

LEGISLATIVE COUNCIL BRIEF

MANAGEMENT INITIATED RETIREMENT SCHEME

INTRODUCTION

At the meeting of the Executive Council on 30 May 2000, the Council ADVISED and the Chief Executive ORDERED that -

- (a) a management-initiated retirement (MIR) scheme should be introduced as a management tool to provide for the retirement of directorate civil servants on permanent and pensionable terms to facilitate improvement in the Government organisation; and
- (b) the approval of the Finance Committee of the Legislative Council should also be sought for the payment of an ex-gratia compensation pitched at the level of six months' final substantive salary of civil servants retiring under the scheme.

BACKGROUND AND ARGUMENT

Existing Exit Mechanisms

2. At present, civil servants who are appointed on permanent and pensionable (P&P) terms can be compulsorily removed from service in the following circumstances -

- (a) dismissal or compulsory retirement on grounds of discipline due to serious misconduct;
- (b) compulsory retirement on grounds of public interest due to poor performance or loss of confidence in the officer concerned;
- (c) compulsory retirement on medical grounds due to permanent incapacity;
or

- (d) compulsory retirement on grounds of redundancy due to abolition of office.

3. In addition, it is provided in Civil Service Regulation (CSR) 383(b)¹ that an officer may be compulsorily retired at any time during his service to facilitate improvement in the organisation of the department or grade to which he belongs in order to effect greater economy or efficiency.

Need for an MIR Scheme

4. In order to serve the community better and to respond to its changing needs effectively, the Civil Service has responded by embracing changes, promoting a culture of openness and encouraging a customer-oriented approach in service delivery. As in all organisations, these changes need to be led by the senior management which should have the vision, leadership and skills to shape policies, adjust operation modalities, articulate plans and motivate staff to collectively achieve organisational objectives.

5. While we have put in much efforts to this end, there are occasions that we feel constrained by the lack of a management tool to deal with the following situations -

- (a) a directorate officer has difficulties in meeting the changes in the requirements of the job or the department or grade and his continued service would hinder organisational improvement to the department or grade; or
- (b) despite posting attempts, a directorate officer in a general grade is found to have severe problems in postability. He could hence no longer function effectively as a general grade officer, and his retirement is considered to be in the interest of the grade.

6. The existing exit mechanisms for P&P civil servants as set out in paragraph 2 above cannot be invoked in the circumstances described in paragraph 5. We see a need to invoke CSR 383(b) by formulating an MIR scheme to retire individual P&P civil servants in these circumstances, as **an exit mechanism to cater for**

¹ CSR 383 –

“An officer may be compulsorily retired at any time during his service –

- (a) if the office which he occupies is to be abolished; or
- (b) to facilitate improvement in the organisation of the department to which he belongs in order to effect greater economy or efficiency.

If a Head of Department considers that an officer is redundant for either of these reasons he should forward recommendations to the Secretary for the Civil Service together with all relevant supporting data, stating whether there is any other office in the service elsewhere for which the officer might be suitable.”

management needs and on terms reasonable and fair to the officers affected. The proposed scheme will allow the injection of new blood by creating space at the directorate ranks, and help to maintain the quality of management, particularly at the senior echelons. This is surely in the public interest.

Consultation within the Civil Service

7. The MIR scheme was first proposed as part of the Civil Service Reform announced in March 1999. We have since followed up by drawing up detailed proposals on the criteria and procedures of the scheme for consultation with the Staff Sides and departmental/grade management.

8. The Staff Sides expressed objection in principle because they considered that a civil servant faithfully and dutifully performing his duties should not be removed compulsorily. They were also concerned that the scheme might be abused. On the other hand, departmental/grade management supported the proposed scheme as an additional management tool to facilitate organisational improvement.

Areas of Concerns

9. The major areas of concerns or comments expressed by the Staff Sides, individual directorate officers and departmental/grade management over the proposed scheme and our responses are summarised in the following paragraphs.

Negotiated or voluntary scheme

10. The Staff Sides opined that the MIR scheme should only be invoked on a negotiated or voluntary basis. Quite a few individual respondents considered that an option for voluntary retirement under the scheme should be introduced, so as to reduce the potential resistance as well as the negative perception towards the scheme. Some respondents even suggested replacing the MIR scheme with a voluntary retirement scheme.

11. We do not support the proposal that the MIR scheme should be replaced by a voluntary retirement scheme for directorate officers. We also cannot agree that the scheme should be proceeded with only on a negotiated basis or only when the officer concerned accepts retirement. The objective of the MIR scheme is to provide an exit mechanism as a management tool to be invoked to cater for organisational improvement. We consider it essential that the authority and decision to retire individual officers under the scheme should be reserved to the management.

12. However, we agree that it would be appropriate to take into account the views of the officer concerned in the processing of potential compulsory retirement cases under the scheme. The officer will be informed of the management's intention to apply the MIR scheme to him in the first instance and his views or representation will be fully reflected to a high-level assessment panel which is to deliberate on each case of proposed compulsory retirement under the MIR scheme.

Upholding fairness in the procedures

13. While many of the respondents acknowledged or accepted in principle the need for a retirement scheme to be initiated by the management on organisational improvement grounds, they were concerned whether the scheme could be applied on a fair and objective basis in practice, and would not be abused for resolving personal conflicts or dislikes. They suggested that the criteria be elaborated to set out circumstances under which the scheme could be invoked.

14. It is unrealistic to exhaustively list out all the management circumstances that warrant invoking the MIR scheme. However, in the light of the feedback particularly from the Staff Sides, we have reaffirmed the criteria for invoking the scheme that the retirement is required in the interest of organisational improvement of a department or grade, and only if there are severe management difficulties to accommodate the officer elsewhere in the service. We have also clarified that no promotion over a period of time or lack of potential to advance are not in themselves reasons for invoking the MIR scheme.

15. In addition, we have built in procedural safeguards in the detailed procedures to ensure that the scheme is invoked only when necessary and justified. The initiation, consideration, assessment and approval of retirement under the scheme will be processed on a fair and objective basis. The scheme will be initiated only at policy secretary or head of departments level, subject to initial checks by the Secretary for the Civil Service (SCS). We have also elaborated that management considerations for retirement have to be supported by organisational development and improvement plans, directorate succession plans and/or posting records.

16. A recommendation to retire an officer compulsorily will be subject to stringent scrutiny by an assessment panel chaired by the Chief Secretary for Administration (CS) with members comprising the Financial Secretary (FS), SCS and other senior officials as appropriate. A representative of the Department of Justice will attend as legal adviser. The recommendation of the panel will be subject to advice by the Public Service Commission (PSC). The Chairman or Members of the PSC will be invited to attend the panel as observers.

17. A decision to retire a directorate P&P officer compulsorily on management grounds is a serious one and the authority to approve the compulsory retirement should be reserved to the highest level. The approving authority should be reserved to the Chief Executive in respect of officers who are serving as principal officials, and CS for other directorate officers.

Labelling effect and confidentiality

18. Many respondents considered that the negative perception of the MIR might mean that officers retiring under the scheme would be labelled negatively.

19. While we acknowledge the difficulty to remove the negative perception completely, there is a clear distinction between officers retiring under the MIR scheme and non-performers. The latter should be removed under the existing mechanism and do not deserve compensation in terms of immediate and enhanced pensions and ex-gratia payment.

20. To address the concern on negative labelling and in line with our established policy and legal requirements for privacy of personal data, we shall observe confidentiality for all actions and proceedings related to the scheme.

Application to Principal Officials

21. The MIR scheme is proposed as a civil service management tool to be applicable to all P&P civil servants at directorate level. It therefore may be applied to **civil servants who are appointed as principal officials**, subject to the provisions regarding their removal under Article 48(5) of the Basic Law (BL 48(5)) being fulfilled and adjustment to the detailed procedures as appropriate.

Retirement Package

22. Under the pensions legislation, an officer who retires under CSR 383(b) is entitled to be granted immediate and enhanced pension on the same basis as redundancy on abolition of office.

23. In addition to the pension benefits, we propose that an additional ex-gratia payment at the rate of six months of the officer's final substantive salary should be granted, similar to the normal practice for redundancy, to cater for the loss of fringe benefits. The grant of this ex-gratia payment will be subject to necessary funding approval by the Finance Committee.

Detailed Proposals for the MIR Scheme

24. We have formulated detailed proposals for the MIR scheme with the following key features –

- (a) the scheme should apply to **permanent and pensionable civil servants at directorate level** who form the core management of the civil service, and should be **initiated at top management level by policy secretaries or heads of department**;
- (b) the scheme should be invoked only if **the retirement of an officer from his present office is in the interest of organisational improvement of a department or grade AND there would be severe management difficulties to accommodate the officer elsewhere in the civil service**;
- (c) **alternative management measures such as posting, redeployment, secondment or demotion should be considered**, and only when they are found not appropriate or practicable should the scheme be invoked;
- (d) the officer **may voluntarily accept the management's initiative to retire early**, and if not, will be given the opportunity to **make representations against the recommendation to retire him**;
- (e) each case will be considered and approved by a **high-level panel chaired by CS, with members comprising FS, SCS** and other senior officials;
- (f) each case of retirement of an officer will **require the advice of the PSC. The Chairman or Members of the PSC will also be invited to attend the panel as observers** to ensure fairness and impartiality of the process of consideration;
- (g) **the retirement of an officer under the scheme will be in accordance with the established CSR 383(b)** which provides that an officer may be compulsorily retired to facilitate improvement in organisation to effect greater efficiency; and
- (h) an officer may make **further representations to the Chief Executive under section 20 of the Public Service (Administration) Order** against a decision to retire him under the scheme. The Chief Executive shall consider and act upon such representations as public expediency and justice to the individual may require.

BASIC LAW IMPLICATIONS

25. Article 48(7) of the Basic Law (BL) provides the Chief Executive the power to “remove holders of public office in accordance with legal procedures”. The Department of Justice has advised that this power can be exercised by way of the long-established CSR 383(b), subject to the inclusion of suitable procedural safeguards.

FINANCIAL AND STAFFING IMPLICATIONS

26. Implementation of the MIR scheme will have additional financial implications in terms of the enhanced pension element and the proposed ex-gratia payment. The exact quantum of compensatory payments will vary from officer to officer, depending on their rank and years of service. Pension payments are a statutory charge. As and when needed, the additional pension expenditure for officers retired under the MIR scheme will be paid out from the pensions vote in the Annual Estimates of Expenditure. Ex-gratia payments for officers retired under the MIR scheme are additional funding commitments that require funding approval of the Finance Committee. Given the nature of the MIR scheme as a standing management tool, we will make a submission to the Finance Committee at its meeting on 16 June 2000 to seek its approval of the financial implications for paying six months’ final substantive salary to an officer who retires under the scheme on an ex-gratia basis.

Civil Service Bureau

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