

立法會
Legislative Council

LC Paper No. CB(1)1247/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/PL/PS/1

Panel on Public Service

Minutes of meeting
held on Monday, 21 March 2005 at 9:30 am
in Conference Room A of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon LI Fung-ying, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon Bernard CHAN, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon WONG Kwok-hing, MH
Hon KWONG Chi-kin

Public officers attending : **Agenda Items III to V**

Mr Joseph W P WONG, GBS, JP
Secretary for the Civil Service

Mrs Rebecca LAI, JP
Permanent Secretary for the Civil Service

Agenda Items III and IV

Mrs Jessie TING, JP
Deputy Secretary for the Civil Service (2)

Agenda Items IV and V

Miss Jennifer MAK, JP
Deputy Secretary for the Civil Service (1)

Clerk in attendance : Miss Salumi CHAN
Chief Council Secretary (1)5

Staff in attendance : Ms Rosalind MA
Senior Council Secretary (1)8

Ms May LEUNG
Legislative Assistant

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1111/04-05 — Minutes of meeting on
21 February 2005)

The minutes of the meeting held on 21 February 2005 were confirmed.

- II. Date of next meeting and items for discussion**
(LC Paper No. CB(1)1112/04-05(01) — List of outstanding items for
discussion

LC Paper No. CB(1)1112/04-05(02) — List of follow-up actions)

2. Members noted that the following items were proposed by the Administration for discussion at the next regular meeting scheduled for 18 April 2005:

- (a) Employment of non-civil service contract (NCSC) staff; and
- (b) Promotion of integrity in the civil service.

3. On paragraph 2(a) above, members noted that the Administration proposed to brief the Panel on the updated position on the employment of NCSC staff. On paragraph 2(b), the Chairman drew members' attention that according to the work plan of the Panel, the Civil Service Bureau (CSB) originally proposed to discuss the subject on "Staff consultation mechanism in the civil service" at the Panel meeting

on 18 April, which would include a briefing on the staff consultation mechanism at various levels within the civil service and the Administration's response to the related issues raised by Mr LEE Cheuk-yan at the Panel meeting in October 2004. Given that CSB needed more time to prepare for the discussion paper on the subject, it proposed to defer the discussion of the subject and brief the Panel on 18 April on its work in the promotion of integrity in the civil service. Members agreed with the proposed arrangements.

III. Outcome of the consultation on the proposals for the pay level survey and the way forward

(LC Paper No. CB(1)900/04-05(13) — Paper provided by the Administration

LC Paper No. CB(1)900/04-05(14) — Submission from the Association of Expatriate Civil Servants of Hong Kong

LC Paper No. CB(1)1112/04-05(03) — Administration's response to the submission from the Association of Expatriate Civil Servants of Hong Kong

LC Paper No. CB(1)950/04-05(02) — Submission from the Hong Kong Chinese Civil Servants' Association

LC Paper No. CB(1)1138/04-05(01) — Administration's response to the submission from the Hong Kong Chinese Civil Servants' Association)

Declaration of interests

4. The Chairman declared that he was a member of the Steering Committee on Civil Service Pay Adjustment Mechanism (the Steering Committee).

5. Mr KWONG Chi-kin declared that his wife was a civil servant.

Briefing by the Administration

6. At the Chairman's invitation, the Secretary for the Civil Service (SCS) pointed out that in the context of the annual civil service pay adjustment 2003 the Administration had decided to embark on the development of an improved civil service pay adjustment mechanism in early 2003, with the conduct of a pay level survey (PLS) as part of the exercise. In the past two years, the Administration had

done a lot of preparatory work for conducting the PLS, including seeking staff input through the Consultative Group on the Civil Service Pay Adjustment Mechanism (Consultative Group) and conducting extensive consultation from November 2004 to January 2005 on proposals concerning the PLS methodology and the general approach on the application of the PLS results. The Administration planned to take a decision on the PLS with a view to embarking on the survey field work as soon as possible.

7. The Deputy Secretary for the Civil Service (2) (DSCS2) then briefed members on the outcome of the consultation on the proposals for PLS. Following the close of the consultation exercise in January 2005, CSB had received a total of 91 written submissions from bureau/departmental management, staff bodies, individual civil servants, non-civil service organizations and members of the public. The main views contained in the submissions were set out in the Annex to the paper provided by the Administration. DSCS2 gave a brief account of the consultation feedback, as follows:

(a) Feedback from written submissions received

- Comments from staff bodies related mainly to various technical issues. A number of staff bodies commented that it was important to allow staff participation in the proposed job inspection process so as to ensure the credibility of the survey results. Most of the technical issues raised by staff in the written submissions had previously been deliberated in the Steering Committee and the Consultative Group, and had been considered by the Phase One Consultant in drawing up his final recommendation.
- While there were comments on, and criticisms of, the broadly-defined job family method recommended by the Phase One Consultant, CSB had not received any suggestion for an alternative approach for job comparison between the civil service and the private sector.
- Non-civil service organizations from the business sector and some members of the public indicated general support to various aspects of the survey methodology. They suggested that a PLS should be conducted as soon as possible to ascertain whether civil service pay remained broadly comparable with private sector pay.
- Staff bodies from the disciplined services which had made written submissions objected to the proposal of applying the survey results to the disciplined services grades/ranks on the basis of the existing system of internal pay relativities. They suggested that a separate grade structure review should be carried out for the disciplined services.

(b) Feedback from the media and District Councils/Area Committees

- Some editorials expressed reservations about the proposal that if the PLS results revealed that civil service pay levels exceeded private sector pay levels, the pay of serving officers should be frozen until it was caught up by the private sector pay level and that subsequent annual pay adjustment exercise should take into account any pay disparity revealed by the upcoming PLS. Some editorials, however, considered the proposed approach acceptable as a pragmatic way forward.
- Members of the District Councils and Area Committees who attended a session with SCS did not raise any objection to the proposed PLS methodology and the proposed application approach.

8. On the next steps forward, DSCS2 advised that CSB had tasked the Phase One Consultant to further consider whether any refinement of his recommended survey methodology was warranted in the light of the consultation feedback. Taking account of the Consultant's refined recommendations and other relevant considerations, the Government would take a decision on the methodology of PLS with a view to embarking on the survey field work as soon as possible. If the recommended broadly-defined job family method was adopted, an intensive job inspection process would be carried out as a preparatory step before the collection of pay data from the private sector. Through this process, details of the provisionally identified civil service benchmark jobs would be ascertained to facilitate their matching with appropriate private sector benchmark jobs. CSB would continue its discussion with the staff side members of the Consultative Group on how best the job inspection process should be carried out. The guiding principle was that the process had to be carried out in a professional and independent manner to ensure the credibility of the survey results.

9. Regarding the proposal on the general approach for the application of the survey results, DSCS2 advised that the Government would consider the application issue in due course upon the conclusion of the proceedings of the judicial review applications concerning the civil service pay adjustments legislation. The Government had obtained leave to appeal against the Court of Appeal's decision in relation to the judicial reviews on the Public Officers Pay Adjustment Ordinance (Cap. 574) and the Court of First Instance's decision in relation to the judicial review on the Public Officers Pay Adjustments (2004/2005) Ordinance (Cap. 580) to the Court of Final Appeal (CFA), and the CFA hearing had been scheduled for June 2005. The Government would take account of the CFA judgment, where applicable, in considering the application of the PLS results and its implementation, and would further consult staff in due course.

Discussion

Inherent differences in job nature of the civil service and the private sector

10. Mr KWONG Chi-kin was concerned that the recommended survey methodology could not cater for the inherent differences in job nature of the civil service and the private sector, such as the difference in terms of seniority and/or years of work experience, in particular for staff at lower ranks.

11. In reply, DSCS2 pointed out that as clearly set out in the consultation paper issued in November 2004, the Phase One Consultant was well aware of the need to take account of inherent differences in the nature of operation and the employment/remuneration practices between the civil service and the private sector in making a pay comparison between the two sectors. The Phase One Consultant recommended a job inspection process to ascertain the details of the work nature and job characteristics of the proposed civil service benchmark jobs. The requirement on relevant work experience for the benchmark jobs would be taken into consideration in the job inspection process. Taking the example of Clerical Officer, the private sector organizations would be requested to identify appropriate job matches that were comparable to the corresponding civil service benchmark jobs in respect of both job content and the requirements on qualifications and experience, rather than on the basis of the job titles alone. Having regard to the job content and other requirements, the job match for a Senior Clerical Officer in the civil service might be an officer in charge of office administration in the private sector. DSCS2 added that in order to provide more useful information for reference in considering the application of the PLS results, the Phase One Consultant had, in view of the higher job mobility in the private sector, suggested collecting information on the experience profile of the private sector employees in the relevant field (rather than just in the organization they were presently employed) for reference.

Application of the PLS results

12. Ms LI Fung-ying pointed out that one of the major concerns of civil service bodies was the application of the PLS results. She urged SCS to provide assurance on the Government's earlier proposal in the consultation paper that serving officers would not have their salaries reduced even though the PLS results might show that civil service pay was higher than that of the private sector. Mr KWONG Chi-kin shared similar concern and requested the Administration to give further explanation on its position in this regard.

13. In response, SCS said that the Government maintained its position as proposed earlier in the consultation paper, i.e. if the PLS findings revealed that the civil service pay levels exceeded the private sector pay levels, the pay of all serving officers would be frozen at the prevailing level until it was caught up by the private sector pay levels. In addition, the Administration proposed to use the PLS results to

draw up a new pay scale for the new recruits. The Administration would review the proposed general approach in the light of the CFA's judgment on the judicial reviews concerning the two pieces of civil service pay adjustments legislation, the hearing of which was scheduled for June 2005. The Administration would consult staff before it took a final decision.

Staff consultation and participation

14. Mr Bernard CHAN supported the Administration's plan to make a decision on the PLS with a view to embarking on the survey field work as soon as possible. He pointed out that as the Administration had started the preparatory work for conducting a PLS in 2003, further delay in commencing the field work would be undesirable and against the expectations of the public as well as the business sector. Mr CHAN however noted with concern the reservations expressed by some civil service bodies on the survey methodology, including the written submissions from the Association of Expatriate Civil Servants of Hong Kong (AECS) and the Hong Kong Chinese Civil Servants' Association (HKCCSA). In this connection, Mr CHAN urged the Administration to maintain good communication with staff during the process of the survey so as to alleviate their worries about the survey methodology. He also requested the Administration to elaborate on its plan to allow staff participation in the process of the survey.

15. In response, SCS said that the Administration would, in accordance with established procedures, select and appoint a consultant to conduct the PLS. The Phase Two Consultant to be appointed would take forward the survey field work with staff participation at different levels during the selection of civil service benchmark jobs for inclusion in the survey field and the proposed job inspection process. DSCS2 added that in the course of identifying job matches in the two sectors for comparison, the Phase Two Consultant would interview civil servants at different levels who were holders of representative posts of the selected civil service benchmark jobs, to obtain detailed information on the nature and characteristics of the jobs for inclusion in the job descriptions. The job descriptions of the civil service benchmark jobs would be provided to the selected private sector organizations for identifying job matches. The pay data of the job matches in the private sector would then be collected for analysis.

16. Mr KWONG Chi-kin was concerned about the views expressed in the written submission from HKCCSA on the PLS methodology. Pointing out that HKCCSA was a service-wide civil service body representing a considerable number of civil servants, Mr KWONG opined that the Administration should attach importance to the views of the association.

17. Referring to the written submission dated 6 January 2005 from the Alliance of Housing Department Staff Unions to SCS copied to the three LegCo Members representing the labour constituency (a copy of which was tabled at the meeting for members' reference), Mr WONG Kwok-hing was concerned whether and how CSB

would further refine the PLS methodology taking into account the strong views and disagreements expressed by civil service bodies. As grave concerns about the PLS methodology were also expressed in the written submission from HKCCSA, he was of the view that further staff consultation should be conducted by the Administration. Mr WONG also suggested that interested civil service bodies be invited to a Panel meeting to present their views on the PLS methodology. He opined that given the significant impact of PLS on the civil service pay adjustment mechanism, it was prudent for the Panel to hear views of civil service bodies in detail, and to examine whether and to what extent their views had been taken forward by the Administration and the Consultant. In Mr WONG's view, if the concerns and views of civil service bodies were not properly addressed, the worries of civil servants could not be alleviated. This would be detrimental to civil service stability and would not be conducive to maintaining social harmony.

(Post-meeting note: The submission dated 6 January 2005 from the Alliance of Housing Department Staff Unions to SCS tabled at the meeting was circulated to members vide LC Paper No. CB(1)1150/04-05(01) on 22 March 2005.)

18. In response, SCS pointed out that in order to facilitate staff participation in the process of developing an improved civil service pay adjustment mechanism, the Consultative Group set up in 2003 comprised representatives from the staff sides of the four consultative councils and staff representatives from four major service-wide civil service unions, including AECS and HKCCSA. SCS explained that the Phase One Consultant had taken into account the views and concerns expressed by the staff representatives in the Consultative Group in formulating and refining its proposals on the PLS methodology for extensive consultation in November 2004. After assessing the relative merits and shortcomings of different common job comparison methods, the Phase One Consultant had advised that the broadly-defined job family method was better able than other methods to meet the objective of PLS and to address the technical considerations arising from a PLS. SCS reiterated that while there were comments on, and criticisms of, the broadly-defined job family method recommended by the Consultant, no suggestion had been received for an alternative approach for job comparison. He advised that a summary of the responses of the Phase One Consultant and CSB to the consultation feedback was being compiled and would be made available on the CSB website in due course for the reference of the public.

19. SCS also stressed that extensive and thorough staff consultation had been conducted in the past two years to gauge the views of civil servants on the conduct of the PLS. All papers issued to the Consultative Group and the minutes of the Consultative Group meetings had been circulated to the Departmental Consultative Committees to keep civil servants informed of the work progress. It was time for the Administration to take a decision on the methodology of the PLS in the light of the consultation feedback and other relevant factors and to embark on the survey field work as soon as possible. SCS pointed out that the PLS was essentially a technical,

fact-finding exercise to ascertain whether there were any differences in the pay levels of the civil service and the private sector. The Administration noted that while civil servants accepted the conduct of a PLS in general, some of them were still concerned about the possible impact of the survey on civil service pay and had sought to state their views on the underlying principles of the civil service pay adjustment mechanism in the written submissions.

20. The Chairman sought members' views on Mr WONG Kwok-hing's suggestion for the Panel to invite civil service bodies to present their views on the PLS methodology. Whilst appreciating the concerns of civil service bodies about the PLS methodology, Mr CHEUNG Man-kwong pointed out that it was not common for Panels to discuss technical issues in detail. Mr LEE Cheuk-yan considered that while it might not be advisable for the Panel to engage in discussion of the technical details of the PLS methodology, the Panel might consider inviting civil service bodies to present their views on other issues of concern about the PLS, such as the inherent difference in the civil service and private sector jobs in terms of seniority and/or years of experience, the time frame for taking forward the PLS, etc.

21. Ms LI Fung-ying suggested that the Panel might consider inviting civil service bodies to present their views at a later stage, when the details of the PLS methodology had been worked out by the Phase Two Consultant and the CFA judgment on the appeals in relation to the judicial review applications concerning the civil service pay adjustments legislation was available. Other members agreed to adopt this approach.

22. In conclusion, the Chairman urged the Administration to take forward the PLS in a prudent manner, taking into full consideration of the concerns and worries of civil service bodies throughout the process. He also invited the Administration to update the Panel on the progress of the exercise in due course.

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IV. Civil service-related issues in the Budget Speech 2005-06
(LC Paper No. CB(1)1112/04-05(04) — Paper provided by the Administration)

Briefing by the Administration

23. At the invitation of the Chairman, SCS briefed members on the civil service-related issues in the Budget Speech 2005-06. He pointed out that an update on the progress of reducing the civil service establishment was given in the Budget Speech. The Administration had been working towards the target of reducing the civil service establishment to around 160 000 by 2006-07 as announced by the Chief Executive in his 2003 Policy Address. The Administration anticipated that the civil service establishment would be reduced by another 2 700 to around 163 300 by March 2006. SCS stressed that in achieving the target for reducing civil service establishment, the Administration would not take an across-the-board approach for

all bureaux and departments. Despite the general civil service recruitment freeze, flexibility had been allowed for exemption provided that Directors of Bureaux (DoBs) /Heads of Department (HoDs) saw genuine operational needs to recruit. Since 2003, approval had been granted for different bureaux/departments to conduct open recruitment, both in the disciplined services grades and the civilian grades.

Discussion

Impact of reduction in civil service establishment on delivery of public service

24. Ms LI Fung-ying considered it unreasonable for the Administration to reduce civil service establishment continuously in the past few years despite the increase in demand for public services. She was particularly concerned about the service provided by the Immigration Department (Imm D) and the Fire Services Department (FSD). Pointing out that Imm D would face a surge in demand for immigration control and clearance with the anticipated increase in the number of tourists and that FSD would have to cope with the increase in demand for new fire stations in the long run to provide emergency services to the new residential developments in the New Territories, Ms LI queried whether the Administration would provide additional manpower to meet the operational needs of these departments. In this connection, she urged the Administration to make an overall assessment of the impact of reduction in civil service establishment on the delivery of public service.

25. In reply, SCS stressed that in taking forward the initiative of identifying savings and reducing surplus staff, bureaux/departments would critically examine their manpower requirements in the light of operational needs. He pointed out that staff savings had been identified through the efforts of bureaux/departments in the streamlining of procedures, re-engineering and re-structuring, such as the various proposals involving merger of bureaux and departments to streamline their organizational structures. Bureaux/departments facing increased demand for service might indicate in their manpower plans the need to recruit or increase their establishment. The Deputy Secretary for the Civil Service (1) (DSCS1) said that according to the manpower plan of Imm D, there would be increase in manpower requirements in the few years to come. She explained that the additional staff would be required only when the new immigration control points commenced operation in due course.

26. Noting that the Administration anticipated that another 2 700 posts would be reduced by March 2006, Mr LEE Cheuk-yan asked whether the deletion of posts would mainly be made in a few departments. In this connection, Mr LEE observed that extensive reduction in establishment had been found in the Food and Environmental Hygiene Department (FEHD), the Police Force and the Housing Department (HD). Mr LEE enquired about the reasons for the deletion as well as the arrangements made to meet service needs after the posts were deleted.

27. DSCS1 stressed that under the current mechanism, posts would only be

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deleted after critical examination of their operational needs. Based on her understanding, the deletion of posts in FEHD involved posts which were left vacant by participants in the Second Voluntary Retirement Scheme and by the gradual implementation of outsourcing arrangements for cleansing services. As for the Police Force, some staff savings had been identified through the department's efforts to civilianize some of the disciplined services posts, as a measure to enhance cost-effectiveness and to facilitate more efficient deployment of disciplined services staff. On the deletion of posts in HD, the details and justifications for the proposal were set out in an information paper submitted to the Establishment Subcommittee in 2004 on the anticipated deletion of posts in the coming years as a result of the restructuring of HD. DSCS1 undertook to provide the information paper to members for reference.

28. Mr LEE Cheuk-yan was concerned that as the civil service establishment had been reduced significantly in the past few years, further reduction might have adverse impact on the timely and effective delivery of public service. Mr LEE considered that service delivery through outsourcing arrangements, as in the case of FEHD where outsourcing arrangements were made for cleansing services, might not be able to cater for special demand for service under emergency or unexpected circumstances, such as the cleansing services required during the outbreak of the Severe Acute Respiratory Syndrome.

29. SCS pointed out that in taking forward the initiative of reducing the civil service establishment, DoBs and/or HoDs would adhere to the guiding principle that the delivery of public service should not be adversely affected. The Administration had also undertaken not to achieve staff savings through forced redundancy. Hence, the initiative of reducing the size of the civil service would not affect the delivery of public service. It would also not affect the stability and job security of civil servants and the major concerns of civil service bodies in this regard could be addressed.

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30. Mr WONG Kwok-hing was concerned about the details of the 2 700 posts anticipated to be deleted by March 2006. He requested the Administration to provide information on the posts to be deleted and the reasons for deletion. SCS undertook to consider providing the required information.

Employment of non-civil service contract staff

31. Ms LI Fung-ying opined that given the Administration's target for reducing civil service establishment, it had been meeting the additional operational needs through employing NCSC staff and adopting outsourcing arrangements. In doing so, the Administration had been taking the lead to lower the pay levels in Hong Kong. Mr LEE Cheuk-yan expressed similar concerns and criticized the Administration for being unfair to the NCSC staff as they were employed to do the same job as their civil servants counterparts but at lower pay levels.

32. SCS advised that the NCSC Staff Scheme provided HoDs with greater

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flexibility to deploy their resources in meeting service and operational needs while at the same time better enabled them to cope with the demands for reducing public expenditure and containing the size of the civil service. NCSC staff might be employed to meet service needs which were short-term, part-time or under review. For example, a few thousand of the NCSC staff were employed under various job creation initiatives for promotion of employment. SCS pointed out that the employment of NCSC staff and the initiative in containing the size of the civil service were two separate issues. He drew members' attention that according to the work plan of the Panel, the Administration would brief members on the updated position on the employment of NCSC staff at the meeting on 18 April 2005.

33. Pointing out that some NCSC staff had been employed to provide public service with long term demand, such as those employed under the Support for Self-reliance Scheme of the Social Welfare Department, Mr LEE Cheuk-yan queried whether the NCSC Staff Scheme was really for meeting service needs which were short-term, part-time or under review as claimed by the Administration.

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34. Mr WONG Kwok-hing also expressed concern about the employment of NCSC staff. Referring to the NCSC staff employed as site supervisors in the Architectural Services Department (ASD), Mr WONG was concerned whether such staff who were employed on a contract basis without job security were able to perform their supervising duties in an effective manner. In this connection, he was concerned whether the Administration was replacing civil servants with NCSC staff in the performance of site supervision duties and sought information on the arrangement in ASD for employment of NCSC staff as site supervisors. SCS responded that while he did not have the required information in hand, he noted that the scale of the contracting arrangements in ASD had been modified having regard to staff feedback during consultation with staff unions in the department. At the request of Mr WONG, SCS undertook to look into the current arrangement in ASD for employment of NCSC staff or contract staff as site supervisors and/or conducting site supervision and provide information to the Panel accordingly.

Government's contingent liabilities in relation to its appeals arising from judicial review applications concerning the civil service pay adjustments legislation

35. Noting that in the 2005-06 Budget, the Administration had made estimates amounting to \$9,600 million in 2006 as the Government's contingent liabilities in relation to its appeals arising from judicial review applications concerning the civil service pay adjustments legislation, Mr CHEUNG Man-kwong was concerned whether the sum of \$9,600 million covered only the sum of the reduced pay to be returned to the affected civil servants in the event that the Government lost in the aforesaid appeals. Mr CHEUNG recalled that during the scrutiny of the Public Officers Pay Adjustment Bill in 2002, the relevant bills committee was advised by the Administration that if civil service pay was reduced with effect from 1 October 2002, the Government subventions to subvented organizations would be reduced accordingly to reflect the revised factor of civil service pay adjustment. Given that

the subvented organizations concerned had reduced the pay of their employees in accordance with civil service pay reductions, particularly those employees whose pay scales were directly linked to the civil service pay scales, Mr CHEUNG considered it fair and justified for the affected employees to have their reduced pay returned in the event that the Government lost in the appeals. In this connection, he requested the Administration to explain whether funds had been/would be reserved as contingent liabilities for returning the amount of reduced subventions to the subvented organizations so that they could return the reduced pay to their employees accordingly.

36. In reply, SCS advised that as far as he knew, the terms of employment in different subvented organizations varied to a great extent in terms of their pay structures and pay adjustment mechanisms. He pointed out that the aforesaid appeals were related to the judicial review applications by civil servants in which the applicants challenged the constitutionality of the two pieces of civil service pay adjustments legislation regarding the application of articles of the Basic Law which referred to the terms and conditions of service of civil servants, such as Article 100. SCS said that the implications of the CFA judgment on the appeals on the pay of employees of subvented organizations were issues outside his purview and he was not in a position to respond to members' concern in this respect. He advised that the Panel might seek the advice of the Secretary for Financial Services and the Treasury (SFST) in this respect.

37. The Chairman directed the Clerk to Panel to write to SFST on behalf of the Panel and requested the Administration to provide a written response to address Mr CHEUNG Man-kwong's concern.

(Post-meeting note: The letter from the Clerk to Panel to SFST and the Administration's response were circulated to members vide LC Paper Nos. CB(1)1270/04-05(01) and (02) on 15 April 2005.)

V. Review of policy on post-service employment of former directorate civil servants

(LC Paper No. CB(1)1112/04-05(05) — Paper provided by the Administration

LC Paper No. CB(1)1095/04-05(01) — Paper provided by the Administration on "Post-retirement employment of Ms Elaine CHUNG, former Deputy Director of Housing/Deputy Secretary for Housing"

LC Paper No. CB(1)1112/04-05(06) — Background brief prepared by the Legislative Council Secretariat

LC Paper No. CB(1)1015/04-05(01) — Letter dated 26 February 2005 from the Secretary for the Civil Service informing the progress for the investigation on possible conflict of interests between the post-retirement employment of the former Deputy Director of Housing and her previous service in the Government)

38. The Chairman pointed out that according to the agreed arrangement between the Legislative Council (LegCo) and the Administration, the Administration was required to provide a paper for a discussion item at least five clear days before the relevant Panel meeting. For this discussion item, the Administration had missed the agreed deadline (i.e. 14 March) by one day. In accordance with the agreement at the House Committee meeting on 26 November 2004, the Chairman consulted members' views on whether the item should be discussed or removed from the agenda. Members agreed that the item should be discussed at this meeting.

39. To facilitate the Panel's discussion of the item, the Chairman proposed and members agreed that the discussion would be divided into the following two parts:

- (a) Discussion on CSB's findings and assessments related to various concerns about the post-retirement employment of Ms Elaine CHUNG, former Deputy Director of Housing/Deputy Secretary for Housing; and
- (b) Discussion on the findings and preliminary proposals from CSB's review of the policy on post-retirement employment of former directorate civil servants.

Discussion on CSB's findings and assessments related to various concerns about the post-retirement employment of Ms Elaine CHUNG, former Deputy Director of Housing/Deputy Secretary for Housing

Ms CHUNG's association with Henderson Land Development Co. Ltd (HLD)'s bidding for the West Kowloon Cultural District (WKCD) development project

40. Referring to paragraph 20 of the paper, Mr KWONG Chi-kin noted that CSB considered that Ms Elaine CHUNG's participation in the promotion of HLD's WKCD proposal fell outside the scope of the approved work, and hence was

inappropriate and unacceptable, and also fuelled public suspicion of conflict of interest, to the detriment of the image and public confidence in the integrity of the civil service. Given the severity of Ms CHUNG's misconduct, Mr KWONG queried why CSB had not imposed any sanctions or penalty on Ms CHUNG in this regard. Instead, CSB had taken only mild actions including conveying its views to Ms CHUNG and issuing a warning to her.

41. In reply, SCS explained that having examined the facts relating to Ms CHUNG's participation in the promotion of HLD's WKCD proposal, CSB had made the assessment that her participation was inappropriate and unacceptable. CSB had made serious criticisms of Ms CHUNG in this regard as set out in paragraph 20 of the paper. Given that the paper was issued to LegCo and made available to the public and the press, the criticisms of Ms CHUNG had been made openly and this was a serious penalty for her, as reputation was an issue of great concern for retired civil servants, particularly those retiring at senior ranks. SCS further pointed out that given the wide public concern about the possible conflicts of interest in Ms CHUNG's post-retirement employment, CSB had attached great importance to a due process in the investigation and ensured that all the assessments were made on the basis of facts and evidence. To this end, CSB had sought the legal advice of the Department of Justice (DoJ) throughout the investigation process.

42. Mr KWONG Chi-kin was surprised by SCS's claim that giving public access to the paper in which the Administration had made criticisms of Ms CHUNG was a serious penalty for her. He considered that CSB should take more serious actions against Ms CHUNG's unacceptable and inappropriate participation in the promotion of HLD's WKCD proposal, such as giving her a reprimand. Mr LEE Cheuk-yan shared Mr KWONG's view. He considered that CSB was too lenient to Ms CHUNG and that it should suspend her monthly pension in accordance with the pensions legislation.

43. SCS explained that while there was an established disciplinary mechanism for imposing different levels of punishment on serving civil servants for their misconduct, retired civil servants were not subject to the same punishment under this mechanism. The possible courses of actions to be taken against the misconduct of retired civil servants were either open criticisms by the Administration or suspension of monthly pension payment in accordance with the pensions legislation. SCS explained that in Ms CHUNG's case, having considered the facts and evidence in the investigation, and after consulting DoJ for legal advice, CSB considered making criticisms of Ms CHUNG as mentioned in the paper an appropriate level of penalty in respect of her involvement in the promotion of HLD's WKCD proposal. He reiterated that any decision to suspend the monthly pension of a retired civil servant under the statutory provisions of the pensions legislation had to satisfy the legal requirement of evidence and could not be made on the basis of personal views.

44. Referring to paragraph 16 of the paper, Mr CHEUNG Man-kwong said that he was not convinced of CSB's assessment that Ms CHUNG's advisory service on

the cultural aspect of HLD's WKCD proposal did not constitute any conflict of interest with her previous service in the Government. In Mr CHEUNG's view, the cultural and property elements of the WKCD development project were intertwined and in fact the two sides of the same coin. The cultural proposals were made for the purpose of property developments and ultimately for the bidding of the WKCD development project. Mr CHEUNG considered that Ms CHUNG's participation in HLD's WKCD proposal, though only limited to giving advice on the cultural aspect, was improper and contradictory to one of the factors for consideration in granting approval for post-retirement employment of civil servants, i.e. whether the prospective employer might gain an unfair advantage over competitors because of the retired civil servant's previous experience and knowledge.

45. Ms LI Fung-ying was also of the view that the cultural and property elements of the WKCD development project were intertwined. She queried whether CSB had taken into account the implicit conflict of interest in Ms CHUNG's involvement in providing advice on the cultural aspect of HLD's proposal.

46. In response, SCS reiterated that all the assessments and conclusions by CSB were made on the basis of facts and evidence. As explained in paragraph 16 of the paper, CSB considered that as Ms CHUNG had ceased to handle cultural matters in any official capacity for nearly five years before she took up the employment with the Hong Kong Ferry (Holdings) Co. Ltd. (HKF), any sensitive data or influence which she possessed in her official capacity would have become outdated by the time she commenced the employment. CSB was therefore satisfied that there was no conflict of interest insofar as Ms CHUNG's advisory service on cultural matters was concerned.

47. As regards Ms CHUNG's advisory service on the cultural aspect of HLD's WKCD proposal, SCS pointed out that Ms CHUNG had not mentioned anything about possible service in connection with the WKCD project in her original application for post-retirement employment. Nevertheless, SCS did not agree that the cultural and property elements of the project could not be treated separately. Ms CHUNG had explained that her involvement in the WKCD project was in the form of providing advice on, for example, the story line for museums and the types of performances to stage at the planned venues. Whilst there was no reason to doubt Ms CHUNG's claim that she was not involved in HLD's bidding for the project, CSB considered that Ms CHUNG's making public appearances, comments and presentation on the cultural aspects of HLD's WKCD proposal in October and November 2004 amounted to participation in the promotion of HLD's proposal to the public and fell outside the scope of approved work, and hence was inappropriate and unacceptable. CSB had therefore made very strong criticisms of Ms CHUNG in the paper.

48. In view of Ms CHUNG's participation in the promotion of HLD's WKCD proposal, Ms LI Fung-ying queried whether CSB had taken necessary actions to monitor Ms CHUNG's compliance with the terms of approval of her post-retirement

employment. SCS explained that the approval granted to Ms CHUNG did not cover areas of work in property or promotion of any bidding for government contracts. CSB had noted press reports on Ms CHUNG's involvement in the promotion of HLD's WKCD proposal and taken a series of actions since early November 2004 in this respect, including writing to Ms CHUNG on 11 and 30 November 2004 asking her to refrain from involving herself in anything which might be perceived as providing service to any bidding team of the project and to specifically prohibit her from a number of activities in connection with the WKCD project for the avoidance of doubt. HKF and Ms CHUNG had both confirmed in writing that her work in respect of the WKCD proposal was only on providing advice on cultural and arts aspects without involving in any property related-issues.

Whether Ms CHUNG was involved in lobbying support for an application for change in land use in respect of a proposed concrete batching plant in Tsing Yi

49. Mr KWONG Chi-kin queried whether the Administration had conducted a thorough investigation in relation to the complaint about Ms CHUNG's involvement in lobbying support from Kwai Tsing District Council (K&TDC) members for the application from Hong Kong Shipyard Ltd. (HKS), a subsidiary company of HKF, to change the land use of part of its shipyard in Tsing Yi to a concrete batching plant. Mr KWONG pointed out that a K&TDC member, who had joined the site visit and meal arranged by HKS on 2 June 2004, mentioned in a phone-in radio programme on 15 March 2005 that he had the impression that Ms CHUNG's attendance at that occasion was for lobbying support from K&TDC members and yet the Administration had not approached him to make any enquiries about the incident during its investigation. In this connection, Mr KWONG noted from paragraph 22 of the paper that the Kwai Tsing District Office (K&TDO) had only made enquiries with some K&TDC members who had joined the site visit. He queried why the Administration had not made enquiries with all the DC members concerned.

50. Mr CHEUNG Man-kwong shared Mr KWONG Chi-kin's concerns. Referring to the transcript of the relevant part of the phone-in radio programme on 15 March 2005, a copy of which was tabled at the meeting for members' reference, Mr CHEUNG queried whether it was appropriate for Ms CHUNG to attend the meal arranged after the site visit for K&TDC members, but before the meeting at which the proposal for change in land use would be discussed. Moreover, the K&TDC member also mentioned in the radio programme that while Ms CHUNG had not directly asked K&TDC members to support the proposal for change in land use, she had verbally asked them for support and cooperation. Mr CHEUNG considered that as a retired senior government officer, Ms CHUNG should distance herself from any lobbying activities connected with the application for change in land use.

(Post-meeting note: The transcript of the relevant part of the radio programme on 15 March 2005 tabled at the meeting was circulated to members vide LC Paper No. CB(1)1150/04-05(02) on 22 March 2005.)

51. Referring to paragraph 23 of the paper, Mr LEE Cheuk-yan pointed out that Ms CHUNG's admittance of her mistake in referring to batching plant in her letter of 25 November 2004 was possibly an attempt to protect herself from the alleged involvement in lobbying support of K&TDC members for the change in land use proposal.

52. In response, SCS referred members to paragraphs 21 and 22 of the paper which set out the process and findings of the investigation. In brief, Ms CHUNG had provided a written representation in response to the Administration's enquiry on her involvement in the application for change in land use, explaining that she had not attended the K&TDC meeting on 15 June 2004 at which the proposal was discussed. Ms CHUNG said that she had met K&TDC members on 2 June 2004, the day on which they joined a familiarization visit to the shipyard of HKS in Tsing Yi initiated by the General Manager of HKS, and she had only exchanged pleasantries and joined the meal arranged for the visitors. Upon CSB's request, K&TDO reviewed Ms CHUNG's written representation, and confirmed that the description on her involvement in the change of land use application was factually correct. According to the staff of K&TDO who attended the site visit on 2 June 2004, Ms CHUNG appeared for a short while at the briefing session to introduce herself and exchange pleasantries with K&TDC members, and she did not make any presentation or conduct any active lobbying on the occasion. K&TDO also made enquiries with the K&TDC Chairman and some K&TDC members who had joined the site visit. All of them confirmed that Ms CHUNG did not make any presentation or conduct any active lobbying on the occasion. On the basis of Ms CHUNG's explanation and K&TDO's comment, CSB accepted Ms CHUNG's claim that she did not participate in lobbying support for HKS's application for change in land use in relation to its concrete batching plant project in Tsing Yi.

53. SCS further advised that noting the views expressed by the K&TDC member at the radio programme on 15 March 2005, K&TDO then consulted all K&TDC members who had joined the site visit and reported to CSB that except for two K&TDC members who had the impression that Ms CHUNG had lobbied support for the change in land use proposal in an implicit manner on 2 June 2004, other K&TDC members did not have such an impression and did not recollect that Ms CHUNG had conducted any active lobbying on the occasion. Referring to a press report on 23 December 2004, SCS pointed out that the K&TDC Chairman had responded to press enquiries on Ms CHUNG's attendance at the site visit and meal. The K&TDC Chairman had clearly stated that Ms CHUNG did not play any active role on that occasion nor gave any presentation on the proposal. SCS reiterated that the investigation was based on facts and evidence and in this case, there was no concrete evidence pointing to the conclusion that Ms CHUNG had lobbied K&TDC members' support for the proposal. SCS also pointed out that as he had not attended the occasion in person, he could not make any judgment on the propriety of Ms CHUNG's attendance and had to rely on the recollection of majority of the attendees, including staff of K&TDO, the K&TDC Chairman and members.

54. Mr CHEUNG Man-kwong maintained his view that Ms CHUNG's attendance at the site visit and meal arranged for K&TDC members on 2 June 2004 was improper and constituted a conflict of interest with her previous government service. SCS pointed out that the investigation had been completed with all the findings, assessments and decisions passed to DoJ for legal advice. All the conclusions were made on the basis of facts. While Members might not agree with the findings and assessments of the investigation, it would not be meaningful to argue on the basis of impressions.

Ms CHUNG's office accommodation

55. Mr KWONG Chi-kin considered that the location of Ms CHUNG's office was important evidence of which company she really worked for, i.e. HKF or HLD. As stated in paragraph 25 of the paper, Ms CHUNG confirmed that she had two offices, one in Tsing Yi and one in Central. Mr KWONG expressed dissatisfaction that CSB, without conducting thorough investigation, had concluded that it was not uncommon in the private sector that senior management were provided with more than one office to suit business purposes. He queried whether CSB had made any attempts to verify the claims of Ms CHUNG on her office accommodation, such as checking the number of days she worked per week in each of the two offices.

56. In response, SCS said that CSB had obtained the explanation from Ms CHUNG on her office accommodation, and noted the confirmation from both HKF and HLD in their press release/announcement that Ms CHUNG was an employee of HKF. As a matter of fact, the Chairman and three other directors of HKF also had offices in Central. SCS explained that the conclusion by CSB had been made on the basis of the information provided by Ms CHUNG and the two companies, having regard to the advice of the Advisory Committee on Post-retirement Employment and DoJ.

57. Pointing out that the Chairman and three other directors of HKF were all directors of HLD, Mr LEE Cheuk-yan said that while it was justified for these senior officers to have offices in Central at the HLD head office, it seemed not necessary for Ms CHUNG, who was an employee of HKF and not a director of HLD, to have an office at the HLD head office unless she was involved in the work of HLD's WKCD proposal. Mr LEE considered that CSB should have conducted more detailed investigation on Ms CHUNG's office accommodation, such as the percentage of time she spent in the office in Central and the date of setting up the office.

58. In response, SCS said that in conducting the investigation, interviews were made with Ms CHUNG to obtain information on her office accommodation. CSB had not come across evidence that substantiated the allegation that Ms CHUNG had been working for HLD, not HKF, against SCS's approval. SCS stressed that conducting the investigation and assessing the findings on the basis of facts rather than on subjective judgment or impressions was of paramount importance to the

upholding of the rule of law in Hong Kong. Hence, CSB could not make any conclusion which was not substantiated by objective findings and facts.

Request for an independent investigation on the post-retirement employment of Ms CHUNG

59. Mr WONG Kwok-hing opined that CSB's handling of the complaints about possible conflicts of interest in Ms CHUNG's post-retirement employment was unsatisfactory, and that its investigation findings and assessments were unacceptable. All along, SCS as the approving authority had tried to defend his position and justify his approval granted for Ms CHUNG to take up the post-retirement employment with HKF. This ended up with a lenient approach adopted by CSB in handling the complaints and conducting the investigation. Mr WONG stressed that it was inappropriate for SCS, the approving authority, to be in charge of the investigation on Ms CHUNG's post-retirement employment. He requested the Government to conduct an independent investigation into the case.

60. Mr CHEUNG Man-kwong pointed out that the paper provided by CSB failed to address the public concerns about Ms CHUNG's breach of the terms of approval for her post-retirement employment, as well as SCS's responsibilities in approving Ms CHUNG's application and subsequent mishandling of the case. Mr CHEUNG shared Mr WONG Kwok-hing's views that it was inappropriate for SCS, the approving authority, to be in charge of the investigation on Ms CHUNG's post-retirement employment, and that CSB's investigation findings and assessments were unacceptable. He requested CSB to withdraw the paper and the Government to conduct an independent investigation of Ms CHUNG's case afresh.

61. SCS stressed that CSB had taken necessary follow up actions in a proactive manner to ensure that Ms CHUNG's post-retirement employment was confined to the scope permitted in the approval. CSB's investigation on issues relating to Ms CHUNG's post-retirement employment had been completed, with findings and assessments presented to LegCo Members and the public in the paper. SCS agreed that with the benefit of hindsight, improvement could have been made in the handling of the case. He assured members that CSB would consolidate the experience gained from this case in working out improvement measures to the policy and mechanism for post-retirement employment.

62. Mr WONG Kwok-hing requested SCS to confirm whether he would apologize to the public in respect of Ms CHUNG's case. In reply, SCS stressed that Ms CHUNG's application was processed in accordance with existing procedures, and approval was granted on the basis of information available at the time of approval. Necessary follow-up actions had been taken to monitor the development of the case. He therefore did not consider that there was any negligence in the handling of the case and did not see the need for him to apologize to the public in respect of this case.

63. Mr CHEUNG Man-kwong was not satisfied with SCS's response. He put forward the following motion for the Panel's consideration, a copy of which was tabled at the meeting:

“本事務委員會不接受公務員事務局《有關前房屋署副署長/房屋局副局長鍾麗嫻女士退休後就業事宜》的調查報告，以及要求政府就該事件進行獨立調查，並向立法會和公眾提交報告。”

(English translation)

“That this Panel does not accept the Civil Service Bureau's investigation report on “Post-retirement Employment of Ms Elaine CHUNG, Former Deputy Director of Housing/Deputy Secretary for Housing”, and requests the Government to conduct an independent investigation into the matter and present a report to the Legislative Council and the public.”

64. The Chairman considered that the proposed motion was directly related to the agenda item under discussion and it was appropriate for the Panel to deal with the motion. All the members present agreed that the motion should be proceeded with. The Chairman put the motion to vote. The five members present voted for the motion. The Chairman declared the motion passed. He invited the Administration to take follow-up actions and provide a written response to the Panel in due course.

(*Post-meeting note:* The Administration's response to the motion was circulated to members vide LC Paper No. CB(1)1263/04-05(01) on 13 April 2005.)

Discussion on the findings and preliminary proposals from CSB's review of the policy on post-retirement employment of former directorate civil servants

Briefing by the Administration

65. At the invitation of the Chairman, SCS briefed members on the preliminary proposals of the review. He highlighted the following proposed improvements set out in the paper:

(a) Transparency

To enhance transparency, CSB proposed instituting an administrative system whereby CSB would disclose basic information in respect of all cases in which the applicant had taken up the approved employment.

(b) Outside work during final leave

To address the dual identity problem and the negative public perception, CSB proposed that directorate officers on final leave would only be permitted to take up unremunerated or notionally remunerated work for charitable/other non-profit making bodies or public services,

either on a full-time or part-time basis. The approving authority, however, might exceptionally give approval for paid employment during final leave under very special circumstances, e.g. in cases where significant public interest was involved.

(c) Sanitization period

To better guard against real, potential or perceived conflict of interest and to forestall negative public perception, CSB proposed to lengthen the period of minimum sanitization for directorate civil servants retiring/retired on pensionable and new permanent terms to 12 months during which paid employment was prohibited. The approving authority might waive or shorten the period in exceptional cases where there were special considerations (e.g. significant public interest) and where there was clearly no real, potential or perceived conflict of interest.

66. SCS advised that in the course of the review, references were made to the practices of overseas jurisdictions on their control regimes in respect of post-service employment of civil servants. The proposals under the current review were in general more restrictive compared with the overseas practices. In accordance with the established mechanism, the staff sides and departmental management were being consulted on the preliminary proposals outlined in the paper and they were invited to provide their views by the end of April 2005. SCS advised that CSB would take account of feedback from the staff sides and departmental management, as well as the views expressed by LegCo Members and the community on the preliminary proposals before reaching a final decision on the proposed changes. SCS also pointed out that in taking forward the review, CSB sought to strike a proper balance of various factors, such as the former civil servants' right as individuals to pursue employment after leaving government service and the community's aspiration regarding the integrity and impartiality of the civil service.

Overall comments on the review proposals

67. Mr CHEUNG Man-kwong appreciated CSB's efforts and good work in taking forward the review. He commended SCS and his colleagues for having taken into account the views of the public and LegCo Members, as well as put forward concrete proposals for enhancing the existing mechanism governing post-retirement employment of directorate officers. Mr CHEUNG expressed support for the revised mechanism. Mr KWONG Chi-kin shared Mr CHEUNG's views.

Outside work during final leave

68. Referring to paragraph 13 of the paper, Mr KWONG Chi-kin considered that officers on final leave should not be allowed to take up outside employment under any circumstances. He pointed out that officers on final leave still maintained the status of civil servants and if they took up paid employment with the private sector

during their final leave, it would give rise to a serious dual identity problem. Mr KWONG therefore considered that the approving authority should not be given the discretionary power to grant exceptional approval for paid employment during final leave of any officers, even under very special circumstances.

69. Referring to CSB's proposal of permitting directorate officers on final leave to take up unremunerated or notionally remunerated work for charitable/other non-profit making bodies or public service, Ms LI Fung-ying considered that the relevant terms such as "notionally remunerated" and "public service" should be clearly defined to prevent any abuse of the permission for employment during the final leave period. SCS advised that whether an employment was "notionally remunerated" could be assessed by the actual level of remuneration provided as there would be a clear difference in the level of remuneration provided for a fully paid employment and the payment of an honorarium for a charitable or voluntary service.

Geographical scope of activities subject to control

70. Ms LI Fung-ying was concerned whether the control on post-retirement employment would cover employment with companies registered outside Hong Kong but the principal part of their business was carried on in Hong Kong. SCS replied in the affirmative. SCS explained that under the existing mechanism, retired directorate officers were required to inform CSB of paid post-retirement employment undertaken outside Hong Kong for CSB to review periodically and monitor the situation. The existing arrangement was considered sufficient and no irregularity had been detected. Hence, CSB did not see any strong grounds or pressing need at the present stage to extend the prior approval requirement to business activities or employment the principal part of which was carried on outside Hong Kong. As legislative amendments would be necessary for the extension of the geographical scope of application, SCS said that the matter would be kept under regular review for further proposed changes as and when necessary. Ms LI opined that CSB should take necessary actions and plan in advance instead of wait until there was a pressing need for changes or irregularities detected which called for immediate remedial actions.

71. Referring to item 4 of Annex B to the paper, Mr CHEUNG Man-kwong appreciated CSB's proposed arrangements for clarifying any doubts on the geographical scope of activities subject to control. Nevertheless, Mr CHEUNG pointed out that the terms "overseas" and "outside Hong Kong" would imply different scope of application, as "outside Hong Kong" would cover places in the Mainland and Macau. He requested CSB to confirm the scope of application and standardize the use of the terms in the review proposals. In reply, SCS clarified that the scope of application covered places in the Mainland and Macau. He took note of Mr CHEUNG's request for standardizing the use of terms.

Control period and approving criteria

Admin 72. Mr WONG Kwok-hing welcomed the preliminary proposals set out in the paper. Referring to paragraph 15 of the paper, Mr WONG was concerned whether the proposal for reducing the control period for directorate agreement officers with less than six years of service would have adverse impact on safeguarding against conflict of interest in post-service employment. SCS responded that the proposal was put forward after consulting DoJ on the consideration that former directorate officers on agreement terms would not be granted pensions after they ceased service with the Government and they would have the need for engaging in paid employment for financial reasons. SCS took note of Mr WONG's concern about the need to safeguard against conflict of interest and undertook to take his views into further consideration.

Admin 73. Mr WONG Kwok-hing referred to paragraph 16 of the paper and sought clarification on the application of the approving criteria that "[i]n the case of a senior directorate officer or if the work handled while in service is of particular sensitivity, his/her duties prior to the three-year period may also be taken into account". He was concerned about the definition of the term "particular sensitivity". SCS noted Mr WONG's concern and advised that the definition of the term would be further considered to facilitate future application of the approving criteria.

Restrictions on scope of work

Admin 74. Referring to item 7 in Annex B to the paper, Mr CHEUNG Man-kwong was concerned about the application of the proposed arrangement of imposing restrictions on ex-directorate officers from being involved, directly or indirectly, in the bidding for any government land, property, projects or contracts. He considered that a more specific or descriptive definition of the phrase "indirectly involved" would be necessary to prevent any ambiguity or loophole in the application of the proposed arrangement. SCS undertook to examine whether and how "indirectly involved" could be defined.

Admin 75. Mr CHEUNG Man-kwong requested for information on the approved applications where former directorate officers were involved, directly or indirectly, in the bidding for any government land, property, projects or contracts. SCS explained that the Administration did not have such information in hand as former directorate officers were not required under the existing mechanism to keep the approving authority informed of details of their employment as long as they complied with the terms of approval for their applications. Nevertheless, SCS undertook to seek legal advice on Mr CHEUNG's request for information in this regard.

Sanitization period

76. Mr LEE Cheuk-yan pointed out that one of the purposes of providing pension benefits to retired civil servants was to give them the necessary financial support after retirement so that they would not have to take up paid employments which might have conflict of interest with their previous service in the government. Mr LEE considered that the sanitization period should be lengthened to three years for retired directorate officers, instead of one year as proposed by the Administration. In his view, a longer sanitization period could address the public concern about civil servants at senior ranks paving way for their post-retirement employment through favouritism towards consortia in their policy formulation or decisions during their service in the Government.

77. In response, SCS said that the Government was guided by the principles of lawfulness, reasonableness and fairness in formulating the proposal under the review, including that on the length of the sanitization period. While provisions in the pensions legislation did not prohibit former civil servants from taking up paid employment after leaving government service, unreasonably long period of sanitization might deprive them of their rights as individuals to pursue employment and might not be in line with the principle of lawfulness. SCS pointed out that under the existing mechanism, the normal sanitization period was six months for directorate officers, which might be shortened or lengthened depending on the merits or circumstances of individual cases. In his personal view, lengthening the normal sanitization period from six months to three years would be too stringent. Nevertheless, SCS said that CSB would take into account views of the staff sides, LegCo Members as well as the public before making a decision on the length of the sanitization period.

78. While expressing support for the proposal to lengthen the sanitization period in general from six months to one year, Mr KWONG chi-kin opined that this should not be applied to all applications across-the-board and special arrangement should be allowed for retired directorate officers of some professional and/or technical grades, such as doctors, engineers and accountants. Mr KWONG pointed out that as professional and/or technical grade officers were not involved in policy formulation in their previous government service, there should not be conflict of interest or transfer of benefits in the post-retirement employment of these officers. Moreover, some professionals had to meet the requirement for continued practice in order to maintain their professional qualifications. Referring to the written submission from the Hong Kong Senior Government Officers Association which was tabled at the meeting, Mr KWONG pointed out that the Association had expressed a similar concern.

79. In reply, SCS pointed out that CSB had received a similar suggestion from some civil service bodies. He explained that if exceptions were allowed for certain grades to shorten the normal length of sanitization period, it might give rise to controversies on the criteria adopted for granting the exceptional approval. Hence, the suggestion should be further examined having regard to the different views from different civil service grades and the feasibility of drawing up suitable eligibility

criteria for this exceptional arrangement. As regards the need to meet the requirement for continued practice to maintain the professional qualifications, SCS advised that the retired officers concerned might choose to take up voluntary work in their professional fields during the sanitization period.

(Post-meeting note: The submission from the Hong Kong Senior Government Officers Association tabled at the meeting was circulated to members vide LC Paper No. CB(1)1150/04-05(03) on 22 March 2005.)

Monitoring and sanction

Admin 80. To facilitate and strengthen the monitoring of approved cases and to enhance the power of the approving authority in imposing sanctions for non-compliance, Mr KWONG Chi-kin made the following suggestions which SCS undertook to take into further consideration:

- (a) To request the applicants to confirm their acceptance of certain conditions in undertaking post-retirement employment, for example, not to participate in activities or engage in work for companies which were the associate or subsidiary of the business group of their prospective employer; to respond to the enquiries and request for information by the approving authority for monitoring compliance of their approved applications; and to accept that the approving authority could terminate the approval if the officers concerned failed to provide the required information;
- (b) To request the applicants to make statutory declaration on all the documents and information provided in their applications, so that they would be liable to civil action if the information they provided was proved to be false; and
- (c) To include other penalties in the applications so that actions other than suspension of monthly pensions could be taken in the event of non-compliance with the terms of approval.

Policy governing post-retirement employment of non-directorate officers

Admin 81. Mr LEE Cheuk-yan was concerned about the policy and mechanism in place to safeguard against conflict of interest in the post-retirement employment of non-directorate officers, such as officers formerly engaged in processing of government contracts. In response, SCS advised that under the existing policy and mechanism, non-directorate civil servants were also subject to control over their post-retirement employment. In brief, retired civil servants were not permitted to take up employment or enter into business which might constitute a conflict of interest with their previous service in the Government or adversely affect the image of the Government. At the request of Mr LEE, SCS undertook to provide

information on the existing policy and mechanism governing post-retirement employment of non-directorate officers.

Processing of applications before the implementation of the revised mechanism

82. Mr CHEUNG Man-kwong noted that CSB planned to commence the operation of the revised mechanism in the latter half of this year, applying to officers who ceased active government service after the revised mechanism had been put in place. Mr CHEUNG was concerned about the processing of applications under the existing mechanism during the interim period. In this connection, he suggested that the approval for applications for post-retirement employment by directorate officers be deferred until the implementation of the revised mechanism.

Admin

83. In response, SCS pointed out that it might not be lawful to defer the processing of applications for post-retirement employment until the new mechanism was in place and CSB would seek legal advice on Mr CHEUNG Man-kwong's suggestion. SCS also pointed out that under the existing mechanism, the approving authority could exercise discretion to extend the length of sanitization period or impose restrictions on the employment depending on the circumstances of individual applications. As such, the concern about inadequate control on these applications could be addressed. At the request of Mr CHEUNG, SCS undertook to consider in what ways the processing of applications could be enhanced between now and the implementation of the revised mechanism.

Admin

Conclusion

84. There being no other questions from members, the Chairman concluded the discussion. He said that the Panel supported CSB's proposals to improve the existing mechanism governing post-retirement employment of directorate officers. He invited CSB to consider the views expressed by members in refining the proposals, and to arrange early implementation of the revised mechanism to address the concerns of LegCo Members and the public about the subject.

Admin

VI. Any other business

85. There being no other business, the meeting ended at 1:00 pm.