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Mrs Jessie TING
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Central Government Offices
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By Fax (2868 5069) and By Post

5 June 2002

Dear Mrs TING,

Public Officers Pay Adjustment Bill

I am in the course of scrutinizing the legal and procedural aspects of the above Bill on behalf of Members and would be pleased if you could clarify the following questions:-

(a) Part 3

Please clarify the meaning of "public officers" in the Bill. Is it possible to provide a list of the "public officers (not being a civil servant or ICAC officer)" referred to in clause 5 of the Bill?

(b) Clause 9

Clause 9 provides that the contracts of employment of public officers are to be read as expressly authorizing the adjustments to pay and the amounts of the allowances made by the Bill.

It seems that the effect of clause 9 is that the legislation will retrospectively impute an intention to a party of an employment contract (i.e. a public officer) that this was what he or she intended at the time the employment contract was entered into. I appreciate that it is not uncommon to enact a legislative provision to override the intention of contracting parties, for example, sections 50(1), 51(1) and 115A(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) and section 42(1) of the Employees' Compensation Ordinance (Cap. 282) (copies enclosed). Could the Administration supply examples where a legislative provision is made to re-interpret the intention of contracting parties?

(c) Clause10

By virtue of clause 10 and paragraph 1 of Schedule 3, the Bill does not apply to the pay of the public officers who are remunerated on a salary, being a starting salary, that is not linked to the annual civil service pay adjustment.

According to your LegCo Brief issued on 22 May 2002, "[a]n appointee recruited in a particular year on the delinked starting salary will remain on that salary until he qualifies for an increment after which he will join the respective pay scale and move along the adjusted scale in subsequent years. As a result of this delinking arrangement, any adjustment to the civil service pay scales, whether positive or negative, will not apply to the starting salaries. When these officers eventually join the adjusted pay scale, their pay level will thereupon reflect the effect of the pay reduction." (para. 17, p.6)

Is it then correct to say that public officers who are recruited on a delinked starting salary will not be affected by any adjustment of pay provided by the present Bill in any event until they qualify for an increment? Please explain the purpose for which such specific exemption is made in the Bill for these public officers.

(d) Clauses 8 and 11

Clause 8 provides that the adjustments made by the Bill do not prohibit or affect any adjustment made after 1 October 2002.

How would this apply in the case where subsequently the Chief Executive in Council amends Schedule 3, thereby bringing any exempted person within the proposed adjustment? Would such an adjustment by way of removal of the exemption be regarded as an adjustment now proposed by the Bill or as an adjustment made after 1 October 2002? Would the power of the Chief Executive in Council under clause 11 be subject to any expiry date?

Please let me have a reply in both languages as soon as possible.

Yours sincerely,

(Kitty CHENG)
Assistant Legal Adviser

Encl.

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