

立法會
Legislative Council

LC Paper No. LS 212/98-99

**Paper for the House Committee Meeting
of the Legislative Council
on 25 June 1999**

**Legal Service Division Third Report on
Disciplined Services Welfare Funds Legislation
(Amendment) Bill 1999**

Members may recall that the Legal Service Division made a further report to the House Committee meeting on 30 April 1999 on the Bill and had brought to the attention of Members the legal effect of a validation clause. To recap, the purpose of that clause is to validate certain transactions relating to the Police Welfare Fund. During the meeting, Hon James To expressed reservations about the need for enacting that validation clause and suggested the Legal Service Division to make further clarifications with the Administration.

2. We wrote to the Administration on 5 May 1999 and a reply was received on 16 June 1999 (please see correspondences attached). In their reply, the Administration confirmed that there has not been any change in the policy on the application of the Police Welfare Fund. However, the Commissioner of Police's power to acquire and dispose of property for the purposes of the Fund is not spelt out expressly in the existing section 39 of the Police Force Ordinance (Cap. 232). For the avoidance of any possible legal challenge on the lawful exercise of the Commissioner of Police's authority, they considered it necessary that previous property transactions conducted by or on behalf of the Commissioner for the purposes of the Fund should be validated. As the Commissioner has not held any personal property for the Fund, they propose to delete the reference to personal property in the validation clause. A Committee Stage amendment is attached.

3. Hon James To has been consulted on the Administration's explanation, and he has found it to be satisfactory. It is recommended that the Second Reading debate of the Bill may be resumed and the proposed Committee Stage amendment be approved.

Encls.

Prepared by
HO Ying-chu, Anita
Assistant Legal Adviser
Legislative Council Secretariat
22 June 1999

SBCR2/2801/75(98)
LS/B/48/98-99
2869 9209
2877 5029

By Fax No. 25234171

5 May 1999

Mr. K W Leung
Chief Assistant Secretary (Special)
Security Bureau
6/F Main and East Wings
Central Government Offices
Hong Kong

Dear Mr. Leung,

**Disciplined Services Welfare Funds
Legislation (Amendment) Bill 1999**

During the House Committee meeting on 30 April 1999, Members have instructed us to clarify with you whether there is the real need for enacting clause 10 of this Bill.

In paragraph (b) of your letter dated 16 April 1999, you stated that there are no personal properties held by the Commissioner of Police for the Police Welfare Fund within and outside Hong Kong. Why is then "personal properties" mentioned in clause 10?

If without the enactment of clause 10, properties acquired cannot be disposed. Then, of course, such clause will be deemed a "must". However, you stated that even without the enactment of clause 10, the disposal of properties already acquired can be disposed of and in fact have been disposed of without difficulties. So, why is there the need for such clause?

Furthermore, you stated that under section 39 of the Police Force Ordinance (Cap. 232), the Police Welfare Fund can be applied to procure comforts and convenience for police officers. Holiday facilities are known to have been maintained. So, if you think that section 39 has already impliedly empowered the Fund to acquire holiday homes, being comforts and convenience for police officers, then clause 10 is really not necessary.

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We reiterate that validation clauses are used as a legislative tool to rectify an act or transaction by deeming the act or transaction as having been done with valid legal authority. This legislative tool should not be used lightly since it has retrospective effect and may amount to a change of the original legislative intent or policy for that matter. Even if it is used, it should be used restrictedly and should not refer to transactions which are not in existence. Would the Administration reconsider the need for the enactment of clause 10?

Your early reply in both Chinese and English is appreciated.

Yours sincerely,

(Anita HO)
Assistant Legal Adviser

c.c. D of J (Attn: Miss Shandy Liu, SGC)
LA

政府總部的信頭
Letterhead of Urgent by Fax
GOVERNMENT SECRETARIAT
香港下亞厘華道
LOWER ALBERT ROAD
HONG KONG

OUR REF.: (11) in SBCR 2/2801/75 Pt. 6

16 June, 1999

YOUR REF.:

Tel. no. : 2810 3435

Fax no. : 2868 9159

Miss Anita HO
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Building,
8 Jackson Road,
Central, Hong Kong.

(Fax No: 2877 5029)

Dear Miss HO,

Disciplined Services Welfare Funds
Legislation (Amendment) Bill 1999

Thank you for your letter of 5 May 1999.

The police holiday homes were acquired for the purpose of procuring comforts and convenience for police officers and other public officers under the existing section 39(3) of the Police Force Ordinance (Cap. 232). We confirm that there has not been any change in the policy on the application of the police welfare fund. However, the Commissioner of Police's power to acquire and dispose of property for the purposes of the fund is not spelt out expressly in the existing section 39. For the avoidance of any possible legal challenge on the lawful exercise of the Commissioner's authority, we consider it necessary that previous property transactions conducted by or on behalf of the Commissioner for the purposes of the fund should be validated.

As the Commissioner of Police has not held any personal property for the police welfare fund, we are agreeable to deleting the reference to personal property in Clause 10 of the Bill. The proposed CSA is attached for your comment.

Yours sincerely,

(Mrs Sarah KWOK)
for Secretary for Security

c.c. Department of Justice (Attn : Ms Shandy LIU)
Commissioner of Police (Attn : Mr W C WONG)

Fax no. : 2869 1302
Fax no. : 2865 4799

1st draft: 04.06.99
2nd draft: 09.06.99

DISCIPLINED SERVICES WELFARE FUNDS LEGISLATION
(AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

Clause

Amendment Proposed

10(1) By deleting "property, whether real or personal and" and substituting "real property,".