

Your Ref: CB1/BC/13/02

6th October 2003

Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong.

Attn: Ms. Rosalind Ma
for Clerk to Bills Committee

Dear Sirs,

Public Officers Pay Adjustments (2004/2005) Bill

Thank you for your letter dated 17 September 2003 enclosing the "Response of the Administration to the written submission from the Hong Kong Bar Association".

The Bar has the following observations on the said Response:

- (1) There is a typographical error at paragraph 4 of the said Response as to the title of Chapter 92 of the Laws of Hong Kong ("the Judicial Officers Recommendation Commission Ordinance").
- (2) The doubt expressed by the Bar in the submission of 29 July 2003 as to members of the Lands Tribunal remains, in spite of paragraph 5 of the said Response. The Administration assumes that all members of the Lands Tribunal appointed under section 4(4) of the Lands Tribunal Ordinance (Cap. 17) by the Chief Executive come within Schedule 1 of the Judicial Officers Recommendation Commission Ordinance. Given that the relevant part of Schedule 1, namely "Members of the Lands Tribunal (being a member who is in the full time service of

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the Government)", is qualified by the words within the brackets; and that "Government" is defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) as the "Government of the Hong Kong Special Administrative Region"; and that the Government of the Hong Kong Special Administrative Region is the "executive authorities of the Region" under Article 59 of the Basic Law of the HKSAR, the Bar therefore finds this assumption less than satisfactory, unless all the members of the Lands Tribunal appointed under section 4(4) of the Lands Tribunal Ordinance are in fact in the full time service of the executive authorities of the HKSAR.

(3) If it is the case that all the members of the Lands Tribunal appointed under section 4(4) of the Lands Tribunal Ordinance are not only members of a judicial body (namely the Lands Tribunal), but also persons in the full time service of the executive authorities of the HKSAR, then all such members have at least placed themselves in a serious conflict of interest (if not having been appointed unconstitutionally in violation of the principle of separation of powers under the Basic Law of the HKSAR), since the Lands Tribunal has to, from time to time, resolve disputes between the citizen and the executive authorities of the HKSAR. If such members are appointed only as members of the judicial body known as the Lands Tribunal and are not in the service of the executive authorities of the HKSAR, then such members should not be described in Schedule 1 of the Judicial Officers Recommendation Commission Ordinance as being "in the full time service of the Government".

Yours faithfully,

Edward Chan, SC
Chairman

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