

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

**Proposals to provide for the percentage of reduction of
accrued benefits of Government's voluntary contributions and
to provide for the terms and conditions of the
Civil Service Provident Fund Scheme in legislation**

Background

At the Bills Committee meeting on 26 March 2009, a Member held that the maximum percentage of reduction of the accrued benefits attributable to the Government's voluntary contributions ("GVC benefits") on compulsory retirement of a civil servant under the Civil Service Provident Fund ("CSPF") Scheme ("the forfeiture ceiling") should be provided in legislation as in the case of pensionable civil servants. The Administration was requested to -

- (a) offer its views on the suggestion and any follow-up actions it would take in this regard; and
- (b) consider whether the terms and conditions for provision of retirement benefits of civil servants under the CSPF Scheme should be laid down in legislation, as in the case of retirement benefits of pensionable civil servants provided under the relevant pension legislation¹.

Percentage of reduction of accrued benefits of Government's voluntary contributions

2. In the paper submitted to the Bills Committee (LC Paper No. CB(1)1124/08-09(03)) and as explained at the Committee meetings on 6 and 26 March 2009, the forfeiture ceiling of 25% of GVC benefits for CSPF civil servants under Level 2 punishment (i.e. compulsory retirement with reduced GVC benefits) is proposed having full regard to the extensive consultations with the staff sides before the introduction of the Disciplined Services Legislation (Miscellaneous Amendments) Bill 2009 ("the Bill"). Unlike the

¹ The Pension Ordinance (Cap. 89) and the Pension Benefits Ordinance (Cap. 99).

retirement benefits of pensionable civil servants which are provided under the relevant pension legislation, 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 is therefore logical that the forfeiture ceiling for GVC benefits at 25% should be provided by way of contract (or more specifically in a CSB circular forming part of the employment contract with CSPF civil servants) such that it will apply to all CSPF civil servants on an equal footing. As explained at the two meetings, the Bill seeks to amend the Disciplined Services Legislation² (“DSL”) which governs generally, among 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 grades, whose disciplinary matters are governed by the Public Service (Administration) Order (“PS(A)O”) made by the Chief Executive. Amendments of the DSL by way of the Bill cannot therefore fully meet the purpose of specifying the forfeiture ceiling for GVC benefits, which affect all CSPF civil servants.

3. Notwithstanding the above, we note Members’ concern over any unilateral variation of the forfeiture ceiling by the Administration without prior consultation. As stated in paragraph 5 of the paper submitted to the Bills Committee (LC Paper No. CB(1)1124/08-09(03)), there are safeguards before any change to the forfeiture ceiling for GVC benefits can be introduced. In particular, all relevant stakeholders including the staff sides and the Legislative Council Panel on Public Service (“the Panel”) would be consulted before any changes could be introduced and in that process, the comments/views of stakeholders concerned would be duly taken into account.

4. In response to a Member’s suggestion made at the meeting on 26 March 2009, the Administration agreed to give a clear undertaking during the resumption of the Second Reading debate of the Bill that the Administration will consult extensively with the staff sides through the established staff consultation mechanism as well as the Panel in the event that there is a future need to revise the forfeiture ceiling, and that we would duly take their comments/views into account before making any such revision.

Legislation for the Civil Service Provident Fund Scheme

5. Regarding the question of whether the terms and conditions for

² 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.

the provision of retirement benefits of CSPF civil servants should be provided in legislation, as in the case of the retirement benefits of pensionable civil servants, we consider it useful to provide an account on the previous deliberations and consultations prior to the implementation of the CSPF Scheme in June 2003.

Previous deliberations and consultations

6. To recapitulate, the proposal of setting up a provident fund scheme for the civil service to replace the pension system was first raised in a public consultation document issued in the context of the Civil Service Reform in March 1999. At the time, it was considered that there was a need to revamp the civil service retirement protection system by enlisting the assistance of a consultant. In June 1999, the Administration briefed the Panel on the outcome of the public consultation, including the fact that a majority of those who had given their views raised no in-principle objection to explore the setting up of a provident fund scheme for the civil service. In March 2000, we further updated the Panel that we had commissioned a consultancy study for the setting up of a CSPF Scheme.

7. In January 2001, we launched another round of public consultation on the consultant's recommendations for the design option of the proposed CSPF Scheme, including the recommendation for the Scheme to be set up under the Mandatory Provident Fund Schemes Ordinance ("MPFSO") (Cap. 485) as a Mandatory Provident Fund ("MPF") scheme similar to those available in the market. Apart from extensive consultation with the staff sides³ on the consultant's recommendations, we issued the consultancy report to departmental and grade management, civil service advisory bodies, employers' federation as well as human resource professional bodies for comments. In March 2001, we also consulted the Panel on the consultancy report. During the consultation process, we explained to all parties concerned that as recommended by the consultant, the CSPF Scheme should be set up and governed under the MPFSO. The second round of public consultation ended in late April 2001. In June 2001, we briefed the Panel on the outcome of the public consultation. Among the 92 submissions received, 24 submissions expressed support for the setting up of the proposed CSPF Scheme, another 58 submissions expressed no objection and made suggestions/comments on individual design features, and the remaining ten submissions raised some concerns or questions on the proposed Scheme⁴.

³ On staff consultation, the Administration had closely consulted the staff sides in the process of setting up the CSPF scheme. Indeed, a long and comprehensive consultation had been conducted through a sub-working group comprising representatives from the four central staff consultative councils and the four service-wide staff associations.

⁴ As supplemented in an information paper issued to the Panel in July 2001.

The Panel raised no in-principle objection to the setting up of the proposed CSPF Scheme in line with the MPFSO requirements. Throughout the consultation process, there was no suggestion or counter-proposal by the staff sides or the Panel on the legal framework underpinning the CSPF Scheme.

8. Having taken account of the views and comments from various stakeholders including the staff sides, departmental and grade management, civil service advisory bodies, employers' federation, human resource professional bodies, the public and Members of the Legislative Council, the Administration decided in July 2001 to set up the CSPF Scheme under the MPFSO as a MPF scheme similar to those available in the market. From the relevant Legislative Council Brief issued in July 2001, it was clear that the consultant's considered view, which was accepted by the Administration, was that at a time when the MPF system was launched just a few months earlier on 1 December 2000, creating the CSPF Scheme under the MPFSO would lend support to the latter in providing retirement protection for the entire working population. It is also stated in the Brief that it would in fact be difficult to justify why the provident fund for civil service recruits should be in a form other than a MPF scheme.

9. Since the decision to set up the CSPF Scheme was made in July 2001, the Administration had continued to update the Legislative Council on the progress of the proposed CSPF Scheme, including the issue of an information note to the Finance Committee in April 2002. The information note contained information on, among others, the design principles of the CSPF Scheme as well as the legal framework under which it would be operated. The Administration had received no contrary views or counter-proposals on the legal framework underpinning the CSPF Scheme. In June 2003, the CSPF Scheme was formally launched as the retirement benefit system for civil servants appointed on or after 1 June 2000 on new entry terms and when they progressed onto permanent terms of appointment upon completion of probation and/or agreement.

Considerations

10. After taking account of the deliberations and consultations undertaken in the run-up to the implementation of the CSPF Scheme mentioned in paragraphs 6 to 9 above, we set out our considerations with regard to Members' suggestion to provide the terms and conditions for the CSPF Scheme in legislation as follows -

- (a) extensive and thorough consultation had been conducted before the implementation of the CSPF Scheme among all relevant stakeholders, including the staff sides, departmental and grade

management, civil service advisory bodies, employers' federation, human resource professional bodies, the public and Members of the Legislative Council. Specifically, there were two rounds of consultation each with the public and the Panel;

- (b) throughout the consultation mentioned in (a) above, there had been a clear understanding and consensus that the CSPF Scheme should be provided under the MPFSO as a MPF scheme similar to those available in the market;
- (c) one of the considerations for the introduction of the CSPF Scheme was to modernise the provision of retirement benefit to civil servants by reference to the retirement benefits provided for the rest of the working population. By subscribing to one of the registered schemes appointed under the CSPF Scheme, CSPF civil servants are afforded the same statutory protection enjoyed by their private sector counterparts. To provide the terms and conditions of the CSPF Scheme in legislation to achieve "parity" with the provision of pension scheme for pensionable civil servants who are being phased out will be a retrograde step, and will render the provision of CSPF benefits for civil servants out of step with the territory-wide norm; and
- (d) under the MPFSO, there is already adequate protection offered to members of MPF schemes, CSPF civil servants inclusive. The protection measures include stringent approval/registration criteria for MPF schemes, ongoing monitoring by the Mandatory Provident Fund Schemes Authority, professional indemnity insurance taken out by scheme trustees, and the added safeguard of a compensation fund.

11. In the light of the considerations in paragraph 10 above, the Administration is of the view that there are insufficient justifications to alter the existing legislative framework (i.e. the MPFSO) under which the CSPF Scheme is operated.