

本署檔號 OUR REF. : S/F(1) in HAB CR 1/2/33

By Fax and Post

來函檔號 YOUR REF :

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4 November, 2003

The Honourable Audrey Eu  
Room 429, Central Government Offices,  
West Wing,  
11 Ice House Street,  
Central,  
Hong Kong

Dear Ms Eu,

I refer to your letters dated 29 and 30 October 2003 regarding some follow up questions relating to the reply given by the Secretary for Home Affairs to the oral question raised by the Honourable Ho Chun Yan on 22 October 2003 and would like to reply as follows :

- (a) In accordance with section 28 and/or 34 of the Pension Benefits (Judicial Officers) Ordinance (the Ordinance), 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 two 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.

We have been informed by the Judiciary that the power of discretion under section 28 of the Ordinance has not been delegated to the Chief Justice.

As regards the power to exercise the discretion permitted under section 34 of the Pensions (Judicial Officers) Ordinance, the Chief Executive has delegated such power to the Chief Justice. Although the power under section 34 has been delegated to the Chief Justice, the Chief Executive, as the delegator retains the power, notwithstanding such delegation.

- (b) We have also been informed by the Judiciary that the then Governor delegated in writing to the then Chief Justice in April 1995 the power to exercise the discretion permitted under section 34 of the Ordinance.
- (c) With regard to the request made by the present Chairperson of the Equal Opportunities Commission that he would like to continue to receive pension during his term of office, the Administration informed the Chief Justice about this request by telephone. Subsequently, the present Chairperson wrote to the Chief Justice seeking approval on the matter. The Chief Justice's written reply, which was also copied to the Secretary for Home Affairs, stated that –

“As both section 28(1) and section 34(1) may be applicable, it is my view that the Chief Executive is the proper authority to consider your request for approval.

- (a) As the Chief Executive and only the Chief Executive can consider the matter under section 28(1), it is only the Chief Executive who can consider your application comprehensively under both provisions.
- (b) In view of (a) and having regard to the standing of the post of Chairman of the Equal Opportunities

Commission, it is appropriate for the Chief Executive to deal with your case under section 34(1), notwithstanding the delegation to me under that section.”

Yours sincerely,

( Mrs Hedy CHU )  
for Secretary for Home Affairs