

Prison (Amendment) Rules 1999

(Made by the Chief Executive in Council under section 25 of the Prisons Ordinance (Cap. 234))

1. Commencement

These Rules shall come into operation on the commencement of Schedule 3 to the Disciplined Services Welfare Funds Legislation (Amendment) Ordinance 1999 (58 of 1999).

2. Powers and duties of Commissioner

Rule 77(8) of the Prison Rules (Cap. 234 sub. leg.) is amended by repealing "Correctional Services Department Welfare Fund" and substituting "general revenue".

3. Part substituted

Part VI is repealed and the following substituted---

"PART VI

Correctional Services Department Welfare Fund

256. Interpretation

In this Part---

"corporation" (法團) means the corporation sole constituted under section 24D(1) of the Ordinance;

"current requirement" (當時需求), in relation to the Fund, means the requirement as estimated under rule 258(1);

"deposit account" (存款帳戶) means the deposit account known as "Deposits--- Correctional Services Department Welfare Fund" in English and "存款——懲教署福利基金" in Chinese;

"Director" (署長) means the Director of Accounting Services;

"Fund" (基金) means the Correctional Services Department Welfare Fund continued by section 24E of the Ordinance.

257. Maintenance of the Fund

(1) The corporation must ensure that all money payable to the Fund under section 24F of the Ordinance is paid to the Director as soon as practicable after it is received.

(2) The Director must---

(a) maintain the deposit account; and

(b) credit money paid under paragraph (1) to the deposit account; and

(c) submit to the corporation before the 10th day of each month a return showing particulars of all transactions relating to the deposit account during the previous month.

258. Investment of surplus funds

(1) The corporation may from time to time estimate the requirement of the Fund

in terms of the amount (if any) by which the money payable from the Fund exceeds the money payable to the Fund during the 3 months' period beginning from the day on which the estimate is made.

(2) The corporation may---

(a) invest in securities or place on deposit any money held in the deposit account that is surplus to the current requirement of the Fund from time to time; and

(b) for that purpose, request the Director to pay the surplus money to the corporation.

(3) The corporation must---

(a) comply with any direction that the Financial Secretary may give in relation to the investments or deposits made under paragraph (2); and

(b) ensure that all dividends and interest accruing from the investments and deposits made under this Part are credited to the Fund.

259. Circumstances in which investments are to be disposed of

(1) If at any time the uninvested portion of the Fund falls below the amount necessary for the current requirement of the Fund, the corporation must dispose of such part of the investments of the Fund as will enable the Fund to meet that requirement.

(2) In this rule, "the uninvested portion of the Fund" (基金的未投資部分) means the part of the Fund that is neither invested in securities nor placed on deposits under rule 258.

260. Temporary loans to the Fund

(1) Pending the disposal of the investments of the Fund under rule 259, the corporation may, with the approval of the Financial Secretary, request the Director to make a loan to the Fund of an amount necessary for meeting the current requirement of the Fund.

(2) If the Director has made a loan to the Fund under paragraph (1), the corporation must, as soon as practicable after disposing of the relevant investments, repay to the Director the loan together with interest at such rate as the Financial Secretary may determine.

261. Certification of vouchers

(1) A person who requests the Director to make a reimbursement or payment from the Fund, must, at the time of the request, give the Director a voucher certified by the corporation or its delegate in relation to the request.

(2) The Director must not make payment from the Fund on the authority of a voucher unless the voucher has been certified by the corporation or its delegate.

262. Loans by the Fund

(1) A loan made from the Fund in accordance with section 24H(1) of the Ordinance is subject to the following conditions---

- (a) repayment by a number of monthly instalments specified by the corporation, not exceeding 48;
- (b) repayment in full (with any interest due) if any monthly instalment is not paid on time;
- (c) at the discretion of the corporation, the payment of interest at a rate that complies with paragraph (2), with that interest being calculated monthly on the balance outstanding at the end of each month until the loan is repaid in full, and payable within 1 month after the date on which the previous instalment became payable.

(2) The rate mentioned in paragraph (1)(c) must not exceed---

- (a) 5 per cent per year; or
- (b) such higher percentage as the corporation may determine with the approval of the Financial Secretary.

(3) The corporation may, by proceedings brought in a court of competent jurisdiction, recover as a debt any part of such a loan that is not repaid, or any interest on such a loan that is not paid, when it is due.

263. Irrecoverable assets and debts

to be written off

(1) The Financial Secretary, or a public officer authorized by the Financial Secretary, may authorize the corporation to write off an asset or a debt due to the Fund that the corporation considers irrecoverable.

(2) The writing-off of an asset or debt under paragraph (1)---

- (a) is subject to any guideline or direction that the Financial Secretary may specify or give; and
- (b) takes effect only for the purpose of the accounting records of the Fund; and
- (c) does not extinguish any right of the corporation to recover the asset or debt being written off.

264. Accounting records and annual statement of accounts

(1) The corporation must ensure that---

- (a) proper accounting records of all transactions, including investments, relating to the Fund are kept; and
- (b) an annual statement of accounts of the Fund is prepared for every period of 12 months ending on 31 March in each year.

(2) The corporation must ensure that the accounting records and annual statement

of accounts are kept and prepared in such manner as the Director may require.

264A. Audit of annual statement of accounts

(1) The corporation must, within the period specified in paragraph (2), submit an annual statement of accounts of the Fund to the Director of Audit for the purpose of auditing.

(2) For the purposes of paragraph (1), the specified period is 6 months after the end of the period to which the statement relates, or such shorter period as is agreed between the corporation and the Director of Audit.

(3) The Director of Audit must, within 3 months after receiving the annual statement of accounts from the corporation---

(a) audit the statement; and

(b) certify the statement subject to such report (if any) as the Director of Audit thinks appropriate.

264B. Audited statement of accounts to be laid on table of Legislative Council

The corporation must ensure that---

(a) a copy of the audited statement of accounts of the Fund together with the report (if any) of the Director of Audit; and

(b) a report by the corporation on the administration of the Fund during the period to which the statement relates,

are laid on the table of the Legislative Council within 3 months after the date on which the corporation has received the audited statement from the Director of Audit, or within such further period as the Chief Executive may allow in a particular case.".

4. Prisoners' Welfare Fund

Rule 265(2) and (3) is repealed and the following substituted---

"(2) The Director of Accounting Services shall submit to the Commissioner, before the 10th day of each month, a return showing all transactions of the Prisoners' Welfare Fund in his accounts during the previous month.".

5. Rules added

The following are added---

"266. Investments

(1) All sums considered by the Commissioner to be surplus to the normal requirements of the Prisoners' Welfare Fund shall at his request be invested by the Director of Accounting Services in such securities or placed on deposit in such manner in Hong Kong as the Financial Secretary may from time to time approve for that purpose.

(2) The dividends or interest accruing from the investments or deposits made under this rule shall be credited to the "Deposits--- Prisoners' Welfare Fund" account specified in rule 265.

267. Valuation of investments

All investments of the Prisoners' Welfare Fund shall be valued at the middle market price in Hong Kong on 31 March in each year, and the balance of that fund on that date shall be increased or decreased as may be required in accordance with such valuation.

268. Realization of investments

Should at any time the uninvested portion of the Prisoners' Welfare Fund fall below a figure which in the opinion of the Commissioner is the minimum necessary for the normal requirements of that fund, he shall request the Director of Accounting Services to sell on the local market such part of the fund's investments as will together with the existing uninvested portion provide an adequate working balance.

269. Temporary advances to the Fund

(1) Pending the realization of the proceeds of sale of any investments as mentioned in rule 268, the Director of Accounting Services may, with the prior approval of the Financial Secretary, advance to the Prisoners' Welfare Fund such sum or sums as may be considered necessary for the proper administration of that fund.

(2) The Director of Accounting Services shall---

- (a) recover any advance made under this rule from the proceeds of the sale of the investments as soon as they are received; and
- (b) charge interest on any such advances at the rate earned by the Government on its main current account with The Hongkong and Shanghai Banking Corporation Limited.

270. Certification of vouchers

(1) All vouchers submitted to the Director of Accounting Services in respect of payments to be made out of the Prisoners' Welfare Fund shall---

- (a) be certified by the Commissioner; or
- (b) have attached to them certified true copies of the Commissioner's approval for each withdrawal, in which case the certificates and vouchers may be signed by an officer authorized to do so by the Commissioner.

(2) The Commissioner shall advise the Director of Accounting Services of the name of any officer authorized by the Commissioner to sign on his behalf.

(3) The Director of Accounting Services shall pay only on the authority of the Commissioner as indicated in paragraph (1).

271. Bad debts

(1) Upon the recommendation of the Commissioner, the Financial Secretary may authorize the writing-off of any asset or any debt due to the Prisoners' Welfare Fund that he considers irrecoverable.

(2) The writing-off of an asset or debt under paragraph (1) shall take effect

for the purpose of accounting records alone and shall not extinguish any right of the Commissioner to recover any such asset or debt.

272. Accounts

(1) The Commissioner shall---

(a) cause proper accounts to be kept of all transactions of the Prisoners' Welfare Fund; and

(b) cause to be prepared for every period of 12 months ending on 31 March in each year, a statement of the accounts of that fund.

(2) The statement of the accounts of the Prisoners' Welfare Fund shall include an income and expenditure account and balance sheet and shall be signed by the Commissioner.

(3) The accounts of the Prisoners' Welfare Fund and the signed statement of the accounts shall be audited by the Director of Audit, who shall certify the statement subject to such report, if any, as he may think fit.

(4) The Commissioner shall ensure that a copy of the signed and audited statement of accounts together with the Director of Audit's report, if any, and a report by the Commissioner on the administration of the Prisoners' Welfare Fund during the period covered by such accounts, are laid upon the table of the Legislative Council not later than 30 September next following the end of such period, or so soon thereafter as the Chief Executive, in his absolute discretion, may allow."

6. Savings

(1) In this rule---

"the amended Part VII" (經修訂的第 VII 部) means Part VII of the principal Rules as amended by sections 4 and 5 of these Rules;

"the new Part VI" (新訂的第 VI 部) means the provisions substituted by section 3 of these Rules;

"referential provisions" (參照條文) means rules 256(2), 257, 258, 259, 260, 261, 263 and 264 of the repealed Part VI as applied to the Prisoners' Welfare Fund and all transactions and accounts relating to that fund in accordance with rule 265(2) and (3) of the principal Rules as in force immediately before the commencement of these Rules;

"the repealed Part VI" (已廢除的第 VI 部) means Part VI of the principal Rules repealed by these Rules.

(2) Without limiting section 23 of the Interpretation and General Clauses Ordinance (Cap. 1)---

(a) all investments and deposits made under the repealed Part VI at the commencement of these Rules are taken as having been made under the new Part VI; and

(b) all loans granted subject to the conditions provided in the repealed Part VI, if outstanding at the commencement of these Rules, continue to be subject to those conditions, and are as valid and enforceable as if they were granted under the new Part VI; and

(c) any act begun under the repealed Part VI but not completed before the commencement of these Rules may, if authorized or required by the new Part VI, be completed in accordance with the new Part VI; and

(d) all investments and deposits made under the referential provisions at the commencement of these Rules are taken as having been made under the amended Part VII; and

(e) any act begun under the referential provisions but not completed before the commencement of these Rules may, if authorized or required by the amended Part VII, be completed in accordance with the amended Part VII.

Mable CHAN

Clerk to the Executive Council

Council Chamber

5 October 1999

Explanatory Note

These Rules repeal and re-enact Part VI of the Prison Rules (Cap. 234 sub. leg.) ("the principal Rules") in consequence of the enactment of the Disciplined Services Welfare Funds Legislation (Amendment) Ordinance 1999 (58 of 1999). The Rules---

* replace references to the Commissioner of Correctional Services of Hong Kong with references to the corporation on the Commissioner being constituted as a corporation sole for the purpose of the Correctional Services Department Welfare Fund; and

* replace the current outdated provisions relating to the investment of surplus money held in the Fund; and

* provide for payment of interest on loans made from the Fund; and

* substitute for the current requirement for tabling the audited statement of accounts prepared for the Fund a requirement that

the audited annual statement of accounts must be tabled in the Legislative Council within 3 months after the date on which the corporation receives it from the Director of Audit, or within such further period as the Chief Executive allows in a particular case.

2. As certain provisions on the Correctional Services Department Welfare Fund in the repealed Part VI of the principal Rules also apply (before the repeal) to the Prisoners' Welfare Fund under Part VII by reference, those provisions are consequentially reproduced under Part VII of the principal Rules (with necessary modifications) for the continuous operation of the Prisoners' Welfare Fund (sections

4 and 5).