



中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China



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立法會秘書處 法律事務部  
LEGISLATIVE COUNCIL SECRETARIAT  
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By Fax (2501 0669)

15 September 2009

Mr SUN Yuk-han, Chris  
 Principal Assistant Secretary (Pay & Leave)  
 Civil Service Bureau  
 2<sup>nd</sup> floor  
 West Wing  
 Central Government Offices  
 11 Ice House Street  
 Central  
 HONG KONG

Dear Mr SUN,

### Public Officers Pay Adjustment Bill

I am scrutinizing the above Bill with a view to advising Members and should be grateful if you would clarify the following matters:

#### Clause 2(2)

What are the "rules" referred to in clause 2(2)? It is noted that in the Public Officers Pay Adjustment Ordinance (Cap. 574) and the Public Officers Pay Adjustments (2004/05) Ordinance (Cap. 580), there is no provision similar to clause 2(2) proposed in the Bill. Is there any reason for including such provision in the Bill?

#### Clause 12

Clause 12, which varies the contracts of employment of public officers so that those contracts expressly authorize the adjustments made by the Bill, is similar to section 10 of Cap. 574 and section 15 of Cap. 580. It is noted that the validity of the latter provisions had been challenged in courts. In *Secretary for Justice v Lau Kwok Fai & Another* (2005) 8 HKCFAR 304, while the Court of Final Appeal held that section 10 of Cap. 574 and section 15 of Cap. 580 were legally valid, it considered that the

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sections were unnecessary because the provisions which gave effect to the actual reductions of pay were themselves sufficient to ensure that a reduction in pay did not result in a breach or termination of the contracts of service of public officers. In the light of the above judgment and given that the actual reduction of pay of various categories of public officers is to be effected by clauses 5 to 8 of the Bill, please explain why it is necessary to include clause 12 in the Bill.

I would appreciate it if you could let us have the Administration's reply in both languages by **29 September 2009**.

Yours sincerely,



(Ms Connie FUNG)  
Senior Assistant Legal Adviser

c.c. DoJ (Attn: Mr Eamonn MORAN, Law Draftsman) (By Fax: 2869 1302)  
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18 September 2009

Ms. Connie FUNG  
Senior Assistant Legal Advisor  
Legal Service Division  
Legislative Council Secretariat  
8 Jackson Road,  
Central, Hong Kong

[Fax No. 2877 5029]

Dear Ms Fung,

**Public Officers Pay Adjustment Bill**

Thank you for your letter dated 15 September 2009 seeking our clarifications on two issues concerning the captioned Bill.

Clause 2(2)

The rules for adjusting the pay and/or allowances of a public officer referred to in clause 8 (i.e. one who is not a civil servant, not an ICAC officer covered by clause 6(2) nor the Director of Audit) may have a number of components, including one referring to civil service pay increases. One example is the pay and allowances for members of the auxiliary forces (other than those of the Auxiliary Police Force), which is adjusted every two years based on an average of civil service pay increases and the rise in consumer price indices in the period since the previous review. Our policy intention is that for those whose monthly pay is above \$48,400 and for whom currently a civil service pay increase is a component in determining their pay and/or allowances, the pay reduction proposed under the Public Officers Pay Adjustment Bill should count as such a component. To achieve this policy intention and for the

