

立法會
Legislative Council

LC Paper No. LS 134/98-99

**Paper for the House Committee Meeting
of the Legislative Council
on 30 April 1999**

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

Members may recall that the Legal Service Division made a report to the House Committee meeting on 26 February 1999 on the Bill (LegCo Paper No. LS116/98-99 refers.) To recap, the Bill amends five Ordinances in order to reconstitute the welfare funds established for members and former members of the Fire Services Department, the Police Force, the Correctional Services Department, the Immigration Service and the Customs and Excise Service and their dependants.

2. We have sought clarifications from the Administration on certain technical points, in particular, the need for enacting clause 10 and whether the staff have been consulted.

3. The Administration intends to enact clause 10 so as to validate certain transactions relating to the Police Welfare Fund. This is a validation clause with retrospective effect. In spite of the fact that the Secretary for Security had said that the Bill did not involve a change of policy, we had asked the Administration to clarify whether it was the case. In the Administration's letter of 10 March 1999, it explained that in its view, the existing Police Welfare Fund established under section 39 of the Police Force Ordinance (Cap. 232) does not have the legal capacity to acquire real property. But the Commissioner of Police had acquire property by using a company limited by guarantee as a vehicle to overcome the legal problem. In its letter of 16 April 1999, it further explained that clause 10 is to clarify that the Police Welfare Fund can be applied to procure comforts and convenience. This is a matter for Members to decide whether clause 10 of this Bill should be supported in light of what the Administration has explained.

4. As for whether the staff of the five disciplined services have been consulted, the Administration stated that the Bill has been drafted with their support.

5. Having studied the Administration's answer to technical points raised, we are satisfied that other provisions of the Bill do not raise any legal difficulties. Correspondences are attached (Please see annexures A, B, C and D).

6. Subject to Members' accepting the Administration's explanation, the Second Reading debate of the Bill may be resumed.

Encls.

Prepared by

HO Ying-chu, Anita
Assistant Legal Adviser
Legislative Council Secretariat
26 April 1999

SBCR 2/2801/75(98)
LS/B/48/98-99
2869 9209
2877 5029

By Fax No. 25234171

24 February 1999

Mr. K W Leung
CAS(S)Special Duty
Security Bureau
6/F Main and East Wings
Central Government Offices
Hong Kong

Dear Mr. Leung,

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

I am scrutinizing the legal and drafting aspects of the above Bill with a view to advising Members. I would be grateful if you could clarify the following:

1. Clause 10 - Validation of certain transactions relating to police welfare fund

Would you please clarify the need for this validation clause?

2. Item 1 of Schedule 1

(a) It is noted that the Bill is not intended to introduce policy changes. However, should not the definition of “dependant” in the proposed new section 18 be expanded to cover “foetus” of the Fire Services’ employees and former employees?

(b) In the proposed new section 19B(h), there is a reference to the Acceptance of Advantages (Governor’s Permission) Notice 1992 (Cap. 201 p. c). Members may wish to have explanation from the Administration on the meaning of “p.c” and the apparent unusual treatment of including non-legislative instruments in the Loose-leaf Laws of Hong Kong.

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3. Item 3 of Schedule 1

The enabling power for the Chief Executive in Council to make subsidiary legislation is amended. Although not being presented as part of the Bill, is it envisaged that amendment regulations would be made? If so, would Members be given the draft for scrutiny together with the Bill?

4. The LegCo Brief is silent on whether staff of the relevant disciplined services has been consulted. Would you please clarify?

5. On the Chinese version of the proposed section 19D(4) of Schedule 1, it reads as “准赅在受處長賑偏 A 當的條件規限的情況下給予”. Can the Chinese be improved by, say, “處長在給予准倉，可施加其賑偏 A 當的條件”。 Although the points 2-5 are made in the context of proposed amendments to the Fire Services Ordinance, they apply to other disciplined services welfare funds.

I shall be grateful if you can let me have a reply in both English and Chinese so that I can report to the Members.

Yours sincerely,

(Anita Ho)
Assistant Legal Adviser

c.c. Dept. of Justice (Attn: Mr. Duncan Berry, SALD)
Dept. of Justice (Attn: Miss Shandy Liu, SGC)
LA

Annex C

SBCR 2/2801/75(98)
LS/B/48/98-99
2869 9209
2877 5029

By Fax No. 25234171

26 March 1999

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

Dear Mr. Leung,

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

Thank you for your letter dated 10 March 1999. In relation to clause 10 of the Bill, I shall be grateful if you could clarify the following:

- (a) Validation clauses are usually 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 and thereby treating it as valid and having full effect in law. By its nature, it would have retrospective effect and it may amount to a change of the original legislative intent or policy for that matter. Under the existing section 39 of the Police Force Ordinance (Cap. 232), the Commissioner of Police, when acting as controller of the Fund, has not been empowered to acquire property for the purposes of the Fund. If Clause 10 is enacted, and by making reference to the purported acquisition of real property by the Commissioner of Police, would it be seen as a change of policy? When moving the Second Reading motion, the Secretary for Security has said that the Bill did not involve changing existing policy.

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- (b) Clause 10 applies to all real and personal properties located both within and outside Hong Kong. What are these properties? Are there any personal properties held by the Commissioner of Police for the Fund within and outside Hong Kong?
- (c) Clause 10 will have the effect of validating previous acquisitions of property by the Commissioner of Police. Nonetheless, would it have the effect to include the conveyance or assignment for the purpose of transferring or vesting of title to the Commissioner of Police in his capacity as the corporation sole to be established by this Bill?
- (d) In paragraph 1 of your letter, you stated that “The Hong Kong Police Welfare Association” acts as trustee for the purpose of holding property on behalf of “The Police Welfare Fund”. We are of the view that the Fund is only an accounting device provided by statute to enable the Commissioner, when acting as controller of the Fund, to use the Fund for purposes provided under section 39(3) of the Ordinance. That being the case, there may not exist any legal basis for the Fund, which is an accounting device, to have the capacity to act as beneficiary in relation to interests in properties held by the Hong Kong Police Welfare Association. Please clarify.
- (e) Why is there the need for enacting clause 10(2)? What if there had been disposal of property and the proceeds of disposal were not credited to the Police Welfare Fund?

Your early reply in both Chinese and English to facilitate my preparation of a further report to the House Committee is appreciated.

Yours sincerely,

(Anita Ho)
Assistant Legal Adviser

c.c. Dept. of Justice (Attn: Mr. Duncan Berry, SALD)
Dept. of Justice (Attn: Miss Shandy Liu, SGC)
LA

Annex B

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

OUR REF.: SBCR 2/2801/75 (98)

YOUR REF.: LS/B/48/98-99

10 March 1999

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

Dear Miss Ho,

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

Thank you for your letter dated 24 February 1999. Having consulted the law draftsman, I would offer the following clarifications to the points you raised -

1 Clause 10 - Validation of certain transactions relating to Police Welfare Fund

The existing Police Welfare Fund established under section 39 of the Police Force Ordinance (Cap.232) does not have the legal capacity to acquire or hold property. Because of this, the holiday homes of the Police Welfare Fund are at present held in the name of an association called "The Hong Kong Police Welfare Association" which was incorporated as a company limited by guarantee. It acts as trustee for the purpose of holding property on behalf of the Police Welfare Fund.

If the Bill is passed into law, the Commissioner of Police will be constituted as a corporation sole for the purposes of the Police Welfare Fund, with the power to acquire, hold and dispose of real and personal property (proposed section 39A(1) and (2)(b) of Schedule 2). The intention is for property derived from the Fund to be vested in

the corporation (proposed section 39B(2)). As for the property acquired before the commencement of the new provisions, Clause 10 will serve to validate their acquisition and will treat them as being lawfully held by the Commissioner for the purposes of the Fund.

2 Item 1 of Schedule 1

(a) Definition of “dependant”

The definition of “dependant” as now drafted does not cover an unborn child. This is in line with our existing practice and we have no intention to expand the definition of “dependant” to cover “foetus” or “unborn child”.

(b) Reference to the Acceptance of Advantages (Governor’s Permission) Notice 1992 (Cap.201 p.C)

“(Cap.201 p.C)” is the reference to the instrument published on Pages C1-6 following Cap.201 in the loose-leaf edition of the Laws. This Notice was originally published as a Government Notice in the Gazette and has been included in the loose-leaf edition as a piece of useful information by virtue of section 2(4) of the Laws (Loose-leaf Publication) Ordinance 1990.

3 Item 3 of Schedule 1 - Power of CE in Council to make subsidiary legislation

Amendment regulations will be made by the Chief Executive in Council when the Bill is passed into law. The proposed amendments will be on updating and improving the operational arrangements to fall in line with the Amendment Bill. Under section 34 of the Interpretation and General Clauses Ordinance (Cap.1), the amendment regulations will be laid on the table of the LegCo at its next meeting after the regulations are gazetted.

4 Staff Consultation

The Bill has been drafted with the support of the disciplined services concerned and active participation of those staff involved in the operation of the welfare funds. The disciplined services departments make their own arrangements to brief their staff while the Bureau has advised the staff side of the Disciplined Services Consultative Council. They note that the Bill is intended to formalize existing

practices and improve operational arrangements of the welfare funds for their benefits.

5 Chinese text of the proposed section 19D(4) of Schedule 1

The English text reads "... Permission may be granted subject to such conditions as the Director considers appropriate". "Subject to" is appropriately rendered as "在受.....規限的情況下" in the context. Your suggested version - "在給予准倉" - adds a time element to the provision, which is absent in the English text. We therefore consider the our Chinese version for the proposed section 19D(4) of Schedule 1 to be appropriate.

Please note that points 2-5 above also apply to similar provisions in Schedules 2 to 5.

Yours faithfully,

(K W Leung)
for Secretary for Security

cc D of J (Attn: Ms Shandy Liu)

Annex D

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

OUR REF.: SBCR 2/2801/75 (98)

YOUR REF.: LS/B/48/98-99

16 April, 1999

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

Fax No: 2877 5029

Dear Miss Ho,

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

Thank you for your letter dated 26 March 1999. My response to the points you raised is as follows : -

- (a) Under section 39 of the Police Force Ordinance (Cap. 232), the Police Welfare Fund ("PWF") can be applied to procure comforts and convenience for police officers and public officers attached to the police force. For this purpose, holiday facilities are known to have been maintained by the PWF all along. The PWF's audited annual accounts contain a list of real estate properties of the PWF. Those accounts have been duly laid on LegCo's table according to reg. 11(3) of the Police (Welfare Fund) Regulations (Cap. 232 sub. leg. B).

The existing section 39 of Cap. 232 was drafted in general terms. The Government is taking the occasion of this Bill to make clear, among other things, the Commissioner of Police's power to acquire and hold property on behalf of the PWF. Clause 10 is necessary to avoid any possibility of having previous acquisition of the PWF's properties from being challenged because of the lack of express wording in the provisions.

- (b) The following real properties have been acquired by application of the PWF or donated to the PWF -
- (i) JPO Holiday Bungalow at Ham Tin Village, Lantau Island (Lot No. 2851 in D.D. No. 316, Pui O);
 - (ii) No. 2 and 2A of Calçada da Penha and No. 22A & 22B of Rua da Penha, Macau (Building II - Block I), Flat E4, 4/F;
 - (iii) Unit C2, 2/F, Building No. 15 to 25 of Rua Do Campo, and No. 6B and 6C of Beco Da Carpideira, Macau (the property has now been sold);
 - (iv) Casa Hoi Fu Fa Yuen, P.3 on 3/F, 85-91, Cacilhas Road, Macau (the property has now been sold);
 - (v) Casa Wang Teh-huei, Lot 988, Demarcation District 381, Jade View Villa, Block G1, New Territories (donated by gift of deed).

There are no personal properties held by the Commissioner of Police for the PWF within and outside Hong Kong.

- (c) The purpose of Clause 10 is to validate previous property acquisitions by or on behalf of the Commissioner of Police for the PWF. If Clause 10 is passed into law, those properties will be taken to have been validly acquired and to be lawfully held by the Commissioner for the purposes of the PWF. This will put the valid application of the PWF in those transactions beyond doubt. The vesting of the property needs not be spelt out specifically in this Clause because detailed conveyancing matters and title documentation can be dealt with in actual property transactions.
- (d) Clause 10 refers to “[all] property purporting to have been acquired by or on behalf of the Commissioner of Police of Hong Kong for the purposes of the police welfare fund”. Clause 10 is drafted in such a way that it can apply to cover a wide range of situations. So long as the property in question was purported to have been acquired in relation to the PWF (whether directly by the Commissioner or on his behalf through another vehicle), the transaction will be validated under Clause 10. Therefore the way in which the original transactions were structured is not a matter of concern because the very objective is to ensure that they will be validated by Clause 10.

- (e) Again, because the existing section 39 was drafted in a general way, the Commissioner's power to dispose of property for the purpose of the PWF is not clearly expressed. Some of the properties previously acquired by the PWF have in fact been disposed of already and the proceeds credited to the PWF without any exception. Paragraph (b) (iii) & (iv) above refer. Therefore, Clause 10 covers not only the validation of their acquisitions but also their disposal.

I hope you the above clarifications can address the points you raised.

Yours sincerely,

(LEUNG King-wai)
for Secretary for Security

c.c. Department of Justice (Attn. : Ms Shandy LIU)