

## **Chapter 1 Introduction**

### **Background**

1.1 On 1 August 2008, New World China Land Limited ("NWCL") announced the appointment of Mr LEUNG Chin-man as an Executive Director and Deputy Managing Director of the company with effect from that date. NWCL is a subsidiary company of New World Development Company Limited ("NWDCL"), the parent company of another subsidiary company, NWS Holdings Limited ("NWS"), which owns 50% of the shareholding in First Star Development Limited ("FSDL"). FSDL is the developer of the Hunghom Peninsula Private Sector Participation Scheme ("PSPS") development. The introduction of the re-positioned housing policy by the Government in 2002, which included the cessation of production and sales of the Home Ownership Scheme ("HOS") flats and the termination of PSPS, had necessitated the disposal of the PSPS flats in the Hunghom Peninsula development. In 2003, the Government sold the 2470-unit development, which was located on a waterfront site in the urban area, to FSDL at a lease modification premium of \$864 million allowing it to sell the flats in the open market. The announcement of Mr LEUNG's appointment by NWCL aroused public controversy as Mr LEUNG was the former Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing ("PSH/D of H") prior to his retirement from the Government on 10 January 2007, and was involved in the disposal of the flats in the development to the developer at a premium considered to be too low at the time by the public. The public was greatly concerned that the appointment smacked of being a reward for favours given to the developer by Mr LEUNG during his tenure, and questioned the propriety of the Secretary for the Civil Service ("SCS") giving approval for Mr LEUNG to take up the appointment.

1.2 At the time, the Third Legislative Council ("LegCo") had come to an end, and general election for Members of the Fourth LegCo was set for 7 September 2008. Immediately upon commencement of the Fourth LegCo, Members took up the matter relating to the post-service work of Mr LEUNG Chin-man. At the House Committee meeting on 17 October 2008, Members endorsed a proposal to appoint a select committee to inquire into the matter. A subcommittee of the House Committee was appointed to undertake the preparatory work. The subcommittee held three meetings in November 2008 and submitted a report to the House Committee on 21 November 2008 with recommendations on the terms of reference, membership size and the procedure for the nomination of members of the select committee. The recommendations were endorsed by the House Committee.

### **Appointment of the Select Committee and its terms of reference**

1.3 On 10 December 2008, LegCo debated on and passed a resolution to appoint a select committee to inquire into the post-service work of Mr LEUNG and related matters ("the Resolution"). The Resolution also authorized the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man ("the Select Committee"), in the performance of its duties, to exercise the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("LCPPO") to order the attendance of witnesses to give evidence and the production of papers, books, records or documents by witnesses. The Resolution sets out the terms of reference of the Select Committee as follows:

**"RESOLVED**

*that this Council appoints a select committee to inquire into the vetting and approval for Mr LEUNG Chin-man, former Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing, to take up post-service work with New World China Land Limited and other real estate organizations, and whether there was any connection between such work and the major housing or land policies which Mr LEUNG had taken part in their formulation or execution and decisions which he had made pursuant to such policies while serving as Director of Buildings, Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing, that had given rise to any potential or actual conflict of interest, as well as related matters, and based on the results of the above inquiry, to make recommendations on the policies and arrangements governing post-service work of directorate civil servants and other related matters; and that in the performance of its duties the committee be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of that Ordinance."*

**Membership of the Select Committee**

1.4 On the recommendation of the House Committee, the President of LegCo appointed on 12 December 2008 the Chairman, Deputy Chairman and members of the Select Committee in accordance with Rule 78(2) of the Rules of Procedure of LegCo. The 12 members of the Select Committee are as follows:

Hon LI Fung-ying, SBS, JP (Chairman)  
Hon LEE Wing-tat (Deputy Chairman)  
Dr Hon Margaret NG  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon LAU Kong-wah, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Cyd HO Sau-lan  
Dr Hon LAM Tai-fai, BBS, JP  
Dr Hon PAN Pey-chyou  
Dr Hon Samson TAM Wai-ho, JP  
Hon LEUNG Kwok-hung (up to 28 January 2010 and rejoined  
on 14 June 2010)

1.5 Hon LEUNG Kwok-hung resigned from office as a LegCo Member with effect from 29 January 2010. The Select Committee decided after due deliberation that it was not necessary to fill the vacancy in membership left by Mr LEUNG as the Select Committee had already completed its hearings and was in the process of drafting its report. The Select Committee's decision was endorsed by the House Committee at its meeting held on 26 February 2010. Members also decided that it was not necessary to revise the membership size of the Select Committee. In the by-election held on 16 May 2010, Hon LEUNG Kwok-hung was re-elected. After the commencement of his term of office, Mr LEUNG requested to rejoin the Select Committee. The Select Committee discussed the matter in June 2010. Taking into account the fact that the Select Committee had completed its hearings prior to Mr LEUNG's resignation, that Mr LEUNG had participated in the work involved and read the relevant documents, and that, at that stage, the Select Committee had already begun to deliberate on the evidence obtained for the purpose of drafting its report, members were of the view that Mr LEUNG could provide input on the draft report based on his participation in the hearings

and his examination of the evidence. The Select Committee considered that no issue of procedural unfairness arose from allowing Mr LEUNG to rejoin the Select Committee. The Select Committee therefore raised no objection to his request. Having regard to the Select Committee's view, the House Committee made a recommendation to the President of LegCo for the appointment of Hon LEUNG Kwok-hung to the Select Committee. The President re-appointed Hon LEUNG Kwok-hung as a member of the Select Committee on 14 June 2010.

### **Areas of study and work plan**

1.6 The Select Committee endorsed its areas of study and work plan at the open meeting held on 18 December 2008. Based on the terms of reference of the Select Committee set out in the Resolution, the Select Committee decided to inquire into the following major areas:

- (a) the post-service work of Mr LEUNG Chin-man with real estate organizations. This includes the policies and arrangements governing the post-service work of directorate civil servants; the vetting and approval of Mr LEUNG's application for post-service work with NWCL covering the circumstances surrounding the appointment, and the vetting and approval of the application and the termination of the employment contract between NWCL and Mr LEUNG; as well as the vetting and approval of Mr LEUNG's applications for post-service work with other real estate organizations;
- (b) major housing or land policies which Mr LEUNG had taken part in their formulation or execution and decisions which he had made pursuant to such policies while serving as Director of Buildings ("D of B") from August

1999 to June 2002 and as PSH/D of H from July 2002 to January 2006. This includes the disposal of PSPS flats at the Hunghom Peninsula, and the exercise of discretionary power by Mr LEUNG in respect of land and planning matters in the development of the Grand Promenade; and

- (c) the connection, if any, between (a) and (b) above which might have given rise to any potential or actual conflict of interest, as well as related matters.

1.7 Based on the study in (a) to (c) above, the Select Committee will make recommendations on the policies and arrangements governing the post-service work of directorate civil servants and on other related matters. The Select Committee also agreed that the areas of study might be refined where necessary in the light of work progress of the Select Committee.

1.8 The Select Committee decided to conduct its inquiry in three phases:

- (a) Phase I for undertaking preparatory work. This would be in the form of internal deliberations. The work included drawing up the practice and procedure of the Select Committee, deciding on the areas of study and the information to be obtained from relevant parties, and identifying the witnesses to be summoned;
- (b) Phase II for conducting hearings to obtain evidence from witnesses and for deliberating on the evidence obtained; and

- (c) Phase III for holding internal deliberations for preparing and discussing the draft report of the Select Committee.

1.9 The Select Committee's plan was for the three phases to commence in mid December 2008 and to end in about October 2009. However, two witnesses instituted judicial review proceedings against members of the Select Committee in July 2009 in relation to the Select Committee's power to summon witnesses and the taking of evidence on matters concerning the inquiry of the disposal of the Hunghom Peninsula PSPS development. The Select Committee was therefore unable to proceed with its work as scheduled. Details of the judicial review proceedings are given in paragraphs 1.30 to 1.39. As a result, the Select Committee adjusted its work plan. Phase III was completed in November 2010.

### **Practice and procedure**

1.10 The proceedings of the Select Committee are governed by relevant provisions in LCPPO and the Rules of Procedure of LegCo. In addition, the Select Committee has also made its own practice and procedure on matters not expressly provided for in the above-mentioned ordinance and rules.

1.11 In determining its practice and procedure, the Select Committee has drawn reference from those adopted by previous select committees and has given regard to the following principles:

- (a) the practice and procedure should be fair and seen to be fair, especially to parties whose interests or reputation may be affected by the proceedings of the Select Committee;

- (b) there should be maximum transparency in its proceedings as far as practicable;
- (c) the practice and procedure should facilitate the ascertaining of the facts relevant to, and within the scope of, its inquiry, as set out in the Select Committee's terms of reference, which do not include the adjudication of the legal liabilities of any parties or individuals;
- (d) its proceedings should be conducted with efficiency; and
- (e) the cost of the proceedings should be kept within reasonable bounds.

1.12 At the open meeting held on 18 December 2008, the Select Committee endorsed its practice and procedure which was updated on 30 May 2009 by the addition of provisions regarding the payment of a witness allowance to eligible persons appearing before the Select Committee<sup>1</sup>. A copy of the updated Practice and Procedure of the Select Committee is in **Appendix 1**.

#### Meetings of the Select Committee

1.13 Under Rule 79(2) of the Rules of Procedure of LegCo, the meetings of a select committee shall be held in public unless the chairman otherwise orders in accordance with any decision of the committee. The Select Committee decided that, as a general rule, the taking of evidence should be conducted at open hearings. However, witnesses were informed that if they wished their evidence or any part thereof to be taken

---

<sup>1</sup> After considering the request from a witness and with reference to the arrangements on witness allowance in courts and tribunals, the Select Committee proposed that eligible persons appearing before the Select Committee be paid a witness allowance. The LegCo Commission endorsed the proposal and decided to pay a witness allowance to eligible persons.



at closed door meetings, they should submit their reasons in writing to the Select Committee for a decision.

1.14 The Select Committee also decided that witnesses should be summoned through issuance of summonses served on them, instead of being invited, to attend the hearings of the Select Committee, and that they should be examined on oath. The witnesses who are lawfully ordered to attend the hearings of the Select Committee to give evidence or to produce documents are entitled, in respect of such evidence or documents, to the same right or privilege as before a court of law by virtue of section 14(1) of LCPPO.

1.15 In line with the practice of previous select committees, the Select Committee decided that its internal deliberations should be held at closed meetings. The Select Committee agreed that members should not disclose its internal deliberations or documents considered at these meetings, and that the Chairman and Deputy Chairman should be the only persons authorized to handle enquiries from the media concerning the work of the Select Committee.

1.16 The Select Committee held a total of nine meetings between 18 December 2008 and 10 March 2009 to undertake preparatory work for the inquiry. The total meeting time spent was 14 hours. This was followed by 23 public hearings between 17 March 2009 and 17 November 2009 during which evidence was taken from 24 witnesses attending the hearings. The number of hearing hours was 80. The Select Committee spent another 21 hours to prepare for these hearings. The Select Committee also held 81 meetings comprising a total of 161 hours to discuss the evidence obtained and deliberate on the report, and matters relating to the inquiry. A schedule of the hearings and the names of the witnesses are in **Appendix 2**.

### Disclosure of interests

1.17 In addition to Rules 83A and 84 of the Rules of Procedure of LegCo governing the disclosure of pecuniary interest, the Select Committee also decided that members who wished to declare non-pecuniary interests should write to the Chairman to declare such interests. The Chairman and two members of the Select Committee have made such declarations.

### Verbatim transcripts of hearings

1.18 The minutes of evidence, in the form of verbatim transcripts made from the sound recordings of the proceedings of the meetings at which witnesses were examined, form part of the Select Committee's report to the Council. In order that witnesses can have a fair and reasonable opportunity to consider whether their oral evidence is accurately transcribed, the Select Committee had sent to all witnesses the parts of the draft verbatim transcripts of their respective oral evidence so that they could have the opportunity to propose corrections, subject to their signing of an undertaking that they would not make any copy of the draft and would return it to the Select Committee before a specified date. The Select Committee accepted corrections proposed so long as they did not materially alter the general sense of the evidence so recorded.

1.19 The Select Committee also agreed that where considered appropriate, copies of the transcripts of evidence taken in public might be provided to witnesses and prospective witnesses on request upon payment of a fee, subject to the unpublished and/or uncorrected status of the transcripts being stated clearly, and also subject to the conditions that the witnesses or prospective witnesses shall not make public use of the transcripts, or quote directly from the transcripts, or use the transcripts in a manner prejudicial to the interest of the Select Committee or other persons. This arrangement is based on the principles that:

- (a) the provision of verbatim transcripts to witnesses and prospective witnesses will enable them to keep track of the proceedings of the Select Committee and facilitate their response to questions raised by the Select Committee, which in turn will facilitate the conduct of the Select Committee's proceedings in an effective and efficient manner; and
- (b) it will enhance procedural fairness, especially to those whose interests or reputation may be affected by the Select Committee's proceedings.

1.20 The procedures for provision of transcripts of evidence are set out in Annex III to Appendix 1. Requests from other parties for the provision of transcripts were considered by the Select Committee on a case-by-case basis and handled in accordance with the conditions set out above.

#### Classification of documents

1.21 For the purpose of its inquiry, the Select Committee had ordered witnesses to produce certain papers, records and documents in their possession. The Administration requested the Select Committee to treat some of the documents it had provided as confidential for the reason that such documents were classified as confidential by the Administration and some contained commercially sensitive or personal information. As the Select Committee was of the view that the documents concerned were relevant to the subject matter of its inquiry for which there was a legitimate public concern, and the commercially sensitive or personal information contained in the said documents had already been obliterated by the Administration, the Select Committee decided not to accede to the Administration's request. The Administration subsequently requested

the Select Committee not to release these documents to the public or upload them onto the LegCo website. After consideration, the Select Committee acceded to the Administration's request. The Select Committee also decided that all unclassified documents obtained by the Select Committee would be kept in the LegCo Library and uploaded onto the LegCo website for public inspection.

### Draft findings and observations

1.22 The Select Committee attaches great importance to ensuring that its procedure is fair and seen to be fair to parties whose interests or reputation may be affected by its proceedings. Where the Select Committee considered appropriate, relevant parts of the draft findings and observations of its report were provided to the named parties to give them an opportunity to comment. After the comments were received from the parties concerned, the Select Committee held four meetings comprising a total of 15 hours to consider the comments carefully before finalizing its report.

1.23 The findings and observations of the Select Committee are based on the oral and written evidence given by the witnesses, as well as the evidence provided by the relevant government bureaux and departments and organizations and persons concerned. The Select Committee understands that witnesses giving evidence had different perspectives owing to their different standpoints and roles. Some witnesses largely relied on their memory for their accounts of what had occurred with respect to matters taking place certain years ago. In view of this, the Select Committee has exercised great care in examining the evidence obtained during the inquiry. Some of the witnesses invited to comment on the draft report expressed worries about the findings and observations of the Select Committee being unfair to them, given that the Select Committee had examined the case with the benefit of hindsight and with information which was not known, or available, to them at the

time when they handled the relevant matters. The Select Committee has to point out that inquiry committees can only conduct inquiries after the event. In order to ensure the impartiality of the inquiry, the Select Committee has based its inquiry on what the witnesses knew when they handled and made decisions on the relevant matters, or what they should have known given the circumstances at the time. Although some witnesses may find the views so formulated severe on them, the Select Committee must stress that it is performing a public function and has a responsibility to the public. Its conclusions and recommendations are intended to serve as a reference for the future for persons concerned in the processing, vetting and approving of post-service work applications from directorate civil servants, so that similar cases may be avoided, and the effectiveness of the Control Regime may be improved.

#### Transparency of inquiry

1.24 Following the practice of previous select committees, members of the public can obtain copies of the sound recordings of public hearings of the Select Committee upon payment of a fee. In order to enhance the transparency of the Select Committee's proceedings and to assist persons in the public galleries of the LegCo Chamber in understanding the proceedings, they were provided with copies of the written statements of the witnesses who were appearing before the Select Committee. Their attention was, however, drawn to the fact that the statements were made available to them only for the purpose of assisting them to understand the proceedings at the public hearings. They were also reminded that the use of the contents of the written statements for other purposes was not protected by the privileges provided under LCPPO, and they should obtain legal advice before doing so.

1.25 In order to keep the media updated on the work of the Select Committee, briefings for the media were conducted by the Chairman and/or Deputy Chairman after closed meetings.

## **Invitation of public views**

1.26 Members of the public were invited to give views on the subject matter under inquiry by the Select Committee. A general invitation for submissions was posted on the website of LegCo on 22 December 2008. The Select Committee has received four submissions and a list of the parties making the submissions is in **Appendix 3**.

## **Report**

1.27 Under Rule 78(4) of the Rules of Procedure of LegCo, the Select Committee shall, as soon as it has completed consideration of the matter referred to it, report to the Council thereon and shall thereupon be dissolved. The Select Committee has completed consideration of the matters specified in the Resolution which appointed it and submits this Report to the Council.

1.28 The Report of the Select Committee consists of the main report, lists of written evidence and relevant documents, the minutes of proceedings, as well as the minutes of evidence in the form of verbatim transcripts in the original language used at the public hearings. For environmental protection purpose, the minutes of evidence are available on CD-ROM only. This Report is also accessible on the LegCo website at [www.legco.gov.hk](http://www.legco.gov.hk).

1.29 The main report comprises nine Chapters. This Chapter is mainly an introduction to the background and sequence of events leading to the formation of the Select Committee, as well as important matters relating to the work of the Select Committee. Chapter 2 outlines the existing Control Regime governing the post-service work of directorate civil servants. Chapter 3 gives an account of the applications for

post-service work made by Mr LEUNG Chin-man prior to his application for employment with NWCL after retiring from the Government. Chapters 4 and 5 set out the circumstances leading to Mr LEUNG Chin-man's employment with NWCL, the process in which the application was handled within the Government and by the Advisory Committee on Post-service Employment of Civil Servants ("ACPE"), as well as the Select Committee's observations on the performance of parties involved in the assessment, vetting and approval of the application. Chapter 6 provides an account of the major housing and land policies which Mr LEUNG Chin-man had taken part in their formulation or execution during his last six years of service in the Government prior to retirement. Chapters 7 and 8 set out the disposal of Hunghom Peninsula PSPS flats by the Government, the relationship of Mr LEUNG Chin-man with some other witnesses, the evidence given by Mr LEUNG regarding his role and participation in the Hunghom Peninsula case and his application for the post-service work with NWCL, as well as the Select Committee's observations on such issues. Chapter 9 sets out the conclusions and recommendations of the Select Committee.

### **Judicial review proceedings**

1.30 Pursuant to the summonses issued under section 10 of LCPPO and served respectively on Dr Henry CHENG Kar-shun (who was the Chairman and Managing Director of NWCL and Managing Director of NWDCL) and Mr Stewart LEUNG Chi-kin (who was an Executive Director of NWCL and Executive Director and the Group General Manager of NWDCL) on 2 March 2009 ordering their attendance at the Select Committee's hearings to give evidence and produce documents on matters relating to the taking up of post-service work by Mr LEUNG Chin-man with NWCL, they attended two public hearings in April 2009 and produced documents as ordered by the Select Committee.

1.31 In order to ascertain whether there was any potential or actual conflict of interest arising from Mr LEUNG's taking up of post-service work with NWCL by virtue of his role and participation in the disposal of the Hunghom Peninsula PSPS flats while serving as PSH/D of H, the Select Committee ordered in April 2009 Dr Henry CHENG and Mr Stewart LEUNG ("the two witnesses") to attend its hearings in May 2009 to give evidence and produce documents on the subject, as they were involved on the side of the developer in the disposal of the Hunghom Peninsula PSPS flats. As the taking of evidence from witnesses relating to the post-service work of Mr LEUNG Chin-man with NWCL had taken longer than originally envisaged, the hearings for Dr CHENG and Mr Stewart LEUNG were subsequently re-scheduled to 23 and 25 June 2009.

1.32 The two witnesses wrote to the Select Committee through their legal representatives several times in May and June 2009 and raised queries on a number of issues, including whether the Select Committee had the power to summon witnesses to give evidence and produce documents at its hearings and to compel the witnesses to give written statements; the legal validity of the summonses served on them; whether the questions asked by the Select Committee were an infringement of the witnesses' right of privacy; and whether the hearings on the disposal of the Hunghom Peninsula development were contrary to the sub-judice rule as the High Court action initiated in 2003 by the developer of the Hunghom Peninsula development against the Government and the Hong Kong Housing Authority ("HA") was still pending. On the basis of these queries, the two witnesses requested the Select Committee to adjourn its hearings on the Hunghom Peninsula development scheduled for 23 and 25 June 2009.

1.33 Following legal advice, the Select Committee refused to accede to the two witnesses' request to adjourn its hearings. However, to allow more time for the two witnesses to seek legal advice and consider the



production of documents ordered, the Select Committee decided to postpone the said hearing to 15 July 2009. Without prejudice to the Select Committee's view on the validity of the summonses served on the two witnesses on 2 March 2009, fresh summonses ordering their attendance on 15 July 2009 were issued and served on Mr Stewart LEUNG and Dr Henry CHENG on 8 and 10 July 2009 respectively.

1.34 On 10 July 2009, the two witnesses made an *ex parte* application to the Court of First Instance for leave to apply for judicial review of the order of the Select Committee for their attendance at its hearing on 15 July 2009 to give evidence and produce documents and for interim relief to stay the said hearing. The main grounds for the application were that LegCo's power to summon witnesses to testify or give evidence pursuant to Article 73(10) of the Basic Law could only be exercised by LegCo and not by a select committee thereof, and the Select Committee's order for the two witnesses to appear at hearings to give evidence and produce documents concerning matters relating to the disposal of the Hunghom Peninsula PSPS flats were *ultra vires* as these matters went beyond the matters specified in the Resolution passed by LegCo.

1.35 The application was heard by the Court of First Instance before the Honourable Mr Justice Andrew CHEUNG on 14 July 2009. The Court granted leave in respect of part of the items of the relief sought. The application for interim relief of staying the Select Committee's hearing on 15 July 2009 was not dealt with as the Select Committee had decided to withhold the summonses ordering the two witnesses' attendance at the said hearing. The substantive hearing of the application for judicial review took place before Mr Justice CHEUNG from 17 to 20 August 2009. On the first day of the substantive hearing, as a preliminary issue, the Court granted leave for the President of LegCo to be joined as a co-respondent in the proceedings on the ground that the summonses served on the two witnesses were issued under the hand of

the Clerk to LegCo by direction of the President. On 24 September 2009, judgment was handed down dismissing the application. In summary, the reasons for dismissing the application are as follows:

- (a) The Court rejected the two witnesses' interpretation of Article 73(10) of the Basic Law. It held that the power to summon under Article 73(10) of the Basic Law can be exercised by LegCo, whether sitting as a full body, or functioning through a select committee in accordance with its Rules of Procedure. The exercise of that power must also be in accordance with the provisions of LCPPO, which forms part of the laws in force in Hong Kong.
  
- (b) On the issue of whether the inquiry of the Select Committee into the role and participation of Mr LEUNG Chin-man in the disposal of flats in the Hunghom Peninsula development was *ultra vires* its terms of reference, the Court held that the Legislature should have control over the conduct of its own affairs; alleged irregularities in the conduct of parliamentary business are primarily a matter for the Legislature, rather than the courts, subject to any overriding provisions in the written constitution. Accordingly, an application for judicial review on the ground that the orders of the Select Committee requiring them to attend before it are *ultra vires* and of no effect should only be entertained by the court if, and only if, it is concerned with a clear-cut case of *ultra vires*, or of an abuse or misuse of the power to order attendance of witnesses. The Court did not find that the two witnesses had made out a clear-cut case of *ultra vires*.

- (c) On the issue of whether the terms of reference, if construed as directed to an inquiry into anything improper for which there was a later reward given to Mr LEUNG Chin-man by the New World group of companies in the form of his post-service employment with NWCL, would go outside the powers and functions of LegCo provided in Article 73 of the Basic Law, the Court held that it is within the terms of reference of the Select Committee to look into the possible reasons for NWCL to hire Mr LEUNG after his retirement from the Government, and whether such reasons had anything to do with his pre-retirement service in the Government and with any potential or actual conflict of interest. The Court further considered that the ultimate purpose of the inquiry is for the Select Committee to come up with recommendations on the policies and arrangements governing post-service work of senior civil servants generally, and the specific case of Mr LEUNG Chin-man is used as a sort of object lesson from which experience is to be learnt in order to make the recommendations. If it so happens that in the course of the inquiry, Mr LEUNG's case is found to have involved some previous improper conduct for which a reward was given later to Mr LEUNG by way of the post-service employment, that does not alter the essential nature of the inquiry or the ultimate purpose for holding it. It remains an inquiry to be held for the ultimate purpose of making relevant general recommendations to the Government. On this basis, the Court did not accept that such an inquiry would be *ultra vires* Article 73 of the Basic Law.

1.36 With the Court's dismissal of the application, the Select Committee decided that the hearing originally scheduled for 15 July 2009

should be resumed, and ordered the two witnesses to attend before the Select Committee at its hearings on 3 and 17 November 2009. On 22 October 2009, the two witnesses served a Notice of Appeal on members of the Select Committee and the President of LegCo to give notice of their appeal to the Court of Appeal against the judgment of the Court of First Instance. They filed with the Court of Appeal the said Notice of Appeal together with a Notice of setting down an appeal on 27 October 2009. The grounds of appeal are similar to or stem from the original grounds of the application for judicial review.

1.37 Although the two witnesses lodged their appeal, they provided written statements and relevant documents on matters relating to the disposal of the Hunghom Peninsula PSPS flats to the Select Committee and attended its hearings on 3 and 17 November 2009 to give evidence on the subject. The taking of evidence from the two witnesses was completed on 17 November 2009.

1.38 As at the date this Report was finalized, the two witnesses have not applied to the Court of Appeal to fix a date for the hearing of the appeal.

1.39 The Select Committee has originally planned to complete the taking of evidence from all witnesses in June/July 2009. This schedule was disrupted as the hearing scheduled for the two witnesses on 15 July 2009 was resumed only in November 2009 after the conclusion of the court proceedings taken out by the two witnesses before the Court of First Instance.