

**Bills Committee on Disciplined Services Legislation
(Miscellaneous Amendments) Bill 2009**

**Percentage of reduction of accrued benefits of Government's Voluntary
Contribution and retrospective effect of the Disciplined Services Legislation
(Miscellaneous Amendments) Bill 2009**

Background

At the Bills Committee meeting on 6 March 2009, a Member expressed concern that the maximum percentage of reduction of the accrued benefits attributable to the Government's voluntary contribution ("GVC benefits") on compulsory retirement of Civil Service Provident Fund ("CSPF") civil servants was not provided in the legislation as in the case of pensionable civil servants. The Administration was requested to -

- (a) provide information on the safeguards against abrupt changes to the maximum percentage of reduction as currently agreed by staff; and
- (b) consider the merits of providing the maximum percentage of reduction in the disciplined services legislation for CSPF civil servants of the disciplined service grades.

2. At the meeting, a Member also expressed concern about the retrospective application of the proposed provisions under the Disciplined Services Legislation (Miscellaneous Amendments) Bill 2009 ("the Bill") to CSPF civil servants who left the service under other specified circumstances (e.g. retirement, death, permanent incapacity, etc. with less than ten years' service) before the commencement of the Bill. In this connection, the Administration undertook to provide supplementary information on the arrangements available under the employment contract of CSPF civil servants, as well as the transitional provisions in Part 6 of the Bill.

**Percentage of reduction of accrued benefits of Government's Voluntary
Contribution**

3. The forfeiture ceiling of 25% of GVC benefits under Level 2 punishment (i.e. compulsory retirement with reduced GVC benefits) on disciplinary grounds for CSPF civil servants is set having full regard to the

extensive consultations with the staff sides prior to the introduction of the Bill. It has taken account of the policy objectives of achieving sufficient punitive and deterrent effect for civil servants who have committed grave disciplinary misconduct or criminal offence, as well as achieving some degree of parity with similar punishment for pensionable civil servants where the pension benefits may be reduced up to 25% on their compulsory retirement on certain disciplinary grounds.

4. Unlike the retirement benefits of pensionable civil servants which are provided under the Pensions Ordinance (Cap 89) and the Pension Benefits Ordinance (Cap 99), the retirement benefits of CSPF civil servants are provided by employment contract which comprises the letter of appointment, the Memorandum of Conditions of Service, and the Civil Service Bureau (“CSB”) circulars and regulations referred thereto. It would therefore be more appropriate to provide the forfeiture ceiling of GVC benefits, which will affect CSPF civil servants only, by way of contract (i.e. in a CSB circular which will form part of the employment contract with CSPF civil servants). Moreover, as explained at the meeting on 6 March 2009, the Bill seeks to amend the Disciplined Services Legislation¹ which governs, amongst others, disciplinary matters of middle ranking civil servants or below in the disciplined services grades. It is not applicable to civil servants of civilian grades and senior ranking civil servants of the disciplined services grades², whose disciplinary matters are governed by the Public Service (Administration) Order (“PS(A)O”) which is an executive order made by the Chief Executive. Consequential amendments to the PS(A)O will be made for this group of CSPF civil servants, and the relevant CSB circular will be amended to provide for the forfeiture ceiling, amongst others, once this Bill is enacted by LegCo.

5. In the event there is a future need to revise the forfeiture ceiling, the Administration will consult extensively with the staff sides through its established staff consultation mechanism within the civil service³. Also, any change to the forfeiture ceiling would require consultation with the relevant Legislative Council Panel. This consultation mechanism has worked in the past and in the formulation of the proposals for the Bill. Indeed, having regard to the

¹ This refers to the main ordinances and subsidiary legislation that are applicable to specific disciplined service grades/ranks of the Hong Kong Police Force, Fire Services Department, Correctional Services Department, Customs and Excise Department, Immigration Department and Government Flying Service.

² Except for Immigration Department in which only the junior ranking officer (i.e. those of the Immigration Assistant grade) are subject to the Disciplined Services Legislation for the disciplinary offences specified therein, whilst the others are subject to the Public Service (Administration) Order.

³ This refers to consultation with the four staff consultative councils which are the Senior Civil Service Council, Police Force Council, Disciplined Services Consultative Council and Model Scale 1 Staff Consultative Council, and where necessary, the four service-wide unions/associations which are the Hong Kong Federation of Civil Service Unions, Government Disciplined Services General Union, Hong Kong Government Employee Association and Hong Kong Civil Servants General Union.

views expressed by the staff sides, we have revised our original proposals extensively. For details of such revisions, please refer to **Annex A**. We had also consulted the Panel twice on 20 October 2008 and 17 November 2008 on our proposals, with staff deputations invited to express their views and concerns at the latter meeting. On the request of the Panel, we further consulted the concerned staff sides in December 2008/January 2009 and reported back the outcome of consultation to the Panel in writing on 12 January 2009 (**Annex B**).

Retrospective application of the Bill

6. For CSPF civil servants who leave the service under other specified circumstances (i.e. reaching prescribed retirement age, death and permanent incapacity, etc, with less than ten years' service) and are not found guilty of any serious misconduct or offence, they are entitled to be vested and paid their GVC benefits. For CSPF civil servants who leave the service under the above-mentioned specified circumstances and are found guilty of any serious misconduct or offence, the terms and conditions of their employment contract have already provided that their GVC benefits may be forfeited, wholly or in part. Hitherto, we have not come across any case involving CSPF civil servants who left under the above-mentioned specified circumstances committing serious misconduct or offence which warranted the imposition of removal punishment. In the rarity of event that such a case arises with punishment awarded between now and the commencement of the Bill, the Administration can deal with it in accordance with the terms and conditions of the employment contract. The Bill, if passed, will not have retrospective application to such a case.

7. On the other hand, the transitional provisions in Part 6 of the Bill, as explained at the meeting on 6 March 2009, seek to cover possible disciplinary cases straddling the commencement of the Bill, e.g. where serious misconduct or offence is committed before the commencement but punishment is awarded after the commencement. These transitional provisions have provided that the Bill applies to such cases even though the misconduct or offence is committed before the Bill comes into effect. It makes clear that the GVC benefits of CSPF civil servants found guilty in such cases may be forfeited wholly or in part. The Department of Justice has advised that these transitional provisions are legally in order.

**Disciplinary framework for civil servants
whose retirement benefits are provided under the
Civil Service Provident Fund Scheme and other related proposals**

Changes made to the original proposals after staff consultation

Original proposals	Changes made
<i>Removal punishments for CSPF civil servants</i>	
<ul style="list-style-type: none"> • Level 1: Dismissal with forfeiture of full GVC benefits 	No change
<ul style="list-style-type: none"> • Level 2: Compulsory retirement with reduced GVC benefits 	The maximum level of forfeiture has been changed from 25% of the accrued benefits attributable to the Government's total contributions to 25% of GVC benefits
<ul style="list-style-type: none"> • Level 3: Compulsory retirement with full GVC benefits 	No change
<i>Appeal mechanism for CSPF civil servants</i>	
<ul style="list-style-type: none"> • To set up an independent non-statutory appeal panel to advise the Chief Executive on appeals against forfeiture of CSPF benefits 	No change
<i>Fine</i>	
<ul style="list-style-type: none"> • To change the calculation of fine from an increment-based approach to a salary-based approach 	No change
<ul style="list-style-type: none"> • To cap the fine at an amount equivalent to two months' salary 	The ceiling of fine has been revised to an amount equivalent to one month's salary
<ul style="list-style-type: none"> • To make the fine imposable in conjunction with all formal disciplinary punishments except for dismissal. 	Taken out from the original proposals

Original proposals	Changes made
<i>Unauthorised absence</i>	
<ul style="list-style-type: none">To align the specified period for taking summary dismissal action against prolonged unauthorised absence in certain disciplined services from 21 days to 14 days as in the case of civil servants subject to the PS(A)O and the disciplined service grade officers of the Fire Services Department	Taken out from the original proposals
<i>Stoppage of salary/allowance upon criminal conviction</i>	
<ul style="list-style-type: none">To apply the service-wide arrangement on stoppage of salary and/or allowance upon criminal conviction to Police disciplined service grades officers	No change
<i>Departmental welfare fund of the disciplined services</i>	
<ul style="list-style-type: none">To amend the description of former member/employee such that civil servants of the disciplined services will be accorded the same status as their pensionable counterparts under their respective departmental welfare fund	No change

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12 January 2009

Ms Joanne MAK
Clerk to Panel on Public Service
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Ms Mak,

**Disciplinary framework for civil servants
whose retirement benefits are provided under the
Civil Service Provident Fund (“CSPF”) Scheme
and other related proposals**

Having received deputations on the proposed disciplinary framework for CSPF civil servants from the Disciplined Services Consultative Council Staff Side (“DSCC Staff Side”) and the Government Disciplined Services General Union (“GDSGU”) at its meeting held on 17 November 2008, the Panel asked the Administration to conduct further staff consultations to fully address the staff sides’ concerns. I write to update the Panel on the follow-up actions taken by the Administration.

The Civil Service Bureau met the DSCC Staff Side and the GDSGU again on 12 December 2008 and 6 January 2009 respectively. We explained to them our plan to introduce the relevant amendment bill into the Legislative Council in the first half of this legislative year, and our target to bring the legislative amendments, together with the requisite amendments to other instruments such as the Public Service (Administration) Order (“PS(A)O”) and the relevant Civil Service Bureau circulars, into effect before mid-2010. At the same time, we reiterated to them our undertaking to conduct separate reviews regarding concerns which fell outside the scope of the above-mentioned amendment bill (namely, certain discrepancies in the disciplinary proceedings of

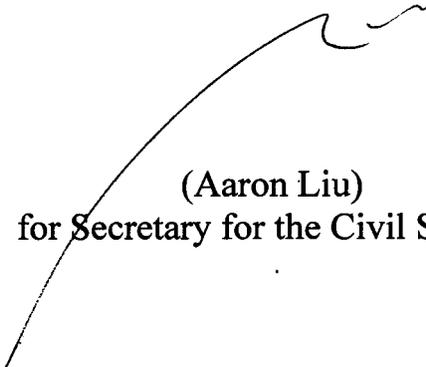
different disciplined services and details of the review board under section 20(2) of the PS(A)O). Both the DSCC Staff Side and the GDSGU took note of the Administration's explanation and agreed that the processing of the amendment bill and the aforesaid reviews could proceed in parallel.

As regards the GDSGU's concern over the inclusion of investment returns in the forfeiture formula for the proposed level 2 punishment for CSPF civil servants who have misconducted themselves, at the meeting held with the GDSGU on 6 January 2009, the Administration further elaborated on the detailed considerations behind the proposal, including the agreed contractual terms for CSPF civil servants when they first joined the service, the policy intent to achieve parity treatment among pensionable civil servants and CSPF civil servants as far as circumstances allow, and the need to maintain sufficient punitive and deterrent effect for staff who have committed the most serious types of misconduct. The GDSGU expressed appreciation of the Administration's stance.

On the basis of the foregoing, the Administration intends to proceed with the drafting of the amendment bill concerned, with a view to introducing the bill into the Legislative Council before the end of February 2009.

Thank you for your attention.

Yours sincerely,



(Aaron Liu)
for Secretary for the Civil Service