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By Fax – 2869 6794

21 October 2003

Clerk to Bills Committee
(Attn.: Ms. Rosalind Ma)
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Ma,

**Bills Committee on
Public Officers Pay Adjustments (2004/2005) Bill**

Follow-up to the meeting held on 10 October 2003

Thank you for your letter of 13 October 2003. The Administration's response in relation to the follow-up actions arising from the last Bills Committee meeting held on 10 October 2003 is set out below, please.

- Item 1 Please refer to the note at **Annex A**.
- Item 2 **Regarding the complaint lodged by the Hong Kong Confederation of Trade Unions to the International Labour Organization (ILO) that the enactment of the Public Officers Pay Adjustment Ordinance (Cap. 574) is in violation of the International Labour Convention no. 151, please brief the Bills Committee on the up-to-date progress of the case, in particular, whether the Administration has provided its response to ILO in relation to the complaint.**

Response from the Administration

In its complaint lodged with the International Labour Organization (ILO), the Hong Kong Confederation of Trade Unions (HKCTU) alleged that the enactment of the Public Officers Pay Adjustment Ordinance violated ILO Convention No.98 and ILO Convention No. 151. We consider the allegation unfounded and are preparing a response to the ILO.

Item 3 Please refer to the note at **Annex B**.

Item 4 Please refer to the note at **Annex C**.

The Chinese translation of our response will be sent to you soon.

Yours sincerely,

(Eddie Mak)
for Secretary for the Civil Service

In examining the need for the Government to implement civil service pay reduction through legislation and the feasibility of implementing pay reduction through alternative means, a member pointed out that in respect of civil service pay increase in previous years, the Administration had sought the approval of the Finance Committee (FC) for the pay increase. In response to the member, the Administration advised that the Government could not implement a civil service pay reduction with certainty solely by seeking the approval of FC, as such an approach did not address the issue that the employment arrangements between the Government and the majority of serving civil servants did not contain any express provision authorizing the Government to reduce pay. To facilitate the Bills Committee's consideration of the issue, please provide a paper to explain the mechanism for the Administration to seek FC's approval for civil service pay adjustment, and whether the FC's approval has legal effect and legislative effect in the case of pay increase and in the case of pay reduction. The Administration is invited to make reference to the functions of FC as are conferred upon the committee by the Public Finance Ordinance (Cap. 2).

Response from the Administration

Civil service salaries are paid from the General Revenue. The level of appropriation from the General Revenue attributable to expenditure on civil service salaries is reflected in the annual Appropriation Bill which is submitted to the Legislative Council for examination and approval.

2. In accordance with section 8(1) and (2) of the Public Finance Ordinance (Cap.2) (PFO)¹, any changes to the approved estimates of expenditure, including any supplementary provision, requires the approval of the Finance Committee (FC). Pursuant to section 8(3) of the PFO², the FC has delegated to the Financial Secretary (FS) powers to approve any supplementary provision which is required for the payment of salaries and allowances in accordance with approved pay scales and rates of allowances.

¹ Section 8(1) of the PFO provides that no changes shall be made to the approved estimates of expenditure except with the approval of the Finance Committee upon a proposal of the Financial Secretary. Section 8(2) provides that without limiting the generality of section 8(1), such changes may provide for the creation of new heads or subheads, supplementary provision in approved or new subheads, variations in the establishment of posts, and increase in the limit to the commitments which may be entered into in respect of expenditure which is not annually recurrent.

² Section 8(3) of the PFO provides that the FC may delegate to the FS powers to approve changes to the approved estimates of expenditure, subject to such conditions, exceptions and limitations as are specified in the delegation.

3. In the case of a decision to increase civil service pay during the financial year, the Administration will seek FC's approval to make upward adjustments to the civil service pay scales following which FS will under delegated authority approve any necessary supplementary provision for individual heads of expenditure to meet any additional expenditure which may arise from the civil service pay increase in excess of the approved provision. The approval of FC in such circumstance has the legal effect of authorising additional public expenditure as a result of a civil service pay increase. In the case of a civil service pay reduction, the question of additional expenditure, and thus the need for supplementary provision, does not arise.

4. While we may seek FC's approval of the adjusted civil service pay scales in the event of a civil service pay reduction, this step in itself would not enable us to implement the pay reduction with certainty. This is because while FC's approval will carry legal effect so far as the expenditure of funds is concerned, it is not legislation and it would not have the effect of authorising the application of the adjusted pay scales to individual civil servants, which can only be achieved by means of legislation. The employment arrangements for the majority of serving civil servants, as stipulated in their letters of appointment and the Memorandum on Conditions of Service (MOCS) attached thereto, do not contain an express provision authorising the Government to reduce pay, although it is inherent in the established civil service pay adjustment mechanism that some of the consideration factors for determining the annual civil service pay adjustment may have a positive or negative impact on the size of the pay adjustment. In the absence of such an express power, we consider that the most appropriate way to implement a civil service pay reduction with certainty would be by way of legislation.

5. In view of the foregoing, we sought the enactment of the Public Officers Pay Adjustment Ordinance (POPA Ordinance) to implement the decision to reduce civil service pay from 1 October 2002. Section 10 of the POPA Ordinance varies the employment contracts of civil servants so as to expressly authorise the adjustments to the pay and the amounts of the allowances made by that Ordinance. As the POPA Ordinance does not authorise any further pay adjustment after 1 October 2002, we need to seek the enactment of the Public Officers Pay Adjustments (2004/2005) Bill in order to implement with certainty the pay reductions which are to take effect on 1 January 2004 and 1 January 2005 respectively (or in the case of biennial adjustments made under clause 11(3) after those dates, by reference to the

percentages specified in Schedule 6).

Civil Service Bureau
October 2003

Public Officers Pay Adjustments (2004/2005) Bill

**Proposed Committee Stage Amendments to Clause 14 and Clause 15
Outcome of Staff Consultation**

Purpose

This paper briefs Members on the outcome of the staff consultation on the proposed amendments to clauses 14 and 15 of the Public Officers Pay Adjustments (2004/2005) Bill (the Bill).

Background

2. At the Bills Committee meeting held on 10 October 2003, we proposed *vide* LC Paper No. CB(1)2552/02-03(2) that Committee Stage Amendments be made to clauses 14 and 15 of the Bill in order to dispel any doubt that the Bill could itself authorise adjustments to the pay or the amounts of allowances payable to public officers after 1 January 2005. We also advised Members that we were consulting the staff sides of the four central consultative councils and the four major service-wide staff unions on the proposed amendments and would report to Members on the views received.

Comments received on the proposed amendments to clauses 14 and 15

3. We have received comments from the staff side of the Model Scale 1 Staff Consultative Council (Mod 1 Council), the staff side of the Police Force Council (PFC) and the Hong Kong Civil Servants General Union (HKCSGU). Their comments are set out in paragraphs 4 to 6 below.

4. The staff side of the Mod 1 Council is agreeable to our proposed amendments to clauses 14 and 15 of the Bill. They opine that the legislation, as a piece of one-off legislation, should be repealed after the implementation of the pay reductions.

5. HKCSGU suggests that the Administration should state in the Bill that -

- (a) the Bill is one-off in nature and will be repealed after the pay

reduction has taken effect; and

- (b) the Bill is for implementing a pay reduction of 3% each for 2004 and 2005 for public officers.

HKCSGU also asks the Administration to clarify whether after the restoration of civil service pay to the 1997 levels, the Government would further reduce the pay and the amounts of allowances payable to pensionable civil servants if the findings of the pay level survey indicate that there is room for further downward adjustments.

6. The staff side of the PFC agrees to amending clauses 14 and 15 of the Bill but considers the addition of clause 14(2) clumsy. They suggest that clause 14 could have been amended in a manner similar to clause 15.

The Administration's response

One-off nature of the legislation

7. The Bill is a piece of one-off legislation to cater specifically for the civil service pay adjustments that are to take effect from 1 January 2004 and 1 January 2005 respectively. As we have pointed out in LC Paper No. CB(1)2552/02-03(2), clause 14 of the Bill seeks to reflect the following policy intention -

- (a) The Bill does not itself authorise adjustments to the pay or the amounts of allowances payable to public officers after 1 January 2005; and
- (b) The Bill is not intended to have the effect of changing the present arrangements for implementing future adjustments to the pay or the amounts of allowances payable to public officers after 1 January 2005. Under these present arrangements, legislation is not required for effecting upward pay adjustments. However, in the absence of the clarification under clause 14, the Bill may be interpreted as specifying levels of pay and allowances payable to public officers that are to prevail until amended by subsequent legislation.

8. Notwithstanding its one-off nature, the legislation cannot be repealed after the implementation of the second-stage pay reduction which is to take effect on 1 January 2005 because the pay and the amounts of allowances payable to public officers as adjusted by the relevant provisions under the Bill

shall continue to be payable to public officers until they are further adjusted under the prevailing pay adjustment mechanism. If the legislation is repealed immediately after 1 January 2005, the intended effect of clause 14 as set out in paragraph 7(b) would be defeated and legislation will be required for effecting any upward pay adjustments after that date.

The rates of pay adjustments in 2004 and 2005

9. HKCSGU considers that the legislation should specify the reduction of civil service pay by 3% with effect from 1 January 2004 and another 3% from 1 January 2005. We should clarify that neither the decision of the Chief Executive in Council nor the consensus proposal reached between the Secretary for the Civil Service and staff representatives in February 2003 referred to any specific percentage of adjustments to individual civil service pay points. The decision of the Chief Executive in Council was to restore the pay pertaining to each pay point to the level it was at on 30 June 1997 in dollar terms. This would result in the application of different adjustment percentages for different pay points. Taking account of the annual adjustments since 1 July 1997, the dollar value of all civil service pay points below Directorate Pay Scale Point 3 (D3) or equivalent will in effect be reduced by around 3% from 1 January 2004 and another 3% from 1 January 2005. The 3% pay reduction is, therefore, only a rough indication of the rate of adjustment to the dollar value of the pay points below D3 or equivalent following the pay reduction to be effected on 1 January 2004 and 1 January 2005 respectively. For clarity and accuracy, we have prescribed all the adjusted pay scales in full in schedules 1, 3, 4 and 5 to the Bill.

The proposed amendments to clause 14

10. As regards the comment made by the PFC staff side that clause 14(2) is clumsy, we wish to reiterate that this new clause is not, strictly speaking, necessary but has been inserted to assure staff that the Bill does not in itself authorise any adjustment to the pay or the amounts of allowances other than the adjustments made in accordance with the respective provisions of the legislation.

Whether civil service pay will be further adjusted downwards following the pay level survey

11. We are now in the process of drawing up the methodology of the upcoming pay level survey, in consultation with the Steering Committee on Civil Service Pay Adjustment Mechanism and the Consultative Group on Civil Service Pay Adjustment Mechanism. It is premature at this stage to speculate on the outcome of the survey. We shall in due course consider how the survey results should be applied to the civil service. In doing so, we shall follow the principle of fairness, reasonableness and lawfulness. We shall also take full account of staff concerns as well as the overall interests of the community as a whole.

Civil Service Bureau
October 2003

Regarding the further submission dated 6 October 2003 from the Hong Kong Bar Association, please provide the Administration's written response for the Bills Committee's consideration at its meeting on 24 October 2003.

Response from the Administration

Clause 3(1)(b)(i)(A) of the Public Officers Pay Adjustments (2004/2005) Bill (the Bill) provides that the pay or allowances of a judicial officer holding a judicial office specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap.92) are excluded from the application of the Ordinance.

2. In its letter dated 6 October 2003, the Hong Kong Bar Association (Bar Association) pointed out that Members of the Lands Tribunal referred to in Schedule 1 to Cap. 92 are qualified by the words “being a member who is in the full-time service of the Government” and that the Government of the HKSAR is the “executive authorities of the HKSAR” under Article 59 of the Basic Law. The Bar Association commented that if full-time Members of the Lands Tribunal are assumed to be covered by clause 3 of the Bill, this would mean that all such members are in the full time service of the executive authorities of the HKSAR. If that is the case, all such members will have at least placed themselves in a serious conflict of interest since the Lands Tribunal has to, from time to time, resolve disputes between the citizens and the executive authorities of the HKSAR.

3. We should clarify that the term “Government” in “Member of the Lands Tribunal (being a member who is in the full-time service of the Government)” in Schedule 1 to Cap. 92 was adapted from the term “Crown” following the enactment of the Adaptation of Laws (Courts and Tribunal) Ordinance (the Adaptation Ordinance) in 1998. The term “Government” should be interpreted having regard to its history and the clear intent that the Adaptation Ordinance was not intended to affect the substance of any provision. In view of the Bar Association’s comments, however, the Judiciary will consult the Chief Justice on the appropriate amendment to Schedule 1 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92).

4. As far as the Bill is concerned, clause 3(1)(b)(i)(A) is intended to cover all full-time Members of the Lands Tribunal. In view of the history of the reference to “Member of the Lands Tribunal (being a member who is in the full-time service of the Government)”, we do not consider that there is any doubt that such a judicial officer is covered by that clause.

Civil Service Bureau
October 2003