

立法會
Legislative Council

LC Paper No. CB(1)532/04-05(04)

Ref: CB1/PL/PS

Panel on Public Service
Meeting on 21 December 2004

Background Brief
on the policy governing post-retirement employment of 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.

Previous discussions at Council meetings and Public Service Panel meetings

3. 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.

4. 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 Administration undertook to review the mechanism, and the major areas covered by the review are set out in **Appendix I**. The Administration 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**.

5. In November 2004, in view of the wide media coverage over the possible involvement of the former Deputy Director of Housing (DDH) in the bidding of the West Kowloon Cultural District 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 the former DDH to take up post-retirement employment with the Hong Kong Ferry (Holdings) Co. Ltd. (HKF)^{Note}. 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.

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.

Existing policy and approving mechanism

6. 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.

7. As regards the approving 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 or Heads of Grade.

8. 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.

9. For applications which warrant approval, the Administration will, having regard to the factors set out in paragraph 6 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.

10. 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.

11. 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.

Members' views

12. 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 and safeguarding public interest.
- (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 to, say, two or three years.
- (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) Monthly pension payment should be suspended for those retired officers who have taken up employment with private enterprises.
- (e) The Administration should 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.

- (f) The Administration should review the existing mechanism as soon as possible.

13. The extracts from the minutes of the PS Panel meeting on 17 May 2004 and the draft Hansard on the relevant oral question raised at the Council meeting on 1 December 2004 are in **Appendices III and IV** respectively.

Council Business Division 1
Legislative Council Secretariat
20 December 2004

**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.

Annex

**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.

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

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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.

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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，根據退休金的法例，退休公務員如在退休後兩年從事業務，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，我可在此證實，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。

鄺志堅議員：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，而你們亦可知道他是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，她是鍾麗嫻女士，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。