

**Extract from the Minutes of the Legislative Council Panel on Public Service Meeting held on 21 March 2005 on discussion on the findings and preliminary proposals from CSB's review of the policy on post-retirement employment of former directorate civil servants  
(LC Paper No. CB(1)1247/04-05)**

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

*Briefing by the Administration*

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

(a) Transparency

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

(b) Outside work during final leave

To address the dual identity problem and the negative public perception, CSB proposed that directorate officers on final leave would only be permitted to take up unremunerated or notionally remunerated work for

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

(c) Sanitization period

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

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

*Overall comments on the review proposals*

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

*Outside work during final leave*

68. Referring to paragraph 13 of the paper, Mr KWONG Chi-kin considered that officers on final leave should not be allowed to take up outside employment under any circumstances. He pointed out that officers on final leave still maintained the status

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

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

*Geographical scope of activities subject to control*

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

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

*Control period and approving criteria*

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

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

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*Restrictions on scope of work*

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

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

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*Sanitization period*

76. Mr LEE Cheuk-van pointed out that one of the purposes of providing pension benefits to retired civil servants was to give them the necessary financial

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

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

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

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

the retired officers concerned might choose to take up voluntary work in their professional fields during the sanitization period.

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

*Monitoring and sanction*

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

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

*Policy governing post-retirement employment of non-directorate officers*

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

*Processing of applications before the implementation of the revised mechanism*

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

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

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Conclusion

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

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**VI. Any other business**

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