

Response from the Judiciary

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The following is issued on behalf of the Judiciary:

In response to press enquiries, a spokesman for the Judiciary today (October 30) made the following remarks:

Pension Benefits (Judicial Officers) Ordinance

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In accordance with section 28 and/or section 34 of the Pension Benefits (Judicial Officers) Ordinance, Cap. 401, Laws of Hong Kong, the Chief Executive may suspend payment of the pension to retired judges under the following circumstances -

- (i) section 28 - that person is re-appointed to the public service; and/or
- (ii) section 34 - that person has, within 2 years after his retirement and without the prior permission in writing of the Chief Executive, entered business on his own account; become a partner in a partnership; become a director of a company; or become an employee, if the principal part of the business/employment is carried on in Hong Kong.

The power of discretion under section 28 of the Pension Benefits (Judicial Officers) Ordinance has not been delegated to the Chief Justice.

As regards the power to exercise the discretion permitted under section 34 of the Pension Benefits (Judicial Officers) Ordinance, the Chief Executive has delegated such power to the Chief Justice. However, the Chief Executive retains the power.

In considering applications under section 34 of the Pension Benefits (Judicial Officers) Ordinance, the Chief Justice would take into account major factors such as whether judicial independence would be or would be perceived to be compromised, and whether the proposed employment would involve or perceived to involve any conflict of interest.

Cases of approval given to retired judges and judicial officers to continue to receive their pension

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The Judiciary has received some press enquiries on the number of retired judges who were permitted to continue receiving their monthly pension while taking up other positions. According to the records of the Judiciary, there have been, since 1 July 1997, five cases of retired judges who were given permission to continue to receive their pension while taking up other appointments after their retirement. All of these retired judges were High Court Judges upon their retirement. It is not appropriate to provide their names.

(i) The first case related to a retired High Court Judge acting as Deputy Judge of the Court of First Instance of the High Court for a period of three months. The relevant provisions under the Pension Benefits (Judicial Officers) Ordinance may be applicable in this case. Permission was given for this retired judge to continue to receive his pension while he acted as Deputy High Court Judge.

(ii) The second case related to a retired High Court judge being appointed as Chairman of a statutory board, the board being the Administrative Appeals Board. The post is not a full-time position. It is doubtful whether the provisions under the Pension Benefits (Judicial Officers) Ordinance are applicable in this case, but for the avoidance of doubt, permission was given for this retired High Court Judge to continue to receive his pension while serving as Chairman of the Board.

(iii) Both the third and fourth cases related to retired High Court Judges taking up positions of non-executive directors of companies.

(iv) The fifth case related to a retired High Court Judge taking up a part-time teaching appointment with a tertiary educational institution.

In addition, since 1 July 1997, there has been one case of permission given to a retired Judicial Officer to continue to receive his pension while taking up another position. This Judicial Officer was a Magistrate upon his retirement. He worked as a consultant in a solicitor's firm after retirement.

In the case of the appointment of Mr Michael Wong as the Chairman of Equal Opportunities Commission, as both section 28 and section 34 of the Pension Benefits (Judicial Officers) Ordinance may be applicable, the Judiciary is of the view that the Chief Executive should be the proper authority to consider whether Mr Michael Wong would continue to receive his monthly pension while receiving the remuneration as the Chairman of Equal Opportunities Commission at the same time.

As regards the question of whether the Chief Justice is consulted on any post-retirement employment of a retired judge, it is considered that the selection of persons to fill various public offices by the Administration is entirely a matter for it and it is up to the Administration to undertake such consultation as it thinks fit. It is inappropriate for the Judiciary to comment.

The Prevention of Bribery Ordinance (Cap. 201, Laws of Hong

Kong) and the Acceptance of Advantages (Governor's Permission)  
Notice 1992

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Regarding circumstances under which judges and judicial officers can accept gifts, the Prevention of Bribery Ordinance (Cap. 201, Laws of Hong Kong) and the Acceptance of Advantages (Governor's Permission) Notice 1992 are applicable to all judges and judicial officers. Unless allowed by relevant provisions, judges and judicial officers are required to seek permission for receiving gifts.

Under the Acceptance of Advantages (Governor's Permission) Notice 1992, Government employees are permitted to solicit or accept from a relation any gift (whether of money or otherwise), any discount, any loan of money or any air, sea or overland passage. "Relation" includes child. There are no provisions governing receipts of personal gifts by their children.

During this short period of time, the Judiciary has checked the record for the 10 years prior to Mr Wong's retirement. During this 10 years' period, Mr Wong did not seek any permission for receiving air tickets as gifts.

Regarding whether Mr Wong had heard any cases concerning the executive director of Chinese Estates Holdings, Mr Joseph Lau Luen-hung, companies under his name or his employer, as far as can be ascertained by the Judiciary, there is no such case.

On questions about follow up actions to be taken by the Judiciary in relation to the above incident, the Judiciary's view is that existing laws and regulations are sufficient.

Ends/Thursday, October 30, 2003

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