

立法會
Legislative Council

LC Paper No. CB(1)1112/04-05(06)

Ref: CB1/PL/PS

Panel on Public Service
Meeting on 21 March 2005

Background Brief
on the policy on post-service employment of
former directorate civil servants

Introduction

Under section 16 of the Pensions Ordinance (Cap. 89) and section 30 of the Pension Benefits Ordinance (Cap. 99), a retired civil servant who has been granted a pension is required to seek prior permission from the Chief Executive (CE) before he enters into business or takes up employment within two years after his retirement (or a longer period as determined by CE), if the principal part of the business or employment is carried on in Hong Kong. Retired officers at the Administrative Officer Staff Grade A1 (AOSGA1) rank have to seek permission within three years after retirement. Blanket approval is given for all staff remunerated on the Model Scale I Pay Scale. Since January 1997, officers on agreement term who are ranked at Directorate Pay Scale D3 and above are also required to seek prior permission before they take up employment outside the Government within one year after completion of their agreements.

2. The objective of the policy governing post-retirement employment of civil servants is to ensure that former civil servants do not enter into any business or take up any employment which may constitute a conflict of interest with their previous service in the Government or adversely affect the image of the Government. However, the approval given by the Administration to a number of retired directorate officers to take up employment with private enterprises or public organizations shortly after their retirement or during their pre-retirement leave has caused public concern about whether any conflict of interests were involved.

Existing policy and approval mechanism

3. According to the information provided by the Administration, in considering applications for taking up post-retirement employment, the basic principle to follow is that there should be no impropriety in the proposed employment. In this regard, the Administration takes into account the following factors:

- (a) Whether the officer, while serving in the Government, was involved in policy formulation or decisions which could have benefited his prospective employer;
- (b) Whether the prospective employer might gain an unfair advantage over competitors because of the officer's previous knowledge and experience; and
- (c) The public perception of the officer taking up the proposed business or employment.

4. As regards the approval mechanism, CE has delegated the approving authority for applications from directorate officers up to the rank of AOSGA1 to the Secretary for the Civil Service (SCS) and for applications from non-directorate officers to the Heads of Department (HoDs) or Heads of Grade.

5. In respect of directorate officers, all applications are considered by the Advisory Committee on Post-retirement Employment (ACPE) which is an independent body to advise the Government on matters related to post-retirement employment of civil servants. The Committee, chaired by a High Court judge, comprises four other members, including three non-official members and one ex-officio member, i.e. SCS. The approving authority takes into account the advice and recommendations of ACPE before arriving at a decision on an application.

6. For applications which warrant approval, the Administration will, having regard to the factors set out in paragraph 3 above, consider whether it is necessary to specify a sanitization period (counting from the date of cessation of active service of the applicant) during which the applicant would be barred from taking up post-retirement employment. The length of the sanitization period, if any, varies depending on the specific circumstances of each case. Normally, a six-month sanitization period counting from the date of cessation of active service will be imposed in the case of directorate officers. For applications from directorate officers, the need for a sanitization period, and if so, its duration, are invariably put to ACPE for consideration and advice.

7. Where appropriate, the Administration may also impose restrictions on the scope of activities to be undertaken by the former civil servant, e.g. forbidding the applicant from being involved in dealings between the

Government and his prospective employer, either absolute or with reference to a stated area or areas.

8. In accordance with the pensions legislation, monthly pension payment will be suspended for those retired civil servants who are re-appointed to the Government or appointed to subvented organizations determined as public service for the purpose of pension suspension by CE. This suspension of pension is not applicable to retired officers taking up employment with private enterprises.

Previous discussions at Council meetings and Public Service Panel meetings

9. On 15 October 1997, an oral question was raised at the Council meeting in connection with a former Assistant Director of Information Services (D2) being allowed to take up post-retirement employment during pre-retirement leave. On 14 March 2001, a written question was raised at the Council meeting in connection with the former Director of Highways (D6) being allowed to take up employment with the Kowloon-Canton Railway Corporation during pre-retirement leave. In early 2004, Members noticed a trend of directorate officers taking up employment with private enterprises shortly after retirement or during pre-retirement leave, and so raised the subject for discussion at the meeting of the Panel on Public Service (PS Panel) on 17 May 2004.

10. At the PS Panel meeting on 17 May 2004, members noted that of the 76 applications submitted by retired officers in 2003, only one was rejected, and 52 were approved without any sanitization period or conditions. Members seriously doubted the effectiveness of the approving mechanism in upholding the integrity of civil servants especially in preventing directorate officers from giving favouritism to private consortia in the formulation of policies and decision-making during their service immediately prior to retirement. The Panel urged that the mechanism should be reviewed as soon as possible. The major areas to be covered by the review, as set out in **Appendix I**, included whether the length of the six-month sanitization period was appropriate, whether the officers concerned should be allowed to take up any employment during the period of their pre-retirement leave, and whether more restrictions should be imposed on the post-retirement of directorate officers, etc. The Administration undertook to review the mechanism. It subsequently advised that it would report the outcome of the review to the Panel in March 2005. In response to the Panel's request, the Administration also provided information on retired directorate officers who had taken up employment with private enterprises in the three years from 1 January 2001 to 31 December 2003, as in **Appendix II**.

11. In view of the wide media coverage in November 2004 over the possible involvement of Ms Elaine CHUNG Lai-kiwok, the former Deputy Director of Housing (DDH), in the bidding of the West Kowloon Cultural District (WKCD) development project by the Henderson Land Development Co. Ltd (HLD), a Member raised an oral question at the Council meeting on 1 December 2004 about the approval given by the Administration for Ms CHUNG to take up post-retirement employment with the Hong Kong Ferry (Holdings) Co. Ltd. (HKF)^{Note}. An extract from the draft Hansard of the relevant Council meeting is in **Appendix III**.

12. Given the public concern about the subject, the PS Panel considered it necessary to advance the discussion on the policy governing post-retirement employment of civil servants. The subject was then discussed at the Panel meeting on 21 December 2004. At the meeting, some members pointed out that apart from Ms Elaine CHUNG's possible involvement in the activities of HLD's bid for the WKCD development project, it was reported by the media that according to a Kwai Tsing District Council (DC) member, Ms CHUNG was involved in lobbying DC members in June 2004 for their support for the proposed change of land use of the Tsing Yi shipyard to a batching plant, and that Ms CHUNG's office was located in Central within the premises of HLD, instead of the premises of HKF in Tsing Yi. In response to members' request for the Administration to conduct a full investigation of Ms CHUNG's case, SCS pointed out that in respect of Ms CHUNG's involvement in the WKCD development project, the Administration had completed the investigation and taken the necessary follow up actions. The officer concerned as well as her company had confirmed that she had ceased to be involved in the cultural aspect of the project. SCS undertook to take follow up actions on other complaints about possible conflict of interests between Ms CHUNG's post-retirement employment and her previous service in the Government, including the complaint about her involvement in lobbying DC members, and provide a report on the outcome of the investigation to the Panel within two months. The Civil Service Bureau (CSB) subsequently informed the Panel in writing that it would conclude the findings in March 2005.

13. At the Council meeting on 5 January 2005, a written question was raised requesting information on civil servants ranked at Directorate Pay Scale point 4 or above who retired in the past ten years, and information on the post-retirement employment of those who have taken up employment in private or statutory bodies. An extract from the draft Hansard of the relevant Council meeting is in **Appendix IV**.

14. When the PS Panel discussed the policy initiatives of CSB featuring in the Chief Executive's 2005 Policy Address on 17 January 2005, some members

Note

As set out in the former DDH's letter dated 25 November 2004 to the Secretary General of the LegCo Secretariat, to the best of her knowledge, HLD owns approximately 73.48% of Henderson Investment Ltd (HI) and HI in turn owns 31.33% of HKF.

expressed concerns on the policy governing post-retirement employment of civil servants. Members queried whether it was appropriate to allow Ms Elaine CHUNG and Mr TSANG Yam-pui, the former Commissioner of Police, to take up employment in the private sector during their pre-retirement leave period when the officers concerned still maintained the status of civil servants and received civil service pay and allowances. They also queried why approval was given for Mr TSANG to accumulate leave in excess of the normal upper limit of one year. To facilitate the Panel's consideration, the Administration was requested to provide the following information about the applications for post-retirement employment submitted by directorate officers in the years 2002 to 2004:

- (a) Names of the applicants, the last posts they held in the Government and the ranks concerned;
- (b) The prospective employment to be taken up by the applicants;
- (c) For those approved applications,
 - whether the applicants concerned were allowed to take up the employment during their pre-retirement leave period; if yes, the reasons;
 - the length of their pre-retirement leave period; and for those applicants whose pre-retirement leave period exceeded the normal upper limit of one year, the reasons for giving approval for them to accumulate such a long period of leave; and
 - the length of the sanitization period imposed on the applicants;
- (d) For those applications which were not approved, the reasons for not approving the applications.

15. SCS undertook to seek legal advice on whether the Administration's disclosure of the information about individual applications for post-retirement employment would infringe the privacy rights of the applicants concerned; and if it would, the Administration would consider to what extent and in what ways information on the applications could be disclosed. He also undertook to consider a Member's suggestion that CSB or the Central Policy Unit should conduct an opinion poll to ascertain the expectations of the public on the policy governing post-retirement employment of civil servants, in particular, on whether directorate officers should be allowed to take up employment during

their pre-retirement leave period.

16. At the Council meeting on 2 February 2005, a motion on “Monitoring the post-retirement employment of the Chief Executive, principal officials under the accountability system and civil servants at directorate level with private sector organizations” was passed with amendments. The motion, as amended, is in **Appendix V**.

Members’ major views

17. The major views previously expressed by Members are summarized as follows:

- (a) Given the high approval rate of applications for post-retirement employment, it is doubtful whether the existing mechanism is effective in achieving the objective of the post-retirement employment policy. A due process for handling the applications is important for maintaining the impartiality of the mechanism, safeguarding public interest, and inspiring public confidence in the probity and integrity of the civil service.
- (b) As directorate officers are involved in policy formulation and decisions, it is important to ensure that their post-retirement employment will not constitute a conflict of interest with their previous service in the Government. In this connection, the granting of approval for post-retirement employment should be tightened up by lengthening the sanitization period for retired directorate officers.
- (c) The sanitization period should be counted from the date on which the retired officers leave the civil service, instead of the date of cessation of active service. In other words, the officers should not be allowed to take up any other employment during the period of their pre-retirement leave.
- (d) To facilitate the HoDs concerned in making their recommendations on applications for post-retirement employment, CSB should collate more information about the applications, such as information on whether the company was a subsidiary or associate of another business group.
- (e) The Administration should look into the approved cases of post-retirement employment and remind the civil servants concerned of the terms of approval, and explore means to strengthen its monitoring of the approved cases to ensure compliance with the terms of approval.

- (f) The Administration should examine how the existing approval mechanism could be enhanced, taking into account the need to strike a balance between the rights of individual civil servants to pursue employment or business after retirement on the one hand, and the public interests and the aspirations of the community regarding the integrity and impartiality of the civil service on the other.
- (g) The Administration should expedite its review of the existing policy and approval mechanism and propose effective measures to improve the transparency of the mechanism and to put in place a more stringent approval process.
- (h) Monthly pension payment should be suspended for those retired officers who have taken up employment with private enterprises.
- (i) The Administration should review the existing leave administration and accumulation system, making reference to private sector practices of requiring staff to take all their earned leave on an annual basis.

18. The extracts of the minutes of the PS Panel meetings on 17 May 2004, 21 December 2004 and 17 January 2005 are in **Appendices VI, VII and VIII** respectively.

Recent developments

Post-retirement employment of Ms Elaine CHUNG

19. On 11 March 2005, CSB provided an information paper entitled “Post-retirement employment of Ms Elaine CHUNG, former Deputy Director of Housing/Deputy Secretary for Housing”, which gave an account of the Administration’s findings and views relating to the concerns raised by Members about the post-retirement employment of Ms CHUNG (LC Paper No. CB(1)1095/04-05(01) issued to all Members on 12 March 2005). CSB’s major findings and assessments are summarized below:

- (a) Ms CHUNG’s application for post-retirement employment with HKF was processed in strict accordance with the prevailing policy and procedure at the time. There was nothing improper about the giving of approval at the time.
- (b) Based on information available, CSB believes that Ms CHUNG’s employment with HKF does not give rise to conflict of interest, and she has been working largely within the scope of work as

approved by SCS in March 2004. But CSB considers that Ms CHUNG's participation in the promotion of HLD's WKCD proposal in October and November 2004, even though limited to the cultural aspects of the proposal, fell outside the scope of the approved work, and hence was inappropriate and unacceptable. Such participation fuelled public suspicion of conflict of interest, to the detriment of the image and public confidence in the integrity of the civil service. CSB considers that Ms CHUNG did not exercise sound judgment commensurate with her previous senior government ranking to distance herself from any promotional activities connected with any bid for the WKCD development project. CSB has conveyed the forgoing views to Ms CHUNG and issued a warning to her to exercise proper care and judgment in her employment with HKF within the remainder of the control period.

- (c) As to the concern about Ms CHUNG's involvement in lobbying Kwai Tsing District Council (K&TDC) members for the application for change in land use in respect of a proposed concrete batching plant in Tsing Yi, Ms CHUNG pointed out that the change in land use proposal was agreed by the Town Planning Board in January 2001. The proposal was then discussed and agreed by K&TDC at its meeting held on 15 June 2004 which she did not attend. She only met K&TDC members, after a briefing session during their site visit to the shipyard on Tsing Yi Island, to exchange pleasantries and to join the meal arranged for them. Kwai Tsing District Office (K&TDO) has reviewed Ms CHUNG's written representation on the issue, and confirmed that the description of her involvement in the change of land use application is factually correct. On the basis of Ms CHUNG's explanation and K&TDO's comment, CSB accepts Ms CHUNG's claim that she did not participate in lobbying support from K&TDC members.
- (d) On the issue of Ms CHUNG's office accommodation, Ms CHUNG advised that she has two offices, one in North Tsing Yi and the other in Central. The office in Central is maintained purely for convenience sake. Ms CHUNG confirmed that she had received no remuneration whatsoever from HLD. CSB accepts that it is not uncommon in the private sector that senior management are provided with more than one office to suit business purposes, and it has not come across evidence that substantiates the allegation that Ms CHUNG has been working for HLD, not HKF, against SCS's approval.

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

20. On 16 March 2005, CSB provided an information paper on the outcome of the review of policy on post-service employment of former directorate civil servants. The paper (LC Paper No. CB(1)1112/04-05(05)) was issued to all Members on the same day.

References

21. A list of relevant papers is in **Appendix IX**.

Council Business Division 1
Legislative Council Secretariat
17 March 2005

**Panel on Public Service
Meeting on 17 May 2004**

**Review of the policy
governing post-retirement employment of civil servants**

The Administration undertook to review the existing post-retirement employment mechanism, covering the following aspects:

- (a) To examine whether the length of the six-month sanitization period was appropriate and to make reference to overseas practices in this aspect; to consider members' views, as follows:
 - The sanitization period for retired directorate officers should be lengthened, e.g. two or three years; and
 - The sanitization period should be counted from the date on which the retired officers left the civil service, instead of the date of cessation of active service. In other words, the officers should not be allowed to take up any other employment during the period of their pre-retirement leave.
- (b) To examine how the transparency of the mechanism could be enhanced, taking into account the need to strike a balance between the rights of individual civil servants to pursue employment or business after retirement on the one hand and the public interests and the aspirations of the community regarding the integrity and impartiality of the civil service on the other.
- (c) In connection with item (b) above, to seek legal advice on whether the disclosure of information would infringe the privacy rights of the retired officers concerned.
- (d) To consider whether more restrictions should be imposed on the post-retirement employment of directorate officers.
- (e) To consult the following parties on the review:
 - The Advisory Committee on Post-retirement Employment;
 - Civil servants; and
 - The Department of Justice.
- (f) To consider how the mechanism should be applied to officers joining the civil service under the new entry terms on or after 1 June 2000, i.e. those who would be eligible for Civil Service Provident Fund instead of pension upon retirement.

The Administration also undertook to convey members' views expressed at the Panel meeting to the Advisory Committee on Post-retirement Employment.

LC Paper No. CB(1)2163/03-04(01)

LegCo Panel on Public Service

**Policy governing the acceptance of
post-retirement employment of civil servants**

Supplementary Information

Purpose

At the meeting of the Panel on Public Service held on 17 May 2004, Members discussed LC Paper No. CB(1)1786/03-04(03) on the 'Policy governing the acceptance of post-retirement employment of civil servants'. In response to Members' request, this note provides further information on the subject.

Supplementary Information

2. In the past three years from 1 January 2001 to 31 December 2003, a total of 65 applications involving 50 retired directorate officers were approved for employment with business enterprises. Of these 65 cases, 25 are part-time in nature. Detailed breakdown by rank of the relevant officers at the time of retirement is at Annex. In this regard, employment with professional institutes and organisations which are established for educational, medical, charitable, or non-profit making purpose have been excluded.

3. It should be noted that there are some 300 directorate officers who retired from the civil service in the past three years. During the same period, we received only a total of 69 applications for employment with business enterprises. We gave approval to 65 of them, which involves 50 officers. This provides a general indication that the number of retired directorate officers working in business enterprises represents only a small percentage.

**Number of directorate officers
who took up post-retirement employment
with private commercial enterprises
(1.1.2001 – 31.12.2003)**

Rank	Number of retired directorate officers who took up employment and number of cases ^(Note.1)											
	1.1.2001-31.12.2001				1.1.2002-31.12.2002				1.1.2003-31.12.2003			
	No. of Officers	No. of cases			No. of Officers	No. of cases			No. of officers	No. of cases		
		Part- time	Full- time	Total		Part- time	Full- time	Total		Part- time	Full- time	Total
D1-D2	11	2	9	11	12	3	10	13	11	5	7	12
D3-D4	1	0	1	1	1	1	0	1	6	2	6	8
D5-D6	2	2	1	3	4	0	4	4	2	1	1	2
D8 & above	1	3	0	3	4	4	1	5	2	2	0	2
	15	7	11	18	21 (Note.2)	8	15	23	21 (Note.3)	10	14	24

Note 1 Some officers have submitted more than one application in a year.

Note 2 Among the 21 officers in 2002, three have submitted applications in the previous year.

Note 3 Among the 21 officers in 2003, four have submitted applications in the previous two years.

提交文件

TABLING OF PAPERS

下列文件是根據《議事規則》第 21(2)條的規定提交：

The following paper was laid on the table pursuant to Rule 21(2) of the Rules of Procedure:

第 31 號 — 緊急救援基金
受託人截至二零零四年三月三十一日年度年報

No. 31 — Emergency Relief Fund
Annual Report by the Trustee for the year ending
31 March 2004

議員質詢的口頭答覆

ORAL ANSWERS TO QUESTIONS

主席：質詢。按照《內務守則》，質詢時間一般不會超過一個半小時，即每項質詢平均約佔 15 分鐘。在一位議員提出主體質詢及有關的官員回答後，該名提出質詢的議員可優先提出第一項補充質詢，其他有意提出補充質詢的議員請按下“要求發言”按鈕，輪候發問。

議員在提出補充質詢時只可提出一項問題，請議員提問時盡量精簡，以便各位可提出更多補充質詢，亦請各位不要在提出補充質詢時發表議論，因這樣不合乎《議事規則》第 26(5)條的規定。

主席：第一項質詢。

退休高級公務員在私人機構任職

Retired Senior Civil Servant Taking up Job in Private Sector

1. 鄺志堅議員：主席，據報，在去年 11 月底退休前擔任房屋署副署長的一位公務員，在本年 4 月加入一間渡輪公司擔任業務發展部董事，工作範圍包括與西九龍文娛藝術區發展計劃（“西九龍計劃”）有關的文化項目工作，而該公司的母公司有就西九龍計劃提交發展建議書。就此，政府可否告知本會：

- (一) 有否批准上述退休公務員在該渡輪公司任職；若有，給予批准的人士的職位、所屬政策局或政府部門及批准時間；
- (二) 在該退休公務員擔任上述職位前，當局是否知悉該職位的工作範圍，以及有否就該工作範圍再給予批准；若有，給予批准的人士的職位、所屬政策局或政府部門及批准時間；及
- (三) 鑒於該退休公務員曾在前市政總署及房屋署任職，當局有否評估這些公職與她的現職有否利益衝突，以及她擔任現職有否違反退休公務員任職私人機構的限制；若有評估，結果是甚麼？

公務員事務局局長：主席，根據退休金法例，退休公務員如在退休後兩年內從事業務，成為合夥人或董事或僱員，而有關業務或工作主要在香港進行，必須預先向行政長官取得批准。首長級甲一級政務官或以上職級的退休公務員，則須在退休後 3 年內申請批准。所有退休公務員不論職級高低，均受有關法例規管，並須遵守上述有關退休後就業的規定。

該政策的基本原則是，前公務員擬從事的業務或工作必須合宜，並考慮以下因素：

- (i) 該名人員在任職政府期間曾否參與可能令其準僱主得益的政策制訂或決策工作；
- (ii) 該名人員以往所得的資料和經驗，會否令其準僱主不公平地獲得較競爭對手有利的條件；及
- (iii) 公眾對該名人員擬從事的業務或工作的看法。

在現行機制下，行政長官已分別授權，由公務員事務局局長審批首長級甲一級政務官職級或以下首長級人員的申請，以及由部門或職系首長審批非首長級人員的申請。

首長級人員所提出的申請，一概經由退休公務員就業申請諮詢委員會（“諮詢委員會”）考慮。諮詢委員會是一個獨立組織，其主席及成員由行政長官委任，負責就前公務員退休後就業的事宜向政府提供意見。審批當局就每項申請作決定前，會充分考慮諮詢委員會的意見及建議。

現就質詢各部分回應如下：

- (一) 為保障私隱起見，我們通常不會披露前公務員退休後就業的詳情，但鑒於該名退休公務員的僱主已就此事發布新聞稿，我在此證實，我已在 2004 年 3 月按前文所述的程序及準則批准該名人員在一間渡輪公司工作。
- (二) 有關申請是根據申請書上所載列的資料處理，而申請書上列出的工作範圍包括文化事務，但不包括土地及地產。我批准該項申請，是以申請書所列明在渡輪公司工作的範圍為依據。由於該名前公務員的工作範圍並沒有改變，所以不引起另行批核的問題。
- (三) 該退休公務員曾於 1997 至 99 年任職前市政總署，1999 至 2002 年任職前房屋局及 2002 至 03 年任職房屋署。根據上文所述的原則，在評估過該名人員擬擔任的工作是否合宜後，我們接納該名人員獲准在有關渡輪公司擔任的工作，與其前任公職不構成利益衝突。有鑒於近日的傳媒報道，我們曾接觸過該名退休人員，知悉其目前工作範圍與批核範圍相符，因此我們認為她沒有違反我們批准限制。我們已提醒該名人員，在未經另行批准前，不得從事任何超越批准範圍的工作。

鄭志堅議員：主席，局長剛才的主體答覆提到兩點，第一，當事人曾任職房屋局和房屋署；第二，政府批准的工作範圍是根據申請書所載資料，其中列明是包括文化事務，但不包括土地及地產。主席，從有關僱主發放給新聞界的信件中，我們知道除於 2004 年 3 月 29 日外，政府在 5 月和 9 月亦再三確認這位退休公務員的工作範圍。我想問局長的補充質詢是，政府再三確認這位退休公務員的工作範圍時，是否知道這位人員會參與西九龍的發展項目？如果知道，便應覺察西九龍計劃即使不是一項地產項目，也是一項與地產有密切關連的項目，因而可明顯地看見其工作範圍與該發展項目有利益衝突。政府為何仍然說不構成利益衝突，仍然批准她擔任該工作呢？

公務員事務局局長：主席，首先，我覺得我並不適宜在此評論有關公務員事務局與該位退休公務員的書信來往，但我可以指出，第一，由於傳媒報道她所參與的工作，我們確曾與她接觸，希望清楚瞭解她負責的工作與最初批准的範圍是否相符，而且我在主體答覆亦清楚指出，我們現在清楚知道她的工作與我們最初批准的範圍是相符的。第二，至於這位退休公務員與西九龍計

劃方面，我想再次澄清，我們批准有關的前公務員在一間渡輪公司擔任文化方面的工作，她已向我們表示，與其所工作的公司有關連的一間公司有參與西九龍計劃，於是，她在公司服務時，工作上可能會透過這種間接方式，參與了西九龍計劃的工作。

就此，我們已再次提醒當事人，第一，我們批准她在渡輪公司工作，儘管她可以就西九龍計劃的文化細節向聘任的公司提供內部的諮詢意見，但她參與的工作不應包括擔任西九龍計劃競投小組的成員，亦不應直接或間接參與該計劃的競投過程。因此，透過我們這次的接觸，一方面確認了她的工作範圍與我們原來所批准的是相符的。此外，透過這次機會，我們亦再次提醒她，其工作範圍為何及她是受僱於該公司從事工作的。

主席：各位議員，共有 10 位議員輪候就這項質詢提出補充質詢。請大家無論在提問及回答時也盡量簡短，好讓更多議員能提出補充質詢。

李鳳英議員：主席，我想問局長，他在回答質詢第(一)部分時，開宗明義提到，為保障私隱起見，所以通常不會披露前公務員退休後就業的詳情。那麼，他以甚麼標準來衡量公眾對該公職人員從事有關業務的看法呢？

公務員事務局局長：主席，我在主體答覆已提過，首長級人員所提出的申請，是會經由諮詢委員會作考慮，其主席及成員均是獨立人士，由行政長官委任，並會就這方面提供意見。同時，就一般政策而言，我們會根據諮詢委員會提供的意見，作出決定。

MISS TAM HEUNG-MAN: 主席，*I need to refer to part (b) of the question itself. When the Secretary answered the question, he said he gave approval for the applicant to work in the ferry company, however, later on, we found that the woman was working in a land development company which submitted a proposal to the Government in relation to the West Kowloon Cultural District development project. So my question is, does that constitute any breach in terms of approval given to the lady to work in a ferry company in the first instance, but later she worked in a different capacity, will that constitute any breach in terms of approval given to her in the first place?*

SECRETARY FOR THE CIVIL SERVICE: Madam President, the approval given to the officer concerned is that she can work in a ferry company, and her work is related to the cultural aspects. It is a fact that her company provides services to an associated company, which is involved in the West Kowloon Cultural District development project. But she remains to work in the ferry company and her work is to provide service to the ferry company, not to the associated company of the ferry company.

主席：譚香文議員，你的補充質詢是否未獲答覆？

譚香文議員：是的。

主席：你可否重複他剛才沒有答覆的那部分補充質詢呢？

MISS TAM HEUNG-MAN: *I want to ask, since the original approval was given to her work contract with the ferry company, would any additional work on her part in the associated company constitute a different contract altogether?*

主席：局長，你有否補充？

公務員事務局局長：我只可以再次清楚說明，她是為渡輪公司工作，並不存在替其他公司工作。

張文光議員：主席，就這位房屋署的退休高官而言，儘管她是在渡輪公司工作，儘管她是負責文化藝術工作，但其母公司的確競投西九龍計劃，而這是一項涉及具大利益的地產項目。政府可否告知本會，該位退休高官的做法，是否已抵觸了退休政策的基本原則的第一及第二項，即以她的經歷和經驗令她的準僱主得益，或令她的準僱主不公平地獲得較競爭對手有利的條件。政府會否基於這原因，按規定處理這位退休高官，要求她退出任何有利益衝突的工作和機構？

公務員事務局局長：主席，實際上，以張文光議員剛才提出、在主體答覆中述及的因素來評估這位前公務員的受聘是否構成利益衝突，我們的結論是否定的。第一，不單止因為她現時只是為渡輪公司工作和負責文化方面的事務，即使再說得遠一點，她過去在政府的工作亦完全不涉及有關西九龍計劃的策劃方面，所以，我們經詳細考慮後，覺得其中並不存在利益衝突的問題。

張文光議員：主席，局長沒有答覆我的補充質詢。西九龍計劃涉及文化、藝術、土地和地產等項目。因此，這位退休高官以文化藝術的名義，涉及土地和地產項目，是否已抵觸了退休高官擬從事業務須考慮的兩項基本原則，即會否令其準僱主得益，以及會否令其他對手覺得有不公平的競爭？政府會如何處理這種行為？

主席：局長，你是否還有補充？

公務員事務局局長：主席，我沒有甚麼補充。也許我再次澄清一下吧。我們經過審核，認為其中沒有涉及利益衝突。我不想重複剛才的答覆，不過，我們已再次提醒她，她不能參與的，不單止是西九龍的地產項目，她甚至不能代表任何一間公司就西九龍計劃進行競投，即使參與推廣文化活動也是不可以的。

李卓人議員：主席，渡輪公司搞文化，其實是“得啖笑”，不過，人人都知道她是協助母公司來搞這些工作的。主席，我想問局長，當初批核時，局長已明知她加入的公司會參與西九龍計劃，請問局長如何界定西九龍計劃的性質呢？在該計劃中，文化中有地產，地產中又有文化，局長認為可以把文化和地產分割嗎？如果不怕有利益衝突，為何要再三囑咐鍾麗幗不能參加競投小組？即使囑咐她不能參加競投小組，又如何能每天看着她，知道她有否向競投小組提供意見？這是無法知道的，這分明是瓜田李下。

主席：你無須提出自己的意見，只須直接提問，因為有多位議員正在輪候提問。

李卓人議員：*是的，我正在問他.....*

主席：請直接提問吧。

李卓人議員：*是的，很明顯，這是瓜田李下。局長是否承認這是瓜田李下呢？其他人看來，這根本就是不公平。我剛才問局長的是，西九龍計劃的定性是文化，還是地產？這根本是分不開的，他是否承認呢？*

公務員事務局局長：主席，如果補充質詢問西九龍計劃的定性，當然，我只能說，據我的理解，這項西九龍計劃基本上是文化藝術項目，當中包括了一些地產的元素。但是，這根本已脫離了質詢的範圍。

(李卓人議員示意局長沒有回答他的補充質詢)

主席：你的補充質詢是否未獲答覆？

李卓人議員：*他剛才已證實了在該計劃中，性質是文化中有地產，但我的補充質詢是，他是否承認有瓜田李下的情況呢？這是很重要的。*

主席：李卓人議員，你可以坐下。各位議員，由此可見，如果你們提出的補充質詢太長，是很難怪官員在回答了部分之後便兼顧不到其他的部分。所以，如果你們提出簡單的補充質詢，官員便可清晰地回答，而你們亦可知道他否回答你們的補充質詢了，對嗎？

公務員事務局局長：主席，就我們現在容許她負責的工作範圍，我已三番四次提過了，由於有些人同樣持有李卓人議員的看法，所以我們已透過與這位前公務員澄清的過程，再次提醒她有關其工作範圍，並說明她不應做一些令人誤解的工作，包括不能擔任有關西九龍計劃的任何競投或推廣工作。

主席：本會就這項質詢已用了超過 19 分鐘，現在是最後一項補充質詢。

梁國雄議員：要站立嗎？

主席：提問及答覆時都是要站立的。

梁國雄議員：我想透過主席問王局長，他剛才提及的前公務員，我不知道自己
有否錯誤理解，她是鍾麗幗女士，對嗎？

主席：這是否你要提出的補充質詢？

梁國雄議員：不是，不是的。

主席：那麼請提出你的補充質詢。

梁國雄議員：我不知道大家談論的是哪一位？如果是她，我的心便可落實，
因為我不知道是談及哪一位。現時，整個議會也不知道正在說哪一位。

主席：梁國雄議員，請你直接提出你的補充質詢。我相信其他議員也很清楚
是指哪一位的。

梁國雄議員：好的。

主席：大家沒有提出姓名，便是想盡量就政策及原則方面提出補充質詢。

梁國雄議員：OK，可以的，收到了。話說某官員退休後到一間公司搞文化工
作，後來，出現了與西九龍計劃內有關項目的游說。我認為這情況並非只有

瓜田李下之嫌，而是明目張膽。根據我的觀察，曾蔭培、許淇安及許仕仁 3 位加入商界服務時，也是不符合局長先前提出的政策原則的。他們的情況是否經過特別批准呢？他們離開政府被禁制接受聘用的時間並不足夠，即沒有經過 1 年或 2 年的“過冷河”時間，而是很快便到商界服務。根據局長的理解，這些情況是否不符合政策原則呢？我是否有需要提醒局長？他們是曾蔭培、許淇安及許仕仁。

主席：梁國雄議員，我們也聽清楚了，但你不坐下來，我是不能請局長回答你的。

公務員事務局局長：主席，這宗個案和梁國雄議員剛才提到的所有個案，均是根據我們既定的政策和程序處理，並不存在任何特殊的情況。

(梁國雄議員向主席示意還想提問)

梁國雄議員：是追問，追問。

主席：跟進質詢是指局長剛才沒有回答議員某部分的補充質詢，所以議員才可跟進，但追問則是指要另外提出一項補充質詢。那麼，你究竟是跟進還是追問呢？

梁國雄議員：追問還是跟進……我現在也分不清楚，我提出後，你便知道了，(眾笑) 是由你裁決的。

主席：是的。梁國雄議員，我只是提醒你，一位議員在提出了一項補充質詢後，如果還要提出第二項補充質詢，他是要再次輪候的。不過，如果局長沒有答覆議員的補充質詢，議員便可提出跟進質詢。

梁國雄議員：我是追問、跟進……

主席：那即是跟進。

梁國雄議員：對，是跟進。

主席：梁國雄議員，請站立發問。

梁國雄議員：是跟進，跟進。很多公務員致電給我，說這 3 位人士的情況並不符合規定，輿論也說是不符合規定。

主席：梁國雄議員，不好意思，我好像經常在打斷你的提問，但你提問的必須是你剛才問過的補充質詢。你現在所說的，並不是你剛才提出的補充質詢的一部分。

梁國雄議員：是的。

主席：你另外提出了一些新元素，這是不符合《議事規則》的。你只要提出局長沒有回答的那部分補充質詢便足夠了。

梁國雄議員：我問他是否經過特別的批准程序，是否有人作出特別批准？又或是否由他批准？就是這樣了。因為根據規定，如有特殊情況，便須由行政長官親自批准。我想問他們的情況是由局長批准，還是由行政長官批准呢？

主席：局長，是否有特殊情況？

公務員事務局局長：沒有，我剛才已說了，是根據既定的政策和程序處理的。

主席：第二項質詢。

退休首長級公務員
Retired Directorate Grade Civil Servants

13. 梁耀忠議員：主席，政府可否告知本會：

- (一) 在過去 10 年內薪酬屬首長級薪級表第四級或以上而退休的公務員的姓名，他們在退休前的職位和退休日期；及
- (二) 這些官員在退休後有否受聘於私人或法定機構；若有，有關職位的名稱、他們受聘的日期，以及是否在退休後的首 3 年內擔任有關職位？

公務員事務局局長：主席，根據退休金法例，任何退休公務員如在退休後兩年內自行從事業務，成為合夥人、公司董事或僱員，而有關業務或工作主要在香港進行，便須預先向行政長官取得批准。至於首長級甲一級政務官或以上職級的退休公務員，則須在退休後 3 年內申請批准。上述管制期一旦終結，有關退休公務員便不再受該項規定所限。

鑒於退休首長級公務員的就業管制期（即須預先取得批准才可從事外間工作的期間）只限於退休後兩至 3 年，加上可供準備本答覆的時間有限，我們只可提供過去 3 年退休的首長級薪級表第四級或以上人員的資料。

現就具體質詢回應如下：

- (一) 於 2002 年 1 月 1 日至 2004 年 12 月 31 日退休而屬於首長級薪級表第四級或以上的首長級人員，其姓名、前任職級及所任職政策局／部門，均表列於附件甲。
- (二) 在該批退休公務員當中，當局批准了 18 名首長級人員合共 31 項退休後從事有薪工作或業務的申請，另外有 13 宗榮譽聘任或無酬服務的個案，附件乙列出獲批工作性質的分類數字。現行機制並沒有要求有關人員在獲得退休後就業批准後，向政府申報他們最終有沒有接受所申請的工作或於何時終止有關工作。

附件甲

2002 年 1 月 1 日至 2004 年 12 月 31 日退休
而屬於首長級薪級表第四級或以上的首長級人員

(一) 13 名於 2002 年 1 月 1 日至 2002 年 12 月 31 日退休的人員

姓名	前任職級	前任政策局／部門
曾蔭權	政務司司長	政務司司長辦公室
陳方安生	政務司司長	政務司司長辦公室
孫明揚	首長級甲一級政務官	政制事務局
湯啟康	教育署副署長	教育署
葉志鵬	顧問醫生	衛生署
許淇安	警務處處長	香港警務處
黃燦光	警務處副處長	香港警務處
李文江	顧問醫生	醫院管理局
周一嶽	顧問醫生	醫院管理局
蕭炯柱	首長級甲一級政務官	規劃地政局
李少光	入境事務處處長	入境事務處
劉錦洪	資訊科技署署長	資訊科技署
傅立新	水務署署長	水務署

(二) 15 名於 2003 年 1 月 1 日至 2003 年 12 月 31 日退休的人員

姓名	前任職級	前任政策局／部門
韋徐潔儀	首長級甲級政務官	漁農自然護理署
鮑紹雄	建築署署長	建築署
劉正光	土木工程署署長	土木工程署
郭禮莊	渠務署署長	渠務署
李承仕	首長級甲一級政務官	環境運輸及工務局
許競平	消防處處長	消防處
劉玉權	警務處副處長	香港警務處
黃星華	首長級甲一級政務官	房屋局
吳榮奎	首長級甲一級政務官	運輸局

姓名	前任職級	前任政策局／部門
王永平	首長級甲一級政務官	公務員事務局
周德熙	首長級甲一級政務官	工商局
張敏儀	廣播處長	香港經濟貿易辦事處
夏秉純	首長級甲級政務官	香港經濟貿易辦事處
黃樹德	顧問醫生	醫院管理局
梁世華	首長級甲級政務官	康樂及文化事務署

(三) 9 名於 2004 年 1 月 1 日至 2004 年 12 月 31 日退休的人員

姓名	前任職級	前任政策局／部門
陳彥達	審計署署長	審計署
伍靜國	懲教署署長	懲教署
甄錫榮	顧問醫生	衛生署
陳馮富珍	衛生署署長	衛生署
林鴻鑒	香港天文台台長	香港天文台
鍾麗幗	首長級乙一級政務官	房屋署
陸炳泉	郵政署署長	郵政署
黃鴻堅	拓展署署長	拓展署
沈文燾	庫務署署長	庫務署

附件乙

2002 年 1 月 1 日至 2004 年 12 月 31 日退休的
首長級薪級表第四級或以上公務員
獲准在退休後從事的工作

獲批的工作性質		個案	
行業概括分類	職位	宗數	小計
有薪全職商業聘任			
商貿	企業管理	4	
建築及工程	企業管理	1	
物業管理	企業管理	1	6

獲批的工作性質		個案	
行業概括分類	職位	宗數	小計
有薪兼職商業聘任			
商貿及財經	顧問服務或非執行性職務	10	
管理顧問	顧問服務或非執行性職務	2	
建築及工程	企業管理	1	
	顧問服務或非執行性職務	1	14
有薪全職非商業聘任			
醫療	醫院管理	3	
	診療服務	1	
教育	學校管理	1	
其他	行政管理	2	7
有薪兼職非商業聘任			
醫療	診療服務	1	
教育	教學	1	
	顧問服務	1	
宗教	神職人員	1	4
總計			31

榮譽聘任或無酬服務 ¹		個案
教育	學校管理	4
	顧問服務	1
醫療	工程顧問	1
慈善	顧問服務	2
其他	顧問服務	5
總計		13

¹ 工作屬諮詢和志願性質，並不構成僱傭聘任，亦不附帶金錢酬勞。

為亟需照顧的長者提供服務 Services for Vulnerable Elders

14. 李國麟議員：主席，據悉，本港長者的自殺身亡率一直較其他年齡組別的人士為高。此外，有調查結果顯示本港有近 4 萬名長者患上抑鬱症，但當中八成長者未有求診。另一方面，2004 年首季的新填報虐待長者個案數字顯示，精神虐待個案佔整體個案數目的第三位。就此，政府可否告知本會：

The LegCo Reporter

2004-2005

Issue No. 11 (3 February 2005)

At its meeting on 2 February 2005, the Legislative Council passed the following four resolutions:

- ~~(1) Resolution moved by the Secretary for Economic Development and Labour relating to the Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004.~~
- ~~(2) Resolution moved by the Secretary for Economic Development and Labour relating to the Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004.~~
- ~~(3) Resolution moved by the Secretary for Commerce, Industry and Technology relating to the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) (Amendment) Regulation 2004 and the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation.~~
- ~~(4) Resolution moved by Hon Miriam LAU Kin-yeek relating to the extension of the period for amending the Merchant Shipping (Prevention of Pollution by Sewage) Regulation and the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation.~~

At the same meeting, the Council passed the following motion with no legislative effect:

Motion on "Monitoring the post-retirement employment of the Chief Executive, principal officials under the accountability system and civil servants at directorate level with private-sector organizations", moved by Hon CHEUNG Man-kwong as amended by Hon TAM Yiu-chung

"That, since the approval granted in recent years to a number of civil servants at directorate level for their post-retirement employment with private-sector organizations has aroused public concern, in order to fortify the prevention of civil servants at directorate level from taking up post-retirement employment that involves conflicts of interests with their

previous service in the Government, this Council urges the Government to immediately tighten up, monitor the implementation of and strictly enforce the policies and measures governing the post-retirement employment of civil servants at directorate level with private-sector organizations, which should include:

- (a) imposing across the board a sanitization period of at least one year for directorate officers;
- (b) prohibiting directorate officers from taking up employment with private-sector organizations during their pre-retirement leave to guard against double pay;
- (c) identifying loopholes in the work of the Advisory Committee on Post-retirement Employment to prevent the Committee from becoming a rubber stamp which approves applications indiscriminately;
- (d) making public information on the approvals granted by the Government for civil servants at directorate level to take up post-retirement employment with private-sector organizations; and
- (e) closely monitoring the changes in the nature of post-retirement employment taken up by directorate officers with private-sector organizations after such approvals have been granted so as to ensure that there is no conflict of interest between their post-retirement employment and their previous service in the Government;

furthermore, this Council also calls upon the Civil Service Bureau to expeditiously complete the investigation into the incident of Ms Elaine CHUNG Lai-kok and publish the relevant report, and urges the Administration to strictly enforce the relevant policies by exercising appropriate and forceful regulation over the post-departure or post-retirement employment of the Chief Executive and the principal officials under the accountability system with private-sector organizations, so as to achieve the policy direction of 'resolutely against collusion between business and the Government to eliminate any transfer of benefits' announced in the Chief Executive's 2005 Policy Address, thereby ensuring that upon the departure of the Chief Executive, principal officials and directorate officers, they do not enter into any business or take up any employment which may constitute a conflict of interest with their previous service in the Government or adversely affect the image of the Government."

**Extract from the minutes of meeting
of the Panel on Public Services on 17 May 2004**

* * * * *

III. Policy governing the acceptance of post-retirement employment by civil servants

(LC Paper No. CB(1)1786/03-04(03) — Paper provided by the Administration

LC Paper No. CB(1)1711/03-04 — “The Fifteenth Report on the Work of the Advisory Committee on Post-retirement Employment (1 January 2003 - 31 December 2003)” provided by the Administration)

Briefing by the Administration

4. At the invitation of the Chairman, the Deputy Secretary for the Civil Service (1) (DSCS1) briefed members on the policy governing the acceptance of post-retirement employment of civil servants, highlighting the following points:

(a) Objectives and principles of the policy

Under section 16 of the Pensions Ordinance (Cap. 89) and section 30 of the Pension Benefits Ordinance (Cap. 99), a retired civil servant who had been granted a pension was required to seek prior permission from the Chief Executive (CE) before he entered into business or took up an employment within two years after his retirement, if the principal part of his business or employment was carried on in Hong Kong. Retired officers at the Administrative Officer (AO) Staff Grade A1 rank had to seek permission within three years after retirement. The objective of the post-retirement employment policy was to ensure that former civil servants did not enter into any business or took up any employment which might constitute a conflict of interest with their previous service in the Government or adversely affect the image of the Government. The

basic principle and factors to be taken into account in considering applications for taking up post-retirement employment were set out in paragraph 5 of the paper.

(b) Approving mechanism

Applications from non-directorate officers were handled by the respective Head of Department/Grade (HoD/HoG) under delegated authority. Applications from directorate officers were first scrutinized by HoD/HoG or the Permanent Secretary concerned. Their recommendations would be processed by the Civil Service Bureau (CSB) and forwarded to the Advisory Committee on Post-retirement Employment (ACPE) for consideration and advice. For applications which warranted approval, the Administration would also consider whether there was a need to specify a sanitization period (counting from the date of cessation of active service of the applicant) during which the applicant would be barred from taking up the post-retirement employment. Normally, a six-month sanitization period would be imposed in the case of directorate officers. Where appropriate, the Administration might also impose restrictions on the scope of activities to be undertaken by the retired civil servant.

5. DSCS1 also informed members that the Administration had been considering how the mechanism should be applied to officers joining the civil service under the new entry terms on or after 1 June 2000 who would be eligible for the Civil Service Provident Fund instead of pension upon their appointment to permanent terms. The Administration would consult staff in accordance with the normal procedures when proposals were available.

Discussion

Need for a review of the existing mechanism

6. Mr CHEUNG Man-kwong noted that of the 76 applications submitted by retired directorate officers in 2003, one was rejected, 23 were approved with sanitization period and/or restrictions, and 52 were approved without any conditions. With such a high approval rate, Mr CHEUNG doubted whether the existing mechanism was effective in ensuring that the objective of the post-retirement employment policy could be achieved. He also pointed out that the approval given to a number of retired directorate officers to take up employment with private enterprises shortly after retirement, or even during the period of their pre-retirement leave, had undermined public confidence in the

integrity of the civil service. Mr CHEUNG therefore urged the Administration to review the existing mechanism as early as possible to restore public confidence. Mr Albert CHAN shared his views. He queried whether the existing mechanism was safeguarding the interest of retired officers and their prospective employers rather than public interest.

7. Mr LEE Cheuk-yan expressed concern about the recent trend that more and more retired directorate officers took up employment with consortia shortly after their retirement. This trend gave rise to the query on whether the retired directorate officers concerned had, during their previous service in the Government, given favouritism towards consortia in their policy formulation or decision in order to pave way for their post-retirement employment. Mr Albert CHAN shared Mr LEE's concern.

8. Mr Michael MAK opined that a due process for handling the applications for post-retirement employment was needed to maintain the impartiality of the mechanism and to safeguard public interests. He considered that the advice of the Independent Commission Against Corruption (ICAC) should be sought by the Administration on the need and means for tightening the control over the application process.

9. DSCS1 stressed that the Government attached great importance to ensuring that post-retirement employment of former civil servants would not result in conflict of interest with their previous service in the Government, and that the existing mechanism for processing applications for post-retirement employment was fair and impartial. Applicants were required to provide detailed information in their applications, including details of the prospective employment, channel through which they applied for the prospective employment as well as whether they had any contact with their prospective employers during their service in the Government. Applications from directorate officers were first scrutinized by the HoD/HoG or the Permanent Secretary concerned. Their recommendations would be processed by CSB and forwarded to ACPE for consideration and advice.

10. DSCS1 also pointed out that of the 75 approved applications from directorate officers, 15 were approved with sanitization period. Of the remaining 60 approved applications, 45 were submitted six months or more after the date of cessation of active service of the officers concerned and only 15 cases were submitted within less than 6 months, with the majority in the latter involving applications for taking up employment in the education sector, or for engaging in business which would not constitute any conflict of interest with the applicants' previous service in the Government. DSCS1 further pointed out that the retired officers were generally aware that any applications for post-retirement

employment would be subject to close scrutiny. They were also conscious of the need to avoid potential conflict of interest in seeking post-retirement employment. As regards the query on whether the retired directorate officers concerned had given favouritism towards consortia in their policy formulation or decision during their previous service in the Government, DSCS1 pointed out that integrity, honesty and impartiality were core values followed by civil servants in conducting their work.

11. The Secretary for the Civil Service (SCS) pointed out that under the existing mechanism, retired officers at higher rank were subject to tighter control on their post-retirement employment or business. For example, retired officers at the AO Staff Grade A1 rank had to seek permission for such employment within three years after retirement, instead of two years in the case of other retired civil servants. SCS also pointed out that the number of retired directorate officers taking up employment with private enterprises was not significant. At the request of Mr LEE Cheuk-yan, SCS undertook to provide information on the number of retired directorate officers who had taken up such employment in the past three years, with a breakdown by rank at the time of retirement.

(Post-meeting note: The information provided by the Administration was circulated to members vide LC Paper No. CB(1)2163/03-04(01) on 15 June 2004.)

12. The Chairman pointed out that while the number of retired directorate officers taking up employment with private enterprises was not significant, the retired officers previously serving as the Commissioner of Police had taken up such employment shortly after their retirement.

13. Mr LEE Cheuk-yan opined that tighter restrictions should be imposed to prohibit retired civil servants from taking up any employment or enter into any business which would have direct conflict of interest with their previous service in the Government. For example, retired officers previously involved in outsourcing exercises should not be allowed to take up employment with the Government contractors concerned. DSCS1 confirmed that approval would not be granted to applications which constituted a conflict of interest with the applicants' previous service in the Government.

14. Mr Albert CHAN was not convinced that the existing mechanism was fair and impartial. He pointed out that the applications were mainly considered by civil servants, such as HoD/HoG or Permanent Secretary, and that ACPE was established by the Government with its chairman and members appointed by CE. Moreover, information about the applications was not disclosed and the existing

mechanism lacked transparency. Mr CHAN requested the Administration to disclose the information provided by the applicants involved in the 76 applications received from retired directorate officers in 2003.

Admin 15. SCS pointed out that ACPE was established in 1987 to strengthen the post-retirement employment mechanism and to enhance public confidence. It consisted of independent members and produced an annual report on its work, a copy of which was provided to members of the Panel for information. SCS also pointed out that in pursuing the post-retirement employment policy, the Administration needed to strike a balance between the rights of individuals to pursue employment or business after retirement on the one hand and the public interest and the aspirations of the community regarding the integrity and impartiality of the civil service on the other. To address members' concern, SCS undertook to consider how the transparency of the post-retirement employment mechanism could be enhanced, taking into account the need to strike the balance mentioned above. SCS also undertook to consider whether there was a case to impose more restrictions on the post-retirement employment of directorate officers in the light of present day circumstances and the enhanced expectation of the community on the probity of the civil service.

Admin 16. On members' request for information about the applications for post-retirement employment, SCS said that given that the information provided by the retired officers in respect of the prospective employment was solely for the purpose of enabling the Administration to process their applications, the Administration would seek legal advice on whether the disclosure of information about the applications would infringe the privacy rights of the retired officers concerned. However, he stressed that the disclosure of such information, if considered appropriate, would only apply to future applications but not to the approved applications.

Admin 17. Mr LEUNG Fu-wah noted that ACPE was chaired by a judge and had three non-official members. Responding to Mr LEUNG's enquiry, DSCS1 said that the three non-official members were either of commercial or legal background. Mr LEUNG suggested that the Administration might consider increasing the number of non-official members of ACPE to enhance public confidence in the mechanism.

18. Noting that the sanitization period was counted from the date of cessation of active service of the applicant (paragraph 7 of the paper), the Chairman sought clarification on whether the period of pre-retirement leave of the applicant was counted as part of the sanitization period. DSCS1 explained that the sanitization period was counted from the date the retired officer ceased active duty. She

clarified that contrary to the general impression of the public that applicants submitted their applications for post-retirement employment shortly after their cessation of active service, the majority of the applications were submitted several months or even one to two years after the applicants had ceased active service.

19. Mr CHEUNG Man-kwong considered that the granting of approval for post-retirement employment should be tightened up by lengthening the sanitization period for retired directorate officers to one year. He also considered that the sanitization period should be counted from the date on which the retired officers left the civil service, instead of the date of cessation of active service. In other words, retired officers should not be allowed to take up any employment during the period of their pre-retirement leave. Mr LEE Cheuk-yan, Mr Albert CHAN and Ms LI Fung-ying shared Mr CHEUNG's view on the need to tighten up the granting of approval for post-retirement employment. Mr LEE and Mr CHAN considered that the sanitization period for retired directorate officers should be extended to two or three years.

Admin

20. SCS pointed out that while a six-month sanitization period would normally be imposed in the case of directorate officers, the length of sanitization period varied depending on the specific circumstances of each case. He also pointed out that the independent ACPE would provide a third party advice to the Administration on the sanitization period and restrictions to be imposed, if any, on approved post-retirement employment applications. To address members' concern, however, SCS agreed to review the length of the sanitization period, taking into consideration practices in other jurisdiction, as well as members' views mentioned in paragraph 19 above.

Admin

21. On members' request for a review of the existing post-retirement employment mechanism, SCS said that the mechanism had been revised from time to time to ensure that it continued to serve the policy objective effectively and that the procedures were clear and well understood by all officers concerned. The Administration was willing to review the mechanism, taking into consideration members' views expressed at the meeting, including their views on the length of the sanitization period and the calculation of such period as well as the enhancement of the transparency of the existing mechanism. As set out in paragraph 15 of the paper, the Administration would consider how the mechanism should be applied to officers joining the civil service under the new entry terms on or after 1 June 2000. In taking forward the review, the Administration would consult relevant parties on the review, including ACPE, civil servants and the Department of Justice.

Admin

Admin 22. In response to the Chairman's enquiry, SCS advised that the aim was to complete the review by end of 2004. At the request of Mr CHEUNG Man-kwong, SCS undertook to convey members' views on the post-retirement employment mechanism to ACPE for reference.

Suspension of monthly pension payment

23. Mr Albert CHAN considered that monthly pension payment should be suspended for those retired officers who had taken up employment with private enterprises. SCS pointed out that retired civil servants were entitled to the payment of monthly pensions for their past years of service in the Government and it would neither be reasonable nor lawful to suspend the monthly pension payment for those who had taken up employment with private enterprises.

Monitoring of approved applications

24. Noting that some of the applications from retired directorate officers were approved with restrictions, Mr Bernard CHAN enquired how the Administration could monitor whether the retired officers concerned had complied with the restrictions. Mr Michael MAK expressed similar concern. DSCS1 responded that in granting approval for post-retirement employment, the applicant and the HoD/HoG or Permanent Secretary concerned would be informed of the restrictions imposed. Responding to Mr CHAN's further enquiry on penalty for non-compliance, DSCS1 said that the monthly pension payment for the officers concerned might be suspended in case of non-compliance. The Administration considered the existing monitoring measures effective and therefore had no plan to introduce additional measures in this regard.

25. Noting that all applications for post-retirement employment from non-directorate officers received in 2003 were approved, Mr LEUNG Fu-wah expressed concern about the control on such employment. DSCS1 advised that the principles and criteria for post-retirement employment were clearly laid down in Government circulars and Civil Service Regulations. Retirees were also reminded of the relevant principles and criteria in letters issued to them before their retirement. Consequently, retirees were unlikely to submit applications which they considered would constitute conflict of interest.

Post-retirement employment outside Hong Kong

26. Mr Howard YOUNG opined that the present criteria for retired officers to seek prior permission from CE for post-retirement employment or business should

be extended to cover post-retirement employment or business carried out outside Hong Kong, as such activities might also constitute a conflict of interest with the retired officer's previous service in the Government. In response, DSCS1 advised that under the existing arrangements, retired directorate officers were required to inform CSB of any paid post-retirement employment undertaken anywhere during the first two years of retirement. CSB would advise the retired officer concerned where necessary if the prospective employment might constitute a conflict of interest with the officers' previous service in the Government. DSCS1 said that as far as she could recall, there was a case where the retired officer had given up post-retirement employment outside Hong Kong on the advice of CSB to avoid conflict of interest with his previous service in the Government.

Employment after completion of agreements

27. Responding to Ms LI Fung-ying, DSCS1 said that agreement officers on Directorate Pay Scale Point 3 or above were also required to seek prior permission before they took up employment outside the Government within one year after completion of their agreements. The one-year period counted from the expiry of their terminal leave. As regards the mechanism for the Directors of Bureau, DSCS1 said that the relevant details had been provided to Legislative Council Members when the Accountability System for Principal Officials was implemented. In brief, a Principal Official would be required to seek advice from a committee appointed by CE within one year after stepping down from office if he intended to commence any employment or start any business or profession.

* * * * *

**Extract from the minutes of meeting
of the Panel on Public Services on 21 December 2004**

* * * * *

III. Policy governing post-retirement employment of civil servants

(LC Paper No. CB(1)473/04-05(01) — Joint letter dated 7 December 2004 from Hon CHEUNG Man-kwong and Hon KWONG Chi-kin to the Chairman of the Panel

LC Paper No. CB(1)473/04-05(02) — The Administration's reply dated 14 December 2004

LC Paper No. CB(1)532/04-05(03) — First letter dated 16 December 2004 from Ms Elaine CHUNG Lai-kwok

LC Paper No. CB(1)545/04-05(01) — Second letter dated 18 December 2004 from Ms Elaine CHUNG Lai-kwok

LC Paper No. CB(1)548/04-05(01) — Third letter dated 18 December 2004 from Ms Elaine CHUNG Lai-kwok

LC Paper No. CB(1)549/04-05(01) — Letter dated 18 December 2004 from the Clerk to Panel to Ms Elaine CHUNG Lai-kwok

LC Paper No. CB(1)565/04-05(01) — Letter dated 20 December 2004 from the Group General Manager of the Hong Kong Ferry (Holdings) Co. Ltd. on behalf of Ms Elaine CHUNG Lai-kwok in reply to the Clerk to Panel

- LC Paper No. CB(1)565/04-05(02) — Letter dated 20 December 2004 from Hon CHEUNG Man-kwong to the Chairman of the Panel
- LC Paper No. CB(1)565/04-05(03) — Letter dated 20 December 2004 from the Clerk to Panel to the Secretary for the Civil Service
- LC Paper No. CB(1)532/04-05(04) — Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)354/04-05(01) — Letter dated 25 November 2004 from Ms Elaine CHUNG Lai-kwok to the Secretary General of the Legislative Council (with press releases issued by the Hong Kong Ferry (Holdings) Co. Ltd. on 9 and 15 November 2004)

Introduction by the Chairman

3. The Chairman briefed members that when the subject of the policy governing post-retirement employment of civil servants was last discussed at the Panel meeting on 17 May 2004, members doubted the effectiveness of the existing policy and approval mechanism in ensuring that the retired civil servants would not take up any employment which would constitute a conflict of interest with their previous service in the Government. Members therefore urged that the existing mechanism be reviewed as soon as possible. The Administration undertook to review the existing mechanism, and subsequently advised that it would report to the Panel on the outcome of the review in May 2005. In November 2004, there was wide media coverage over the possible involvement of the former Deputy Director of Housing (DDH) in the bidding of the West Kowloon Cultural District (WKCD) development project by a private company. At the request of the Panel, the Administration agreed to expedite the review and advance the date for reporting the outcome of the review to March 2005. Given the public concern about the subject, the Panel decided that the policy governing post-retirement employment of civil servants and related issues should be further discussed at this meeting.

4. The Chairman pointed out that in order to facilitate discussion of the subject, he had accepted some members' request that Ms Elaine CHUNG Lai-kwok, the former DDH, be invited to attend this meeting. The Clerk to Panel then extended the invitation to Ms CHUNG by phone and in writing. However, Ms

CHUNG responded that she considered it inappropriate for her, as a non-civil servant, to attend a meeting of the Panel to discuss Government policies. She then provided some information related to her case through her three letters to the Clerk to Panel. She confirmed over the phone on 18 December 2004 that she would be out of town and would not be able to attend this meeting.

Briefing by the Administration

5. At the invitation of the Chairman, SCS briefed members on the progress of the review on the policy governing post-retirement employment of civil servants and issues related to Ms Elaine CHUNG's case. He assured members that the Administration would report the outcome of the review to the Panel in March 2005. He was prepared to discuss with members at this meeting on the Administration's preliminary thoughts about the measures for improving the existing approval mechanism. As regards Ms Elaine CHUNG's case, SCS referred members to the Administration's reply dated 14 December 2004 (LC Paper No. CB(1)473/04-05(02)), which set out the current policy governing post-retirement employment of civil servants, the Administration's response to the questions raised by Mr CHEUNG Man-kwong and Mr KWONG Chi-kin, and a detailed account of the Administration's consideration of the case.

(Post-meeting note: The Administration's reply dated 21 December 2004 in respect of Mr CHEUNG Man-kwong's request for provision of all papers related to Ms Elaine CHUNG's application for post-retirement employment was tabled at the meeting and then circulated to members vide LC Paper No. CB(1)576/04-05(01) on 22 December 2004.)

Discussion

Approval granted for the post-retirement employment of the former DDH

6. Pointing out that Ms Elaine CHUNG, the former DDH, had undertaken in a broadcasting programme that she would attend meetings of the Legislative Council (LegCo) to answer Members' questions, Mr CHEUNG Man-kwong regretted that Ms CHUNG had finally declined the Panel's oral and written invitations to attend this meeting. Referring to the information obtained from the official website of the Hong Kong Ferry (Holdings) Co. Ltd. (HKF), Mr CHEUNG said that it was obvious that the company's major business and major source of income were property-related. He therefore doubted whether SCS as the approving authority had exercised due care in examining details of the application before granting approval for Ms CHUNG to take up employment with HKF after retirement. Quoting the remarks made by President HU Jintao on 20 December 2004 during the Chief Executive (CE)'s duty visit to Macau, calling on the Hong Kong Special Administrative Region Government to identify inadequacies, Mr CHEUNG urged SCS to review whether there was any misjudgment and/or negligence on his part in handling the case.

7. In response, SCS explained that when assessing an application for post-retirement employment, the primary consideration was on the nature and scope of the proposed work and whether a conflict of interest existed between the proposed work and the applicant's former duties. As set out in the Annex to the Administration's reply dated 14 December 2004, the scope of work given in Ms Elaine CHUNG's application for post-retirement employment with HKF included the fields of travel, hotel, cultural and recreational services. The application had not mentioned any plan of the ferry company to invest in any property project or the WKCD development project. The application was processed in accordance with the existing procedures. It was first scrutinized by the Head of Department (HoD) concerned and forwarded to the Advisory Committee on Post-retirement Employment (ACPE) for advice. After taking into consideration the advice of ACPE, approval was given for the applicant to take up the employment. SCS stressed that the scope of the approval was confined to the areas of work specified in the application and did not cover land and property nor any other fields of activities taken up by the ferry company.

8. Mr CHEUNG Man-kwong considered that while the application had not mentioned any plan of the ferry company to invest in any property project or the WKCD development project, the Administration should have checked what the company's major business was before approving the application. He was of the view that SCS as the approving authority had not exercised due diligence in verifying the information provided by the applicant and had therefore approved the application without taking into account the fact that the major business of the ferry company was property-related. Mr LEE Cheuk-yan expressed similar views. Mr KWONG Chi-kin also considered that the Administration should have verified the information provided by the applicant to ensure that there would be no conflict of interest. Referring to the high approval rate of applications for post-retirement employment (only one of the 76 applications submitted by retired directorate officers in 2003 was rejected), Mr KWONG was concerned that the approving authority was acting like a rubber stamp in granting approvals.

9. SCS disagreed that the approving authority was acting like a rubber stamp. He reiterated that when assessing an application for post-retirement employment, the primary consideration was on the nature and scope of the proposed work. Under the existing mechanism, such applications would be processed on the basis of the information provided by the applicants. He assured members that any inadequacies of the existing mechanism would be addressed in the review being conducted by the Administration.

10. Miss CHAN Yuen-han expressed dissatisfaction about SCS's handling of the case. Referring to the Administration's reply dated 14 December 2004, Miss CHAN considered that in approving Ms CHUNG's application, SCS had overlooked the three factors set out in paragraph 2(a), (b) and (c) of the reply, namely:

- (a) whether the officer, while serving in the Government, was involved in policy formulation, or decisions which could have benefited his prospective employer;
- (b) whether the prospective employer might gain an unfair advantage over competitors because of the officer's previous knowledge and experience; and
- (c) the public perception of the officer taking up the proposed business or employment.

11. In response, SCS reiterated that the application in question was processed in accordance with the existing procedures which were applicable to all applications for post-retirement employment. It was first scrutinized by the HoD concerned and forwarded to the ACPE for advice. The approval was granted on the basis of the information available at the time of approval, and he did not agree that there was negligence in the processing of the application or misjudgment in the approval of the application. Nevertheless, the Administration would consolidate the experience gained from this case and expedite the review on the existing policy and approval mechanism.

12. Mr Howard YOUNG enquired what information would be provided to the HoDs concerned to facilitate their consideration of the applications. SCS said that all the information provided by the applicants in their applications would be passed to the HoDs concerned. To facilitate the HoDs concerned in making their recommendations on the applications, Mr YOUNG suggested that the Civil Service Bureau (CSB) should collate more information about the applications, such as information on whether the company was a subsidiary or associate of another business group. SCS undertook to consider Mr YOUNG's suggestion.

Admin

13. Mr KWONG Chi-kin queried why approval was given for Ms Elaine CHUNG to take up employment during her pre-retirement leave. Moreover, Ms CHUNG was allowed to take up the employment about four and a half months after her cessation of duty with the Government, instead of the normal sanitization period of six months. Mr Howard YOUNG shared Mr KWONG's concern and considered that such an arrangement would defeat the purpose of imposing the sanitization period.

14. SCS explained that under the existing mechanism, approval might be granted for a retired civil servant to take up employment during the final leave period after he or she had ceased duty with the Government. The final leave was the leave earned and accumulated by an officer during the course of his or her service with the Government. He or she was entitled to salary for the whole leave period and there was no question of "double pay". SCS pointed out that the propriety of permitting retired civil servants to take up employment during their final leave

period was being reviewed. As regards the sanitization period, it was normally six months from cessation of duty. However, it might be lengthened depending on circumstances of individual cases or shortened if it could be established that there would be no conflict of interest. For Ms Elaine CHUNG's case, the sanitization period was shortened to less than six months because of the consideration at the time of approval that there was no conflict of interest between her last post in the Government and the proposed employment. With the benefit of the hindsight and judging from the subsequent development of the case, SCS said that it might have been better if the normal sanitization period of six months had been imposed. Mr CHEUNG Man-kwong considered that it was a misjudgment of SCS to have shortened the sanitization period for Ms CHUNG's case.

Monitoring compliance with the terms of approval

15. Mr CHEUNG Man-kwong, Mr KWONG Chi-kin and Mr WONG Kwok-hing queried whether CSB had closely monitored the approved applications to ensure that no conflict of interests existed between the retired civil servants' post-retirement employment and their former duties. Referring to Ms Elaine CHUNG's case, they pointed out that despite that the approval granted for her to take up post-retirement employment with HKF did not cover land or property, it was reported by the media that she was subsequently involved in activities of the Henderson Land Development Co. Ltd. (HLD)'s bid for the WKCD development project. Moreover, it was reported in today's newspapers that according to a Kwai Tsing District Council (DC) member, Ms CHUNG was involved in lobbying DC members in June 2004 for their support for the proposed change of land use of the Tsing Yi shipyard into a batching plant. Mr WONG further pointed out that according to media reports, Ms CHUNG's office was located in Central within the premises of HLD, instead of the premises of HKF in Tsing Yi.

16. Referring to the Annex to the Administration's reply dated 14 December 2004, SCS pointed out that CSB had monitored the development of the case and taken necessary follow up actions to ensure that the applicant complied with the terms of approval. Between May and September 2004, CSB had communication with Ms Elaine CHUNG on several occasions on matters relating to her approved employment and the nature of her involvement in the WKCD development project. Ms CHUNG confirmed verbally and in writing that she had been performing work strictly within the confines of her approved employment with the ferry company. She also confirmed that she was never involved in land property matters and her service with the ferry company in relation to the WKCD project was limited to the cultural aspects only. In view of continued and intensified reports in the press about Ms CHUNG's possible involvement in the bidding of the WKCD development project, CSB approached her again in November 2004 and advised her to refrain from involving herself in anything which might be perceived as providing services to any bidding team. CSB also reviewed the case and sought the advice of ACPE. On the basis of the information provided by Ms CHUNG, CSB concluded that there

was no apparent conflict with the terms of approval given for her employment with the ferry company. For the avoidance of doubt, CSB had conveyed to Ms CHUNG in writing in November 2004 the types of activities which the terms of approval for her employment did not permit her to take part in.

17. Mr KWONG Chi-kin pointed out that SCS had, in response to a relevant oral question raised at the LegCo meeting on 1 December 2004, informed Members that the Administration understood that Ms Elaine CHUNG's current job was consistent with the scope of her approved employment and she had not breached the terms of approval. CSB had handled the case in a passive manner and taken follow up actions only upon complaints and media reports about the possible conflict of interests between Ms CHUNG's post-retirement employment and her previous service in the Government. Given the grave public concern about the subject, CSB then started to take more proactive actions. Mr CHEUNG Man-kwong, Miss CHAN Yuen-han, Mr LEE Cheuk-yan and Mr WONG Kwok-hing expressed similar concerns and doubted whether the monitoring actions taken by the Administration was effective. Referring to the remarks made by President HU on 20 December 2004, Mr WONG considered that CSB should consolidate the experience gained and identify inadequacies of the existing mechanism. He pointed out that while the majority of the retired civil servants observed the requirement for avoidance of conflict of interests in taking up post-retirement employment, the improper employment undertaken by a few retired civil servants would be detrimental to the integrity of the Government and the image of the civil service.

18. SCS stressed that CSB had taken necessary follow up actions in a proactive manner to ensure that Ms Elaine CHUNG's post-retirement employment was confined to the scope permitted in the approval. The actions were taken before, and not only in response to, the oral question raised at the LegCo meeting on 1 December 2004. SCS also pointed out that in response to Members' follow-up questions on 1 December 2004, he had clearly stated that CSB had reminded Ms CHUNG that the scope of work of her approved employment did not cover any activities that might be perceived as directly or indirectly related to the bidding of the WKCD development project. Nevertheless, SCS agreed that with the benefit of hindsight, improvement could have been made in the handling of the case by providing a more detailed account of the case, probably in his main reply to the oral question on 1 December 2004. He assured members that better arrangements would be made in future.

Admin

19. Mr LEE Cheuk-yan was concerned that despite CSB's communication with Ms Elaine CHUNG between May and September 2004, she still participated in a press conference hosted by HLD in November 2004 for bidding the WKCD development project. Mr LEE also pointed out that in Ms CHUNG's letter dated 25 November 2004 to the Secretary General of LegCo, she had clearly stated that her work with HKF included travel, hotel, recreational services, batching plants, liaison with DCs, etc. The work relating to batching plants and liaison with DCs might in fact be referring to the lobbying activities in June 2004 for securing the

support of Kwai Tsing DC members for the change of land use of the Tsing Yi shipyard into a batching plant.

20. SCS said that CSB had noted the press reports today concerning Ms Elaine CHUNG's possible involvement in lobbying DC members for their support for the proposed change of land use of the Tsing Yi shipyard. CSB had taken immediate follow up actions requesting Ms CHUNG to provide an explanation in writing. SCS considered that in order to be fair to the officer concerned, she should be given an opportunity to provide an explanation on the allegation against her.

21. Mr WONG Kwok-hing was not satisfied with the follow up actions taken by CSB in monitoring compliance with the terms of approval in Ms CHUNG's case. He suggested that the following actions be taken by CSB:

- (a) To write to the Kwai Tsing District Officer and/or the Kwai Tsing DC Chairman to seek clarification of Ms CHUNG's involvement in lobbying DC members for their support for the proposed change of land use of the Tsing Yi shipyard into a batching plant in June 2004; and
- (b) To write to HLD to confirm whether Ms CHUNG's office was located in the premises of the company in Central.

22. In response, SCS pointed out that he had only highlighted the immediate actions taken to follow up the recent complaint about Ms CHUNG and that the Administration would take further actions as appropriate. In this connection, he undertook to consider the above actions suggested by Mr WONG Kwok-hing.

Admin

23. Mr CHEUNG Man-kwong was also not satisfied with the follow up actions taken by CSB in monitoring compliance with the terms of approval in Ms CHUNG's case. He requested CSB to conduct a full investigation of the case, looking into all the complaints about the possible conflict of interests between Ms CHUNG's post-retirement employment and her previous service in the Government, taking any necessary actions against the officer if any breach of the terms of approval was confirmed and providing the Panel with a report on the outcome of the investigation.

24. Mr WONG Kwok-hing supported Mr CHEUNG Man-kwong's request. Mr WONG cautioned that the inadequacies of the policy governing post-retirement employment of civil servants and the approval mechanism, in particular the mishandling of the post-retirement employment of retired civil servants at senior ranks, had tarnished public confidence towards the Government. Mr WONG and Mr CHEUNG requested the Administration to conduct a thorough investigation of Ms CHUNG's case and provide a report on the outcome within two months.

Admin 25. In response, SCS said that in respect of Ms CHUNG's involvement in the WKCD development project, the Administration had completed the investigation and taken the necessary follow up actions. The officer concerned as well as her company had confirmed that she had ceased to be involved in the cultural aspect of the project. He assured members that the Administration would take follow up actions on other complaints about possible conflict of interests between Ms CHUNG's post-retirement employment and her previous service in the Government, including the complaint about her involvement in lobbying DC members mentioned in paragraph 15 above. SCS undertook to provide a report on the outcome of the investigation to the Panel within two months.

Admin 26. Mr James TO pointed out that as demonstrated in Ms Elaine CHUNG's case, ambiguity might exist in the terms of approval for post-retirement employment. He enquired whether the terms of approval, including the types of activities that the applicants were permitted and not permitted to take part in during their approved employment, had been clearly conveyed to the retired civil servants concerned. Pointing out that private companies might change their scope of business or engage in providing consultant or contract services to other companies in different fields, Mr TO considered it essential for the Administration to strengthen its monitoring of the approved cases to ensure compliance with the terms of approval. In this connection, he requested the Administration to look into the approved cases and remind the retired civil servants concerned of the terms of approval, such as the types of activities that they were not permitted to take part in during their approved employment. Mr CHEUNG Man-kwong and Mr WONG Kwok-hing shared Mr TO's view and supported his request. Given that the review of the existing policy and approving mechanism would only be completed in March 2005, Mr WONG further enquired whether the Administration had any effective means to monitor the approved cases before the implementation of any improvement measures.

Admin 27. SCS pointed out that in Ms Elaine CHUNG's case, there was no ambiguity in the terms of approval. He noted Mr James TO's observation that it was difficult to determine whether the retired civil servant's provision of internal advisory service to the ferry company for the part of the company's involvement in the cultural aspects of the WKCD development project as a consultant of another company constituted a breach of the terms of approval. SCS stressed that the Administration would take necessary actions against any complaints on breach of the terms of approval. If each approved case had to be monitored closely with the assumption of possible non-compliance of the officers concerned, it would involve considerable manpower resources. Nevertheless, SCS undertook to look into the approved cases and remind the retired civil servants concerned of the terms of approval, and explore means to strengthen the monitoring of approved cases.

Penalty for breach of the terms of approval

28. Referring to the letter dated 16 December 2004 from Ms Elaine CHUNG to the Clerk to Panel, Mr LEE Cheuk-yan questioned whether Ms CHUNG's participation in the WKCD development project, i.e. her participation in the press conference hosted by HLD on 10 November 2004, had already constituted a breach of the terms of approval for her post-retirement employment with HKF; and if yes, the penalty and the disciplinary actions she might be subject to under the existing pensions legislation. Mr CHEUNG Man-kwong expressed similar concern.

29. In reply, SCS reiterated that the Administration had concluded that on the basis of the information provided, there was no apparent conflict with the terms of approval in Ms Elaine CHUNG's case as far as the officer's participation in the WKCD development project was concerned. SCS pointed out that in accordance with the pensions legislation, the monthly pension payment for the officers concerned might be suspended in case of breach of the terms of approval. He also pointed out that although retired civil servants would not be subject to the punishment under the civil service disciplinary mechanism, public criticisms on their post-retirement employment would be a form of penalty, in particular for those retiring at senior ranks.

Improvement measures to the existing policy and approving mechanism

30. In response to Mr WONG Kwok-hing's reference to remarks made by President HU on 20 December 2004 regarding the need to identify inadequacies, SCS said that the President also encouraged unity and harmony in the community, and therefore he looked forward to co-operation with LegCo Members on making improvements. SCS said that while Ms Elaine CHUNG's case had revealed some inadequacies of the existing mechanism, the Administration had already started a review of the existing policy and mechanism before her case had become an issue of public concern. SCS further pointed out that in the current review, a number of improvement measures were being considered, including the lengthening of the normal sanitization period for retired senior directorate officers from six months to 12 months and regular disclosure of information on the approved applications to enhance monitoring by the public and the Administration. The information to be disclosed might include the names of the officers concerned and the last posts they held in the Government, the companies employing their services, the approved scope of work, the sanitization period, and the restrictions imposed on the employment, if any. As the review was still underway, legal advice had to be sought and more time would be required for internal discussion of the proposed improvement measures. SCS welcomed members' views on the proposed measures.

31. Referring to the previous discussions by the Panel on the policy governing the post-retirement employment of civil servants, Mr LEE Cheuk-yan expressed

grave concern about the trend for retired civil servants at senior ranks to take up employment with consortia shortly after their retirement. This trend gave rise to the query on whether the retired civil servants concerned had, during their previous service in the Government, given any favouritism towards consortia in their policy formulation or decisions in order to pave way for their post-retirement employment. Miss CHAN Yuen-han shared Mr LEE's concern. Mr LEE and Miss CHAN considered that this undesirable trend had seriously affected public confidence in the integrity and probity of the civil service. They considered that the proposed improvement in the transparency of the approved employment of retired directorate officers could not address the problem, and urged the Administration to take immediate action to rectify the problem.

32. SCS explained that under the existing mechanism, retired civil servants who had been granted a pension was required to seek prior permission before he or she entered into business or took up an employment within two years after his or her retirement, if the principal part of his or her business or employment was carried on in Hong Kong. Retired officers at the Administrative Officer Staff Grade A1 rank had to seek permission within three years after retirement. He pointed out that the existing mechanism had been worked out with reference to the mechanism in the United Kingdom and had been in use for a long time. While sharing members' concern that there was room for improvement in the existing mechanism, SCS advised that amendments to the pensions legislation might be required for making substantive changes to the existing policy and approval mechanism. For example, under the pensions legislation, the existing requirement for retired officers to seek prior permission only applied if the principal part of the business or employment was carried on in Hong Kong. Hence, legislative amendments would be necessary if it was considered appropriate to extend the scope of application. SCS also pointed out that in implementing the post-retirement employment policy, the Administration needed to strike a balance between the rights of the retired civil servants as individuals to pursue employment or business after retirement and the views and expectation of the public regarding the integrity and probity of the civil service. He assured members that the Administration would review the existing policy and approval mechanism in a prudent manner and report the outcome of the review to the Panel in March 2005.

Admin

Conclusion

33. There being no other questions from members, the Chairman summed up the discussion. He said that the members present considered that substantive improvements should be made in the existing policy governing post-retirement employment of civil servants and the approval mechanism, and that the monitoring of the approved cases should be strengthened. The Panel would discuss the subject further in March 2005 when the Administration would report on the outcome of the review.



**Extract from the minutes of meeting
of the Panel on Public Services on 17 January 2005**



III. Briefing by the Secretary for the Civil Service on the policy initiatives of the Civil Service Bureau featuring in the Chief Executive's 2005 Policy Address

(Paper provided by the Administration for the meeting
LC Paper No. CB(1)684/04-05(03)

Other relevant documents

- (a) Address by the Chief Executive at the Legislative Council meeting on 12 January 2005 — “Working Together for Economic Development and Social Harmony”
- (b) The 2005 Policy Address — “Policy Agenda”)

4. The Chairman referred to the information paper on the policy initiatives of the Civil Service Bureau (CSB) (LC Paper No. CB(1)684/04-05(03)) and invited questions from members.

Policy governing the post-retirement employment of civil servants

Approval granted for the post-retirement employment of the former Deputy Director of Housing (DDH)

5. Referring to the remarks made by the Chief Executive (CE) in his 2005 Policy Address that the Government was resolutely against “collusion between business and the Government” and would strictly enforce its monitoring systems to eliminate any “transfer of benefits”, Mr CHEUNG Man-kwong queried whether the Secretary for the Civil Service (SCS), before approving the application for post-retirement employment from Ms Elaine CHUNG, former DDH, had exercised due diligence to examine the application so as to prevent any conflict of interests between Ms CHUNG's prospective employment in the private sector and her previous duties in the Government. He also queried whether the approval given for Ms CHUNG to take up employment in a private firm about four and a half months after her cessation of duty with the Government, instead of the normal sanitization period of six months, had facilitated the “collusion between business and the Government” and the “transfer of benefits”. Mr CHEUNG considered that there was negligence and mishandling on the part of SCS in the case. He requested SCS

to identify inadequacies in the handling process and to apologize to the public in respect of Ms CHUNG's case.

6. In response, SCS pointed out that Ms Elaine CHUNG's case had been discussed in detail at the last Panel meeting held on 21 December 2004. He stressed that the fundamental principle of the policy governing post-retirement employment of civil servants was that there should be no impropriety in the business or employment which former civil servants proposed to undertake. He also pointed out that under the existing approval mechanism, all applications from directorate officers would be passed to the Advisory Committee on Post-retirement Employment (ACPE), which was an independent body chaired by a High Court judge, for comments and advice. As regards Ms CHUNG's application for post-retirement employment, it was processed in accordance with the existing procedures, and approval was granted on the basis of the information available at the time of approval. SCS agreed that with the benefit of hindsight, improvement could have been made in the handling of the case, but he did not agree that there was negligence in the handling of the application or misjudgment in the approval of the application. Nevertheless, he assured members that the Administration would consolidate the experience gained from the case and work out improvement measures to the existing mechanism during the current review of the policy governing post-retirement employment of civil servants, such as measures to improve the transparency of the mechanism and to extend the length of sanitization period for retired senior directorate officers. The proposed measures would be presented to the Panel when the Administration reported on the outcome of the current review in March 2005.

7. Mr CHEUNG Man-kwong was not satisfied with SCS's response. He was of the view that as a Principal Official under the Accountability System, SCS should be held accountable for the approval of Ms Elaine CHUNG's application for post-retirement employment and should not try to shift the responsibility to ACPE. Mr CHEUNG requested SCS to confirm whether he would apologize to the public in respect of Ms CHUNG's case.

8. SCS clarified that while the approval for post-retirement employment of directorate officers would be granted having regard to the advice and recommendations of ACPE, he, as the Principal Official responsible for civil service matters, was accountable for the relevant policy and cases. He reiterated that Ms Elaine CHUNG's application was processed in accordance with existing procedures, and approval was granted on the basis of the information available at the time of approval. He therefore did not see the need for him to apologize to the public in respect of Ms CHUNG's case.

9. Mr WONG Kwok-hing was concerned whether Ms Elaine CHUNG had complied with the scope of work specified in the approval for her post-retirement employment. SCS pointed out that Ms CHUNG as well as her company had confirmed that she was not involved in any property-related work.

10. Referring to paragraph 21 of the minutes of the Panel meeting held on 21 December 2004, Mr WONG Kwok-hing asked whether CSB had taken the following actions on Ms Elaine CHUNG's case as he had suggested at that meeting; and if so, the progress of the actions taken and details of the information obtained:

- (a) To write to the Kwai Tsing District Officer and/or the Kwai Tsing District Council (DC) Chairman to seek clarification of Ms CHUNG's involvement in lobbying DC members for their support for the proposed change of land use of the Tsing Yi shipyard into a batching plant in June 2004; and
- (b) To write to the Henderson Land Development Co. Ltd. to confirm whether Ms CHUNG's office was located in the premises of the company in Central.

11. SCS pointed out that he had undertaken at the Panel meeting held on 21 December 2004 to take follow-up actions on a number of complaints about possible conflict of interests between Ms Elaine CHUNG's post-retirement employment and her previous service in the Government, and provide a report on the outcome of the investigation to the Panel within two months. SCS confirmed that the scope of the investigation covered the location of Ms CHUNG's office and her involvement in lobbying DC members. CSB had taken actions to obtain the relevant information and seek written clarifications from the parties concerned, and would give a full account of the findings in the report to be provided to the Panel. The Permanent Secretary for the Civil Service (PSCS) added that CSB had obtained initial responses from the parties concerned and would consider whether and what further information would be required, with a view to presenting to the Panel a detailed report on the findings.

Approval for civil servants to take up employment during their final leave period

12. Referring to the post-retirement employment taken up by Ms Elaine CHUNG, the former DDH and Mr TSANG Yam-pui, the former Commissioner of Police, Mr KWONG Chi-kin pointed out that senior civil servants taking up employment in private enterprises during their final leave period had become an issue of wide public concern. In this connection, Mr KWONG urged the Administration to impose stricter restrictions on the terms of approval for post-retirement employment of senior civil servants so that they would not be allowed to take up employment during their final leave period.

13. Ms Emily LAU queried whether it was appropriate to allow Ms Elaine CHUNG and Mr TSANG Yam-pui to take up employment in the private sector during their final leave period when the officers concerned still maintained the status of civil servants and received civil service pay and allowances. She also queried why

approval was given for Mr TSANG to accumulate leave in excess of the normal upper limit of one year.

14. SCS clarified that under the existing mechanism, approval might be granted for a retired civil servant to take up employment during the final leave period after he or she had ceased duty with the Government, if it could be established that there would be no conflict of interest between the officer's last post in the Government and the proposed employment. The Administration was examining the propriety of this arrangement in the current review. As regards the approval granted for some officers to accumulate leave in excess of the upper limit, SCS explained that the discretionary power would only be exercised where there were justifications that the officer concerned was not able to take leave due to exigencies of service.

Admin

15. To facilitate Members to have a better understanding of the position, Ms Emily LAU requested the Administration to provide the following information about the applications for post-retirement employment submitted by directorate officers in the years 2002 to 2004:

- (a) Names of the applicants, the last posts they held in the Government and the ranks concerned;
- (b) The prospective employment to be taken up by the applicants;
- (c) For those approved applications,
 - whether the applicants concerned were allowed to take up the employment during their final leave period; if yes, the reasons;
 - the length of their final leave period; and for those applicants whose final leave period exceeded the normal upper limit of one year, the reasons for giving approval for them to accumulate such a long period of leave; and
 - the length of the sanitization period imposed on the applicants;
- (d) For those applications which were not approved, the reasons for not approving the applications.

Admin

16. Ms Emily LAU also asked whether the Administration needed to seek the consent of the officers concerned for disclosing the required information. In response, SCS undertook to seek legal advice on whether the Administration's disclosure of the information about individual applications for post-retirement employment would infringe the privacy rights of the applicants concerned; and if it would, the Administration would consider to what extent and in what ways information on the applications could be disclosed.

17. Pointing out that a three-year sanitization period was imposed on retired Mainland government officials, Ms Emily LAU requested the Administration to make reference to approval mechanisms in the Mainland and other jurisdictions in

the current review. SCS pointed out that the existing mechanism had been worked out with reference to that in the United Kingdom (UK) where the normal sanitization period was only three months. In reviewing the existing policy and mechanism, the Administration would make reference to the practices in other jurisdictions.

Admin

18. To ascertain the expectations of the public on the policy governing post-retirement employment of civil servants, in particular, on whether directorate officers should be allowed to take up employment during their final leave period, Ms Emily LAU suggested that CSB or the Central Policy Unit (CPU) should conduct an opinion poll in this regard. In response, SCS undertook to consider Ms LAU's suggestion. He also pointed out that the Administration would consult civil servants on the proposed improvement measures for the existing mechanism.

19. Referring to CE's remark in his 2005 Policy Address that the Government would strictly enforce its monitoring systems to eliminate any "transfer of benefits", Mr LEE Cheuk-yan opined that to "strictly" enforce its monitoring systems, the Government should lengthen the sanitization period for retired directorate officers to three years. Mr LEE considered that the sanitization period should be counted from the date on which the retired officers left the civil service, i.e. the final leave of retired civil servants would not be counted as part of the sanitization period. 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.

20. SCS explained that in implementing the policy governing post-retirement employment of civil servants, the Administration needed to strike a balance between the rights of the retired civil servants as individuals to pursue employment or business after retirement and public expectation regarding the integrity and probity of the civil service. SCS reiterated that the Administration was considering improvement measures to the existing mechanism, including the extension of the normal sanitization period from six months to one year. The initial response from the civil service was that the extension of sanitization period would deprive retired civil servants of the rights to take up employment after retirement. The Administration envisaged that there would be controversy over the appropriate length of the sanitization period. SCS further pointed out that the Administration attached great importance to maintaining a clean and efficient civil service. Civil servants were subject not only to the policy governing post-retirement employment but also different legislation and regulations, such as the Prevention of Bribery Ordinance (Cap. 201) and the Public Service (Administration) Order.

21. Mr Howard YOUNG urged the Administration to review the existing leave administration and accumulation system, making reference to private sector practices of requiring staff to take all their earned leave on an annual basis. He was of the view that paid leave of civil servants also constituted part of the staff cost and the Administration should take this into account in comparing the pay levels of the civil

service and the private sector. In response, SCS explained that there were inherent differences in the leave administration and accumulation system in the civil service and the private sector. For example, private sector firms might give cash allowance to their employees in lieu of the untaken leave but such an arrangement could hardly be adopted for the civil service. SCS further pointed out that the Administration had already substantially reduced the leave earning rates and leave accumulation limits for civil servants appointed on or after 1 June 2000. Nevertheless, civil servants employed before 1 June 2000 were still entitled to comparatively higher leave earning rates, particularly for civil servants of senior ranks, and they might not be able to take all their earned leave on an annual basis due to operational needs. He noted Mr YOUNG's suggestion for a review of the existing system and undertook to take this into consideration at an appropriate time.

Admin

* * * * *

Policy governing post-retirement employment of civil servants

List of relevant papers
(Position as at 17 March 2005)

Paper/Document	LC Paper No.
Hansard of the Council meeting on 15 October 1997 (Oral question raised by Hon CHAN Yuen-han on the acceptance of employment by civil servants on pre-retirement leave)	—
Hansard of the Council meeting on 14 March 2001 (Written question raised by Hon LAU Kong-wah on the post-retirement employment of civil servants in public organizations)	—
Paper provided by the Administration on “Policy governing the acceptance of post-retirement employment of civil servants”	CB(1)1786/03-04(03) <i>(discussed at the PS Panel meeting held on 17 May 2004)</i>
“The Fifteen Report on the Work of the Advisory Committee on Post-retirement Employment (1 January 2003 - 31 December 2003)” provided by the Administration	CB(1)1711/03-04 <i>(for reference at the PS Panel meeting held on 17 May 2004)</i>
Minutes of PS Panel meeting on 17 May 2004	CB(1)2119/03-04 <i>(Agenda Item III)</i>
Supplementary information provided by the Administration on the retired directorate officers who had taken up employment with private enterprises in the three years from 1 January 2001 to 31 December 2003	CB(1)2163/03-04(01) <i>(Follow-up to members’ request at the PS Panel meeting held on 17 May 2004)</i>

Paper/Document	LC Paper No.
Draft Hansard of the Council meeting on 1 December 2004 (Oral question raised by Hon KWONG Chi-kin on retired senior civil servants taking up job in the private sector)	—
Letter dated 25 November 2004 from the former Deputy Director of Housing, Ms Elaine CHUNG Lai-kwok to the Secretary General of the LegCo (with press releases issued by the Hong Kong Ferry (Holdings) Co. Ltd. on 9 and 15 November 2004)	CB(1)354/04-05(01) <i>(for reference for the PS Panel meeting held on 21 December 2004)</i>
Joint letter dated 7 December 2004 from Hon CHEUNG Man-kwong and Hon KWONG Chi-kin to the Chairman of the Panel on their request for discussion of Ms Elaine CHUNG Lai-kwok's post-retirement employment at a PS Panel meeting	CB(1)473/04-05(01) <i>(for reference for the PS Panel meeting held on 21 December 2004)</i>
The Administration's reply dated 14 December 2004 to the Panel Clerk in relation to the request of Hon CHEUNG Man-kwong and Hon KOWNG Chi-kin	CB(1)473/04-05(02) <i>(discussed at the PS Panel meeting held on 21 December 2004)</i>
Background brief prepared by the Legislative Council Secretariat	CB(1)532/04-05(04) <i>(for reference for the PS Panel meeting held on 21 December 2004)</i>
Three letters dated 16 and 18 December 2004 from Ms Elaine CHUNG Lai-kwok to the Clerk to Panel in respect of her post-retirement employment	CB(1)532/04-05(03), CB(1)545/04-05(01) and CB(1)548/04-05(01) <i>(for reference for the PS Panel meeting held on 21 December 2004)</i>

Paper/Document	LC Paper No.
Letter dated 18 December 2004 from the Clerk to Panel to Ms Elaine CHUNG Lai-kwok	CB(1)549/04-05(01) <i>(for reference for the PS Panel meeting held on 21 December 2004)</i>
Letter dated 20 December 2004 from the Group General Manager of the Hong Kong Ferry (Holdings) Co. Ltd. on behalf of Ms Elaine CHUNG Lai-kwok in reply to the Clerk to Panel	CB(1)565/04-05(01) <i>(for reference for the PS Panel meeting held on 21 December 2004)</i>
Letter dated 20 December 2004 from Hon CHEUNG Man-kwong to the Chairman of the Panel requesting for provision of all papers related to Ms Elaine CHUNG Lai-kwok's application for post-retirement employment	CB(1)565/04-05(02) <i>(for reference for the PS Panel meeting held on 21 December 2004)</i>
The Administration's reply dated 21 December 2004 in respect of Hon CHEUNG Man-kwong's request	CB(1)576/04-05(01) <i>(for reference for the PS Panel meeting held on 21 December 2004)</i>
Minutes of PS Panel meeting on 21 December 2004	CB(1)638/04-05 <i>(Agenda Item III)</i>
Draft Hansard of the Council meeting on 5 January 2005 (Written question raised by Hon LEUNG Yiu-chung on the taking up of employment by retired senior civil servants)	—
Paper provided by the Administration on "Policy initiatives of the Civil Service Bureau"	CB(1)684/04-05(03) <i>(discussed at the PS Panel meeting held on 17 January 2005)</i>

Paper/Document	LC Paper No.
Minutes of PS Panel meeting on 17 January 2005	CB(1)901/04-05 <i>(Agenda Item III)</i>
Draft Hansard of the Council meeting on 2 February 2005 (Motion moved by Hon CHEUNG Man-kwong and amended by Hon TAM Yiu-chung on monitoring the post-retirement employment of the Chief Executive, principal officials under the accountability system and civil servants at directorate level with private-sector organizations)	—
Paper provided by the Administration on “Post-retirement employment of Ms Elaine CHUNG, former Deputy Director of Housing/Deputy Secretary for Housing”	CB(1)1095/04-05(01) <i>(for reference at the PS Panel meeting to be held on 21 March 2005)</i>
Paper provided by the Administration on “Review of policy on post-service employment of former directorate civil servants”	CB(1)1112/04-05(05) <i>(for discussion at the PS Panel meeting to be held on 21 March 2005)</i>