

**Select Committee to Inquire into Matters Relating to
the Post-service Work of Mr LEUNG Chin-man**

Witness statement of The Hon. Mr Justice Pang Kin-kee

I, PANG Kin-kee, hereby make the following statement in response to questions by the Select Committee listed in Appendix IV of the letter addressed to me dated 27 February 2009.

1. As the Chairman of the ACPE, please advise-

- (a) *your role and duties in vetting and consideration of applications for post-service work from directorate civil servants;*

My role as the Chairman is to ensure all applications coming before the Committee are processed and considered in accordance with the prevailing policy for vetting such applications and to advise accordingly within the Terms of Reference of the Committee; to receive and consider the views, recommendations and requests from members of the Committee from time to time and to Chair the meetings of the Committee.

- (b) *the procedure for considering applications for post-service work from directorate civil servants by ACPE, including the declaration of interest requirement, the consultation process between the Secretary and the Chairman of ACPE in preparing the paper on an application for consideration by members of ACPE, the criteria you adopt in deciding whether to convene a meeting to discuss an application or to consider the application by circulation of paper to members; and*

In respect of all applications the CSB would prepare a paper for my consideration. Information in the paper would include the particulars of the applicant, a history of the applicant's previous applications (if any), the nature and duties of the proposed employment, a summary of the views and recommendations of the government bureaux/departments and officials consulted by the CSB in respect of the proposed employment and the CSB's views on the application. It is open to me to seek clarifications from the CSB in cases of doubt or if there is uncertainty on any aspects of the paper.

On the basis of the information available to me I would then decide whether the case could be dealt with by way of circulation of papers to the members or if there is a need to call a meeting to discuss the case. If the former, I would express my preliminary views on the advice which would be incorporated in the paper to the members. On receipt of the paper individual members are expected to state their views on the application through a return slip attached to the paper. A copy of the paper will be supplied to me.

If a meeting is called by me or by any of the members, the Secretary would proceed to arrange for one. A minute of the meeting would be taken by the Secretary and circulated to members for amendments, if any after seeking my preliminary views, and for confirmation. The minutes would then be retained by the Secretary of the committee for record. Each member and I would be given a copy of the minutes.

(c) *your understanding of:*

- (i) *the circumstances under which the Chairman and/or a member of ACPE is required to declare interest in relation to an application for post-service work from a directorate civil servant; and*

[The following is extracted from CSB Document: Note on Declaration of Interest.]

When a member (including the chairman) has a potential conflict of interest in a matter placed before the Advisory Committee, he should make full disclosure of his interest. Potential conflict of interest situations may include:

- (a) Pecuniary interests in a matter under consideration by the Advisory Committee, held either by a member or by any close relative of his/hers. Members are themselves the best judge of who, in the particular circumstances, is a "close relative".
- (b) A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organization which is connected with, or the subject of, a matter or an application under consideration by the Advisory Committee.
- (c) Some friendships which might be so close as to warrant declaration in order to avoid situations where an objective observer might believe a member's advice to have been influenced by the closeness of the association.
- (d) A member who, as a barrister, solicitor, accountant or other professional adviser, has personally or as member of a company, advised or represented or had frequent dealings with any person or body connected with a matter or an application under consideration by the Advisory Committee.
- (e) Any interest likely to lead an objective observer to believe that a member's advice might have been motivated by personal interest rather than a duty to give impartial advice.

(ii) *the factors to be taken into account in the consideration of an application for post-service work from a directorate civil servant.*

The key factors to be taken into consideration are the prevailing policy of the government; the circumstances of the particular applicant including his rank; postings; duties; his dates of cessation of service and departure from service; the nature and duties of the proposed employment and also the following specific considerations [extracted from CSB Circular No. 10/2005 paragraph 7]:

- (a) whether the applicant was involved in the formulation of any policy or decisions, the effects of which directly or specifically benefited or could directly or specifically benefit his/her own business or prospective employer;
- (b) whether the applicant or his/her prospective employer might gain unfair advantage over competitors because of the applicant's access to sensitive information while in government service;
- (c) whether the applicant was involved in contractual or legal dealings to which his/her prospective employer was a party;
- (d) whether the proposed work would have any connection with the assignments/projects and/or regulatory/enforcement duties in which the applicant was involved while in government service;
- (e) whether the applicant's taking up of the proposed work would give rise to public suspicion of conflict of interest or other impropriety; and
- (f) whether any aspects of the proposed work would cause embarrassment to the Government or bring disgrace to the civil service.

Also considered are the right of an individual to seek work and to contribute to the community after his/her leaving the Government.

The vetting of Mr Leung's application for post-service work with New World China Land Limited ("NWCL")

- 2. The process with which you were consulted by the Secretary to ACPE in preparing the paper(s) on Mr Leung's application for consideration by ACPE, and records of formal or informal discussion with the Secretary to ACPE.***

To the best of my recollection I received a copy of the CSB paper on Mr Leung's application (Application No. 27/2008) at the end of June 2008. I took time to consider the application. Based on the information contained in the paper, I decided that the case could be dealt with by circulation of papers to members. In or about the first week of July, I telephoned Mrs. Carrie Wong, the Secretary of the Advisory Committee to inform her of the following-

- (1) A paper should be prepared for circulation to the members.
- (2) Mr. Leung was my secondary school mate and the fact should be disclosed to the members of the committee;
- (3) I agree with the recommendation of the CSB, that is to say I have no objection that Mr Leung's application be approved subject to the standard restrictions and the set of four additional restrictions and

Then I received a set of papers with Mr Leung's application annexed. I perused the contents and I saw no reason to depart from my previous views.

- 3. The reason for deciding that Mr Leung's application be dealt with by circulation of paper to members of ACPE***

There were sufficient information in the CSB paper and the issues were adequately addressed by the various government departments consulted. I decided that the application could be dealt with by circulation of papers to members.

- 3. [Should be 4.] The declaration of interest you made on Mr Leung's application, and the reason for not withdrawing from consideration of Mr Leung's application in the light of the declared interest***

Mr Leung and I were in the same class when we attended the Diocesan Boys' School between the years 1964-1966. Since leaving school we have met on several occasions at alumni functions. In or around mid-1997 during my duty visit to Toronto, Canada, I met Mr Leung in his capacity as Director, (Toronto) Economic and Trade Office over lunch.

In the 42 years since I left school, I never had any dealing with Mr Leung in a personal capacity.

4. *[Should be 5.] The factors you had taken into account in considering Mr Leung's application*

The application was considered on the basis of the information provided in the CSB paper:

The factors which I considered included: the prevailing policy in handling applications by retired directorate officers of Mr Leung's grade [D8]; information of Mr Leung's previous posting and his duties from 1999 to 2006; the dates of Mr Leung's cessation of active service with the government and of his retirement; his previous applications processed by the committee; the particulars of his proposed employment with New World China Land Limited and the views and recommendations of the various government bureaux/officers consulted by the CSB in processing Mr Leung's application.

5. *[Should be 6.] In the light of the "public perception issue" raised by the Works Branch of the Development Bureau and the comment of the Planning and Lands Branch of the Development Bureau that subsidiary companies of New World Development Company Limited, the parent company of NWCL, had made building plans submissions for development projects under the Buildings Ordinance, the reason for agreeing with the recommendation of the Civil Service Bureau (CSB) on Mr Leung's application that approval be given to Mr Leung's application subject to the imposition of the standard and four additional work restrictions proposed by CSB*

I proceeded on the assumption that all the five government bureaux/officers consulted must have been aware of the contents of the CSB Circular No. 10/2005 and have addressed themselves on the criteria listed in 1c(ii) above in the light of the information provided by Mr Leung in his application.

The Permanent Secretary for Transport and Housing (Housing) [PS(H)]

"considers it unlikely that the proposed appointment will give rise to any negative public perception or embarrassment to the government".

The Permanent Secretary for Development (Works) [PS(W)] indicated that there may be a public perception issue. It appeared from the paper that his opinion was based on -

- (i) NWS Holdings, a subsidiary of New World Development Company Limited, own a number of companies which have 13 outstanding public works contracts;
- (ii) The nature of business Mr Leung's prospective employer; and
- (iii) Mr Leung's former appointment as Director of Buildings from Oct 1999 to 2002.

The Permanent Secretary did not elaborate on his observations but emphasized that both New World Development and New World China Land were not listed contractors of the Development Bureau (Works Branch). I noted that the business of New World China Land was confined to projects in Mainland China and that Mr Leung's appointment as Director of Buildings ended in 2002 which was some six years ago.

AO Grade Management did not make reference to the issue of negative public perception. I took the view that it must have been their considered opinion that there was no real issue on negative public perception. Had it been otherwise they would have expressed their concern and their remarks would be included in the CSB paper.

The Permanent Secretary for Development (Planning & Lands) [PS(PL)] advised that the Buildings Department has no dealings with either New World Development or New World China Land although there are building plans submissions by subsidiaries of New World Development. Having made reference to the plans he did not raise any objection to Mr Leung's proposed employment.

The CSB noted that :

"Mr Leung has left the posts of DB and PS(H)/D of H for six years and over two years respectively. He has no previous dealings with the company. His prospective employer deals with property development in the Mainland only. Both PS(W) and PS(PL) confirm that New World China Land Limited has no business connection with them. Mr Leung's proposed appointment with New World China Land Limited oversees the company's business in the Mainland only. It is therefore considered that the proposed appointment would unlikely constitute problems of conflict of interest."

The CSB recommended

"approval be given to Mr Leung's application without further sanitization."

Specifically on Mr Leung's former senior government positions and the public perception issue. The CSB took the view that

"it is desirable to impose the following work restrictions in addition to the standard work conditions as set out."

[The following are extracted from CSB Application No. 27/2008]

The standard restrictions are that Mr Leung should not –

- (a) be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises;
- (b) undertake or represent any person in any work including any litigation or lobbying activities that are connected in any way with –
 - (i) the formulation of any policy or decisions;
 - (ii) sensitive information;
 - (iii) contractual or legal dealings;
 - (iv) assignments or projects; and/or
 - (v) enforcement or regulatory duties,

in which he was involved or to which he had access during his last three years of government service; or

- (c) engage in any activities which will cause embarrassment to the Government or bring disgrace to the civil service.

The four additional restrictions are :

- (a) he should not involve himself in any business of New World China Land Limited that is connected with Hong Kong;
- (b) he should not use or disclose any classified or sensitive information acquired while he was in government service in the course of his employment with New World China Land Limited;
- (c) he should not represent New World China Land Limited in any discussion with the Government; and
- (d) for avoidance of doubt, he should confine his proposed appointment to New World China Land Limited.

Based on the information available before me, I considered that the recommendation by the CSB to impose the standard work restrictions plus the four additional restrictions should address the issue of public perception adequately and that the application of Mr Leung should be approved.

6. *[Should be 7] In the light of the senior positions held by Mr Leung in the Government namely, the Director of Buildings from August 1999 to June 2002, and the Permanent Secretary for Housing, Planning and Lands (Housing)/Director of Housing from July 2002 to January 2006, and given that the nature of the principal business of NWCL and its parent company is related to the real estate industry, your view on whether Mr Leung's taking up o the appointment with NECL would constitute or give rise to problems of conflict of interest.*

I have considered the views of the respective government bureaux and officers as contained in the CSB paper on the issue of conflict of interest.

The Permanent Secretary for Transport and Housing (Housing) recommended approval of the application.

The Permanent Secretary for Development (Works) who raised the issue of public perception did not give his view on conflict of interest. I took it to mean that he did not consider that to be a real issue.

The Permanent Secretary of Development (Planning and Lands) advised that New World China land Limited has no contractual dealing with the Buildings Department although a number of subsidiaries of New World Development Company Limited, has submitted building plans to the department. In full awareness of these facts, the Permanent Secretary decided not to object to Mr Leung in taking up the proposed appointment.

The CSB

“considered that the proposed appointment would unlikely constitute problems of conflict of interest”.

The AO Grade Management

“considers there does not appear to be any apparent conflict with his [Mr Leung's] former duties.”

Again I took the view that by imposing the standard restrictions plus the four additional restrictions as recommended by the CSB, the conflict of interest issue had been adequately addressed and that Mr Leung's application be approved.

7. *[Should be 8.] The personal relationship between you and Mr Leung*

Please refer to my response in 3 above.

Submitted.

