

## **LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE**

### **Disciplinary action on a civil servant involved in the Harbour Fest event**

#### **Purpose**

This paper gives an account of the disciplinary proceedings and outcome on a civil servant involved in the Harbour Fest event.

#### **Civil service disciplinary mechanism**

2. Where there is a prima facie case of misconduct by a civil servant, management will initiate disciplinary proceedings in accordance with the provisions set out in the Public Service (Administration) Order (“PS(A)O”) or, in the case of specified disciplined service officers, the provisions in the relevant disciplined services legislation.

3. The principles of natural justice, including the rule against bias and the right to a fair hearing, apply to disciplinary proceedings. As an integral part of the disciplinary proceedings held under section 9 or 10<sup>(Note)</sup> of the PS(A)O, an inquiry hearing is held to ascertain the facts of the case and to determine whether the facts established amount to misconduct. The hearing is conducted by inquiry officers who are serving civil servants and senior to the accused civil servant, and have no direct interest in the case. They are usually appointed from outside the department the accused civil servant works in. Before the hearing, the accused civil servant is given access to all materials and documents that would form part of the disciplinary proceedings. He may enlist the assistance of a third party to help defend his case at the hearing. The accused civil servant has the right to be heard, to make representations, and to present his own witnesses at the hearing. He also has the right to cross-examine witnesses presented by management.

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<sup>(Note)</sup> If the disciplinary authority is of the opinion that the misconduct alleged may be serious enough to warrant the dismissal or compulsory retirement of the officer, he may cause an inquiry into the officer’s conduct under section 10 of the PS(A)O. If the misconduct alleged is not serious enough to warrant proceedings under section 10, the disciplinary authority may order an inquiry under section 9.

4. Records of the hearing and the findings made by the inquiry officers are forwarded to the Department of Justice (“D of J”) for scrutiny. D of J’s advice on whether the proceedings are in order and whether the findings are supported by the evidence presented would be taken into account before the disciplinary authority (i.e. the officer to whom the power to administer punishment has been delegated) formally accepts the findings. If and when a civil servant is found guilty of the disciplinary charge laid against him, he will be invited to make representations in mitigation of punishment. Taking into account the civil servant’s representations and after obtaining the independent advice of the Public Service Commission (“PSC”) on the recommended level of punishment, the disciplinary authority will decide on the level of punishment. A civil servant who feels aggrieved may appeal to the Chief Executive (“CE”) under section 20 of the PS(A)O against the decision made by the disciplinary authority. He may also seek legal remedy through judicial review.

5. It is the Administration’s established practice not to disclose the details of individual disciplinary cases. This is to respect and protect the identity of the civil servant under disciplinary proceedings. In particular, disclosing the details of individual disciplinary cases when the proceedings are still on-going may jeopardize a fair hearing and prejudice the civil servants concerned. We also maintain confidentiality in all disciplinary cases after completion of action.

### **The Harbour Fest event**

6. The Harbour Fest event has attracted considerable public concern and attention, particularly after the publication of the report of the Independent Panel of Inquiry on Harbour Fest (“Independent Panel”) appointed by the CE and the report of the Public Accounts Committee (“PAC”) in May 2004 and June 2004 respectively. For the reasons stated in paragraph 5 above, we have taken care to maintain the confidentiality of the disciplinary proceedings in connection with the Harbour Fest event and to ensure the whole proceedings were conducted in a manner compatible with the principles of natural justice. That said, the nature and magnitude of the speculation that has arisen from the public attention surrounding the Harbour Fest event is such that we have decided to give an account of the process and its outcome after completion of the disciplinary proceedings. This

exceptional decision is taken primarily to uphold confidence in the integrity of the civil service disciplinary mechanism.

***Allegations of misconduct laid against civil servants involved in the Harbour Fest event***

7. In May 2004, following receipt of the report by the Independent Panel, the CE directed the Secretary for the Civil Service (“SCS”) to consider whether any action needed to be taken in respect of any civil servant. The Civil Service Bureau (“CSB”) then proceeded with the investigation, including examining the report of the Independent Panel and relevant documents relating to the Harbour Fest event. Meanwhile, PAC, in its report tabled before the Legislative Council on 23 June 2004, requested the Administration to consider taking disciplinary action against the Director-General of Investment Promotion who was involved in the event.

8. Having examined the reports published by the Independent Panel and PAC as well as the evidence collected through internal investigations, the Secretariat on Civil Service Discipline (“SCSD”) of CSB concluded in August 2004 that there was a prima facie case of misconduct on the part of one civil servant. SCSD prepared draft disciplinary charges against the civil servant concerned and cleared them with D of J within the same month. SCSD did not find prima facie evidence of misconduct on the part of other civil servants, having regard to their respective roles and responsibilities in the event.

9. In early September 2004, CSB wrote to the civil servant concerned with the draft disciplinary charges, inviting representations as to why formal disciplinary action should not be taken against the civil servant. The civil servant responded with representations within the same month. Having considered the representations from the civil servant, SCS (the disciplinary authority in this case) ordered, in late September 2004, the commencement of formal disciplinary proceedings under section 10 of the PS(A)O against the civil servant.

***Disciplinary hearing***

10. An Inquiry Committee (“IC”) was appointed by SCS under section 6 of the Public Service (Disciplinary) Regulation (“PS(D)R”) to

conduct a hearing into the allegations of misconduct laid against the civil servant. Two civil servants senior to the civil servant concerned and without direct supervisory responsibility over the civil servant concerned were appointed as the chairman and member of the IC. Before the hearing, the civil servant concerned was given a full set of the documentary evidence that was proposed to be adduced at the hearing. In accordance with section 8(3) of the PS(D)R, approval was given for the civil servant to be assisted in the civil servant's defence by a third party (hereafter referred to as "friend") throughout the hearing. The disciplinary hearing commenced in November 2004 and was concluded in January 2005 after 12 sessions.

11. The documentary evidence cited in support of the disciplinary charges laid against the civil servant included notes of meetings of the Economic Relaunch Strategy Group and the Economic Relaunch Working Group; extracts from notes of interviews with the Independent Panel and the Panel's report; extracts from the relevant report of the PAC; relevant government circulars and legislation prescribing the duties and responsibilities of Controlling Officers of public funds; statements made by a witness to CSB; and e-mail correspondence to and from Invest Hong Kong ("InvestHK").

12. Four witnesses gave testimony before the IC, namely, an officer in D of J who was at the material time responsible for advising InvestHK on legal matters relating to the Harbour Fest event; an Associate Director-General and a Chief Executive Officer of InvestHK; and the Financial Secretary. They were cross-examined by the civil servant and the civil servant's "friend" in the course of the hearing.

13. At the end of the hearing, the IC confirmed that it was satisfied that all material facts had been disclosed to the civil servant and that the civil servant had been given sufficient opportunities to comment on the facts that were in dispute.

14. The IC presented its findings to SCS in early February 2005. On the basis of the documentary evidence and the testimony of the witnesses adduced before it at the hearing, and having considered the defence presented by the civil servant and the "friend" of the civil servant, the IC found one of the five misconduct charges laid against the civil servant substantiated and the other four charges partially substantiated. In summary, the IC found that

whilst serving as the Secretary to the Economic Relaunch Working Group (“Working Group”), the civil servant concerned -

- (a) failed to ensure that the budget proposed by the American Chamber of Commerce (“AmCham”) for the Harbour Fest event was critically examined by InvestHK and that the Working Group was fully and adequately advised on the proposed budget when the funding application was submitted to the Working Group for approval;
- (b) as Controlling Officer for the \$100 million allocated to the Harbour Fest event, when three memoranda of understanding were signed with AmCham, failed to ensure that they contained provisions (i) requiring the Government to be consulted and its approval sought on any major changes to the programme and the budget of the event; (ii) requiring periodic reports to be made to the Government on the development and progress of the event; (iii) entitling the Government to have access to all accounts, contracts and records of the event; and (iv) for the refund of the advance payments if no agreement was reached and the event was not held, and to ascertain whether AmCham was in a financial position to meet its obligations under the memoranda;
- (c) as Controlling Officer for the \$100 million allocated to the Harbour Fest event, failed to ensure that the sponsorship agreement signed with AmCham contained provision (i) for refund of the payments already advanced if the event was not held; (ii) requiring AmCham to make periodic reports to the Government on the development and progress of the event; and (iii) requiring AmCham to consult the Government on the ticket pricing strategy;
- (d) failed to ensure that a critical review of the ticket pricing strategy had been conducted covering the distribution of free tickets, thereby prejudicing Government’s position; and

- (e) failed to establish procedures or mechanisms that would enable InvestHK to scrutinize and approve the detailed budget and statements of account prior to and during the course of the Harbour Fest event.

### ***Acceptance of the IC's findings***

15. In accordance with established procedures, CSB obtained D of J's advice on whether the proceedings were legally in order and whether the IC's findings were supported by the evidence presented at the hearing. In the light of D of J's comments on the IC's findings, SCS decided that the IC should be invited under section 9(b) of the PS(D)R to clarify some issues. This was done in April 2005. The IC furnished its clarifications to SCS in the same month.

16. Having considered the IC's inquiry report including its clarifications, the recommendations of the processing officers in CSB and the advice of D of J, SCS accepted the IC's findings in May 2005. Immediately thereafter, CSB notified the civil servant concerned of the IC's findings and that SCS had accepted the findings. In accordance with established procedures, CSB invited the civil servant to make representations in mitigation of punishment.

17. In early June 2005, the civil servant made representations to SCS in mitigation of punishment. The civil servant also made an appeal against SCS's acceptance of the IC's findings. Having consulted D of J, CSB notified the civil servant in the same month that since it was SCS that made the decision to accept the IC's findings, it would not be appropriate for SCS to consider the civil servant's appeal. CSB also drew the civil servant's attention to the appeal channel available under section 20 of the PS(A)O, should the civil servant wish to further pursue the appeal.

### ***Consideration of punishment***

18. In late June 2005, having considered the IC's findings, the representations made by the civil servant in mitigation of punishment and the inputs furnished by the processing officers in CSB, the Permanent Secretary for the Civil Service endorsed a recommended level of punishment against the civil servant for the purpose of seeking the advice of PSC in accordance

with section 18 of the PS(A)O. In early September 2005, PSC tendered its advice on the appropriate level of punishment.

19. On receipt of PSC's advice, the processing officers in CSB informed the civil servant of the contents of a submission relating to the civil servant's disciplinary case, including the recommended level of punishment, to be made to SCS; and invited the civil servant to put in the last word. In late September 2005, the civil servant made further representations.

20. After taking into account the advice of PSC and the gravity of the established acts of misconduct, the customary level of punishment in precedent cases of a similar nature of misconduct, the civil servant's very senior position, the civil servant's service and disciplinary record, the mitigating circumstances described in the IC's report and the civil servant's representations in mitigation of punishment, SCS decided that the civil servant concerned should be awarded the punishment of "a severe reprimand plus a fine equivalent to reduction in salary by two increments for 12 months" and "a caution of removal from the service in the event of further misconduct". The civil servant was informed of SCS' decision in early October 2005.

### ***Representations under s.20 of the PS(A)O by the civil servant concerned***

21. In mid-October 2005, the civil servant submitted representations in relation to the disciplinary case to the CE under s.20 of the PS(A)O. In the representations, the civil servant appealed against both the guilty verdict and the disciplinary punishment imposed. The CE delegated to the Chief Secretary ("CS") the authority to determine the representations on his behalf. After carefully considering the case, including the representations and other relevant information and factors, the CS decided to uphold the IC's findings accepted by SCS, and the punishment imposed by SCS. The civil servant was so informed on 26 January 2007.

### **Conclusion**

22. The Administration is committed to upholding a high standard of integrity and conduct in the civil service. Allegations of misconduct against civil servants are acted upon in accordance with due process. To ensure that the disciplinary mechanism remains an effective management tool, we have a

responsibility to maintain fairness and justice in the process as well as to demonstrate our determination to take disciplinary action where misconduct is substantiated.

Civil Service Bureau  
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