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14 December 2004

Miss Salumi Chan
Clerk to Panel on Public Service
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Salumi,

Policy Governing Post-retirement Employment of Civil Servants

I refer to your letter of 8 December 2004 in connection with a proposal from the Hon Cheung Man-kwong and Hon Kwong Chi-kin to convene a special meeting of the Panel to discuss the application for post-retirement employment submitted by the former Deputy Director of the Housing Department and related post-retirement employment policy on civil servants. Having regard to the concerns of Members, we would like to set out in this letter our current policy in further detail and highlight some important points in relation to the case in question.

The Policy

The current policy on post-retirement employment requires that all retired civil servants have to seek the prior permission of the Chief Executive (CE) before they enter into business, become partners or directors, or become

employees, if the principal part of the business or employment is carried on in Hong Kong, within two years after their retirement, or within three years for officers retiring at the rank of AOSGA1 or above. All retired pensionable civil servants, irrespective of ranks, are covered by the relevant legislation and are subject to the above requirement. The fundamental principle of the policy is that there should be no impropriety in the business or employment which former civil servants propose to undertake. In this regard, the following factors are taken into account:

- (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.

Under the present mechanism, the approving authority for applications from directorate officers up to the rank of AOSGA1 is the Secretary for the Civil Service (SCS) under the delegated authority of the Chief Executive (CE). SCS would carefully take into account the advice and recommendations of the Advisory Committee on Post-retirement Employment, whose members are appointed by the CE, before arriving at a decision on an application. For non-directorate officers, the approving authority is the respective Head of Department or Head of Grade.

The prevailing policy provides for a normal sanitization period of six months from cessation of duty with the Government for directorate officers. The sanitization period may be lengthened depending on the circumstances of individual cases or shortened if it can be established that there will be no conflict of interest.

The policy applies equally to employment which commences during the final leave period of an officer after he or she has ceased duty with the Government and which straddles into his/her formal retirement. We would like

to explain, once again, the question of salary payable during the leave period. The final leave is leave earned and accumulated by an officer during the course of his service with the Government. He is entitled to salary for the whole leave period and there is no question of special treatment.

The Panel has been briefed on the policy on a number of occasions in the past. The last time was in May 2004.

The Specific Case

SCS has already replied to an oral question on the specific case in the Legislative Council on 1 December 2004 and also further elaborated on the matter in response to media enquiries on 3 December 2004. To address Members' further concerns on the case, we have set out in the **Annex**, a more detailed account of our consideration of the case. The additional information provided should address the questions raised by the Hon Cheung Man-kwong and the Hon Kwong Chi-kin. We recap in answer to the three specific questions as follows –

- (1) and (2) When assessing an application, our primary consideration is on the nature and scope of the proposed work and whether a conflict of interest exists between the proposed work and the applicant's former duties. In the case in question, the application included the fields of travel, hotel, cultural and recreational services to the ferry company. The scope of approval given is confined to these areas and does not cover land and property nor any other fields of activities taken up by the ferry company. The application, and hence the approval, did not contain any reference to the applicant's or the company's involvement in the West Kowloon Cultural Development project.
- (3) On the issue of sanitization period, as explained in the beginning of this letter, under the current policy, while there is normally a sanitization period of six months for directorate officers, the length of such sanitization may be shortened where it can be clearly established that there is no conflict of interest between the proposed employment and the previous service of a retired civil servant. For the specific case, the period between the date of cessation of duty of the applicant and her taking up of the employment with the company is about four and a half months, which is shorter than the

normal sanitization period of six months. This is based on our consideration at the time of approval that there was no conflict of interest between the proposed employment and the applicant's last post in Government. The application in question was evaluated against the same policy and standard of requirement as applicable to any other applications.

We hope the Panel will find the above information useful. As the terms of reference of the Public Service Panel is to discuss policy matters, SCS has undertaken to brief the Panel on a review currently undertaken on the policy governing post-retirement employment. He has also agreed to advance the date originally set down for discussion of this item by the Panel at its meeting in May 2005 to the meeting in March 2005. SCS would like to assure the Panel that the review will be comprehensive and detailed and that substantive improvements will be made to the present policy to address the concern of the Legislative Councillors as well as the community at large.

We believe that this letter and the Annex have responded to the specific questions raised by the two Members. If the Chairman or other Members would like to seek further clarification on the contents of this letter and the Annex, the Secretary for the Civil Service would agree to respond to this at the next Panel meeting.

Yours sincerely,



(SUI Wai Keung)

for Secretary for the Civil Service

c.c. Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon CHEUNG Man-kwong
Hon KWONG Chi-kin

Annex

- CSB received an application from the retired civil servant to work with a ferry company in February 2004. The scope of work as given in the application included the fields of travel, hotel, cultural and recreational services. The application was processed in accordance with the existing procedures and, after taking into consideration the advice of the Advisory Committee on Post-retirement Employment, SCS gave approval in March 2004 for the retired civil servant to take up the employment on the basis of the scope and nature of work as given in the application. The application had not mentioned any plan of the company to invest in any property project or the West Kowloon Cultural District (WKCD) development project. Neither the application nor the approval covered land or property.
- Between May and September 2004, CSB had communication with the retired civil servant on several occasions on matters related to her approved employment and the nature of her involvement in the WKCD development project. Such communication was partly related to some reports in the press during the latter part of this period. The retired civil servant confirmed verbally and in writing that she had been performing work strictly within the confines of her approved employment with the ferry company. She confirmed that she was never involved in land and 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 the retired civil servant's possible involvement in the bidding of the WKCD development project, we approached her again in November 2004 and advised her to refrain from involving herself in anything which may be perceived as providing services to any bidding team. In response, the retired civil servant again gave her clarification that her involvement in the cultural aspects of the WKCD development project in providing service to the ferry company was as an employee and that she was not and would not be involved in land or property matters.
- CSB reviewed the case and then sought the advice of the Advisory Committee on Post-retirement Employment. On the basis of the information provided we concluded that there was no apparent conflict with the terms of approval given for her employment with the ferry company for the 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. However, the approval did not cover participation in the bidding or promotional activities of any bidding team for the project. For avoidance of doubt, we conveyed to the retired civil servant that the terms of the approval for her employment did not permit her to take part in the following activities:

- (a) being part of a bidding team for the WKCD development project;
 - (b) participation, directly or indirectly in the bidding process;
 - (c) participation in any promotional activities;
 - (d) participation in any public consultation sessions;
 - (e) public presentations or appearance in relation to any bid for the project; and
 - (f) acting as a spokesman for any bidding team.
- We noted the ferry company had issued a press release on 3 December 2004 which stated that the retired officer has ceased to be involved in the cultural aspect of the WKCD development project.