independent Commission considers that there is a need to keep under review the appropriateness of the package, in the light of the practical experience gained over the next few years. The Independent Commission further recommends that this aspect could be reviewed by an independent body when the other issues relating to the office of the CE, such as the remuneration package, are due for review in future.

CHAPTER 5: SUMMARY OF RECOMMENDATIONS

Remuneration Package for the Chief Executive

5.1 The Independent Commission recommends that the remuneration package for the CE should be re-designed to:

- (a) alter the remuneration structure of the CE to an all-inclusive cash package similar to that of the POs;
- (b) eliminate the existing anomaly that CE is having a lower take-home pay than the total cash package of CS or FS and reinstate a suitable relativity between the remuneration of the CE and that of CS;
- (c) rationalise the impractical non-cash elements in the existing package (by, for example, reducing the annual leave of 55.5 days to 22 working days, which is identical to the existing entitlement of POs); and
- (d) in implementing (a), (b) and (c) above, cap the total cost to the taxpayer at the same level as the existing package (excluding entertainment allowance, housing as well as medical and dental care) (paragraph 2.6).

- 5.2 The Independent Commission recommends that the differential between CE's remuneration and the pay of the CS should be 12.5% (paragraphs 2.7 and 2.8).
- 5.3 The Independent Commission recommends that the new remuneration package for the CE should comprise the following components:
- (a) cash remuneration of \$4,017,100 per annum (or \$334,758 per month);
 - (b) annual leave of 22 working days, subject to a maximum accumulation limit of 22 days. Any accumulated leave will be forfeited upon leaving office;
 - (c) a non-accountable entertainment allowance at the existing rate to be subject to annual adjustment in accordance with established practice;
 - (d) official residence, free of rental charge; and
 - (e) medical and dental care on the same basis as before (paragraph 2.10).
- 5.4 The Independent Commission recommends that the Administration should identify a suitable location as a permanent official residence for the future CEs. If, for whatever reasons, the CE chooses not to move

into the official residence provided by the Government, he will have to meet his accommodation needs out of his own means (paragraph 2.11).

5.5 The Independent Commission recommends that the existing remuneration package will continue to be applicable to the new CE returned through the by-election, and that the new package will be implemented for the third term CE in July 2007 (paragraph 2.13).

5.6 The Independent Commission recommends that the remuneration of the CE (and the POs under the Accountability System) should be reviewed from time to time by an independent body (paragraph 2.15).

Involvement in Political and Commercial/Professional Activities by Former Chief Executives

5.7 In respect of participation in political activities, the Independent Commission recommends that restrictions other than Article 46 of the Basic Law will not be appropriate or necessary (paragraph 3.4).

5.8 On the use of official information, the Independent Commission recommends that the following restrictions applicable to a former CE should be drawn up :

- (a) a former CE shall not use his former official position or any information made available to him during his term of office that has not yet been known to the public to benefit himself or any other persons, financially or otherwise. Further, he shall not use

information which he has access to while in office to provide advice to any person if this will give the recipient an unfair advantage over any other persons; and

- (b) except with the prior approval of the Government, a former CE shall not use, divulge or communicate to any person any classified or market sensitive information, if that has come to his knowledge during his term of office. The form of disclosure includes publication in a speech, lecture, radio or television broadcast or in the press or in book form or otherwise (paragraph 3.8).

5.9 In respect of participation in commercial/professional activities, the Independent Commission recommends that a former CE should be subject to a control period of three years after leaving office.

- (a) During the first year, a former CE will be barred from commencing any employment (either on a full-time or part-time basis), becoming a director or a partner in any business or profession, or starting any business or profession on his own account or with others. The exemptions are set out in paragraph 5.10 below.
- (b) In the following two years, other than the exemptions set out in paragraph 5.10 below, a former CE is required to seek advice from an advisory committee before re-engaging in employment, business or professional activities (paragraph 3.9).

5.10 During the first year after leaving office, the Independent Commission recommends that there will be blanket exemption for a former CE to accept, on a full-time or part-time basis, appointments in non-commercial organisations as follows:

- (a) appointments made by the Central Authorities or the HKSAR Government;
- (b) appointments to charitable, academic or other non-profit-making organisations; and
- (c) appointments to non-commercial regional or international organisations.

If in doubt or if there is any other appointment not covered in the above categories which is considered to be in the public interest, the Independent Commission recommends that a former CE should consult an advisory committee. He is required to inform the incumbent Administration of any such appointment, remunerated or otherwise, accepted and undertaken by him. A register will be kept and made available for public inspection upon request (paragraph 3.10).

5.11 During the second and third years, the Independent Commission recommends that apart from the appointments in non-commercial organisations, a former CE may also commence any employment, become a director or a partner in any business or profession, or start any business or profession on his own account or with others after

seeking the advice of an advisory committee. In vetting the post-office employment plans of a former CE, the advisory committee shall have regard to two broad principles: to prevent conflict of interest and to avoid negative public perception. The Independent Commission further recommends to the advisory committee that a former CE shall not:

- (a) enter into employment with or become a director of companies with land or property development being part of their business or companies awarded with franchises approved by the Executive Council during the CE's tenure;
- (b) represent any person in connection with any claim, action, demand, proceedings, transaction or negotiation against or with the Government;
- (c) engage in any lobbying activities on matters relating to the Government;
- (d) enter into employment with or become a director of companies which are involved in on-going litigation with the Government; and
- (e) be involved personally in the bidding for any government land, property, projects, contracts or franchises (paragraph 3.11).

- 5.12 The Independent Commission recommends that a body similar to the existing Advisory Committee on Post-office Employment for Principal Officials should be set up to take on the task of advising former CEs on their plans to take up employment, and advising them on the suitability of appointments in non-commercial organisations. Such a committee will operate on an advisory basis. The Independent Commission further recommends that the advice given by the advisory committee should be published (paragraph 3.12).
- 5.13 The Independent Commission recommends that a written undertaking in the form of an agreement under seal signed by each CE on taking up office, signifying agreement to abide by the restrictions would be adequate to protect the public interest. The Independent Commission believes that in a city as open and transparent as Hong Kong, the real and more effective sanction rests with the revelation of the wrongdoing, which would be swiftly followed by public censure through the news media and the LegCo (paragraph 3.15).
- 5.14 The Independent Commission considers that a written undertaking signed by Mr Tung Chee Hwa that he will abide by the proposed post-office restrictions will provide further reassurance to the public. The Independent Commission recommends that Mr Tung should be consulted on whether or not he is prepared to sign such an undertaking. (paragraph 3.16).
- 5.15 The Independent Commission recommends that the above restrictions on post-office employment should be applied to subsequent CEs,

including the CE to be returned through the by-election (paragraph 3.17).

Services for Former Chief Executives

5.16 The Independent Commission recommends that the following package of post-office services should be made available to a former CE:

- (a) office accommodation and administrative support;
- (b) protocol and related arrangements;
- (c) security protection, including bodyguard services and security system for his residence;
- (d) a car with driver; and
- (e) medical and dental care (paragraph 4.3).

5.17 The Independent Commission recommends that an office in existing government premises be set up to serve former CEs and to enable them to discharge promotional and protocol-related functions. The office will not be established to serve one particular former CE, but should be available for any former CE who is prepared to play an “ambassadorial role” for Hong Kong. The office should provide secretarial and administrative support for making suitable public and social appointments, and handling correspondence (paragraphs 4.5 and 4.6).

- 5.18 The Independent Commission recommends that the office should provide a car with driver for serving a former CE. This service will be withdrawn if a former CE has taken up gainful employment in the private sector or has re-engaged in commercial activities, which provides a car with chauffeur services (paragraph 4.7).
- 5.19 The Independent Commission recommends that a former CE should be accorded the formal title “Former Chief Executive of the HKSAR” (香港特別行政區前任行政長官) with the tenure forming part of the formal title, abbreviated as “Former CE” (前任行政長官) with the years of tenure. The Independent Commission further recommends that a former CE and his spouse be granted access to VIP facilities at the Hong Kong International Airport. These protocol arrangements will be made available to a former CE on a life-long basis, regardless of whether he has taken up gainful employment in the private sector or has re-engaged in commercial activities (paragraph 4.8).
- 5.20 The Independent Commission recommends that a former CE should be provided with security protection. The provision and continuation of bodyguard services and residential security system will be subject to the security assessment by the Police from time to time, regardless of whether a former CE has taken up gainful employment in the private sector or has re-engaged in commercial activities (paragraph 4.9).
- 5.21 The Independent Commission recommends that a former CE should be offered medical and dental care on a life-long basis in line with that provided to civil service pensioners (paragraph 4.10).

5.22 The Independent Commission recommends that the post-office services should be made available to a former CE upon departure from office, regardless of the duration of his service with the Government unless he has been removed by the Central People's Government pursuant to an impeachment motion passed by LegCo. The services are not available to a former acting CE (paragraph 4.11).

5.23 The Independent Commission recommends that the package of post-office services should be put in place as soon as practicable. The Independent Commission further recommends that there is a need to keep under review the appropriateness of the package, and that this aspect could be reviewed by an independent body when the other issues relating to the office of the CE, such as the remuneration package, are due for review in future (paragraph 4.12).

Acknowledgements

5.24 We would like to record our thanks to those LegCo Members who took the time and trouble to make written submissions to the Independent Commission. We thank in particular those who, in addition, met us to present their views. We are also thankful for the interest shown by members of the public on the issues involved. We were fortunate to receive views from a wide range of well-informed people whose insights have proved extremely valuable.

**Independent Commission on Remuneration Package
and Post-office Arrangements for the Chief Executive of the
HKSAR**

Terms of Reference

The terms of reference of the Independent Commission are to consider and make recommendations on :

- (a) whether the remuneration package for the Chief Executive (CE) should be re-designed such that it would be commensurate with his responsibilities and status as the head of the HKSAR;
- (b) whether rules should be drawn up and applicable to a former CE in respect of his participation in political or commercial/professional activities after leaving office;
- (c) whether provisions should be made for a former CE in respect of personal security, office accommodation and administrative support, as well as medical and dental care for him and his spouse; and
- (d) any matter relating to the above issues which the Administration may refer to the Independent Commission from time to time.

**Independent Commission on Remuneration Package
and Post-office Arrangements for the Chief Executive of the
HKSAR**

Membership

Chairman

The Honourable WONG Po-yan, GBM, JP

Members

Mr Vincent CHENG Hoi-chuen, JP

Dr Thomas LEUNG Kwok-fai, BBS, JP

Professor LIU Pak-wai, SBS

Secretary

Ms Doris HO , Principal Assistant Secretary for Constitutional Affairs

Arrangements for Former Heads of Government in Places Outside Hong Kong

The information below is primarily culled from the Internet, or obtained from contacts in the governments of the countries/territories concerned, or extracted from the research reports compiled by the LegCo Secretariat.

Australia

2. In Australia, the head of government is the Prime Minister.
3. After the Prime Minister leaves office, there are no specific rules relating to his involvement in political or commercial activities. It is not uncommon for a former Prime Minister to remain active politically, even after he has ceased to be the Prime Minister.
4. A former Prime Minister enjoys various benefits. The precise provisions vary depending on whether he remains in Parliament or not.
5. If he remains in Parliament, he will be provided with:
 - (a) office accommodation, unlimited free postage for official purposes within the city in which he resides, telephone and facsimile machines as well as a mobile phone;
 - (b) two staff members;
 - (c) unrestricted first class air travel within Australia for non-commercial purposes, for himself and his spouse;

- (d) travelling allowance when travelling in the capacity of a former Prime Minister;
- (e) unrestricted economy class air travel within Australia for his staff for official purposes;
- (f) a car (plus driver) and access to pool transport in Australia; and
- (g) security protection.

6. If a former Prime Minister is no longer a member of Parliament, he will be provided with:

- (a) a pension;
- (b) office accommodation, unlimited free postage for official purposes within the city in which he resides, telephone and facsimile machines as well as a mobile phone;
- (c) two staff members;
- (d) 40 domestic return trips per year (first class on scheduled services) within Australia for non-commercial purposes, for himself and his spouse;
- (e) travelling expenses up to A\$15,000 per annum for his staff for official purposes;
- (f) choice between allocated car (plus driver) in capital city of home State or a private-plated car. Elsewhere in Australia, access to pool transport; and

(g) security protection.

Belgium

7. In Belgium, the head of government is the Prime Minister.

8. There are no rules governing a former Prime Minister's involvement in political activities.

9. In the first year after ceasing to be a Member of Parliament, a former Prime Minister is not allowed to take up a civil service post for which a salary is paid.

10. As regards commercial activities, a former Prime Minister is not allowed :

(a) to mention his former title in deeds or publications related to profit-making companies; and

(b) to become a member of the supervisory board or the management of a company which, through his intervention, was declared State contractor when he was in office.

The restriction in (b) above is valid for five years following the end of his term.

11. The benefits that a former Prime Minister enjoys after leaving office include:

(a) a pension;

(b) two staff members (granted at the end of a legislature or if the whole government resigns);

(c) medical benefits; and

(d) security protection.

Canada

12. In Canada, the head of government is the Prime Minister.

13. There are no rules governing a former Prime Minister's involvement in political activities.

14. As regards commercial activities, the restrictions applicable to all public office holders, including the Prime Minister, are set out in the "Conflict of Interest and Post-Employment Code for Public Office Holders". Before assuming office, all public office holders, including all Ministers (and the Prime Minister), are required to sign a document certifying that, as a condition of their holding office, they will observe the Code.

15. Section 28 of the Code sets out the obligations applicable prior to leaving office:

(a) a public office holder is not allowed to be influenced in the pursuit of his official duties and responsibilities by plans for or offers of outside employment;

(b) a public office holder has to disclose in writing to the Ethics Counsellor (appointed by the Prime Minister to, inter alia, administer the Conflict of Interest and Post-Employment Code for Public Office Holders and investigate allegations against Ministers' conflict of interest) all firm offers of outside

employment that could place him in a position of conflict of interest; and

- (c) a public office holder who accepts an offer of outside employment is required to immediately disclose in writing to the Ethics Counsellor as well as to his superior the acceptance of the offer.

16. Sections 29 and 30 of the Code set out the restrictions applicable after leaving office:

- (a) a public office holder is permanently barred from switching sides in any on-going proceedings to which the Government is a party and in respect of which the person acted for or advised the Government;
- (b) a public office holder is permanently barred from giving advice to one's client using information not available to the public concerning the programmes or policies of the departments with which he was employed, or with which he had a direct and substantial relationship during the year preceding departure from office;
- (c) within two years after leaving office, a Minister is not allowed to accept appointment to a board of directors of, or employment with, an entity with which he had direct and significant official dealings in the year preceding departure from office; and
- (d) within two years after leaving office, a Minister is not allowed to make representations to any department with which he had

direct and significant dealings in the year preceding departure from office.

17. In addition, section 33 of the Code stipulates that incumbent public office holders who have official dealings with former public office holders are required to report those dealings to the Ethics Counsellor.

18. After leaving office, a former Prime Minister enjoys similar benefits as other Members of Parliament. These include:

- (a) a pension provided for under the MP Pension plan;
- (b) medical and dental benefits provided for under the MP Pension plan; and
- (c) life insurance provided for under the MP Pension plan.

Germany

19. In Germany, the head of government is the Federal Chancellor.

20. There are no rules governing a former Chancellor's involvement in political or commercial activities. The only restriction, which is set out in section 6 of the Federal Ministers' Act, is the requirement to observe "professional secrecy", i.e. restriction from disclosing confidential information known to him as a result of his holding the office of the Chancellor.

21. After leaving office, a former Chancellor is entitled to the following benefits:

- (a) a pension;

- (b) office accommodation;
- (c) one staff member;
- (d) a car (plus driver); and
- (e) medical benefit.

Japan

22. In Japan, the head of government is the Prime Minister.

23. There are no rules governing a former Prime Minister's involvement in political or commercial activities.

24. After leaving office, a former Prime Minister is entitled to the following benefits:

- (a) a one-off retirement allowance which would be given provided that he has been Prime Minister for at least six months; and
- (b) security protection.

New Zealand

25. In New Zealand, the head of government is the Prime Minister.

26. There are no rules governing a former Prime Minister's involvement in political or commercial activities.

27. After leaving office, a former Prime Minister is entitled to the following benefits:

- (a) an annuity;
- (b) reimbursement for international air travel, for non-commercial purposes, for himself and his spouse;
- (c) free domestic air travel on the same basis as a current Member of Parliament, for himself and his spouse;
- (d) free domestic road and rail travel for himself and his spouse;
and
- (e) a car.

People's Republic of China

28. In China, the head of government is the Premier.

29. The Constitution of PRC provides that the Premier shall serve no more than two consecutive terms. There is no information indicating that in general, the involvement of former heads of government in political activities is subject to restrictions.

30. The general practice in China is that very senior officials (including the Premier) are accorded, upon retirement, more or less the same treatment they enjoyed whilst in office. The following would most likely form part of the package :

- (a) salary/ pension;
- (b) medical benefits including nursing;
- (c) car;

(d) security protection;

(e) secretary; and

(f) office.

31. There is no time limit on the above package. The above post-office treatments is also applicable in general to former Governors of provinces.

United Kingdom

32. In the United Kingdom, the head of government is the Prime Minister.

33. There are no rules governing a former Prime Minister's involvement in political activities.

34. As regards commercial activities, the relevant arrangements are set out in the "Ministerial Code: A Code of Conduct and Guidance on Procedures for Ministers". It is applicable to all outgoing Ministers, including Prime Ministers.

35. Paragraph 140 of the Code requires Ministers, on leaving office, to seek advice from the independent Advisory Committee on Business Appointments about any appointments they wish to take up within two years of leaving office, other than unpaid appointments in non-commercial organisations or appointments in the gift of the Government. If the Advisory Committee considers that an appointment could lead to public concern that the statements and decisions of the Minister, when in Government, have been influenced by the hope or expectation of future employment with the firm or organisation concerned, or that an employer could make improper use of official information

to which a former Minister has had access, it may recommend a delay of up to two years before the appointment is taken up, or that for a similar period the former Minister should stand aside from certain activities of the employer. The Advisory Committee may also advise that an appointment is unsuitable.

36. A former Prime Minister is normally expected not to take up employment within the first three months from the date of leaving office unless the Advisory Committee advises a longer period. The Advisory Committee may also waive the three-month period if no consideration of improper advantage could apply. Examples are the return to a family business or the practice of a profession such as medicine or teaching.

37. After leaving office, a former Prime Minister is entitled to the following benefits:

- (a) a pension¹;
- (b) full pay and allowance of a Member of Parliament (MP) if he remains a MP;
- (c) allowance for covering expenses on losing office²;
- (d) allowance for office expenses; and
- (e) security protection.

¹ The Prime Minister is entitled to receiving a pension equal to one half of his final annual salary when leaving office. This benefit is payable immediately unless he takes up another paid ministerial or related post.

² This allowance is not payable to any former Prime Minister while he holds the office of the Leader of Opposition because he will receive financial support attaching to that office.

United States

38. In United States, the head of government is the President.

39. There are no rules governing a former President's involvement in political or commercial activities, other than the restriction that a person who has been a President for two terms cannot stand for Presidential election.

40. After leaving office, a former President, other than a President whose service was terminated by removal through the impeachment process, is entitled to receive the following benefits as provided in the law:

- (a) for the remainder of his life, a taxable pension that is equal to the annual rate of basic pay of the head of an executive department;
- (b) transition funding is available to the outgoing President and Vice-President for seven months to facilitate their relocation to private life;
- (c) provision of funds for an office staff and suitable office space, equipment and supplies at any location within the US as selected by the former President. The funding for this provision becomes effective six months after the expiration of a President's term of office;
- (d) travel expenses for a former President and no more than two members of his staff for official travel and related expenses are funded;

- (e) secret service protection limited to 10 years for former Presidents who begin serving after 1 January 1997 and their spouses are provided; and
- (g) former Presidents and their spouses, widows and minor children are entitled to treatment in military hospitals.

California

41. In California of the United States, the head of government is the Governor.

42. Under the California Constitution, Governors cannot stand for another gubernatorial election after serving two terms.

43. The restrictions placed on former state officials, including Governors, are set out in the Political Reform Act. Before leaving office, state officials are prohibited from making, participating in, or influencing a government decision that directly relates to a prospective employer. Within one year after leaving office, former state officials are barred from accepting remuneration to communicate with their former agency in an attempt to influence the agency's decisions involving the issuance, amendment, awarding, or revocation of a permit, licence, grant, or contract, or the sale or purchase of goods or property. They are also permanently barred from accepting remuneration to work on the other side of a proceeding that they participated in while in office. In other words, they are prohibited from representing anyone else and making a communication back to any government agency with the intent to influence, in connection with any proceeding where the State of California is a party or has a direct and substantial interest and the proceeding is one which they participated while in office.

44. Like other States in the country, there is no specific policy to provide services to former Governors other than entitlements under state pension/retirement scheme.

New South Wales

45. In New South Wales of Australia, the head of government is the Premier. Premiers, like other officers in public agencies, should observe the rules set out in a Model Code of Conduct Guidelines–

- (a) before leaving office, officers should not use their position to obtain opportunities for future employment;
- (b) officers should not allow themselves or their work to be influenced by plans for, or offers of, employment outside the agency;
- (c) former officers should not use, or take advantage of, confidential information that may lead to gain or profit obtained in the course of their official duties, until it has become publicly available; and
- (d) officers should exercise care in their dealings with former officers of the agency, and make sure that they do not give or appear to give the former officers favourable treatment or access to privileged information.

46. Former Premiers of the New South Wales are entitled to the following services on a life-long basis –

- (a) parliamentary pension;

- (b) office accommodation;
- (c) two staff members;
- (d) air travel up to a certain limit (for former head of provincial government and his/her spouse); and
- (e) a car with driver.

Ontario

47. In Ontario of Canada, the head of government is the Premier.

48. There are no rules governing a former Premier's involvement in political activities.

49. Under the Members' Integrity Act 1994, former members of the Executive Council, including former Premiers, are prohibited from accepting contracts or benefits granted or approved by the Executive Council of Ontario within one year after leaving office. They are also prohibited from making representations to the government on their own behalf or on another person's behalf with respect to contracts of benefits granted or approved by the Executive Council for one year after leaving office. The above restrictions do not apply if the conditions on which the contract or benefit is awarded, approved or granted are available to any other persons.

50. In addition, a former member of the Executive Council (including former Premiers) shall not make representations to the Government of Ontario in relation to a transaction or negotiation to which the Government is a party and in which he or she was previously involved as a member of the Executive Council, if the representation could result in the conferring of a benefit not of general application.

51. The Members' Integrity Act also applies to other heads of provinces in Canada.

52. After leaving office, a former Premier is entitled to the same benefits as other elected members of the Ontario Provincial Parliament. Such benefits include the following:

- (a) a pension;
- (b) severance payment;
- (c) a specified payment to cover outplacement services offered by a professional transition firm, a legal or retirement counselor and/or expenses on educational course; and
- (d) life insurance.

Similar arrangements apply to former heads of other provinces in Canada.

Submission from Article 45 Concern Group

《基本法》四十五條關注組提交意見

Views on the Remuneration Package and Post-Office arrangements for the CE

A. Remuneration package of the CE

1. Remuneration

- (1) The CE's remuneration should be aligned to that of Principal Officials except that the CE should have a slightly higher basic salary.
- (2) The CE should have an official residence in the former Government House and nowhere else. No compensation should be payable to the CE if he or she chooses other accommodations.
- (3) The CE should be entitled to a non-accountable entertainment allowance.
- (4) The CE's leave entitlement should be similar to that of principal officials, i.e. 22 days. The 55.5 days leave and passage entitlement of former Governors of Hong Kong who came from overseas are inappropriate for the CE, who is a permanent resident of the HKSAR.
- (5) Similar to principal officials, the CE should not be entitled to gratuity.
- (6) The CE should enjoy free medical and dental care.

2. Timing of implementation

The new package should be put in place for the third term of the CE elected in 2007. This follows from the arrangement under Article 53(2) of the Basic Law as interpreted by the NPCSC on 27 April 2007. Namely, the new CE elected to continue the current term should also be entitled to the same remuneration package.

B. Former CE's involvement in political or commercial/professional activities

3. Formulation of Rules

Rules no less stringent than those applicable to principal officials should have been formulated from the outset and applied to the CE. These rules should now be formulated without delay and applied to the former CE. The fact that they were not formulated from the outset is no reason for not doing so.

Further, the rules for senior government officials including the CE should be tightened up to reflect the principles set out in the Annex.

C. Services to be provided for the former CE

- (1) The CE is not a head of state or government of the state. It is inappropriate to use as comparables the President of the United State, the Prime Minister of the United Kingdom or heads of government of Australia, Belgium, Canada, Germany, Japan, New Zealand or of the People's Republic of China.
- (2) protocol arrangements – The CE is a public office. Once the occupier leaves the office, he or she is an ordinary citizen. "Former CE" should not be made a personal status with special dignities or privileged attached.
- (3) security protection, bodyguards, car and driver – Only if warranted by actual need. It should not be assumed that he or she requires it.
- (4) office accommodation and administrative support – There is no reason why a former CE should be provided with office and staff. Neither should he or she have any official duties *qua* former CE.

14 May 2005

Margaret Ng

Audrey Eu, S.C.

Ronny Tong, S.C.

Alan Leong, S.C.

Annex on Rules for Government Officials on conflict of interest and confidential information

- (a) Hong Kong is a small place dominated by a number of major conglomerates which have commercial interests in almost every sphere of activity. Given that in future there may be more switching back and forth between public and private sectors protecting confidential information gleaned from the public sector and preventing conflicts of interest, actual or potential is more of an issue here than elsewhere in the world. Without the ultimate open accountability to parliament in other democracies, there is an even more potent mix for abuse against the public interest.
- (b) Any information or knowledge which is acquired by a public servant in the course of his employment and which is not information or knowledge available to the general public or to those who are working in the same field in the private sector is information or knowledge which is not for that individual to use for his personal benefit after leaving the public sector.
- (c) Consideration should be given to make it a criminal offence to abuse any such information which applies to every public servant during and after the leaving of office. This can be reinforced by requiring every such person to sign an undertaking on leaving office that he will not use any such information or knowledge for personal gain or the gain of his employer unless that the employer is a registered charity or an academic institution and the use is confined to defined purposes.
- (d) A vetting body of say 7-10 persons should be created, with at least half consisting of legislators, to vet all applications to join the private sector. All public servants above a certain rank including former CEs should be required to submit any such applications to cover employment, directorships or even private consultancies within a 5 year period of the formal ending of their public service. A blanket exemption should exist for work of any kind for registered charities or academia.
- (e) Guidelines should be developed for the type of employment or work which a former public servant may take based upon the nature of his work in the public sector in the 10 years preceding his retirement or resignation. Thus, the more extensive that work is and the more extensive has been his access to commercially sensitive or confidential information, the more restricted may be the kind of employment or work he may take up during the 5 year period of leaving office. Any application made must be published and any person may, on giving good grounds, object to the application being granted. Such objections must be considered by the vetting panel which must also independently consider the merits of the application. An application may be granted if the individual applicant and his prospective employer undertakes that he will not be required to work in certain areas related to his previous work in the public sector. Such undertaking should be supported by criminal sanction: see (e) above.



香港特別行政區行政長官報酬及離職後安排建議書

政府在今年四月成立香港特別行政區行政長官報酬及離職後安排獨立委員會，就行政長官的報酬、就行政長官離職後參與政治或商業/專業活動應否訂立規則，以及應否要為前任行政長官就個人保安、辦公室、行政支援，以及他與其配偶的醫療和牙科福利作出安排等事宜，進行研究。

對於上述各項問題，民建聯有如下意見：

行政長官的報酬

民建聯認為，對於本屆剩餘任期的新行政長官的報酬，~~首選沿用前行政長官，即月薪為24萬4,565元，享有25%約滿酬金，其與配偶旅費津貼7萬9,260元，酬酢津貼6萬元及55日年假，免費提供官邸及其與配偶的醫療及牙科福利。~~次方案可考慮增加行政長官的薪酬，這是由於推行高官問責制後，問責局長的薪酬是把昔日公務員的附帶福利折現，行政長官則不增加自己的薪酬，導致行政長官的薪酬反比司長及局長等低，這似乎不太合理，相信亦會引起國際的嘖奇；此外，為了顯示行政長官與問責官員共同進退的精神，~~建議取消行政長官的約滿酬金及旅費津貼，同等享有22日假期及強積金供款，繼續享有6萬元酬酢津貼，醫療福利及提供官邸。~~現時行政長官與政務司司長的折現總月入（月薪、酬酢及假期折現後的總和）的差幅為16.6%，故次方案建議行政長官調整後的薪酬計算理據如下：

現時政務司司長折現總月入是\$345,691:

月薪\$297,510 + 酬酢\$30,000 + 假期22日\$18,181 (\$297,510/30x22/12)

現時行政長官折現總月入是\$403,070:

月薪\$244,565 + 酬酢\$60,000 + 約滿酬金\$61,141(\$244,564x25%) + 假期55日\$37,364(\$244,565/30x55/12)

折現後兩者總收入相差幅度為16.6%

以行政長官折現總月入\$403,070，取消約滿酬金及縮短假期為22日，報酬計算如下：

即月薪\$323,312 + 酬酢\$60,000 + 假期22日(\$19,758)

強積金供款為\$13,992: 政務司司長強積金供款\$12000 x 116.6%

行政長官離職後參與政治或商業／專業活動訂立規則

民建聯建議應為行政長官離職後參與政治或商業活動訂定限制，並要比問責官員及公務員守則嚴謹。可如加利福尼亞州、安大略省及中國採用法例形式，並設有1.5年至2年的禁制期，比現時公務員及問責官員的限制期6個月至1年長，以防止行政長官在任期間對某些政策作出不恰當的決定，是有利於日後從事其他工作，以及確保行政長官所掌握的敏感資料，不會對其日後投身活動的機構不公平地取得有利的條件。

行政長官的個人保安、辦公室、行政支援，行政長官及其配偶的醫療及牙科福利安排

民建聯建議首選維持現時香港行政長官離任享有年薪的25%的約滿酬金，次方案由每月13,992元強積金供款取代(如前述)。此外，可參考其他國家為離任政府首長設有的其他福利，但非終身制，以5年為限。建議如下：

1. 辦公室(年租60萬元，1000呎，\$50呎租)：與外國官員政要等仍有往來接觸，需要辦公地方方便接見會面；
2. 一輛汽車(折舊、汽油、保險及牌照費年費40萬元)及司機(年薪24萬元)，方便行動出入；
3. 秘書及助理2名，協助事務安排(合共年薪72萬元)；
4. 保安1人(年薪36萬元)，對其人身安全作出保護；
5. 醫療津貼(年費12萬元)，對其健康提供一定保障；
6. 雜項(年費12萬元)

每年開支為256萬元

民建聯

二零零五年五月十二日

真誠為香港



民主黨立法會議員秘書處

Secretariat of Legislative Councillors
The Democratic Party

香港中環雪廠街 11 號
政府合署西翼 401-410 室
Rm. 401-410 West Wing
Central Government Offices
No. 11 Ice House Street Central HK

網址: Website www.dphk.org
電郵: E-mail dpweb@dphk.org
電話: Tel 2537 2319
傳真: Fax 2537 4874

香港特別行政區
行政長官薪酬和離職後安排獨立委員會
全體委員：

對行政長官薪酬和離職後安排事宜的意見

民主黨立法會議員張文光曾於 2005 年 5 月 21 日與行政長官薪酬和離職後安排獨立委員會見面，討論民主黨對行政長官薪酬和離職後安排事宜的意見，就此，現謹附上民主黨的有關意見，以供參考。

謝謝。

如有任何疑問，請致電 25372122 與研究主任鄭慕貞聯絡。

民主黨立法會議員張文光

二零零五年六月三日



民主黨立法會議員秘書處

Secretariat of Legislative Councillors
The Democratic Party

香港中環雪廠街 11 號
政府合署西翼 401-410 室
Rm. 401-410 West Wing
Central Government Offices
No. 11 Ice House Street Central HK

網址: Website www.dphk.org
電郵: E-mail dpweb@dphk.org
電話: Tel 2537 2319
傳真: Fax 2537 4874

民主黨對離任特首的薪酬福利和行政支援的意見

1. 民主黨認為離任特首應該得到有尊嚴的生活安排和適當的行政支援。
2. 民主黨認為第二屆補選特首，仍屬第二屆的任期內，所有薪酬福利應維持不變。
3. 民主黨認為第三屆或以後的特首的薪酬福利，應糾正特首薪酬低於政務司長的偏差，以反映特首的地位和職責。
4. 鑑於回歸前的港督與政務司，回歸後的特首和政務司長，其薪酬的比例是一百二十五比一百，因此，民主黨建議第三屆或以後的特首的薪酬，高於政務司長，但不超越政務司長的薪酬的百分之二十五。
5. 第三屆或以後的特首的離任酬金維持不變，是特首薪酬的百分之二十五，以確保特首離任後的生活仍然具有質素，毋須立即工作。
6. 第三屆或以後的特首，離任後，三至五年內不得從事商業活動。
7. 第三屆或以後的特首，應繼續享有免費的公共醫療服務，確保他的尊嚴和健康。
8. 政府應在行政署屬下設離任特首支援辦事處，在有需要時提供適當的人手資源，包括公關、秘書、保鏢、司機和座駕，支援離任特首參與特區的公職活動。

二零零五年六月三日



行政長官薪酬及離職後安排 自由黨意見書

一．前言

特區政府在 2005 年 4 月 27 日宣布成立「行政長官薪酬及離職後安排獨立委員會」，就行政長官薪酬和離職後的安排等範疇提出建議。本文件闡述自由黨對相關問題的立場。

二．具體回應

A. 是否需要重新釐定行政長官的薪酬，以符合他作為香港特別行政區首長的職責和地位？

現時政務司司長的月薪為 29.8 萬元左右，但行政長官的薪津仍然是 24.4 萬元左右，出現這個差異，是由於 2002 年 7 月特區政府推行主要官員問責制時，當時的行政長官主張維持他個人薪酬不變，但當時政府已經強調這個只是臨時安排，將來新的行政長官薪酬水平，將由一個獨立委員會去釐定。

現時政務司司長的月薪為 29.8 萬元、財政司司長的月薪為 28.7 萬元、律政司司長的月薪為 27.8 萬元、各問責局長的月薪為 26.8 萬元，每一級之間的差距為 3.5%，所以行政長官與政務司司長的薪酬差距，也應該參考現行問責制的薪酬制度。

作為特區的最高首長，行政長官薪酬低於其他主要官員似乎有欠邏輯，所以自由黨認為，行政長官的薪酬應該高於政務司司長，以顯示行政長官作為最高首長的身份，但高出的部分不應多於政務司司長薪酬的 5%。

至於其他福利，鑒於現時政府會為政務司司長、財政司司長和律政司司長提供官邸，為顯示行政長官的身份，我們亦同意政府應該為行政長官提供官邸，但是否入住禮賓府則視乎新特首本人的意願。

B. 是否需要就離職後參與政治或商業/專業活動訂立規則並將之適用於前任行政長官？

行政長官作為香港特別行政區首長，亦是特區政府的最高決策人，所有政府的重大政策，都會經由行政長官拍板，所以行政長官離職後參與政治或商業活動都應該受到適當監管。

我們認為，可以參考現行政府對按合約條款受聘的首長級人員的規管，建議行政長官離職後需要有一年的冷河期，期間不得從事任何可能與其行政長官職務構成利益衝突的活動，並且要取得當時的行政長官的批准才可工作。

C. 是否需要為前任行政長官就個人保安、辦公室、行政支援，以及他與其配偶的醫療和牙科福利作出安排？

鑒於香港並非一個國家，外國為卸任元首提供的各種保障不宜照搬來港，所以我們認為，政府無須為前任行政長官提供個人保安、辦公室及行政支援，而這亦可免卻對新特首造成任何不便，但為了表示對前任行政長官表示敬意，我們同意即使他們離職後，他/她與其配偶，也應該和其他公務員一樣，能夠終身享受政府的醫療和牙科福利。

自由黨主席

田北俊 謹啟

田北俊

2005年5月12日

郭家麒醫生提交意見

郭家麒醫生
立法會議員



Dr.Hon.Kwok Ka Ki
Legislative Councillor

行政長官報酬及離職後
安排獨立委員會主席
黃保欣先生

黃保欣主席：

有關：行政長官報酬及離職後的意見

本人對於行政長官報酬及離職後的安排，有以下的意見，敬請 貴委員會詳細考慮，有關的意見詳情如下：

- 1) 每位離職的行政長官均曾為香港作出重大的貢獻。因此，我原則並不反對為他們提供退休金或長俸等福利，當然有關的金額需要合理及為公眾所接受；
- 2) 然而，本人認為離職的行政長官，由於再沒有公職身份，基於確保公眾資源合理運用的原則，不可以由公帑為他們支付一切常設的行政支援服務(如：辦公室、私人秘書和司機等)；
- 3) 此外，本人認為基於本港和諧的社會及政治環境，以及確保公眾資源合理運用的原則，離職的行政長官亦毋需要由公帑支付個人的保安服務；
- 4) 假如離職的行政長官因特殊情況需出席一些公開活動時，本人同意可以通過一個獨立的委員會審核後，以「實報實銷」的方式支付有關的開支；
- 5) 行政長官作為本港政府最高的負責人，薪俸亦理應合理地高於特區政府內的所有問責官員及公務員。

立法會議員

(郭家麒)

2005年5月14日

劉慧卿議員提交意見

前綫立法會議員劉慧卿對行政長官薪酬和離職後安排的意見

11-5-2005

立法會早於 2001 年初便促請行政當局研究對前任行政長官進行的活動作出規限，並要求當局在首任行政長官董建華先生任期屆滿前設立此種機制。可惜當局漠視立法會的關注，在以後四年多亦不能解決這重要問題，實在是嚴重失職。現在董先生已下台，但特區對他離任後的活動卻沒有任何規限，實令人感覺憤怒及失望。

本月六日立法會主席宴請董建華先生，席間本人向董先生表示，特區政府未能在他離任前制訂行政長官離職後的安排，實屬失職。本人謂希望他不會做出令特區尷尬的事情，更不要重蹈退休高官鍾麗幗女士的覆轍。

對於行政長官離職後的安排，本人認為是應按防止利益衝突的原則處理，以避免他在任時及離職後濫用其公職身份或利用在職期間所獲取的資料謀取個人私利。這安排是要確保公眾利益不受損害，而所施加的限制，更應以法規為依據。

(一) 對離任行政長官的限制：

由於行政長官並非由市民以一人一票的方式選舉產生，故他不用向立法會或市民問責，因此傳媒批評及公眾不友善反應的阻嚇性亦非常有限。本人建議當局參考英國的做法，設立獨立的委員會，規管離任的行政長官參與商業活動。

委員會應由獨立人士組成，成員可參考特區的「退休公務員就業申請諮詢委員會」安排，主席由一名高等法院或終審法院的法官擔任，成員包括法律界人士及立法會議員，以體現行政機關受立法機關監察的精神。

若離職後的行政長官有意接受任何機構聘任，他須徵詢該委員會的意見，若委員會評估後認為離任行政長官擬進行的私人活動與先前擔任的職責不存在任何利益衝突，他才可接受聘任。委員會若認為某項聘任可引起公眾疑慮，或擔心離任行政長官所掌握的官方資料可能被其未來僱主不恰當地利用，委員會可建議離任行政長官延遲一段合適時間才接受聘任，或反對該項聘任，以防止有人不恰當地利用本身的身分，向他在任職政府期間接觸的私營機構尋求工作，或接受該等機構的聘任。

若離任行政長官曾於在任期間參與某項計劃，離任後便永遠不得替參與計劃的私人機構擔任與計劃有關的工作。此外，前行政長官亦不得代表任何與計劃有關的機構或人物與政府談判，以免他利用其過往的地位影響政府的決定。

除上述措施，當局亦應設立等候期，規範行政長官在離任後一段時間不能接受私人公司聘任。首長級人員如在退休後三年內獲私人公司聘任，須事先徵得有關委員會的批准，其他退休的高級公務員，則在退休後兩年內須事先徵得批准。本人認為首長級人員的限制亦應適用於離任的行政長官。若離任行政長官欲申請豁免，須獲獨立委員會批准，而委員會亦要公開其決定及理據。

(二) 為離任行政長官提供的福利：

現時退任行政長官可領取百分之廿五的約滿酬金，但當局並沒有為退任行政長官、問責制主要官員及立法會議員設立退休金制度。為鼓勵更多人士從政，並視之為一項職業，同時減少前行政長官再就業的誘因，本人建議委員會參考英國、美國、德國、新西蘭、加拿大安大略省、台灣等地區的做法，為離任行政長官提供退休金安排，有關金額可考慮參考美國的做法，與行政部門主管的基本薪金相約，亦即公約員薪級表 D1 點，每月支取 92,650 元退休金。本人亦建議委員會參考日本的做法，要求行政長官需出任超過半年，才合資格領取退休金。

若行政長官一旦犯上刑事罪行而離職，或因為行為不檢，被立法會通過不信任動議，其退休金福利將被褫奪。

對於是否須為前任行政長官提供個人保安、辦公室和相關行政支援的問題，本人認為，雖然中國內地及海外不少地區均有為離任元首提供相關支援，但本人認為當局應先釐定離任行政長官有何種角色和工作，才決定為他提供甚麼形式的辦公室和相關行政支援。若當局決定設立離任行政長官辦公室，需按善用公帑的原則處理，並訂立明文規定。至於是否需要為前行政長官安排保安服務，要視乎保安當局在這方面的評估。

(三) 完成餘下任期的行政長官的薪酬水平：

既然當局已成功尋求中央政府釋法，訂明七月所選出的「新的行政長官」只是接替董先生的剩餘任期，因此亦無需在現階段檢討及提高行政長官薪酬水平。本人建議當局應就 2007 年產生的行政長官及主要官員的薪酬水平和服務條件進行公眾諮詢，從而重新釐訂合理的薪酬及服務條件。

(四) 行政長官官邸安排：

當局應有政策為行政長官提供官邸，而不是按行政長官的喜好行事，更不應動用公帑為他租住房屋。為善用資源及節省公帑，新的行政長官應入住禮賓府，而該處亦應改名為行政長官官邸。