

Chapter 2 Control regime governing the post-service work of directorate civil servants

2.1 The taking up of post-service work by civil servants has been subject to Government control since the 1940s, and the control has evolved over the years. In May 2004, to address LegCo Members' concern about whether the prevailing control regime could effectively ensure that retired civil servants would not take up employment which would constitute a conflict of interest with their previous service in the Government, the Government undertook to review the control regime and arrangements governing the post-service work of civil servants. In October of the same year, the public expressed concern about possible conflict of interest in the work undertaken by a retired directorate civil servant (who had been responsible for the formulation of housing policy during government service) in a company belonging to a real estate group of companies. As the directorate civil servant had participated in promotional activities relating to real estate projects organized by the real estate group of companies in spite of the fact that the scope of approved post-service work of the officer in the company did not cover real estate business, the public was concerned that the work undertaken by the officer was outside the scope of the approved work and considered that the prevailing control regime had failed to meet the aspirations of the community. LegCo Members urged the Government to expedite its review of the regime. Subsequently, the Government promulgated in December 2005 a set of revised arrangements governing the post-service work of directorate civil servants, which came into effect on 1 January 2006. The relevant policy and arrangements are set out in Civil Service Bureau ("CSB") Circular No. 10/2005 (**Appendix 4**).

2.2 This Chapter outlines the policy objective of the control regime currently in force governing the post-service work of directorate civil

servants² ("the Control Regime"), periods of restriction, criteria used to assess applications for post-service work, work restrictions, procedures for processing the applications, role of ACPE, appeal mechanism, register for inspection by the public, monitoring of approved cases, and the sanctions applicable in the event of breach of the requirements under the Control Regime. It also sets out the measures taken by the Government to enhance civil servants' understanding of the policy objective of the Control Regime and related arrangements.

Policy objective

2.3 The policy objective of the Control Regime is to ensure that civil servants on final leave or who have left the service will not take up any work outside the Government which may constitute a real or potential conflict of interest with their previous government service or cause negative public perception embarrassing the Government and undermining the image of the civil service, without at the same time unduly restricting their right to pursue employment or other work after ceasing government service³.

Periods of restriction

2.4 Directorate civil servants who wish to take up post-service work during their final leave period and/or within a specified sanitization period and/or control period are required to seek prior permission from SCS.

² Post-service work of directorate civil servants referred to in this Report means the taking up of employment outside the Government and does not include re-employment with the Government.

³ The Select Committee's view on the right to work of former directorate civil servants is given in Chapter 9 of this Report.

2.5 The final leave period refers to the period when a directorate officer ceases active service and proceeds on final leave on full pay before he leaves the Government formally. Directorate civil servants are normally not allowed to take up full-time paid work or work of a commercial nature during their final leave period. The approving authority will only consider approving such applications if there are very exceptional reasons and if no conflict of interest and dual identity issues are involved. The approving authority will consider an application to take up part-time or notionally remunerated work with a specified non-commercial organization from a directorate civil servant on final leave on its own merits. In doing so, the approving authority will have regard to whether or not an application might give rise to concern over conflict of interest and the problem of dual identity. Such organizations include:

- (a) charitable, academic or other non-profit making organizations not primarily engaged in commercial operations;
- (b) non-commercial regional or international organizations; and
- (c) the Central Authorities of the People's Republic of China.

2.6 The sanitization period starts from the date when a directorate civil servant proceeds on final leave. The minimum sanitization period is six months for a directorate civil servant at Directorate Pay Scale Point 1 ("D1") to D3, and 12 months for those at D4 or above⁴. No minimum sanitization period is prescribed for directorate civil servants taking up post-service work on grounds other than retirement (e.g. on completion of agreement or resignation). For these civil servants, the

⁴ Reference made in this Report to D1 to D8 ranks of the Directorate Pay Scale includes also the equivalent ranks in the civil service.

approving authority will consider the need for, and length of, sanitization period on a case-by-case basis.

2.7 The control period starts from the date of a directorate civil servant's formal departure from the Government upon exhaustion of his final leave. For directorate civil servants leaving the Government on retirement ground, the control period is two years for those at D1 to D7, and three years for those at D8. For directorate civil servants with six or more years of continuous government service leaving the Government on grounds other than retirement, the control period is the same as that for those leaving the Government on retirement ground; for those at D1 to D7 with less than six years of continuous government service, the control period is one year, and for those at D8, one and a half years.

Assessment criteria

2.8 The criteria for assessing applications are set out in CSB Circular No. 10/2005⁵ issued on 1 December 2005. The key factors to be taken into account in vetting and approving an application to take up post-service work are whether there is any real or potential conflict of interest between the applicant's former government duties and the proposed work, and whether the applicant's taking up of the proposed work is likely to give rise to negative public perception. The specific considerations include:

- (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 own business/prospective employer;

⁵ Under the old arrangements governing post-service work applications, four principles were to be considered by the approving authority. The revised arrangements promulgated in December 2005 list out six specific criteria to be taken into account.

- (b) whether the applicant/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 any contractual or legal dealings to which the 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.

2.9 When vetting an application based on the criteria above, the relevant Head of Department/Head of Grade/Permanent Secretary and SCS as the approving authority would normally focus on the duties in which the applicant was involved during the last three years of his active service in the Government. Where the applicant is a directorate officer at D4 or above or if the work he handled is of particular sensitivity, duties prior to the three-year period may also be taken into account. When assessing applications made by these applicants, the assessing officials responsible for completing Part III Assessment A and B of the application

form may take into account either the last three years or six years of their active government service.

Work restrictions

2.10 The taking up of post-service work by a directorate civil servant is subject to the standard restrictions that the concerned person should not in his post-service work:

- (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.

2.11 Apart from the standard work restrictions, the approving authority may, where necessary, impose additional work restrictions in approving an application for post-service work.

Processing procedures

2.12 A directorate civil servant who wishes to take up post-service work is required to submit an application form, as shown in **Appendix 5**, at least one month before the commencement of the work. If an applicant was a Head of Department or a Permanent Secretary immediately before leaving the civil service, he should send his application form to CSB. Other directorate civil servants should send their applications to the relevant Permanent Secretary or Head of Department who will provide assessments on the applications and forward them to the applicants' Head of Grade. The Permanent Secretary or Head of Department or Head of Grade are required to assess an application from the conflict of interest and public perception perspectives before submitting it to CSB for further processing.

2.13 The applicant is required to provide in the application form his particulars such as the date of cessation of active service, date of leaving the Government, terms of appointment and service history covering the last three years (for a D1 to D3 officer) or six years (for a D4 or above officer) before his cessation of active service. In addition, he is required to provide the details of the prospective outside work (including the job title, major duties and responsibilities, etc.) and the prospective employer's details (including the employer's name, major clientele, parent company and subsidiaries, etc.). He is also required to answer questions on whether he has any contractual or legal dealings, or official or unofficial contacts/dealings, with the prospective employer, etc. during his last three years of active service in the Government. If the applicant

will be involved in the business of the prospective employer's parent company or subsidiaries, he should also answer the questions in the application form with reference to any contractual or legal dealings, or official or unofficial contacts/dealings, with these parent or subsidiary companies. Except where the applicant has clearly indicated that the proposed work will involve the business of the prospective employer's parent or subsidiary companies, the officials assessing the application will not cover these companies in their assessment.

2.14 Upon receipt of the application from a former Permanent Secretary or Head of Department, CSB will forward the application to the incumbent Permanent Secretary and/or Head of Department and Head of Grade, who are required to provide assessment of the application. The assessment covers questions which reflect the assessment criteria on whether the applicant had any contractual, legal or official dealings with the prospective employer; whether he was involved in the formulation of any policy or decisions, the effect of which benefited or could benefit the prospective employer; whether he or his prospective employer might gain an unfair advantage over the prospective employer's competitors because of his access to sensitive information while in government service; whether he was involved in any assignments/projects or regulatory/enforcement duties which are connected in any way with his duties and responsibilities under the prospective work with the prospective employer; and whether the proposed appointment would give rise to any negative public perception or cause embarrassment to the Government.

2.15 Depending on the nature of the work under application, CSB will also invite other concerned bureaux or departments to give their views on an application.

2.16 After receiving the assessments and views on an application from within the Government, CSB will seek the views of ACPE, an

independent advisory committee, on the application before submitting the application to SCS for approval.

Advisory Committee on Post-service Employment of Civil Servants

2.17 ACPE⁶ was set up in October 1987 to render independent advice to the Government on the principles and criteria to be adopted in formulating policy and arrangements to govern post-service employment of civil servants. Since 1 January 2006⁷, ACPE considers and advises on all applications from directorate civil servants. The terms of reference of ACPE are as follows:

- (a) to advise the Government on the principles and the criteria to be adopted in formulating policy and arrangements to control post-service employment;
- (b) to consider and advise on all applications to take up post-service employment from directorate officers; and
- (c) to consider and advise on other applications which may be referred by SCS.

2.18 The chairman and members of ACPE are appointed by the Chief Executive ("CE"), and ACPE submits annual reports on its work to CE.

⁶ ACPE was formerly known as "Advisory Committee on Post-retirement Employment" and was renamed "Advisory Committee on Post-service Employment of Civil Servants" in January 2006.

⁷ Prior to 1 January 2006, applications for post-service employment considered by ACPE were restricted to those from directorate civil servants retired on pensionable terms and civil servants appointed on agreement terms at D3 or above.

Procedures for considering applications by the Advisory Committee on Post-service Employment of Civil Servants

2.19 After the collation of views from within the Government on an application from a directorate civil servant, CSB provides a draft paper to the chairman of ACPE. The draft paper contains information concerning the policy for vetting such applications, as well as the views and assessment of the relevant Head of Department, Head of Grade and/or Permanent Secretary on the application. The chairman may either convene a meeting to discuss the application or advise that it be dealt with by circulation of papers. In the latter case, CSB will include in the paper a paragraph on "Views of the Chairman" and circulate the paper to members of ACPE for their advice.

Declaration of interest by members of the Advisory Committee on Post-service Employment of Civil Servants

2.20 To ensure the impartiality of advice given by ACPE, CSB has issued a note on Declaration of Interest for the chairman and members of ACPE. When a member, including the chairman, has a potential conflict of interest in a matter placed before the Committee, he is required to make full disclosure of his interest. It is the responsibility of each member to judge and decide if the situation warrants a declaration and to seek a ruling from the chairman in case of doubt.

2.21 The guidelines issued by CSB state specifically that:

- (a) if a member (including the chairman) has any direct personal or pecuniary interest or if he is acquainted with the individuals in any matter or applications under consideration by ACPE, he must as soon as practicable after he has become aware of it, disclose it to the chairman (or ACPE) prior to the discussion of the item;

- (b) the chairman (or ACPE) shall decide whether the member disclosing an interest may express views or vote on the matter, may remain in the meeting/discussion as an observer or should withdraw from the meeting/discussion;
- (c) if the chairman declares an interest in a matter under consideration at meetings, ACPE shall elect a member to take over the meeting in respect of the discussion of the matter in question;
- (d) when a known direct pecuniary interest exists in respect of a member, the secretary may withhold circulation of relevant papers to him. Where a member is in receipt of a paper for discussion which he knows presents a direct conflict of interest, he should immediately inform the secretary and return the paper; and
- (e) all cases of declaration of interests shall be recorded in the minutes of the meeting or in other appropriate format where no meeting is held.

2.22 After ACPE tenders its advice, CSB will submit the application together with the assessments and views from the parties concerned to SCS. SCS will then decide whether to approve or reject the application, or to approve the application but impose additional work restrictions.

Appeal mechanism

2.23 If an applicant is aggrieved by SCS's decision, he can ask for a review of the decision. SCS will then review the decision having regard to the justifications and any supplementary information provided by the applicant. An applicant may also make representations to CE under section 20 of the Public Service (Administration) Order, or lodge a petition or a complaint to CE in accordance with Article 48 of the Basic Law.

Public register

2.24 When a decision has been made by SCS, CSB will inform the applicant of the decision in writing. If the application is approved, the applicant will be asked to notify CSB of the commencement date of the work and notify the prospective employer of the terms of approval, including any sanitization or restrictions imposed. If the application is rejected, the applicant will be informed of the reasons for rejection.

2.25 Where approval is given to a directorate civil servant at D4 or above and he takes up the work, he is required to complete a case record on the work and return it to CSB. The case record will be entered on a register, as shown in **Appendix 6**, which is available for public inspection upon request. The case record includes basic information covering the commencement date of the approved work; restrictions/sanitization imposed on the approved work; identity of the employer; and the applicant's position in the organization, etc. The case record will be removed upon the expiry of the control period for post-service work of the officer concerned, or upon his notification to CSB that he has ceased the work, whichever occurs first. Approved work not taken up by the applicant will not be entered on the register.

Monitoring of approved cases

2.26 To facilitate the monitoring of approved cases, the directorate civil servant concerned is required to, before commencing any approved post-service work, confirm the commencement date of the work with CSB, and notify the prospective employer of the terms of approval including any sanitization or restrictions imposed. Thereafter, the directorate civil servant should notify CSB of any material change to the approved work (including cessation) until the expiry of the control period for his post-service work, and update CSB on the status of his involvement in the approved work annually within the control period or upon request by CSB.

Sanctions

2.27 If a directorate civil servant contravenes a requirement under the Control Regime, SCS may consider invoking either one or a combination of the following forms of sanction against him:

- (a) suspension of pension under the pension legislation for civil servants on pensionable terms;
- (b) civil action for injunction or damages;
- (c) withdrawal of approval or suspension of the approval for a specified period;
- (d) where it concerns professional negligence/misconduct or may involve a breach of the code of conduct of a relevant profession, reporting the matter to the relevant professional body;

- (e) issuing a public statement of criticism;
- (f) placing a warning or reprimand in a register for public inspection; and/or
- (g) issuing a reprimand or warning letter which may be copied to the employer.

Enhancement of understanding by civil servants

2.28 To ensure that directorate civil servants are aware of the requirement to seek permission before taking up post-service work, the requirement is set out in the Memorandum on Conditions of Service that accompanies the letter of appointment and forms part of the contract of employment between the Government and a civil servant. The requirement is set out along the following lines:

"A directorate civil servant is required to seek the Government's prior permission for taking up outside work during the final leave period before his formal departure from the Government and/or within a specified control period counting from the said departure upon expiry of the final leave. "Outside work" refers to appointments, employment or any other work undertaken outside the Government and includes entering into business on one's own account, becoming a partner in a partnership, becoming a director of a company, becoming an employee, etc. The officer is subject to the arrangements governing the taking up of outside work by directorate civil servants as set out in

*Civil Service Regulation 397 and Civil Service Bureau
Circular No. 10/2005."*

2.29 CSB Circular No. 10/2005 (in Appendix 4) sets out the policy and arrangements governing the taking up of post-service work by directorate civil servants. These arrangements are also reflected in Civil Service Regulations 397 (for directorate civil servants) and 398 (for non-directorate civil servants) which are appended to the Circular. All civil servants are required to observe the Civil Service Regulations and the relevant CSB circulars, which are conditions of service for civil servants. The Government has stressed that the contractual obligations to observe the Civil Service Regulations on post-service work of civil servants and the relevant CSB circulars survive after a civil servant has ceased service.

2.30 Apart from the above, CSB has published a "Civil Servants' Guide to Good Practices". Notwithstanding that the Guide has no binding effect on serving or former civil servants and breaches of or non-compliance with the requirements therein would not result in punishment, it contains the core values and good behaviour civil servants at all levels are expected to uphold. Chapter 8 of the Guide (version published in March 2005) which relates to "Outside Work and Post-Service Employment", states that:

"To maintain the standing and integrity of the civil service, it is important that civil servants, even after they have left the service, should continue to conduct themselves in an appropriate manner as the activities which they take up would continue to be seen by the public as a reflection of the culture and character of the civil service. Retired civil servants should act with good sense and propriety in pursuing post-service employment or business and avoid engaging themselves

in activities which could be construed as being in conflict with their previous duties in the Government, or might bring the civil service into disrepute, or expose them or the Government to public controversy."