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21 June 2002

Ms Kitty Cheng  
Assistant Legal Adviser  
Legislative Council Secretariat  
Legal Service Division  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Ms Cheng,

### **Public Officers Pay Adjustment Bill**

I refer to your letter of 20 June 2002. Our response to the questions raised are set out in the following paragraphs :-

(a) Parts 2 and 3

A civil servant is a person employed by the Government on civil service terms of appointment to a civil service rank. There are many different sets of civil service terms of appointment as defined in the Civil Service Regulations. The specific terms of appointment offered to an appointee to the civil service are clearly set out in the letter of offer of appointment and/or the Memorandum on Conditions of Service (MOCS). For persons employed by the Government on terms of appointment other than civil service terms, the letter of offer of appointment clearly stipulates that :

- he/she is not appointed to the civil service on civil service terms and conditions;
- he/she is not a civil servant;
- he/she does not occupy any post on the civil service establishment; and
- he/she is not eligible for posting, promotion or transfer to any post in the civil service.

The recruitment advertisements also make clear whether the advertised vacancy is a civil service vacancy or a non-civil service vacancy. In view of the foregoing, it is clear to both the Government as the employer/appointment authority and all Government employees/appointees whether or not an individual is a civil servant. We do not, therefore, consider it necessary to define the term "civil servant" in the Bill. .

(b) Clause 5

Clause 5 of the Public Officers Pay Adjustment Bill is intended to cover those public officers who are not civil servants or ICAC officers but whose pay is:

- (a) determined in accordance with or by reference to, directly or indirectly, a point on the civil service pay scales or the ICAC pay scale;
- (b) adjusted in accordance with or by reference to, directly or indirectly, adjustments to the civil service pay scales or the ICAC pay scale; or
- (c) determined and adjusted as mentioned in paragraphs (a) and (b) respectively.

Essentially, this refers to specified types of non-civil service appointments made by the Government. The remuneration of certain public officers as defined under the Interpretation and General Clauses Ordinance (Cap.1) is not determined and/or adjusted in accordance with or by reference to the civil service pay scales or the ICAC pay scale. As such, they will not be caught by clause 5 of the Bill.

In our letter of 10 June 2002, we have provided examples of non-civil service appointments which are covered by clause 5(a), (b) or (c) of the Bill. An updated list is attached. These examples represent the majority of non-civil service appointments made by the Government which will be subject to the pay reduction specified in the Bill. We are, however, unable to provide an exhaustive list of all non-civil service appointments covered by the Bill because bureaux and departments may, depending on operational needs and the availability of resources, make new non-civil service appointments anytime between now and the proposed implementation date of 1 October 2002 for the pay reduction.

(c) Clause 9 – Justifications for the provision

Clause 9 is included to ensure that the reduction in pay and allowances as specified in the Bill is authorized despite any possible doubt as to whether the terms of the contract would provide sufficient authority.

(d) Clause 9 – Drafting aspect

The purpose of clause 9 is not to interpret the original intention of the contracting parties, but to modify those provisions of the contract dealing with pay, in accordance with the provisions of the Bill. We do not agree that “are to be read as” in this clause implies imputing an intention to the parties that this was what they intended when the contract was first entered into. The effect of clause 9 is only prospective and carries no imputation as to what the parties may or may not have originally intended.

Our intended purpose could be achieved by different forms of drafting. We consider that the present formulation of clause 9 adequately achieves the intended result.

(e) Clause 10 and Schedule 3

The arrangement whereby an officer is appointed on starting salaries that are delinked from the annual civil service pay adjustment essentially covers the civil service and ICAC officers. A civil servant or an ICAC officer who is remunerated on starting salaries is remunerated on a civil service pay scale or the ICAC pay scale as the case may be. As such, unless these officers are specifically exempted from the Bill, they will be caught by Clauses 3 and 4 of the Bill and thus be subject to the pay reduction as specified in the Bill. This would be contrary to our policy intention that those officers on starting salaries should not be affected by the service-wide annual civil service pay adjustment.

We have specifically exempt judicial officers from the Bill to avoid any possible misunderstanding that they are caught by Clause 5 of the Bill and are thus subject to the pay reduction as specified in the Bill. This would be contrary to our policy intention.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'A. Fung', with a stylized flourish at the end.

(Angelina Fung)  
for Secretary for the Civil Service

**Examples of non-civil service appointments  
that will be subject to 2002 civil service pay reduction, if approved**

I. Examples of non-civil service posts with pay determined in accordance with or by reference to, directly or indirectly, a point on the civil service pay scales

Posts/Category of staff	Relevant departments/bodies
Members of the Auxiliary Police Force	Hong Kong Police Force
Graduate Trainees	Architectural Services Department, Buildings Department, Civil Engineering Department, Drainage Services Department, Electrical and Mechanical Services Department, Environmental Protection Department, Highways Department, Government Property Agency, Housing Department, Lands Department, Planning Department, Rating and Valuation Department, Transport Department, Territory Development Department, Water Supplies Department,
Legal Trainees (Solicitor)	Department of Justice
Temporary Teachers	Education Department
Departmental Contract Staff I in RTHK	Radio Television Hong Kong

II. Examples of non-civil service posts with pay adjusted in accordance with or by reference to, directly or indirectly, adjustments to civil service pay scales

<b>Posts/Category of staff</b>	<b>Relevant departments/bodies</b>
Contract Managers	Hong Kong Post
Undergraduate Trainees	Architectural Services Department, Civil Engineering Department, Electrical and Mechanical Services Department, Housing Department, Water Supplies Department,
Members of the Auxiliary Medical Service	Auxiliary Medical Service
Members of the Civil Aid Service	Civil Aid Service
Auxiliary members of the Government Flying Service	Government Flying Service
Ex-Council Contract staff	Food and Environmental Hygiene Department, Leisure and Cultural Services Department

III. Examples of non-civil service posts with pay determined and adjusted in accordance with or by reference to, directly or indirectly, a point on the civil service pay scales

<b>Posts/Category of staff</b>	<b>Relevant departments/bodies</b>
Full-time Members and Researchers of the Central Policy Unit	Central Policy Unit
An Assistant Director in the Office of the Telecommunications Authority	Office of the Telecommunications Authority
Conservation Advisor in Chief Secretary's Office / Financial Secretary's Office	Chief Secretary's Office/Financial Secretary's Office
Native English Teachers	Education Department
Chief Executive and Curriculum Officers in the Curriculum Development Institute	Education Department
Flight Operations Inspector (Consultant)	Civil Aviation Department