

CSB/AP/C242/5 Pt.3
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22 December 2000

Clerk to Panel
(Attn : Miss Salumi CHAN)
LegCo Panel on Public Service
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Miss Chan

**LegCo Panel on Public Service
Meeting on 18 December 2000**

**Follow-up to Agenda Item V
Mandatory Provident Fund Arrangements for
Government Employees serving on Agreement Terms**

Thank you for your letter of 20 December.

Enclosed please find a copy of our response to the letter dated 18 December from the Staff Side Chairman, Senior Civil Service Council to the Hon TAM Yiu-chung. I trust we have already answered the allegations in the letter.

We understand that the Judiciary adopts the same arrangements for

provision of contract gratuity as applied in bureaux and government departments. Chief Justice has not “exempted” judges and judicial officers from the arrangements for provision of contract gratuity on contracts entered into after mid December 1998. Same as the Administration, the Judiciary takes the stance that the contractual position regarding contract gratuity must be respected.

We have also been informed by the Judiciary that of the existing 77 judges and judicial officers who are appointed on agreement terms, two are of age above 64 and hence exempted from the MPF legislation. Twenty-seven of them are already on contracts with the “new” clause on provision of contract gratuity, i.e. the arrangements introduced since mid December 1998 whereby the contract gratuity plus the MPF contributions made by the Government for the employee concerned in the period equal to a specified percentage of the total basic salary drawn. Another two contracts with the “new” contract gratuity provision entered into will take effect in the latter half of next year. When further appointments are offered, more judges and judicial officers will be covered by the arrangements for provision of contract gratuity introduced since mid December 1998.

Yours sincerely

(Ms Anissa Wong)
for Secretary for the Civil Service

c.c. Judiciary Administrator

22 December 2000

Ms Cecilia SO Chui-kuen
Staff Side Chairman
Senior Civil Service Council
Room 138
East Wing
Central Government Offices
Lower Albert Road
Hong Kong

Dear Ms So

Contract Gratuity and MPF Contributions

I refer to your letter of 18 December to the Hon TAM Yiu-chung and copied to us.

You would recall that we consulted the Staff Sides before the introduction of the contract gratuity provision reflecting the Mandatory Provident Fund contribution. The Staff Sides indicated no objection in December 1998, and we have since December 1998 adopted the provision in all contracts entered into from December 1998.

After the consultation, the Staff Sides have raised questions relating to the contract gratuity arrangements in different meetings of the Senior Civil Service Council, and on each occasion we have given full response. We have explained that in setting the level of contract gratuity, the management has taken into account factors including the market situation, the competitiveness of the

terms of appointment offered and the lack of retirement benefits for these staff. Given that contract gratuity already reflected an element of retirement benefits, in anticipation of the implementation of the Mandatory Provident Fund (MPF) system, we have since mid December 1998 introduced in new gratuity-bearing contracts the arrangements whereby the contract gratuity and the Government's MPF contributions in respect of the staff in question equals to a specified percentage of the total basic salary of the substantive office drawn in the period.

As regards those gratuity-bearing contracts which have been entered into before December 1998 and in which no reference is made to the MPF contribution, the Government will continue to honour the contract commitment in respect of the gratuity and meet the employer's mandatory contribution as required by the MPF legislation.

We have also clarified time and again that there is no question of deduction of the MPF contributions from the contract gratuity; the MPF contributions are made from Government funds. We pointed out that we had sought legal advice and the advice of the Mandatory Provident Fund Authority (MPFA) on the arrangements. The arrangements are found to be in order legally. We have also consulted Labour Department and the arrangements are not considered to be in conflict with their guidelines.

These points were re-iterated in our reply of 22 November 2000 to your letter of 20 October 2000. I note you have also written to the Chairman of MPFA on 30 November, querying the compliance of the arrangements with Section 7A of the MPF legislation and alleging that the Government has contravened Section 43B(1) thereof. In its reply, the MPFA concludes that as far as the MPF system is concerned, it cannot find any fact which suggests that the Government has treated its employees on gratuity-bearing contracts unlawfully. A copy of the reply from the MPFA is now at Annex.

The latest allegation, as set out in your present letter, is the news report that the Chief Justice had exercised his authority to exempt judicial officers on contract-terms from the intended deduction out of gratuities. We are disappointed to note that you have taken the report as being factual and accurate,

without seeking a clarification, either from us or from the Judiciary Administrator in the first instance. If you did, you would no doubt appreciate that the same arrangements for the contract gratuity provision have been applied for agreements of judges and judicial officers. Specifically, appointments offered by the Judiciary since mid December 1998 have included the clause that the contract gratuity and the Government's MPF contributions in the period equals to a specified percentage of the total basic salary drawn in the period. So far 27 judges and judicial officers are already on contracts with the gratuity provision reflecting the MPF contribution, and another two new contracts with the new gratuity provision have been signed to take effect in the latter half of next year

I sincerely hope that you will put this matter to rest. Indeed, it would serve no purpose for the Staff Sides to pursue unfounded allegations and to use such words like "possibly unlawful" in describing the administration's policy in this matter.

Finally, I would like to assure you that we shall remain as open as ever in response to any request for information or clarification.

Yours sincerely

(Ms Anissa Wong)
for Secretary for the Civil Service

c.c. The Hon TAM Yiu-chung, GBS, JP
The Chief Executive, Mandatory Provident Fund Authority
Commissioner for Labour (Attn : Mrs Pamela TAN)
Judiciary Administrator (Attn : Mr Wilfred TSUI)