

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

**Recovery of accrued benefits attributable to
Government's voluntary contributions**

Background

At the meeting of the Bills Committee on 26 March 2009, a member reiterated his concern about the limited grounds on which the accrued benefits attributable to Government's voluntary contributions ("GVC benefits") already paid out under the Civil Service Provident Fund ("CSPF") Scheme could be recovered, and further noted that those grounds did not cover any breach of post-service outside work restrictions imposed on former directorate civil servants. In this connection, the Administration was requested to provide information on the possible means for recovering GVC benefits from a CSPF civil servant who had committed a misconduct or offence other than the four specified offences set out in Civil Service Bureau ("CSB") Circular No. 9/2003 as constituting the grounds upon which paid GVC benefits might be recovered.

Recovery of GVC benefits

2. In the paper submitted to the Bills Committee (LC Paper No. CB(1)1124/08-09(02)) and at the Bills Committee meeting on 26 March 2009, we have explained to Members the circumstances under which the Administration may recover GVC benefits that have already been paid out to a CSPF civil servant. According to paragraph 5.5 of the Terms and Conditions of the CSPF Scheme as set out in CSB Circular No. 9/2003, where the misconduct or offence of a CSPF civil servant comes to light only after the civil servant has left the service and has fully withdrawn his GVC benefits, the Administration may recover, either wholly or in part, such benefits by means of civil action if the officer is convicted of –

- (a) the common law offence of misconduct in public office; or

- (b) any offence under Part II of the Prevention of Bribery Ordinance (Cap. 201), being an offence related to his previous government service; or
- (c) any offence related to his Government service, being certified by the Chief Executive (“CE”) to have been gravely injurious to Hong Kong or to be liable to lead to serious loss of confidence in the public service; or
- (d) treason under section 2 of the Crimes Ordinance (Cap. 200).

3. The four specified offences mentioned above, except for that in paragraph 2(a), mirror those set out under section 15 of the Pensions Ordinance (Cap. 89) and section 29 of the Pension Benefits Ordinance (Cap. 99) which provide for the cancellation, suspension or reduction of pension already granted to former civil servants on pensionable terms.

4. The Terms and Conditions of the CSPF Scheme as provided in the CSB Circular No. 9/2003 do not currently provide the Administration with a basis to recover the GVC benefits already paid to a former civil servant who has left the service and has committed a misconduct or offence other than the specified offences. Such an arrangement is on par with that for pensionable civil servants in that there are no terms and conditions, or legal provision, that provide the Administration with the basis to recover the pension benefits already paid to a former civil servant who has been granted such benefits upon leaving the service and has committed a misconduct or offence other than the specified offences.

Sanctions for breach of post-service outside work restrictions by former directorate civil servants

5. The control regime governing post-service outside work of directorate civil servants on pensionable and CSPF terms is explained in a paper provided to the Panel on Public Service on 27 October 2008 (LC Paper No. CB(1)84/08-09(01)), a copy of which was provided to the Bills Committee on 9 March 2009 for reference. The paper sets out the policy objective, the statutory and contractual bases for control, the rights of serving or former civil servants, the control arrangements, the assessment criteria, the sanctions and processing procedures under the control regime.

6. In short, if a former directorate civil servant fails to obtain prior permission from the approving authority before taking up post-service outside

work during the control period or fails to comply with the conditions imposed by the authority on an approved application, the authority may invoke either one or a combination of the following sanctions –

- (a) pension suspension under the pension legislation;
- (b) initiating civil action to seek an injunction or sue for damage (under contract law);
- (c) withdrawal of approval;
- (d) suspension of approval for a specified period;
- (e) reporting to the relevant professional body where the matter concerns professional negligence/misconduct or may involve a possible breach of the code of conduct of the relevant profession;
- (f) issue of a public statement of criticism;
- (g) placing a warning/reprimand in a register for public inspection;
- (h) issue of a reprimand letter which may be copied to the outside employer; and/or
- (i) issue of a warning letter.

7. For the sanction at paragraph 6(a) above, it may be applied to former directorate civil servants on pensionable terms only. In other words, former directorate civil servants on CSPF terms who have failed to obtain prior permission before taking up post-service outside work or who have breached the post-service outside work conditions imposed during the control period may be subject to the whole host of sanctions mentioned in paragraph 6 above, including being sued by the Government for damage, except for the sanction in paragraph 6(a).

Review of post-service outside work for directorate civil servants

8. In response to public concern over the control of employment for directorate civil servants after leaving the civil service, the CE has set up an independent Committee on Review of Post-Service Outside Work for Directorate Civil Servants (“Review Committee”) to review the existing policy and arrangements. The Review Committee is chaired by the

Honourable Ronald Arculli, an Executive Council member. The other ten members include five Legislative Council members, the head of a university, a professor in public law, a seasoned businessman, a retired senior civil servant and the Secretary for the Civil Service.

9. The Review Committee launched a two-month public consultation on 20 February 2009. Nine salient issues, one of which concerns sanctions for breaching post-service outside work control, have been highlighted in the consultation document to facilitate public discussion. In this connection, we have relayed to the secretariat of the Review Committee Members' concern about recovery of GVC benefits where there is a breach of post-service outside work restrictions but such a breach only comes to light after a CSPF directorate civil servant has left the service and has fully withdrawn his GVC benefits. We understand that the Review Committee will discuss this issue in the context of formulating its recommendations to the CE.

Civil Service Bureau
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