

立法會

Legislative Council

LC Paper No. CB(1)559/08-09
(These minutes have been seen
by the Administration)

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Panel on Public Service

**Minutes of special meeting held on
Monday, 27 October 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon LEE Cheuk-yan (Chairman)
Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon LEUNG Kwok-hung
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Dr Hon PAN Pey-chyou

Member attending : Hon Audrey EU Yuet-mee, SC, JP

Public officers attending : **Agenda item I**

Miss Denise YUE, GBS, JP
Secretary for the Civil Service

Mr Andrew H Y WONG, JP
Permanent Secretary for the Civil Service

Mrs Ingrid YEUNG, JP
Deputy Secretary for the Civil Service 1

Clerk in attendance : Ms Rosalind MA
Chief Council Secretary (1)2

Staff in attendance : Mrs Vivian KAM
Assistant Secretary General 2

Ms Connie FUNG
Assistant Legal Adviser 3

Ms Sarah YUEN
Senior Council Secretary (1)6

Miss Winnie CHENG
Legislative Assistant (1)5

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I Policy on post-service employment of former directorate civil servants

(LC Paper No.
CB(1)84/08-09(01)

- Administration's paper on control regime for post-service outside work of directorate civil servants

LC Paper No.
CB(1)84/08-09(02)

- Administration's paper on processing of the application from Mr LEUNG Chin-man to take up post-service employment with New World China Land Limited and related issues

LC Paper No. CB(1)86/08-09

- Paper on the policy on post-service employment of former directorate civil servants prepared by the Legislative Council Secretariat (Background brief)

Briefing by the Administration

At the invitation of the Chairman, the Secretary for the Civil Service (SCS) highlighted salient points in the Administration's papers, in particular the control regime for post-service outside work of directorate civil servants and processing of the application from Mr LEUNG Chin-man to take up employment with New World China Limited (NWCL). SCS advised that the

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independent Committee on Review of Post-Service Outside Work for Directorate Civil Servants (the Review Committee) had started its work. The Review Committee aimed to issue a public consultation document around January 2009. The public consultation would end around end March 2009. The Chairman of the Review Committee would arrange to brief the Panel in due course on the content of the consultation document and any recommendations made after the consultation.

Potential conflict of interest in Mr LEUNG Chin-man's application

2. Mr CHEUNG Man-kwong pointed out that Mr LEUNG Chin-man held a number of senior government posts responsible for policies on land and property development (such as the Director of Buildings (DB), the Permanent Secretary for Housing, Planning and Lands (Housing) (PS/H) and Director of Housing) before retirement. Given Mr LEUNG's involvement in policies related to land and property development during his service, Mr CHEUNG queried the propriety of giving approval for Mr LEUNG to take up outside work with any real estate company, even though the attention of the Advisory Committee on Post-service Employment of Civil Servants (the Advisory Committee) had not been drawn to Mr LEUNG's involvement in the handling of the Hunghom Peninsula development. Mr CHEUNG asked SCS whether the decision of approving Mr LEUNG's application was a correct one.

3. In response, SCS advised that the application from Mr LEUNG for taking up employment with NWCL was processed in accordance with the established procedures. Under the existing control regime, the approving authority examined applications on the basis of information provided by the applicants on their prospective employers, including the major business activities of the prospective employers and the major duties of the appointments. In the case of Mr LEUNG's application, approval had been given on consideration that the core business of NWCL was in the Mainland, that Mr LEUNG's major duties would be performed in the Mainland, and that Mr LEUNG would be physically based in a major city in the Mainland under the proposed appointment. SCS further advised that applicants were required to provide to the approving authority information on any parent or subsidiary companies of their prospective employers. In this connection, Mr LEUNG had stated in his application that NWCL's parent company was New World Development Company Limited and had advised that he would not be involved in any way in the business of the parent company.

4. Mr CHEUNG Man-kwong expressed grave concern that the existing control regime for processing applications of post-service outside work was inadequate in safeguarding against the transfer of benefits to private consortia by senior officials during their last years of government service. Referring to the disposal of Hunghom Peninsula flats at a low premium of \$864 million,

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Mr CHEUNG pointed out that there was public suspicion that Mr LEUNG might have paved the way for his post-service outside work through transferring benefits to the developer of Hunghom Peninsula. He was concerned that the existing loophole in the control regime might be subject to abuse and become a new mode for bribery. Mr WONG Sing-chi and Mr IP Wai-ming expressed similar concern. Mr IP opined that public concerns about safeguards against conflict of interest could not be adequately addressed if the approving authority did not take into full account the range of business of the prospective employer and its associated companies.

5. SCS responded that under the existing control regime, the approving authority would assess the nature and duties of the outside work under application. SCS advised that in vetting Mr LEUNG's application, the approving authority had come to the conclusion that there was no conflict of interest between the proposed work with NWCL in the Mainland and Mr LEUNG's previous duties in the Government, after examining the business nature of NWCL, the major duties of the proposed work and the information provided by Mr LEUNG that he would not be involved in any way in the business of the parent company of NWCL. She took note of Mr CHEUNG's concern about the inadequacy of the existing control regime and agreed to convey this to the Review Committee for consideration.

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6. As regards Mr CHEUNG Man-kwong's concern about bribery, SCS advised that any member of the public could report to the enforcement authority alleged breaches of provisions under the Prevention of Bribery Ordinance (Cap.201). Responding to Mr WONG Sing-chi's enquiry, SCS advised that all civil servants, including those holding senior positions, were required to comply with established guidelines and procedures in discharging their duties.

7. Mr WONG Sing-chi was of the view that, senior civil servants could exercise discretion when discharging statutory duties or making decisions in individual cases. Mr CHEUNG Man-kwong was of the view that the current restrictions on the areas of post-service outside work could not effectively plug the loophole, as private consortia could reward retired civil servants by offering them jobs in areas unrelated to their former duties while in government service. Mr CHEUNG suggested that the Civil Service Bureau (CSB) should work in collaboration with the Independent Commission Against Corruption (ICAC) to examine measures to plug the loophole by making reference to the processing of Mr LEUNG's application.

8. In response, SCS reiterated that important policies and decisions in the Government were made in accordance with established guidelines and procedures. Individual civil servants would not have full discretion in the process of policy formulation and decision making as they would have to observe the established guidelines, report to their supervisors and maintain

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written records of the process. She noted Mr CHEUNG's suggestion and advised that CSB was willing to liaise with ICAC to seek the latter's advice on how to strengthen the anti-corruption work in the civil service.

9. Dr Margaret NG opined that public confidence in the integrity of the civil service would be undermined if the existing control regime could not effectively safeguard against the transfer of benefits to private consoria. She queried whether the existing criteria for vetting applications could effectively prevent senior civil servants from getting well-paid post-service jobs in return for acting in favour of their prospective employers while in service. Pointing out that Mr LEUNG was involved in the handling of the Hunghom Peninsula development, Dr NG had doubts about the basis for approving Mr LEUNG's application to take up employment with a company associated with the developer of the Hunghom Peninsula development.

10. SCS responded that in her report submitted to the Chief Executive (CE) on 15 August 2008, she had admitted that Mr LEUNG's involvement in the Hunghom Peninsula development had not been considered in the processing of his application for outside work. As the decision authority, SCS had taken responsibility and apologized for not having comprehensively considered all factors relevant to Mr LEUNG's application. SCS pointed out that Mr LEUNG had performed a number of statutory duties (such as approval of building plans) when holding the post of DB during August 1999 to June 2002. She had not associated these duties with the disposal of the Hunghom Peninsula flats and the decision on the premium paid by the developer for the lease modification. SCS further clarified that agreement on lease modification for the Hunghom Peninsula development was worked out in 2004 when Mr LEUNG was PS/H responsible for public housing policy, and that lands and building matters fell under the purview of another permanent secretary. Responding to Mr WONG Sing-chi's enquiry, SCS explained that she had provided the information on Mr LEUNG's various postings in the Government to shed light on Mr LEUNG's responsibilities in the years before his retirement. She did not imply that the Mr LEUNG's involvement in the handling of the Hunghom Peninsula development should not be a factor for consideration in processing Mr LEUNG's application for outside work.

11. Ms LI Fung-ying referred to paragraph 2 of the Administration's paper which highlighted the need for avoidance of real or potential conflict of interest and negative public perception in processing applications for post-service outside work. She was concerned that the existing control arrangements could not achieve the policy objective, thereby giving rise to public concern about the propriety of some post-service employment of senior civil servants in the past years. In this connection, Ms LI enquired what lessons had been learnt from the processing of Mr LEUNG's application.

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12. In reply, SCS said that in processing applications for post-service outside work, she had to make a judgement on each case on the basis of information provided by the applicants, having regard to the views of relevant bureaux, the Head of Grade concerned and the Advisory Committee. In making a decision on Mr LEUNG's application, SCS admitted that she had not taken into account Mr LEUNG's involvement in the Hunghom Peninsula development. She had reviewed the processing of the application with a view to identifying ways to ensure that all relevant factors would be taken into account before making decisions on future applications. She also pointed out that in arriving at the decision for Mr LEUNG's application, she had tried to strike a balance between the avoidance of conflict of interest on the one hand and the right of a retired civil servant as an individual to pursue employment after ceasing government service on the other.

13. Dr Margaret NG said that the control regime should be enhanced in that there should be more stringent benchmarks for determining the areas of work that a retired civil servant could be involved in, for processing applications of post-service outside work. Dr NG opined that retired civil servants should exercise self-restraint to avoid taking up appointments which might give rise to public concern or suspicion of conflict of interest. She was of the view that the approving authority should accord priority to safeguarding public interest over the individual right of a retired civil servant to pursue employment.

14. SCS responded that the control regime for post-service outside work was put in place to safeguard public interest. To ensure that civil servants would not take up outside work which might constitute a real or potential conflict of interest with their former government duties or cause negative public perception embarrassing the Government, directorate civil servants were required to seek prior permission from SCS before taking up post-service outside work within a specified sanitization period and/or control period. SCS hoped that members would appreciate that applications for post-service outside work did not necessarily equate to pursuit of monetary rewards. SCS stressed that as the approving authority, she had to make decisions in a justifiable and reasonable manner, adopting a reasonable benchmark for reference. She was willing to accept criticisms if the decisions made were considered unreasonable by the public.

Consultation with relevant bureaux

15. Dr Margaret NG, Ms LI Fung-ying and Mr IP Wai-ming noted that according to paragraph 12 of CSB's report to CE, the Works Branch of the Development Bureau had advised that, in light of the business nature of Mr LEUNG's prospective employer in real estate development, construction and management matters, the post-service appointment applied for by Mr LEUNG in relation to his former appointment as DB from August 1999 to June 2002 might

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have a public perception issue despite that the business of his prospective employer would be carried out outside Hong Kong. Dr NG saw no reason why CSB had not given consideration to this public perception issue in processing Mr LEUNG's application. Ms LI also questioned why CSB had not brought to the attention of the Advisory Committee the comments made by the Development Bureau. Mr IP queried whether the approving authority had given due consideration to the comments made by the Development Bureau, in particular on the likelihood of public suspicion of conflict of interest and embarrassment caused to the Government.

16. In response, SCS advised that having regard to the business of the prospective employer and the duties involved in Mr LEUNG's post-service work application, she considered that the proposed appointment would unlikely constitute problems of real conflict of interest. However, given Mr LEUNG's former senior position in the Government and to address the public perception issue, she had imposed four additional work restrictions when granting approval to his application.

17. Mr TAM Yiu-chung declared that he was a member of the Review Committee. Noting that advice of relevant bureaux would be sought on applications for post-service outside work, Mr TAM was concerned whether the officers giving advice would be inclined to support the applications given their past working relations with the applicants. In reply, SCS stressed that officers giving advice on post-service outside work applications upheld the principle of fairness in the vetting process. While there might be occasions where certain factors had been overlooked, SCS assured members that the vetting process was impartial, and personal relationship was never a consideration. SCS appreciated Mr TAM's concern that a broader view would have to be taken in examining the core business of the prospective employers and the applicants' major duties in future applications.

Role and work of the Advisory Committee

18. Dr PAN Pey-chyou opined that in processing Mr LEUNG's application, the Advisory Committee appeared not to have discharged its role as the gate-keeper properly, as it had not advised SCS against approving the application. In this connection, Dr PAN noted that while the Chairman of the Advisory Committee, the Hon Mr Justice PANG Kin-kee, had declared that Mr LEUNG was his secondary school mate, he had not refrained from assessing the application and giving advice to CSB. Referring to the practice in the medical profession for safeguarding against real or potential conflict of interest, Dr PAN enquired whether the Advisory Committee had established guidelines in this respect.

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19. In reply, SCS pointed out that the approving authority, i.e. SCS herself, instead of the Advisory Committee, was the gate-keeper for the post-service outside work applications. As the Advisory Committee had given advice on applications on the basis of information provided by CSB, it would be unfair to put the blame on the Advisory Committee if the information provided had not been comprehensive. As to the guidelines on declaration of interest, SCS advised that members of the Advisory Committee, including the Chairman, had been provided with a copy of the guidelines on avoidance of conflict of interest upon their appointment. In essence, they were required to declare any real or potential conflict of interest and consider the propriety to participate in the assessment of an application subject to the nature and extent of conflict involved. Where in doubt, members might seek the advice of the Chairman of the Advisory Committee. In processing Mr LEUNG's application, the Chairman of the Advisory Committee had declared that Mr LEUNG was his school mate around 40 years ago. As far as SCS understood, the two parties had no contact after their secondary school years. SCS pointed out that as senior civil servants would have contacts with individuals from different sectors of the community when discharging their government duties, it would not be practicable to set a rule that the Chairman or any member of the Advisory Committee should not participate in giving advice whenever he / she knew the applicant. The important point for consideration was the closeness of the ties between the Chairman or member concerned with the applicant. The guidelines given to the Chairman and members of the Advisory Committee contained all the points to which they should pay attention.

20. Responding to Dr PAN's enquiry about the vetting criteria adopted by the Advisory Committee, SCS said that the Advisory Committee vetted applications according to the policy objective and the six assessment criteria under the control regime set out by CSB. Reference would also be made to precedent cases to maintain consistency in processing applications. Noting Dr PAN's concern about the need to enhance the role of the Advisory Committee in the processing of applications to meet increasing public expectation for accountability, SCS undertook to convey Dr PAN's view to the Review Committee for consideration.

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21. As members of the Advisory Committee were appointed by the Government and only gave advice to SCS on applications based on the information provided by CSB, Mr LEUNG Kwok-hung doubted the credibility of such a mechanism and the function of the Advisory Committee. SCS advised that members of the Advisory Committee were appointed by CE to give advice to the approving authority on post-service outside work applications. As the approving authority, SCS was at liberty to accept or reject the advice and recommendations of the Advisory Committee. Responding to Mr LEUNG 's further concern, SCS assured members that the Government had adhered to the six-years six-board rule in making appointment to advisory bodies. As to

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Mr LEUNG's enquiry on the power of the Advisory Committee to make inquiries, SCS advised that the Advisory Committee could ask CSB to provide supplementary information when vetting applications.

Other suggested enhancements to the control arrangements

22. Dr Margaret NG opined that the existing arrangement for SCS to decide on the applications from senior civil servants who were in most cases SCS's former colleagues, would not give the public the impression that such decisions were entirely impartial. She suggested that the approving authority should more appropriately be an independent committee/body. In response, SCS stressed that her decisions on post-service outside work applications were not affected by consideration of the past working relations with the applicants. She undertook to convey Dr Margaret NG's suggestion to the Review Committee for consideration.

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23. Mr LEUNG Kwok-hung noted with concern that a number of retired directorate civil servants had taken up work with private consortia shortly after ceasing government service. Mr LEUNG was of the view that this phenomenon had given rise to grave public concern. He queried the effectiveness of the existing control regime and suggested that restrictions under the regime be tightened up without delay, so that retired directorate civil servants would not be allowed to take up paid outside work with commercial organizations during a period of five or ten years after ceasing government service.

24. Mrs Regina IP suggested the Administration to consider tightening up the control regime so that directorate civil servants could only take up appointments in the private sector after expiry of the sanitization period and where the nature of businesses were not related to the policy areas they had been involved in during their last five years of government service. Mr IP Wai-ming suggested to increase the transparency of the vetting process, say, by disclosing information on the applications to the public.

25. SCS took note of members' above suggestions and agreed to convey them to the Review Committee for consideration.

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Concluding remarks

26. Concluding the discussion, the Chairman said that Members could follow up the subject at the proposed Select Committee to Inquire into Matters relating to the Post-service Work of Mr LEUNG Chin-man.

III Any other business

Arrangements for the next meeting

27. The Chairman advised members that as the Administration had just informed the Panel that the item on "Grade structure reviews" would not be ready for discussion at the next meeting of the Panel scheduled for 17 November 2008, there would only be two items on the agenda for that meeting. The meeting would therefore start at 10:45 am instead of 9:30 am.

(Post-meeting note: Members were informed of the above arrangements vide LC Paper No. CB(1)140/08-09 issued on 29 October 2008.)

28. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 1
Legislative Council Secretariat
12 January 2009