

## **Chapter 8 The relationship between Mr LEUNG Chin-man and some other witnesses and the evidence given by Mr LEUNG**

8.1 This Chapter gives an account of the relationship among Mr LEUNG Chin-man, Mr CHUNG Kwok-cheong, Dr Henry CHENG and Mr Stewart LEUNG, and the Select Committee's observations on a series of events concerning them. It also sets out the evidence given by Mr LEUNG Chin-man 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 Mr LEUNG's evidence having regard also to the evidence obtained from other witnesses.

### **Relationship among Mr LEUNG Chin-man, Mr CHUNG Kwok-cheong, Dr Henry CHENG and Mr Stewart LEUNG**

#### Mr CHUNG Kwok-cheong

8.2 According to the witness statements provided by Dr Henry CHENG and Mr LEUNG Chin-man to the Select Committee, they were introduced to each other by Mr CHUNG Kwok-cheong, who also arranged a lunch meeting between Dr CHENG and Mr LEUNG on 8 May 2008. When attending the hearing on 18 April 2009, Dr CHENG said that in respect of FSDL's dispute with HA and the Government on the disposal of the Hunghom Peninsula PSPS flats, he had asked Mr CHUNG to act for the developer to institute legal proceedings against the Government and HA. At the hearing on 9 May 2009, Mr LEUNG said that when he put down "*Introduced by a family friend*" in answer to the question under item 25 (i.e. "How did the offer of outside work arise?") of the application form submitted to CSB on his employment with

NWCL, the family friend he referred to was Mr CHUNG. Mr LEUNG also said that he had nominated Mr CHUNG as a member of HA's Commercial Properties Committee ("CPC") in 2003. Given that Mr CHUNG was the "*family friend*" stated in Mr LEUNG's application form; that Messrs Cheung, Chan & Chung, the solicitors' firm to which he belonged, were appointed as the legal representatives of the developer in the Hunghom Peninsula dispute with HA and the Government in 2003; and that he was nominated as a member of CPC by Mr LEUNG in the same year, the Select Committee hoped to find out through the conduct of hearings whether Mr CHUNG was involved in Mr LEUNG's employment with NWCL, and whether he was in any way connected with Mr LEUNG's participation in the Hunghom Peninsula case. The Select Committee therefore summoned Mr CHUNG to attend the hearing on 4 June 2009.

#### Relationship between Mr LEUNG Chin-man and Mr CHUNG Kwok-cheong

8.3 Mr LEUNG Chin-man and Mr CHUNG Kwok-cheong told the Select Committee that they had known each other since 1972/1973 when Mr CHUNG was a matriculation student. According to Mr CHUNG, they met about two to three times a year ever since Mr CHUNG went to university, except when Mr LEUNG was working overseas in the mid 1990s. Mr CHUNG regarded Mr LEUNG as his mentor. Mr LEUNG said that he regarded Mr CHUNG as his student and treasured their relationship, as Mr CHUNG was the only one among his friends with whom he could just talk about their common interests without touching on their respective work or business.

8.4 Mr LEUNG Chin-man told the Select Committee that he only had three work-related dealings with Mr CHUNG Kwok-cheong: (a) in 2003 when he nominated Mr CHUNG as a member of CPC; (b) at the end of 2005 when he requested Mr CHUNG to refer a solicitor to act for

him in his application for judicial review against the Director of Audit's report in relation to the Grand Promenade development; and (c) when he was preparing his witness statement to the Select Committee, he sought Mr CHUNG's consent to disclose his name in the witness statement. According to Mr CHUNG, he had provided legal services to Mr LEUNG in redeeming the mortgages of three properties during the period from 1999 to 2006.

8.5 In relation to Mr LEUNG's taking up of the employment with NWCL, Mr CHUNG gave evidence that upon invitation by Dr Henry CHENG, he had arranged the lunch meeting between Dr CHENG and Mr LEUNG on 8 May 2008. On the other hand, Mr LEUNG told the Select Committee that as Mr CHUNG had known him for years and Mr CHUNG also knew his wife, he regarded Mr CHUNG as a family friend. Mr LEUNG said that Mr CHUNG was the family friend he was referring to when he stated in item 25 (i.e. "How did the offer of outside work arise?") of the application form submitted to CSB for taking up the employment with NWCL that such work was "*Introduced by a family friend*".

#### Relationship among Mr CHUNG Kwok-cheong, Dr Henry CHENG and Mr Stewart LEUNG

8.6 Mr CHUNG Kwok-cheong stated that he was introduced to Dr Henry CHENG by an accountant friend during a social function in 1996/1997. Since then, he and Dr CHENG and their mutual friends had social gatherings from time to time. Mr CHUNG became a partner of Messrs Cheung, Chan & Chung in 1982<sup>52</sup>. Messrs Cheung, Chan & Chung had provided legal services to the New World group of companies

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<sup>52</sup> Mr CHUNG Kwok-cheong resigned from the partnership in 2000 and became a Senior Consultant of Messrs Cheung, Chan & Chung until his retirement in March 2005. Mr CHUNG was re-appointed as the Senior Consultant of the firm in May 2005. According to the firm, Mr CHUNG had participated exclusively in the conveyancing practice of the firm as well as clientele development and related legal work.

in respect of property transactions and related litigation, and were instructed in March/April 2003 as the solicitors of FSDL in the latter's dispute with HA and the Government on the disposal of the Hunghom Peninsula PSPS flats. According to Mr CHUNG, he had been a non-executive director of Citybus Limited<sup>53</sup> since March 2004 and was still in that position when he attended the hearing on 4 June 2009, and he was an independent non-executive director of Lifestyle International Holdings Limited<sup>54</sup> from 2004 to 2005. Mr CHUNG informed the Select Committee that he was appointed by Dr Henry CHENG or Dr CHENG Yu-tung to these positions. Dr Henry CHENG told the Select Committee that Mr CHUNG was appointed to the above positions because Mr CHUNG was his friend and he trusted him.

8.7 As regards the relationship between Mr CHUNG Kwok-cheong and Mr Stewart LEUNG, Mr CHUNG said that he came to know Mr LEUNG in March 2003. Their contacts were related to work concerning the New World group of companies and they did not have any personal relationship. In respect of the Hunghom Peninsula litigation initiated by FSDL against HA and the Government in July 2003, Mr Stewart LEUNG told the Select Committee that his contact was mainly with the solicitors of Messrs Cheung, Chan & Chung who handled the case.

#### Relationship among Mr LEUNG Chin-man, Dr Henry CHENG and Mr Stewart LEUNG

8.8 Both Mr LEUNG Chin-man and Dr Henry CHENG stated that they came to know each other through Mr CHUNG Kwok-cheong at a donation ceremony cum cocktail reception held around March 2006 at the

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<sup>53</sup> Citybus Limited is jointly owned by Chow Tai Fook Enterprises Limited and NWS.

<sup>54</sup> Chow Tai Fook Enterprises Limited is a substantial shareholder of Lifestyle International Holdings Limited.

University of Hong Kong<sup>55</sup>. Since then, they had no further contact until the lunch meeting on 8 May 2008, during which Mr LEUNG's employment with NWCL was discussed.

8.9 Mr Stewart LEUNG told the Select Committee that he came to know Mr LEUNG Chin-man through official contacts after the latter took up the post of D of B. Since then, there had been no personal contact between them until after Mr LEUNG Chin-man's retirement from the Government, when both of them attended a lunch gathering in mid October 2007 with senior personnel of some real estate developers. Mr Stewart LEUNG said that the closest official contact that he had with Mr LEUNG Chin-man was in the disposal of the Hunghom Peninsula PSPS flats.

### **Events concerning Mr LEUNG Chin-man, Mr CHUNG Kwok-cheong, Dr Henry CHENG and Mr Stewart LEUNG**

#### Appointment of Messrs Cheung, Chan & Chung as the solicitors for the developer in the dispute with the Hong Kong Housing Authority and the Government on the disposal of the Hunghom Peninsula Private Sector Participation Scheme flats

8.10 At the hearing on 4 June 2009, the Select Committee enquired with Mr CHUNG Kwok-cheong the circumstances surrounding the appointment of Messrs Cheung, Chan & Chung as the solicitors of FSDL in the Hunghom Peninsula dispute with HA and the Government and Mr CHUNG's involvement. Mr CHUNG declined to answer on the grounds that the information requested involved communications between his client and himself in the capacity of solicitor and hence was protected by legal professional privilege. The Select Committee

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<sup>55</sup> Please refer to footnote 11 of paragraph 4.2.

appreciated that legal professional privilege protected the confidentiality of communications made between clients and their lawyers, and the privilege could only be waived by the clients to whom the privilege belonged. The Select Committee considered that the questions put to Mr CHUNG were important and relevant to the subject matter of the Select Committee's inquiry and hence, after the hearing, requested Mr CHUNG to provide information on how and why the information requested was covered by legal professional privilege, and other related information. Mr CHUNG subsequently advised that his clients in the Hunghom Peninsula dispute with HA and the Government had refused to waive their legal professional privilege. In order to assist the Select Committee's inquiry, Mr CHUNG had provided to the Committee supplementary information which was not restricted from disclosure under the legal professional privilege. Having considered Mr CHUNG's supplementary information, the Select Committee did not request further information from him.

8.11 The following events relating to the appointment of Messrs Cheung, Chan & Chung as the solicitors of FSDL in the Hunghom Peninsula dispute with HA and the Government and Mr CHUNG Kwok-cheong's involvement in the dispute are based on the evidence given by Mr CHUNG and Dr Henry CHENG at the hearings, supplementary information provided by Mr CHUNG, and other documentary evidence obtained by the Select Committee.

8.12 Mr CHUNG Kwok-cheong told the Select Committee that FSDL approached him around mid to late March 2003 for instructing Messrs Cheung, Chan & Chung as FSDL's solicitors in the Hunghom Peninsula dispute with HA and the Government. Mr CHUNG said that as a Senior Consultant of Messrs Cheung, Chan & Chung, he had referred the case to the firm and was entitled to share the profit costs generated from the case.

8.13 According to Dr Henry CHENG, Mr CHUNG was instructed to act for FSDL in the Hunghom Peninsula litigation because Mr CHUNG had handled the Aldrich Bay PSPS development in 1999<sup>56</sup>. Mr CHUNG told the Select Committee that as Messrs Cheung, Chan & Chung were not on HA's list of HOS panel solicitors at that time, he had to work as a consultant of another solicitors' firm, Hobson & Ma Solicitors & Notaries which was on HA's list of HOS panel solicitors, in order to be eligible for handling the Aldrich Bay PSPS project. Mr CHUNG said that he was responsible for providing professional networking services in the Aldrich Bay PSPS project, including liaising with banks and other law firms and making progress reports to the client, while the substantive work was done by Hobson & Ma Solicitors & Notaries.

8.14 According to the witness statement provided by Mr CHUNG Kwok-cheong to the Select Committee, in respect of FSDL's dispute with HA and the Government over the Hunghom Peninsula development, he was not the solicitor responsible for handling the case and had not taken part in the substantive work relating to it. At the hearing on 4 June 2009, Mr CHUNG reiterated that he had not taken part in any substantive work in connection with the Hunghom Peninsula dispute. In response to the Select Committee's questions on his role in the Hunghom Peninsula dispute, Mr CHUNG initially said that around mid to end of March 2003, he had arranged the first meeting for the teams from Messrs Cheung, Chan & Chung and FSDL which were responsible for the Hunghom Peninsula dispute. He had attended the first meeting as well as a subsequent meeting held for the dispute. When asked repeatedly by the Select Committee about the meaning of substantive work, Mr CHUNG said that introducing a client to the solicitors' firm or undertaking liaison work for a particular case did not fall within the meaning of substantive work. In his view, substantive work for a particular case would include

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<sup>56</sup> The developer of Aldrich Bay PSPS project is Golden Forum Limited which is a subsidiary of Chow Tai Fook Enterprises Limited. Chow Tai Fook Enterprises Limited is the majority shareholder of NWDCL.

studying the case thoroughly, preparing letters and court documents, and providing legal advice and recommendations relating to the case. Upon further enquiry by the Select Committee, Mr CHUNG admitted that he had received briefings on the Hunghom Peninsula dispute from the solicitor(s) in his firm handling the case, but he had not given any views on it. When further questioned by the Select Committee, Mr CHUNG said that the briefings concerned were merely informal and infrequent, but he admitted that important issues including the premium figures were covered.

8.15 As shown in the correspondence between Messrs Cheung, Chan & Chung and DoJ, and between the firm and LD in late 2003 and early 2004, the solicitors' firm was involved in the mediation between the developer and the Government (please refer to paragraphs 7.56 and 7.66). In the letters issued by Messrs Cheung, Chan & Chung, the contact person/solicitor was not Mr CHUNG Kwok-cheong but his name and title as Senior Consultant appeared in the letterhead used by the firm<sup>57</sup>.

Nomination of Mr CHUNG Kwok-cheong as a member of the Commercial Properties Committee of the Hong Kong Housing Authority

8.16 Mr CHUNG Kwok-cheong served as a member of CPC for a two-year term from April 2003 to March 2005. The terms of reference of CPC for the relevant period are in **Appendix 13**. They included advising HA on policies concerning its commercial, industrial and other non-domestic facilities, and exercising HA's powers and functions in accordance with the relevant prevailing policies including the determination of letting and promotional strategy, rents and other tenancy terms in the management and maintenance of HA's non-domestic properties. According to Mr CHUNG, Mr LEUNG Chin-man raised the

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<sup>57</sup> The name and post title of Mr CHUNG Kwok-cheong appeared at the footer of the firm's letterhead which showed the partners, senior consultants, associates and consultants of the firm.



proposed nomination with him around February 2003 and he confirmed his acceptance in about early or mid March 2003 after talking to a partner of Messrs Cheung, Chan & Chung. Mr CHUNG said that at the request of Mr LEUNG, he provided a reference letter dated 18 March 2003 issued by Messrs Cheung, Chan & Chung for consideration by HA.

8.17 At the hearing on 9 May 2009, the Select Committee asked Mr LEUNG Chin-man about his nomination of Mr CHUNG Kwok-cheong as a member of CPC. Mr LEUNG said that it was through his recommendation that Mr CHUNG was appointed as a CPC member. He "*thought of him* [Mr CHUNG] *at that time*" because he found Mr CHUNG suitable for the position, and he considered that Mr CHUNG should try to take up this public office. Mr LEUNG also said that in nominating Mr CHUNG, he had not checked whether Mr CHUNG had any public service experience, nor had he asked whether Mr CHUNG had handled any HOS contractual transactions for HA. However, when further questioned by the Select Committee at the hearing on 12 May 2009, Mr LEUNG said that he had nominated Mr CHUNG Kwok-cheong because he considered Mr CHUNG a suitable person given his legal professional background, analytical power and social experience, although he knew that Mr CHUNG had not served on any government advisory bodies before.

8.18 At the hearing on 4 June 2009, Mr CHUNG Kwok-cheong said that he should be competent to serve as a CPC member in view of his experience gained from his legal practice in dealing with commercial properties, management of shopping centres and related rental matters. He notified HA before his tenure of office expired in March 2005 that he did not wish to be re-appointed as a member of CPC. According to Mr CHUNG, this was because he did not find interest in the work of CPC. He had not taken up any position in government advisory bodies since then.

8.19 The Select Committee enquired about the process of Mr LEUNG Chin-man's nomination of Mr CHUNG as a member of CPC. According to Mr LEUNG at the hearing on 9 May 2009, he had told his colleagues in charge of the matter that he found Mr CHUNG competent for the position, and had left it to his colleagues to follow up. When further questioned by the Select Committee, Mr LEUNG pointed out that there was no specified procedure for the appointment of members of the public to public offices by the Government. However, at the hearing on 12 May 2009, Mr LEUNG Chin-man said that in the light of the Select Committee's enquiry at the hearing on 9 May, he had sought information from the Government on the procedure for the nomination of Mr CHUNG. He noted from the information that no guideline or circular had been issued by the relevant departments or HA on the nomination for committees. He also pointed out that according to a practice adopted for many years, D of H and the deputy directors of HD would hold a meeting to discuss any persons they knew who might be suitable for nomination as members of HA or its committees, and a paper would be submitted to the Chairman of HA afterwards. He pointed out that there were no minutes of such meetings, nor was there any record on the parties/persons who made the nominations. The nomination procedure did not require the nominator to know about the business, work or activities, etc. in which the nominee had previously engaged. Mr LEUNG told the Select Committee that the process of nominating Mr CHUNG Kwok-cheong also followed the above procedure. He had discussed the proposed nomination with deputy directors of HD at that time, but he could no longer recall the content of the discussion. He further pointed out that a nominee was required to register his/her interests within one month from the date of appointment. Any changes to the information provided by members concerned should be reported within 14 days.

8.20 The Select Committee subsequently sought clarification from the Administration on the procedure for the appointment of members to HA's committees. According to the information provided by the

Administration, the appointment exercise of members to HA's committees commenced with nominations from various sources including the Home Affairs Bureau and senior directorates of HD. Discussions were held among senior directorates on the nominations made as and when necessary. A submission on the proposed membership would be made to the Chairman of HA/Bureau Secretary responsible for housing matters for agreement. This was followed by a presumption paper issued to HA members for their approval of the proposed membership. The Administration has advised that, while the above nomination and appointment procedures were applicable to Mr CHUNG's case, there was no file record showing who proposed the nomination of Mr CHUNG. According to the Administration, Mr CHUNG's name first appeared in a submission dated 25 March 2003 to the then SHPL on membership of HA's committees for 2003-2004. The Administration could not confirm whether Mr CHUNG was on other lists of proposed membership for HA's committees prepared earlier than the above submission. With the then SHPL's agreement, a presumption paper was issued on 1 April 2003 to HA members for their approval of the committees' membership. The tenure of office of the members commenced on the same day.

8.21 As regards the discussion of Mr CHUNG Kwok-cheong's nomination within HD, Mr Marco WU and Mr Vincent TONG said that they had not taken part in the relevant discussions. At the request of the Select Committee, the Administration has sought confirmation on the matter from the other four senior directorates of HD at that time. Three of them confirmed that they either had no discussion with Mr LEUNG on the matter or had no re-collection of any such discussions. One former senior directorate advised that he had a very vague impression that Mr LEUNG had proposed a few names for membership of committees at a meeting, but he could not recall exactly the names mentioned or the date of the meeting.

Registration/declaration of interests made by Mr CHUNG Kwok-cheong during his tenure as a member of the Commercial Properties Committee

8.22 The Administration informed the Select Committee that during Mr CHUNG Kwok-cheong's tenure as a member of CPC from 2003 to 2005, he had made two annual registrations of interests, in April 2003 upon his taking up of the CPC membership and in April 2004. Mr CHUNG stated in both registrations that he was a Senior Consultant of Messrs Cheung, Chan & Chung and received remuneration from the position or had pecuniary interest with the firm. In the registration made in April 2004, he stated that he was an independent non-executive director of Lifestyle International Holdings Limited and an independent director of Citybus Limited, and received remuneration from both positions. Mr CHUNG had not mentioned Messrs Cheung, Chan & Chung or himself acting as the legal representatives of FSDL in the Hunghom Peninsula litigation in both registrations.

8.23 The Select Committee asked Mr CHUNG the reason why he did not declare interest in relation to the appointment of Messrs Cheung, Chan & Chung as the solicitors of FSDL in the Hunghom Peninsula dispute when he took up the position as a member of CPC in April 2003. Mr CHUNG replied that he had considered whether it was necessary to make a declaration. Given that the terms of reference of CPC were to deal with matters relating to the non-domestic properties of HA and that the non-domestic portion of the Hunghom Peninsula development which was wholly owned by FSDL was not under the purview of CPC, he took the view that the Hunghom Peninsula dispute was not related to the work of CPC and did not consider it necessary to make a declaration on the matter. Moreover, Mr CHUNG said that after perusing the prescribed form on registration of interests, he could not find any appropriate item under which he could make the declaration relating to his position or capacity as a legal representative of a party in the litigation against HA. Mr CHUNG also told the Select Committee that he had discussed the

matter on declaration of interests with the Chairman of CPC in June/July 2003, but the discussion did not change his view that it was not necessary to make any declaration of interest on the matter.

8.24 Mr CHUNG Kwok-cheong wrote to the Chairman of CPC on 28 October 2003, stating that Messrs Cheung, Chan & Chung were acting for FSDL in the Hunghom Peninsula litigation and, in order to avoid any possible conflict of interest or allegation of disclosure of confidential information on his part (whether to FSDL or to HA), he would refrain from attending CPC meetings or discussion relating to the litigation, or receiving relevant papers. The letter was copied to D of H. Mr CHUNG explained to the Select Committee that he had made the declaration in October 2003 after discussion with the solicitor in Messrs Cheung, Chan & Chung responsible for the Hunghom Peninsula dispute, and he had taken the solicitor's advice that it would be more prudent to make the declaration to HA. The Select Committee was concerned about a possible conflict in Mr CHUNG's roles as a member of CPC and a Senior Consultant of Messrs Cheung, Chan & Chung which had been appointed to act for the developer in the Hunghom Peninsula dispute with HA and the Government, and asked whether the declaration was triggered by his knowledge about the imminent commencement of the mediation between the Government and the developer on the disposal of the Hunghom Peninsula PSPS flats<sup>58</sup>. Mr CHUNG replied in the negative.

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<sup>58</sup> According to the paper provided to the Select Committee by the Administration, HPLB sought ExCo's endorsement at the ExCo meeting on 28 October 2003 to re-open negotiation by way of mediation with the developer of the Hunghom Peninsula PSPS project.

Declaration of interests issue involved in the relationship between Mr LEUNG Chin-man and Mr CHUNG Kwok-cheong

8.25 The Select Committee asked Mr LEUNG Chin-man the reason why he had not made any declaration of interests regarding his personal relationship with Mr CHUNG Kwok-cheong or his relationship with Messrs Cheung, Chan & Chung by virtue of his personal relationship with Mr CHUNG. Mr LEUNG replied that he first noticed that Messrs Cheung, Chan & Chung were the solicitors of FSDL in the Hunghom Peninsula litigation in July/August 2003 when he saw the legal documents or letters of the firm issued to HA and the Government by the firm in July 2003 regarding FSDL's dispute with HA and the Government over the Hunghom Peninsula development. While he had seen the correspondence relating to the litigation bearing the letterhead of Messrs Cheung, Chan & Chung, he did not know at that time that Mr CHUNG was involved in the case. Mr LEUNG also said that the litigation was a legal matter and he had left it to be handled by the legal advisers in HD and DoJ. Mr LEUNG said that he only learned from the evidence given by Dr Henry CHENG at the hearing on 18 April 2009 that Mr CHUNG had acted for FSDL in the Hunghom Peninsula litigation. After the hearing, he had checked with HD and found that a solicitor surnamed CHENG, not Mr CHUNG Kwok-cheong, was mentioned in the legal documents filed by the developer in the litigation against the Government at that time.

8.26 On the question of declaration of interests in relation to his relationship with Mr CHUNG Kwok-cheong, Mr LEUNG Chin-man told the Select Committee that during his service in the Government, he had been involved in litigation in his official capacity and he had lawyer friends who were working for solicitors' firms acting for parties against the Government. He had never made any declaration of his personal relationship with those friends on such occasions. Mr LEUNG admitted at the hearing that if he had learnt that Mr CHUNG was acting for the

developer in the Hunghom Peninsula litigation, he would have to report his relationship with Mr CHUNG to Mr Michael SUEN. However, since he had not asked Mr CHUNG about the matter, the question of whether he should make a declaration did not arise.

8.27 As to whether Mr LEUNG Chin-man should have declared his relationship with Mr CHUNG Kwok-cheong as being close friends to dispel suspicion about potential conflict of interest, Mr LEUNG remarked that it was not necessary to dispel suspicion about conflict of interest as he had handled the disposal of the Hunghom Peninsula development in an open and fair manner. The Select Committee has enquired with the Administration whether the non-declaration by Mr LEUNG of his personal relationship with Mr CHUNG when he nominated Mr CHUNG as a CPC member would constitute any breach of relevant guidelines on declaration of conflict of interest. The Administration advised that according to the then prevailing guidelines when Mr LEUNG nominated Mr CHUNG in 2003, there was no specific declaration requirement for the nomination of personal friends as members of HA and its committees. However, whether personal relationship was declarable would depend on whether such relationship had a potential or real conflict of interest with one's official duties. In the case of Mr LEUNG and Mr CHUNG, a conflict of interest would arise if Mr LEUNG's loyalty to the Government conflicted with his loyalty to Mr CHUNG who was his personal friend. The Administration added that one could only come to a firm view as to whether Mr LEUNG had breached Government or official guidelines after consideration of all the facts in detail.

8.28 The Select Committee has made reference to CSB Circular No. 19/92 on "Conflict of Interest"<sup>59</sup> which was applicable when Mr LEUNG Chin-man was handling the Hunghom Peninsula case. The circular specified that:

*"All officers are strongly reminded that they should at all times make a conscious effort to avoid or declare, as appropriate, any conflict [of interest] that may arise or has arisen [between his official duties and his private interests]."*

and that an officer should

*"avoid putting himself in a position where he might arouse any suspicion of dishonesty,.....An officer should.....report to his superior officer any private interest that might influence, or appear to influence, his judgement in the performance of his duties."*

8.29 In response to the Select Committee as to whether there would be any role conflict in Mr CHUNG Kwok-cheong being both a member of CPC and the Senior Consultant of Messrs Cheung, Chan & Chung who were the solicitors of the developer in the Hunghom Peninsula litigation against HA and the Government, Mr LEUNG Chin-man said that Mr CHUNG could not have knowledge about the strategies and matters relating to the lease modification of the Hunghom Peninsula development

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<sup>59</sup> CSB Circular No. 19/92 on "Conflict of Interest" was issued on 4 December 1992 by the then SCS for circulation to all officers in the civil service. It set out the common areas in which a conflict of interest might arise between an officer's official duties and his private interests, and gave guidance on how such conflicts could be avoided. This circular was superseded by CSB Circular No. 2/2004 on "Conflict of Interest" issued by CSB on 30 January 2004. The latter contained requirements similar to those in the former, such as an officer in the Government being required to make a conscious effort at all times to avoid or declare, as appropriate, any conflict of interest that might arise or had arisen, and to report to his superior officer any private interest that might be seen to compromise the officer's personal judgment in the performance of his duties.



and the Hunghom Peninsula litigation from his work in CPC, as these matters were not within the CPC's terms of reference. According to the Administration, during Mr CHUNG's tenure as a CPC member from 2003 to 2005, CPC had not convened any meeting concerning the disposal of the Hunghom Peninsula PSPS development or issued any paper on the subject.

8.30 Mr CHUNG Kwok-cheong told the Select Committee that during his tenure as a CPC member from 2003 to 2005, he did not have any contact or discussion with Mr LEUNG Chin-man on matters relating to the Hunghom Peninsula case. On the other hand, Dr Henry CHENG said that he did not have any discussion with Mr CHUNG on matters relating to the Hunghom Peninsula case during the same period. Mr Stewart LEUNG also said that he had no knowledge about Mr CHUNG being a member of CPC when Messrs Cheung, Chan & Chung were appointed to act for FSDL in the Hunghom Peninsula litigation in 2003. In respect of the Hunghom Peninsula litigation, his contact was mainly with the solicitor(s) of Messrs Cheung, Chan & Chung responsible for handling the case.

#### Employment of Mr LEUNG Chin-man by New World China Land Limited

##### *Factors considered by Dr Henry CHENG in the employment*

8.31 The Select Committee asked Dr Henry CHENG the reason for employing Mr LEUNG Chin-man. Dr CHENG explained that since 2007, he had considered creating a new department in NWCL to be responsible for central procurement in the Mainland and to co-ordinate the administration of regional offices of the company in the Mainland. He wanted to appoint a person to head the new department which was very important to the management and cost saving of NWCL. Dr CHENG said that he had tried to fill the post by internal recruitment

but could not find any suitable candidate. He had also approached a friend for filling the post but was not successful. Dr CHENG told the Select Committee that he had not looked for the suitable candidate through headhunters or open recruitment. He considered the post a key position and did not wish to employ someone whom he did not know very well to fill it. In his view, the right person for the job must fulfil the three criteria: being loyal and trustworthy, possessing rich administrative experience, and having sufficient qualifications to command respect. He considered that Mr LEUNG had rich administrative experience as he had worked for the Government for almost 30 years, some posts which he had held in the policy bureaux and departments were related to real estate work, and Mr LEUNG had gone through many investigations and his name was cleared after each of these investigations. Dr CHENG had found Mr LEUNG suitable for the post and hence made the offer. Dr CHENG told the Select Committee that he had not thought about how the public would perceive his employment of Mr LEUNG. He stressed that the appointment did not involve any transfer of benefits between them when Mr LEUNG was serving in the Government. On the other hand, as Mr LEUNG's duties in NWCL would be carried out in the Mainland, he did not consider there to be any conflict of interest between the appointment and Mr LEUNG's previous government duties.

8.32 Dr Henry CHENG informed the Select Committee that apart from Mr LEUNG Chin-man, NWDCL and its subsidiaries had also employed other former directorate civil servants. Dr CHENG said that the attributes of the former civil servants which he had considered included: discipline, administrative experience, leadership, experience in real estate development, and their network. According to the information provided to the Select Committee by Dr CHENG after the hearing, the New World group of companies had employed a total of seven former directorate civil servants in the past 10 years.

8.33 Mr LEUNG Chin-man told the Select Committee that he had initiated the termination of his employment with NWCL because of the strong public reaction over his taking up of the employment with NWCL and the announcement of the Government that it had not given thorough consideration to his application. According to Dr Henry CHENG, he had accepted Mr LEUNG's proposal for termination as the appointment had aroused much public concern, although he did not consider that there was anything wrong with the appointment. Dr CHENG also told the Select Committee that from the termination of Mr LEUNG Chin-man's contract in August 2008 to 18 April 2009 when Dr CHENG attended the hearing of the Select Committee, Mr LEUNG's post in NWCL had been left vacant and the procurement department had not yet been set up.

*The lunch meeting between Dr Henry CHENG and Mr LEUNG Chin-man on 8 May 2008*

8.34 Noting that Dr Henry CHENG had asked Mr Stewart LEUNG around November 2007 to find out whether Mr LEUNG Chin-man was interested in joining New World, the Select Committee asked Dr CHENG why he asked Mr CHUNG Kwok-cheong to arrange the lunch meeting on 8 May 2008. Dr CHENG said that he was told by Mr Stewart LEUNG that Mr LEUNG Chin-man would be out of town for some time and would consider the matter when he returned. However, Mr Stewart LEUNG had not informed him of any development after that. Dr CHENG considered that it might be better for him to meet Mr LEUNG Chin-man personally and hence requested Mr CHUNG to arrange the lunch meeting. Dr CHENG added that even if Mr LEUNG Chin-man turned down the job offer, he would not feel embarrassed as the lunch was arranged by a friend.

8.35 Mr CHUNG Kwok-cheong told the Select Committee that Dr Henry CHENG rang him up sometime in May 2008 saying that he would like to invite Mr LEUNG Chin-man to lunch. Mr CHUNG said

that he had not asked Dr CHENG about the purpose of the lunch because he regarded it as a social gathering of friends and did not consider it necessary to enquire about the details. Mr CHUNG further said that he had lunch with Dr CHENG and Mr LEUNG on 8 May 2008. However, he left early because of another commitment. Up to the time he left, Mr LEUNG and Dr CHENG had not raised the matter of Mr LEUNG joining New World.

**Evidence given by Mr LEUNG Chin-man regarding his role and participation in the Hunghom Peninsula case**

8.36 This section highlights the evidence given by Mr LEUNG Chin-man on his role and participation in the Hunghom Peninsula case and related evidence given by some witnesses.

8.37 Mr LEUNG Chin-man gave evidence that after he took up the post of PSH/D of H on 1 July 2002, he held ad hoc meetings as head of HB with his staff to discuss the direction of the housing policy including the policy on the cessation of the production and sale of HOS and PSPS flats. For the disposal of PSPS flats in the Hunghom Peninsula development, Mr LEUNG said that while he had attended the meeting of the Steering Committee on Land Supply for Housing chaired by SHPL on 13 August 2002 and agreed that Option A (i.e. to convince the developer to initiate lease modification for the PSPS site to allow the flats to be sold in the open market subject to payment of lease modification premium by the developer) would be the least problematic, adoption of Option A was the decision of the meeting after discussion. Mr LEUNG told the Select Committee that he had vetted the papers drafted by his staff in HD on the re-positioned housing policy and the disposal options for PSPS flats before clearance by Mr Michael SUEN, the then SHPL, for submission to

the PC<sup>60</sup> and ExCo. Mr LEUNG had attended the PC meeting on 24 October 2002 and the ExCo meetings on 5 and 12 November 2002<sup>61</sup> at which the item on "A Comprehensive Market-Oriented Housing Policy", which included the cessation of the production and sale of HOS and PSPS flats, was discussed. He, however, had not attended the PC meetings on 12 and 19 September 2002 and the part of the ExCo meeting on 12 November 2002 at which the disposal options for PSPS flats were discussed.

8.38 Mr Michael SUEN told the Select Committee that the policy on the cessation of the production and sale of HOS/PSPS flats and the adoption of Option A for disposal of the PSPS flats in the Hunghom Peninsula and the Kingsford Terrace developments were the collective decisions of the Government. HB of HPLB was responsible for the formulation of the cessation policy and the disposal options discussed at the Steering Committee on 13 August 2002. PLB of HPLB, Financial Services and the Treasury Bureau, and LD were involved in the preparation of draft papers for both PC and ExCo on the disposal of PSPS flats in Hunghom Peninsula through Option A.

8.39 The Select Committee asked Mr LEUNG Chin-man about communications with the developer of the Hunghom Peninsula development between July 2002 and late 2002. Mr LEUNG Chin-man said that he vaguely remembered that Mr Stewart LEUNG had come to see him in his office grumbling about the delay in granting the Consent to Sale for the Hunghom Peninsula development. Mr LEUNG Chin-man told the Select Committee that although he had stated in the letter to

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<sup>60</sup> The PC has been established following the introduction of the Accountability System of Principal Officials in July 2002 to provide a forum for considering policy proposals before their submission to ExCo. It is co-chaired by the Chief Secretary for Administration and the Financial Secretary and comprises all politically appointed Principal Officials.

<sup>61</sup> Mr LEUNG was accompanied by Mr Marco WU in attending the ExCo meetings on 5 and 12 November 2002 for the item.

NWDCL on 3 October 2002 that he was in "*close contact with Mr Stewart LEUNG on the matter*", the reply was only meant to be a delaying tactic to pacify Dr CHENG Yu-tung, and he in fact had not been in close contact with Mr Stewart LEUNG from July to October 2002.

8.40 Mr Stewart LEUNG informed the Select Committee that he and his colleagues had a meeting with Mr LEUNG Chin-man and HD staff on 10 August 2002 in Mr LEUNG Chin-man's office to discuss the disposal options for the Hunghom Peninsula development. He told the Select Committee that this was the only occasion that he had met Mr LEUNG Chin-man between July and October 2002 on the matter. After the meeting, he had a few other meetings with HD officials to follow up on the matter.

8.41 Mr LEUNG Chin-man told the Select Committee that he was not involved in the negotiation between the Government and the developer on the lease modification premium during the period from January to March 2003. Lease modification and the related discussions on premium were matters for LD and should be steered by PLB instead of HB. He stressed that he had not given any instructions to LD or Mr John CORRIGALL at the negotiation stage.

8.42 Mr Stewart LEUNG told the Select Committee that at the negotiation stage, the developer was mainly in contact with LD and he did not have any formal or informal discussions with Mr LEUNG Chin-man on the disposal of the Hunghom Peninsula development during that period of time.

8.43 Mr John CORRIGALL advised that while he had not received any instructions from Mr LEUNG Chin-man during the negotiation stage on the premium figure or the bulk purchase discount to be offered to the developer, he had made regular reports on the progress of the negotiation with the developer to HB and PLB.

8.44 Mr LEUNG Chin-man told the Select Committee that, towards the end of March 2003 when the negotiation between LD and the developer came to a standstill, and following the memoranda issued by Mr Thomas TSO of PLB to LD dated 26 February and 26 March 2003 in which Mr John CORRIGALL was advised to report to and seek instructions from Mr LEUNG Chin-man on the progress and way forward of the premium negotiation, he started to take on a significant role in the disposal of the Hunghom Peninsula PSPS flats. Mr LEUNG said that PLB's memoranda were "*to pass the ball*" to HD but he did not dispute it with PLB. Mr LEUNG pointed out that at that time he had actually accepted that the matter relating to the Hunghom Peninsula flats would be handled by him.

8.45 According to Mr LEUNG Chin-man, he started liaising closely with Mr John CORRIGALL and related parties on the disposal of the Hunghom Peninsula PSPS flats upon suspension of the negotiation with the developer. Mr CORRIGALL reported to Mr LEUNG Chin-man through an email on 12 April 2003 that he had approached Mr Stewart LEUNG to seek his view on the proposal of appointing three independent surveyors to evaluate the premium levels the average of which would be binding on both parties, but Mr Stewart LEUNG had rejected the proposal. In his response to Mr CORRIGALL by email on the same day, Mr LEUNG Chin-man stated that Mr Stewart LEUNG had also come to see him on or before 12 April 2003 to discuss the proposal of appointing three independent surveyors to assess the premium for the lease modification. After repeated questions of the Select Committee, Mr LEUNG Chin-man said that he could not recall the exact time and manner of the meeting with Mr Stewart LEUNG, nor could he recall what they had discussed.

8.46 Furthermore, Mr LEUNG Chin-man said that he and his colleagues in HD started to re-visit the various options for disposal of the

PSPS flats in April 2003. Between April and June 2003, HD had prepared six papers providing analysis of the various options for consideration at SDMs. Mr LEUNG denied that he had any preference or preconception on any of the options, and stressed that he had endeavoured to provide an analysis on the pros and cons of each option in the papers.

8.47 Mr LEUNG advised that in making the decision in June/July 2003 to re-open negotiation with the developer, he had participated in formulating the strategy and was aware of the Government's position. He pointed out that the decision to resume negotiation with the developer by way of mediation was made by Mr Michael SUEN after discussion at the SDMs. According to the evidence given by Mr SUEN, HB of the then HPLB recommended the re-opening of the negotiation with the developer through mediation to dispose of the Hunghom Peninsula PSPS flats. As to why Mr LEUNG did not consider it necessary at the SDM on 30 June 2003 to seek ExCo's approval for re-opening negotiation with the developer, Mr LEUNG explained that his view was based on a briefing note prepared for the SDM. Since re-opening the negotiation would not depart from ExCo's decision made on 12 November 2002 for the Government to negotiate with the developers of the Hunghom Peninsula and the Kingsford Terrace PSPS projects for modifying the land leases subject to payment of land premium by the developers, he considered that there was no need to seek ExCo's endorsement on re-opening the negotiation.

8.48 Mr LEUNG Chin-man said at the hearing that in the mediation between the Government and the developer in December 2003, he had acted on behalf of Mr Michael SUEN in giving instructions to the Mediation Team, except on the premium figure which was to be determined by the Team. Mr LEUNG also told the Select Committee that before the mediation started, he had contacted Mr Stewart LEUNG over the phone on the mediation arrangements, but had pointed out to



Mr Stewart LEUNG that he would not be involved in the actual negotiation and told Mr Stewart LEUNG not to contact or call him during the mediation period. Mr LEUNG Chin-man further stated that the Mediation Team had sought his views and advice on certain issues in the preparatory work for the mediation and during the mediation process. They included the scope of authority of the Mediation Team, the person recommended as the mediator, the recommendation of appointing a valuer to act as an advisor to the mediator, whether the developer should be informed of the figure of \$1,150 million set by ExCo, whether the mediation should continue on the basis of the \$864 million premium offered by the developer, and whether they should proceed with the mediation to reach settlement of the premium only. Mr LEUNG said that while he had not participated in the mediation, he had received progress reports on the mediation from Mr John CORRIGALL. He further confirmed that he did not have any contact with Mr Stewart LEUNG or any other member of the developer during the mediation period.

8.49 According to the evidence given by Mr Michael SUEN, Mr LEUNG had sought his agreement on the scope of authority of the Mediation Team. While Mr LEUNG had not participated in the actual mediation process, he had considered Mr John CORRIGALL's progress reports and given his comments including a recommendation to Mr SUEN to conclude the mediation at the lease modification premium of \$864 million.

8.50 In response to the Select Committee's question whether there were grounds for the public to suspect that Mr LEUNG Chin-man's employment with NWCL was a deferred benefit related to the Hunghom Peninsula case, Mr Michael SUEN said that in his personal opinion, there were grounds for the public to have such suspicion.

## **Evidence given by Mr LEUNG Chin-man regarding his application for post-service work with New World China Land Limited**

### Non-provision of information on the Hunghom Peninsula case in the application form

8.51 In the application form for employment with NWCL he submitted to CSB, Mr LEUNG Chin-man did not provide information on his role and participation in the Hunghom Peninsula case. However, in his public statement made on 16 August 2008 on the termination of his employment contract with NWCL, Mr LEUNG said that he did consider his role in the Hunghom Peninsula case and the fact that the New World group of companies was the purchaser of the Hunghom Peninsula flats, and was most astonished to learn that the approving authority had omitted to consider the important factor of the Hunghom Peninsula case when processing his application (Appendix 10). At the hearings on 9 and 19 May 2009, Mr LEUNG told the Select Committee that since Mr SUEN was his supervisor when he served as PSH/D of H, and CSB Circular No. 10/2005 was circulated to Directors of Bureaux and the relevant assessing officers, he believed that Mr Michael SUEN would be consulted and would make an assessment on his application. He believed that in the process of assessment, Mr SUEN would certainly have taken into account his participation in the Hunghom Peninsula case. However, the Select Committee notes from the report submitted by Miss Denise YUE to CE on 15 August 2008 on Mr LEUNG's case that CE and Principal Officials appointed under the Political Appointment System (other than SCS) would not participate in the vetting and approval of post-service work applications from directorate civil servants. Mr SUEN also told the Select Committee at the hearing on 14 July 2009 that as a Principal Official, he would not be consulted by the Government on post-service work applications from directorate civil servants. Therefore, he was not aware of the application made by Mr LEUNG, and did not take part in the assessment process.

8.52 Considering Mr LEUNG Chin-man's view that the Hunghom Peninsula case was an important factor that should have been considered by the approving authority in processing his application, the Select Committee asked why Mr LEUNG had not provided information on his role and participation in the case in the application and whether he had deliberately played down his role and participation in the case. In response, Mr LEUNG said that his responsibility as an applicant was to provide accurate information as required in the application form. The approving authority would have notified him if further information was required. He pointed out that both Miss Denise YUE and Mr Andrew WONG had told the Select Committee that he had not omitted any information required in the application form. As he would not be involved in the business of the parent company of NWCL, i.e. NWDCL, or NWCL's subsidiaries, there was no need for him to provide information on his previous dealings with NWDCL or NWCL's subsidiaries. As for the information on his service history during the last three years of government service as required in item 8 of the application form, Mr LEUNG pointed out that the general practice was for the applicants to set out the major duties undertaken during the period instead of giving a detailed account of the projects they had been involved in. Mr LEUNG added that he had mentioned in the application form that NWDCL was the parent company of NWCL. In his view, that information was sufficient for the approving authority to take the Hunghom Peninsula case into account. It was far-fetched and unreasonable to conclude that he had deliberately played down his role and participation in the Hunghom Peninsula case.

Information provided by Mr LEUNG Chin-man regarding how the offer of work arose

8.53 The Select Committee asked Mr LEUNG Chin-man the reason why he had filled in "*Introduced by a family friend*", instead of

Mr CHUNG Kwok-cheong's name, in item 25 of "How did the offer of outside work arise?" of the application form. The Select Committee was also interested to know why Mr LEUNG regarded Mr CHUNG, instead of Mr Stewart LEUNG or Dr Henry CHENG, as the person who had introduced the job to him.

8.54 Mr LEUNG Chin-man explained to the Select Committee that Mr Stewart LEUNG had approached him in October 2007 to ascertain his interest in joining NWCL. Although he agreed to give serious consideration to the matter, he had not responded to Mr Stewart LEUNG afterwards. He only regarded Mr Stewart LEUNG as a person who relayed Dr Henry CHENG's message to him. According to Mr LEUNG Chin-man, it was through Mr CHUNG Kwok-cheong that he came to know Dr CHENG during a cocktail reception at the University of Hong Kong in 2006<sup>62</sup>, and it was Mr CHUNG who arranged the lunch meeting with Dr CHENG on 8 May 2008. Therefore, Mr LEUNG considered that the job had arisen from Mr CHUNG. Mr LEUNG further explained that he had not put down Mr CHUNG's name in the application form because he considered it necessary to protect Mr CHUNG's privacy. He added that he had also put down "*Introduced by a friend*" for item 25 in the application form in respect of some of his previous applications for post-service work<sup>63</sup>.

8.55 The Select Committee has repeatedly asked Mr LEUNG Chin-man whether it was his intention to avoid any association of his involvement in the Hunghom Peninsula case by not mentioning Mr Stewart LEUNG or Dr Henry CHENG in the application form. Mr LEUNG Chin-man said that he found such a view far-fetched and unreasonable. There was no reason for him to avoid stating the names

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<sup>62</sup> Please refer to footnote 11 of paragraph 4.2.

<sup>63</sup> In his application for post-service work with TCL, Mr LEUNG had stated "*Introduction by a personal friend*" in item 25 of the application form. In his application for post-service work with PuraPharm, Mr LEUNG had stated "*Invited by the company chairman, a long-time personal friend*" in that item.

of Dr CHENG and Mr Stewart LEUNG. He said that he had put down the website address of NWCL in the application form, and it was widely known that Dr CHENG and Mr Stewart LEUNG were holding senior management positions in the New World group of companies.

8.56 The Select Committee asked Mr LEUNG Chin-man whether he contacted Mr CHUNG Kwok-cheong about his employment with NWCL before 1 August 2008. Mr LEUNG told the Select Committee at the hearing on 9 May 2009 that he had not informed Mr CHUNG of his taking up of the employment with NWCL and believed that Mr CHUNG learned about the employment through NWCL's public announcement made on 1 August 2008. However, when further questioned by the Select Committee at the hearing on 20 July 2009, Mr LEUNG said that he might have called Mr CHUNG to inform him of the matter before mid May 2008.

8.57 According to Mr CHUNG Kwok-cheong's evidence, due to another commitment, he left early at the lunch with Dr Henry CHENG and Mr LEUNG Chin-man on 8 May 2008. Up to the time he left, Dr CHENG and Mr LEUNG had not raised the matter of Mr LEUNG joining New World. About one to two weeks later, Mr CHUNG received a call from Mr LEUNG who indicated that he was joining New World to work in the Mainland and had to seek approval from the Government. Mr LEUNG asked whether he could put down in the application form Mr CHUNG's name as the introducer. Mr CHUNG said that at that time, he thought that Mr LEUNG regarded him as the introducer to Dr Henry CHENG; he considered it appropriate for Mr LEUNG to fill in his name and so gave his consent. On further questions by the Select Committee, Mr CHUNG said that he had not seen the application form or sought clarification with Mr LEUNG on the meaning of "introducer". With hindsight, Mr CHUNG agreed that before giving his consent, he should have clarified the matter with Mr LEUNG and asked Mr LEUNG to write clearly in the application

form that he was the person who had introduced Dr CHENG to Mr LEUNG. Furthermore, he should have asked Mr LEUNG to state clearly that it was Dr CHENG who offered the job to him.

8.58 According to Mr Stewart LEUNG's evidence, Dr Henry CHENG asked him around November 2007 whether he knew Mr LEUNG Chin-man as a person. Dr CHENG did not disclose the purpose of his enquiry at that time. A few weeks later, Dr CHENG asked him to find out whether Mr LEUNG Chin-man was interested in working in New World. He then rang up Mr LEUNG to arrange a meeting with him. During the meeting, he asked about Mr LEUNG's latest situation and whether Mr LEUNG was interested in joining New World. Mr LEUNG said that he would consider the matter and would discuss it when he came back from his trip. Mr Stewart LEUNG reported to Dr CHENG afterwards. Thereafter, he had no further contact with Mr LEUNG Chin-man, nor did he take part in the discussions on the employment of Mr LEUNG with NWCL. He also had no discussion with Mr LEUNG about the employment.

Factors which Mr LEUNG Chin-man had considered before accepting the offer

8.59 The Select Committee repeatedly asked Mr LEUNG Chin-man whether he had considered that his taking up post-service employment with NWCL would create a public perception issue which would embarrass the Government. Mr LEUNG reiterated a number of times that he had considered the public perception issue regarding his taking up of the employment before submitting the application for employment with NWCL to CSB. He also said that when consulted on post-service work applications from directorate civil servants during his government service, he had endeavoured to give his best assessment and offered his views on whether negative public perception might arise. The Select Committee also asked Mr LEUNG Chin-man several times whether civil

servants making post-service work applications had the responsibility of considering public perception. In response, Mr LEUNG said repeatedly that it was not the responsibility of applicants to consider public perception. He considered that his responsibility as an applicant was to provide information required by the approving authority, and civil servants who had left or retired from the civil service did not have the ability or resources to assess public perception. In his view, it was the responsibility of the approving authority, not the applicant, to assess and consider public perception. Having regard to the fact that he was just an ordinary member of the public after he had retired from the Government, he had put the question of assessment of public perception to one side, and asked himself the following three questions:

- (a) whether he had acted fairly and without bias in handling cases involving the New World group of companies during his service with the Government, including the disposal of the Hunghom Peninsula PSPS flats;
- (b) whether his employment with NWCL would constitute a real or potential conflict of interest with his previous duties in the Government; and
- (c) whether he had complied with the relevant procedures when making the application for approval for taking up post-service work, as he would only take up the job if the Government approved his application.

Mr LEUNG told the Select Committee that his answers to questions (a) and (c) were in the affirmative and to (b) in the negative. Mr LEUNG therefore considered that he had not done anything wrong. In the circumstances, he did not see the need for him to avoid public suspicion in relation to his taking up of the employment with NWCL.

8.60 Mr LEUNG Chin-man said that he was aware of the policy objective of the Control Regime as enshrined in CSB Circular No. 10/2005 (please refer to Appendix 4). Mr LEUNG considered that it was the responsibility of the Government to achieve the policy objective concerned in the assessment of post-service work applications. He also reckoned that it was the responsibility of the approving authority, in considering his application for post-service employment with NWCL, to strike a balance between public perception and an individual's right to work, and public perception should not be the overriding consideration.

Mr LEUNG Chin-man's employment contract with New World China Land Limited

8.61 On the employment contract which Mr LEUNG Chin-man signed with NWCL, the Select Committee has compared its provisions with the information provided to CSB by Mr LEUNG and found that there were inconsistencies in three aspects. Firstly, Mr LEUNG's post title had been changed from "Executive Director", as stated in his application submitted to CSB, to "Executive Director and Deputy Managing Director" in the contract signed by Mr LEUNG on 1 August 2008. Secondly, Mr LEUNG had filled in four major duties of his employment with NWCL as required in the application form submitted to CSB (please refer to paragraph 4.18), and such duties were also set out in the draft employment contract. However, the employment contract which Mr LEUNG signed with NWCL on 1 August 2008 did not specify the duties to be undertaken by him in NWCL. Thirdly, the employment contract contained a transfer clause under which NWCL could transfer or second Mr LEUNG to work for NWCL's subsidiaries or associated companies, or subsidiaries or associated companies of NWCL's holding company. However, according to the application submitted by Mr LEUNG to CSB, Mr LEUNG's prospective employer was NWCL with its business largely conducted in the Mainland, and he would be based in a major city in the Mainland. Mr LEUNG also stated in his



application form (i.e. item 22 on involvement in the business of employer's parent company and employer's subsidiary companies) that he would not be involved in the business of NWDCL or any subsidiaries of NWCL. Furthermore, according to the first and fourth items of additional work restrictions imposed by CSB on Mr LEUNG's employment with NWCL, he should confine his work to NWCL and should not involve himself in any business of NWCL that was connected with Hong Kong.

8.62 Regarding the change in post title, Mr LEUNG Chin-man stated in an email dated 20 July 2008 to Ms Lynda NGAN of NWCL that:

*"I hope Henry [Dr Henry CHENG] is amenable to the post title 'Executive Director and Deputy Managing Director', which will facilitate my dealing with the regional managers and, for that matter, other colleagues in the company [NWCL]."*

On the other hand, in CSB's approval letter issued on 9 July 2008 to Mr LEUNG, he was reminded of the need to notify CSB of any material changes to his approved appointment in a timely manner and to apply for a separate or fresh approval as necessary. However, Mr LEUNG had not informed CSB about the change in his post title. It was only when CSB noticed the change from NWCL's press announcement on 1 August 2008 and wrote to Mr LEUNG on 4 August 2008 to clarify the matter, and at the same time reminded him again on the need to notify CSB of any material changes to his approved appointment in a timely manner during the control period, that Mr LEUNG apologized in his reply to CSB on 11 August 2008 for not notifying it of the change earlier.

8.63 On the change in his post title, Mr LEUNG Chin-man explained to the Select Committee that it was the result of discussion among Dr Henry CHENG, NWCL and himself. The title of Deputy Managing

Director was a functional title and did not alter his duties in NWCL as submitted in his application to CSB. On the other hand, Dr Henry CHENG told the Select Committee that when he discussed the job offer with Mr LEUNG in May 2008, he had not thought of the most suitable post title for the appointment. The post title of "Executive Director" was to facilitate Mr LEUNG in making his application to the Government. After further consideration on the matter, he decided to use the post title of "Executive Director and Deputy Managing Director" for Mr LEUNG.

8.64 On the non-specification of his duties in the employment contract with NWCL, Mr LEUNG Chin-man explained to the Select Committee that he had accepted the employment contract which did not stipulate the scope of his main duties because he considered it reasonable for NWCL to maintain certain flexibility in deploying his service. As regards whether the non-specification of his duties and the inclusion of a transfer clause in the employment contract would constitute a breach to the work restrictions imposed by CSB, Mr LEUNG said that as the senior management of NWCL including Dr Henry CHENG was aware of the work restrictions, he believed that NWCL would not require him to violate the restrictions. Since it was his responsibility to observe the work restrictions, in the event that NWCL did request him to violate the restrictions, it would be a matter for him to deal with NWCL and to report the situation to CSB. If CSB did not approve, he would consider terminating the employment contract with NWCL. Mr LEUNG advised that the inclusion of a transfer clause in the employment contract did not mean that he would violate the work restrictions or his work would go beyond the scope of duties as stated in his application. With no actual changes to the appointment and no violation of the work restrictions, Mr LEUNG did not consider it necessary to report to CSB. He further explained that he had not informed CSB of the relevant provisions in the employment contract because there was no requirement for an applicant to submit his employment contract to CSB.

8.65 Dr Henry CHENG told the Select Committee that it was his decision not to specify the scope of his main duties in Mr LEUNG Chin-man's employment contract. He said that, as the Deputy Managing Director of NWCL, Mr LEUNG would be expected to perform other duties of NWCL in addition to his main duties. The non-specification of duties in the employment contract would provide flexibility to the company. As regards the transfer clause, Dr CHENG said that it was a standard provision in the employment contracts of the parent company of NWCL, i.e. NWDCL, to provide flexibility in deploying staff to work in its subsidiary companies. It was also a standard provision in the employment contracts of the subsidiaries of NWDCL including NWCL and NWS. He confirmed that there were no previous cases of staff members of subsidiary companies being transferred to work for the parent company by virtue of the transfer clause.

8.66 On the issue of whether the signing by Mr LEUNG Chin-man of the contract which did not specify the duties and which included the transfer clause constituted a breach of the terms of approval of his application, Miss Denise YUE advised the Select Committee at a hearing held in April 2009 that it was necessary for her to consult DoJ. The Select Committee subsequently requested her to provide further information on the above issue. After consulting DoJ, Miss YUE pointed out in the information provided to the Select Committee that there was no requirement for the job duties of an applicant to be specified in the employment contract, nor was there any requirement for the application to be submitted together with the draft employment contract. There was also no requirement for the terms of the approval given by the decision authority for post-service work to be included in an applicant's employment contract with the prospective employer. Therefore, Miss YUE considered that the absence of specification of Mr LEUNG's job duties in his employment contract with NWCL did not constitute a breach of the terms of approval. As regards the transfer clause in Mr LEUNG's employment contract, Miss YUE reckoned that the mere

inclusion of such a clause would not constitute a breach of the terms of approval. If NWCL did not exercise its right of transfer or Mr LEUNG did not comply with the required transfer, there would be no breach of the terms of approval to take up employment with NWCL on the part of Mr LEUNG.

8.67 In response to the enquiry of the Select Committee, Miss Denise YUE said that she found the Select Committee's view, i.e. applicants should be required to submit a copy of the employment contract after the granting of approval of post-service work applications made by directorate civil servants, a positive recommendation. She said that if the above view was taken on board, and if the content of the contract submitted by an applicant was found to be inconsistent with the approved application, action could be taken in respect of the application.

### **Observations of the Select Committee**

8.68 The following sets out the Select Committee's observations, based on the evidence obtained, on Mr LEUNG Chin-man's involvement in the Hunghom Peninsula case, and the connection between the involvement of Mr LEUNG Chin-man, Mr CHUNG Kwok-cheong, Dr Henry CHENG and Mr Stewart LEUNG in the Hunghom Peninsula case on the one hand and Mr LEUNG Chin-man's taking up of the employment with NWCL on the other.

#### Mr LEUNG Chin-man's involvement in the Hunghom Peninsula case

8.69 The evidence obtained from documents provided by the Administration and from Mr Vincent TONG, Mr John CORRIGALL, Mr Michael SUEN and Mr LEUNG Chin-man himself reveals that Mr LEUNG had started to participate in the Hunghom Peninsula case as early as July 2002 when he took up the post of PSH/D of H, and he had

assumed an increasingly significant role. The Select Committee considers that he played a steering and co-ordinating role in the Hunghom Peninsula case. (please refer to paragraphs 7.19, 7.21 to 7.24, 7.29 to 7.34, 7.36, 7.38 to 7.47, 7.49, 7.53 to 7.55, 7.57 to 7.64, 7.67, 7.70, 7.81 and 8.36 to 8.50)

8.70 In response to the Select Committee's questions as to whether Mr LEUNG Chin-man was involved in the preparation of papers in relation to the disposal of the Hunghom Peninsula PSPS flats, Mr Vincent TONG said at the hearings on 30 May and 2 June 2009 that Mr LEUNG would normally discuss the draft papers with the subject officers and give his views and directions. The papers which had been vetted by Mr LEUNG would be submitted for discussion and consideration at SDMs. In response to the Select Committee, Mr TONG said that he agreed with the Select Committee's view that Mr LEUNG had actively participated in the disposal of the Hunghom Peninsula flats. Mr TONG also pointed out that Mr LEUNG gave instructions to HD staff on research to be carried out as well as information and legal advice to be sought in relation to the disposal exercise. In the view of the Select Committee, this evidence shows that Mr LEUNG had important influence on the direction of the papers prepared and the formulation of disposal strategies (please refer to paragraphs 7.34, 7.38, 7.39, 7.41, 7.43 and 7.46).

8.71 The evidence obtained from other witnesses has also pointed to the steering role played by Mr LEUNG Chin-man in the Hunghom Peninsula case. On 13 August 2002, Mr LEUNG, in his capacity as PSH/D of H, attended the meeting of the Steering Committee on Land Supply for Housing chaired by Mr Michael SUEN. At the meeting, he had taken part in the discussion on the disposal of the Hunghom Peninsula PSPS flats and the decision to adopt HD's proposed option of convincing the developer to initiate lease modification for the PSPS site so that the flats could be sold in the open market subject to payment of

land premium. During the negotiation and mediation between LD and the developer in early 2003 and December 2003 respectively, although Mr LEUNG had not participated personally in the premium negotiation with the developer, he was kept informed by Mr John CORRIGALL of how things were proceeding. He had access to important information including the premium figures put forward by both sides as well as ExCo's decision, and was fully informed of the progress of the negotiation and mediation. He had participated in making major decisions and given important advice and directions in the process. These included exploring afresh options for disposing of the Hunghom Peninsula development and analyzing the pros and cons of each option, and presenting these views in discussion papers from April to June 2003, after the negotiation between the Government and the developer was suspended; deciding in June/July 2003, to re-open negotiation with the developer through mediation; taking charge of the mediation process in December 2003 on behalf of Mr SUEN and giving instructions to the Mediation Team; and recommending to Mr SUEN to accept the developer's offer of the lease modification premium of \$864 million without settling the claim for damages in the Hunghom Peninsula litigation. (please refer to paragraphs 7.23, 7.24, 7.29 to 7.32, 7.34, 7.36, 7.38 to 7.49, 7.52 to 7.64, 8.43 and 8.49)

8.72 Mr Michael SUEN told the Select Committee at the hearing on 14 July 2009 that Mr LEUNG Chin-man had assisted him in handling the policy issues on the disposal of the Hunghom Peninsula PSPS flats and implementing decisions relating to the disposal exercise. Mr SUEN said that although Mr LEUNG had not personally participated in the negotiation or mediation with the developer on the lease modification premium, Mr LEUNG had an intensive participation in the case, particularly in the mediation process, and gave advice to the Mediation Team. Mr LEUNG was fully informed of the development of the case, and had access to information including the Government's strategies and positions on the disposal options and the premium figure.

8.73 The Select Committee has to point out that in response to questions about his handling of the Hunghom Peninsula case in July 2003, Mr LEUNG Chin-man said at the hearing on 12 May 2009 that:

*"It's between the end of November and December [2003] that I [LEUNG Chin-man] was instructed by my supervisor [Michael SUEN] to co-ordinate the negotiation of Hunghom Peninsula. At that time [July 2003] it was not my duty.....I had not yet taken charge of the co-ordination. But I was D of H, when someone sued us on this matter [the Hunghom Peninsula flats], of course I had to know....."*

However, after Mr Michael SUEN had pointed out Mr LEUNG's intensive participation in the Hunghom Peninsula case at the hearing on 14 July 2009, Mr LEUNG, at the hearing of 20 July 2009, stated that he had started to take over the disposal of Hunghom Peninsula after the negotiation between the Government and the developer on the lease modification premium was suspended in March 2003. After repeated questions by the Select Committee, Mr LEUNG said at last:

*"I [LEUNG Chin-man] had substantial participation [in the Hunghom Peninsula case]. When I said that I had not participated in the matter, I meant I had not participated in the negotiation on the land premium, by directly negotiating with the other side on what the premium should be; that part was led by Mr John CORRIGALL.....I played a very important role. In fact I co-ordinated the entire exercise and did a lot of work."*

Furthermore, Mr LEUNG admitted at the hearing on 22 July 2009 that he had been heavily involved in the disposal exercise including making major decisions and putting forward important views and comments, all of which had affected the way and outcome of the disposal of the Hunghom Peninsula PSPS flats. The Select Committee notes that Mr LEUNG had been playing a steering role in the handling of the case, and not, as he said when giving evidence in May 2009, that he did not take charge of the co-ordination for the Hunghom Peninsula case before November/December 2003. There was an apparent inconsistency between the evidence of Mr LEUNG Chin-man on his participation in the Hunghom Peninsula case he gave at the hearings held in May and July 2009 respectively. The Select Committee considers that Mr LEUNG has attempted to play down his role and participation in the Hunghom Peninsula case. The Select Committee has to point out that Mr LEUNG's involvement in the Hunghom Peninsula case is the focus of this inquiry. The Select Committee is disappointed that Mr LEUNG, a former senior directorate officer at D8 level, has deliberately concealed his involvement in the Hunghom Peninsula case during the hearings.

Connection between the involvement of Mr LEUNG Chin-man, Mr CHUNG Kwok-cheong, Dr Henry CHENG and Mr Stewart LEUNG in the Hunghom Peninsula case and Mr LEUNG Chin-man's taking up of the employment with New World China Land Limited

*The involvement of Dr Henry CHENG and Mr Stewart LEUNG in the Hunghom Peninsula case*

8.74 The Select Committee notes from the evidence given by Mr Stewart LEUNG that he represented the developer in the discussion with the Government on the options for disposal of the Hunghom Peninsula PSPS flats, as well as the negotiation and mediation on the lease modification with the Government. He also headed a team representing the developer in the mediation with the Government in



December 2003. Moreover, Mr Stewart LEUNG said at the hearing that he learned from Mr LEUNG Chin-man's reply to Dr CHENG Yu-tung dated 3 October 2002 that Mr LEUNG had taken over the disposal of the Hunghom Peninsula flats, and he visited Mr LEUNG Chin-man's office on 10 August 2002 to discuss with Mr LEUNG the disposal options proposed by FSDL. The Select Committee also notes from the paper provided by the Administration that Mr Stewart LEUNG had contacts with Mr LEUNG Chin-man regarding the Hunghom Peninsula case on the following occasions: a meeting with Mr LEUNG Chin-man on or before 12 April 2003 regarding the Government's proposal of appointing three independent surveyors to assess the lease modification premium, and telephone contacts with Mr LEUNG Chin-man in late October 2003 concerning the mediation arrangements. The Select Committee considers that Mr Stewart LEUNG assumed an important role in the Hunghom Peninsula case, and he was also aware of Mr LEUNG Chin-man playing a steering role and acting as an overall co-ordinator for the Government in the case. (please refer to paragraphs 7.21, 7.22, 7.25 to 7.28, 7.36, 7.37, 7.53 to 7.55, 8.9, 8.39 to 8.42, 8.45 and 8.48)

8.75 On the other hand, the Select Committee notes from Dr Henry CHENG's evidence that since July 2002, Mr Stewart LEUNG had been reporting to Dr CHENG on important matters relating to the disposal of the Hunghom Peninsula flats, including discussions between Mr Stewart LEUNG and HD officials on the disposal options for Hunghom Peninsula proposed by the developer, and negotiation with the Government on the lease modification premium. Dr CHENG said that he was aware of Mr LEUNG Chin-man being PSH/D of H at that time, and admitted that he had taken part in determining the developer's offers of the lease modification premium. In response to the enquiry of the Select Committee, Dr CHENG said that he did not know whether Mr LEUNG Chin-man had a part to play in the negotiation between the Government and the developer on the lease modification premium for Hunghom Peninsula, nor did he consider that Mr LEUNG had taken part in the

negotiation because in his view, it was LD which should be responsible for the negotiation on land premium. When reporting to him on the land premium negotiation, Mr Stewart LEUNG had never told him that Mr LEUNG Chin-man had participated in the process, or mentioned that he had discussions with Mr LEUNG Chin-man on the land premium. Nevertheless, in the view of the Select Committee, given that Mr Stewart LEUNG was fully aware of Mr LEUNG Chin-man's steering role in the Hunghom Peninsula case and reported to Dr CHENG on important matters relating to the disposal of the Hunghom Peninsula flats from time to time, and that Dr CHENG knew that Mr LEUNG Chin-man was PSH/D of H at that time, Dr CHENG should have known about the key role Mr LEUNG Chin-man played in the handling of the Hunghom Peninsula case. (please refer to paragraphs 7.27, 7.28, 7.31, 7.36, 7.37 and 7.69)

*The involvement of Mr CHUNG Kwok-cheong in the Hunghom Peninsula dispute*

8.76 The Select Committee notes from the evidence given by Dr Henry CHENG and Mr CHUNG Kwok-cheong that Dr CHENG approached Mr CHUNG and asked him to act as the legal representative of FSDL in the Hunghom Peninsula dispute with HA and the Government, and that Mr CHUNG referred the case to Messrs Cheung, Chan & Chung. Mr CHUNG has pointed out in his witness statement provided to the Select Committee that he was not involved in any substantive work of the Hunghom Peninsula dispute. However, when questioned by the Select Committee, Mr CHUNG disclosed that he had attended the first two meetings between the solicitors' firm and FSDL. Upon repeated questions by the Select Committee, Mr CHUNG said that as a Senior Consultant of Messrs Cheung, Chan & Chung, as the person who referred the case to the firm, he was entitled to a share of the profit costs. He also admitted that he had received briefings which covered important issues including the premium figure from the solicitor(s) responsible for

the case. The Select Committee considers that, on the evidence above, Mr CHUNG did participate in the substantive work on the case of the Hunghom Peninsula dispute handled by Messrs Cheung, Chan & Chung. It was not the case that he was not involved in any substantive work, as he had said. (please refer to paragraphs 7.42, 7.50, 8.12 to 8.15)

8.77 The Select Committee wanted to find out if Mr CHUNG's involvement in the Hunghom Peninsula dispute had any connection with Mr LEUNG Chin-man's participation in the Hunghom Peninsula case. As Mr CHUNG had claimed legal professional privilege at the hearings, this has prevented the Select Committee from getting a full picture of Mr CHUNG's role in the dispute. However, given that Mr CHUNG was a Senior Consultant of Messrs Cheung, Chan & Chung which had been appointed to deal with the Hunghom Peninsula case through the arrangement of Mr CHUNG, and that Mr CHUNG had participated in the substantive work of the firm in handling the Hunghom Peninsula dispute, the Select Committee considers that Mr CHUNG had some role in the case of the Hunghom Peninsula taken up by the firm. The Select Committee also notes that Mr CHUNG and Mr LEUNG got to know each other as early as 1972/1973, and since then Mr LEUNG has been a friend and a mentor to Mr CHUNG; Mr LEUNG nominated Mr CHUNG as a member of CPC in March 2003; and Mr LEUNG had played a steering role in the handling of the Hunghom Peninsula case. (please refer to paragraphs 8.3 to 8.5, 8.10 to 8.18, 8.69 to 8.72 and 8.76)

8.78 The Select Committee further considers that there was conflict of interest in the roles of Mr CHUNG Kwok-cheong as a member of CPC (a committee of HA) and as a Senior Consultant of Messrs Cheung, Chan & Chung (the solicitors of FSDL in the Hunghom Peninsula dispute with HA and the Government). The Select Committee finds it surprising that Mr CHUNG did not make a declaration about the appointment of Messrs Cheung, Chan & Chung as the solicitors of FSDL for the Hunghom Peninsula dispute when he took up the membership of CPC in

April 2003, or after his discussion with the CPC Chairman in June/July 2003, but made the declaration to HA only in late October 2003. The Select Committee notes that Mr CHUNG's declaration was made at a time when the Government was just about to re-open negotiation with the developer by way of mediation to settle the lease modification premium and the developer's claim for damages. (please refer to paragraphs 7.42, 7.50, 8.10 to 8.18, 8.22 to 8.24, 8.29 and 8.30)

*Declaration of interests issue involved in the relationship between Mr LEUNG Chin-man and Mr CHUNG Kwok-cheong*

8.79 The Select Committee notes from CSB Circular No. 19/92 on "Conflict of Interest" that serving officers should make a conscious effort to avoid or declare any conflict of interest between their official duties and their private interests. The Select Committee is of the view that Mr LEUNG, a former senior directorate officer at D8 level, should have been alert to the importance of avoiding public suspicion of any real or potential conflict of interest. Given Mr LEUNG Chin-man's relationship with Mr CHUNG Kwok-cheong, Mr LEUNG's role and participation in the Hunghom Peninsula case, Mr CHUNG's membership in CPC and Mr LEUNG's awareness of Mr CHUNG being a Senior Consultant of Messrs Cheung, Chan & Chung, the Select Committee considers that there is no ground for Mr LEUNG not to have declared to Mr Michael SUEN as soon as he became aware that Messrs Cheung, Chan & Chung were involved in the Hunghom Peninsula litigation, that he and Mr CHUNG had been friends for years. Mr LEUNG also had the responsibility to take the initiative to ask Mr CHUNG whether he was involved in the Hunghom Peninsula litigation, in order to avoid any potential conflict of interest which might have arisen from his relationship with Mr CHUNG. The Select Committee finds it unacceptable that Mr LEUNG has avoided the question on declaration of interest on the ground that he did not ask Mr CHUNG whether he had been involved in the litigation. (please refer to paragraphs 8.25 to 8.28)

8.80 Further, the Select Committee notes from the evidence given by Mr LEUNG Chin-man and the papers provided by the Government that D of H and deputy directors of HD would convene a meeting to discuss the nominations to HA or its committees. However, in the case of the nomination of Mr CHUNG Kwok-cheong as a member of CPC, there is no record of the person/party who nominated Mr CHUNG or any discussion on the nominations. On the other hand, the Select Committee also notes that the senior directorate officers of HD may nominate such persons as they think fit to be members of HA or its committees, but are not required to declare their relationship with the nominees. The Select Committee considers that the nomination and appointment procedures for membership of committees under HA are not strict enough, and this might give rise to potential or actual conflict of interest. As reflected in the case of Mr CHUNG, there is room for improvement in the nomination and appointment procedures. The Select Committee sees a need for HA to consider reviewing these procedures. (please refer to paragraphs 8.17 to 8.21)

*Employment of Mr LEUNG Chin-man by New World China Land Limited and Mr LEUNG's application to the Civil Service Bureau*

8.81 As regards the employment of Mr LEUNG Chin-man by NWCL, the Select Committee finds the process puzzling. Although the idea of setting up a central procurement department in NWCL was conceived in 2007, Dr Henry CHENG did not look for a suitable candidate to be department head through headhunters or open recruitment but waited till August 2008 for Mr LEUNG to fill the post. While Dr CHENG told the Select Committee that he and Mr LEUNG Chin-man did not have any contact with each other after they met for the first time in March 2006, the Select Committee finds it strange that Dr CHENG should have suddenly thought of Mr LEUNG and asked Mr Stewart LEUNG in or about November 2007 to find out if he was interested in

joining New World. On the other hand, although Dr CHENG said that the central procurement department was very important to the management and cost saving of NWCL, up to 18 April 2009 when he attended the hearing of the Select Committee, Dr CHENG had made no move to set up the department in NWCL or to fill the post after the contract with Mr LEUNG was terminated on 16 August 2008. The Select Committee therefore has reasons to believe that Dr CHENG wished to employ Mr LEUNG and the post was created for him. (please refer to paragraphs 4.2 to 4.4, 8.8 and 8.31 to 8.35)

8.82 On Mr LEUNG Chin-man's application to CSB, Mr LEUNG said that it was not his responsibility to consider public perception in respect of his application and in his view such a responsibility lay with the Government. He had put the assessment of public perception to one side and, after answering three questions raised by himself, considered that he had done nothing wrong and had no need to avoid public suspicion in relation to his taking up of the employment with NWCL. However, the Select Committee notes that Mr LEUNG said in his public statement made on 16 August 2008 that his participation in the Hunghom Peninsula case was a factor which should have been taken into account by the approving authority. Mr LEUNG further stated in the hearings that before submitting the application for employment with NWCL to CSB, he had considered whether he had acted fairly and impartially in the disposal of the Hunghom Peninsula PSPS flats. These show that Mr LEUNG was fully aware that the Hunghom Peninsula case would arouse the concern of the approving authority, and he knew that the case was an important factor in vetting and approving his application. The Select Committee is of the view that since the assessment of the application concerns Mr LEUNG's direct and significant pecuniary interest, involving a highly paid employment with NWCL, it was Mr LEUNG's responsibility to disclose all relevant information to the approving authority, including his participation in the Hunghom Peninsula case, so that the approving authority could properly consider

issues of conflict of interest and public perception and to avoid any embarrassment to the Government. The Select Committee notes that as pointed out in the "Civil Servants' Guide to Good Practices" issued by CSB in 2005:

*"[r]etired 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."*

The Select Committee agrees with Miss Denise YUE that the Guide is a reference on the core values and good practices that all civil servants are expected to share and uphold. The Select Committee considers it a reasonable expectation that Mr LEUNG should observe the good practices above when making post-service work applications and when taking up the employment with NWCL. For these reasons, the Select Committee finds it totally unacceptable for Mr LEUNG to have said that he did not have the responsibility to consider public perception. The Select Committee considers that Mr LEUNG had not fulfilled his responsibility to provide, in a frank and honest manner, the important information on his participation in the Hunghom Peninsula case to the approving authority. (please refer to paragraphs 2.30, 5.99, 8.51, 8.52, 8.59 and 8.60)

8.83 Mr LEUNG Chin-man has explained to the Select Committee that he believed that the approving authority would consult Mr Michael SUEN on his application since Mr SUEN was his supervisor when he served as PSH/D of H, and that Mr SUEN would certainly take into account his participation in the Hunghom Peninsula case when assessing his application. The Select Committee finds no factual basis to support

Mr LEUNG's explanation, since according to the application procedures set out in CSB Circular No. 10/2005, only the relevant Head of Department, Head of Grade and Permanent Secretary would be involved in the assessment of an application. There is no provision for Directors of Bureaux to be consulted on the applications. The Select Committee considers that there is no reason why Mr LEUNG, a former D8 officer who should be familiar with civil service procedures and who declared in his application form that he had read CSB Circular No. 10/2005, should have been ignorant in this respect. Mr LEUNG's explanation is unacceptable to the Select Committee. The Select Committee has to point out that, irrespective of whether Mr SUEN would be consulted, it was Mr LEUNG's responsibility to provide information on his participation in the Hunghom Peninsula case, and he cannot push this responsibility onto others. (please refer to paragraph 8.51 and Appendix 4)

8.84 The Select Committee has to point out that even if Mr LEUNG construed item 25 (i.e. "How did the offer of outside work arise?") of the application form as "the origin of the work", and even if the family friend he referred to in *"Introduced by a family friend"* was Mr CHUNG Kwok-cheong, the fact remains that the employment did not originate from Mr CHUNG. According to the evidence obtained at the hearings, Mr Stewart LEUNG, as instructed by Dr Henry CHENG, approached Mr LEUNG Chin-man in late 2007 to see if he was interested in joining New World. At the lunch meeting on 8 May 2008, it was Dr CHENG who invited Mr LEUNG in person to work for NWCL and he only discussed the offer of appointment with Mr LEUNG after Mr CHUNG had left. The Select Committee finds that it does not make sense for Mr LEUNG to consider his employment with NWCL as having arisen from Mr CHUNG, given that Mr CHUNG merely introduced Mr LEUNG to Dr Henry CHENG in March 2006. The Select Committee also considers that Mr LEUNG Chin-man had regarded his employment with NWCL as having arisen from Mr CHUNG because he did not want the



parties involved in processing the application to be alerted by the mention of Dr Henry CHENG and Mr Stewart LEUNG, the two persons who had been involved in the Hunghom Peninsula case, thereby drawing attention to his participation in the Hunghom Peninsula case when they assessed the application. The Select Committee takes the view that Mr LEUNG gave the evasive answer of "*Introduced by a family friend*" when making the application for employment with NWCL to CSB to hide the fact that the job offer had come directly from the top management of New World, by which the Select Committee is led to the conclusion that he was deliberately withholding the facts. (please refer to paragraphs 4.2 to 4.7, 5.11, 5.12, 5.85, 5.103, 5.104, 8.34, 8.35 and 8.53 to 8.58)

8.85 While the Select Committee notes the Administration's advice that the inclusion of the transfer clause and the non-specification of his duties in Mr LEUNG Chin-man's employment contract with NWCL might not constitute a breach of the terms of approval per se, the Select Committee is of the view that the Administration's requirements and procedure are too lax in this respect. Given that the approval granted to Mr LEUNG to take up post-service employment with NWCL was mainly based on the information provided by him in the application form, the information concerning Mr LEUNG's major duties in NWCL as well as his non-involvement in the business of NWCL's parent company and subsidiaries was important to the assessing parties. The accuracy of such information was essential for the Administration to make a realistic assessment of conflict of interest and public perception in relation to the application. Hence, the Select Committee finds it unacceptable for Mr LEUNG Chin-man not to have sought advice from CSB on such important information as the inclusion of a transfer clause and the non-specification of his main duties in his employment contract. (please refer to paragraphs 4.14, 4.15, 5.102, 8.61 and 8.64 to 8.66)

8.86 In the view of the Select Committee, the problem of Mr LEUNG Chin-man not having sought advice from CSB on the

inclusion of a transfer clause in his employment contract is particularly serious, as the clause might have bearing on his work in NWCL. Under the clause, NWCL could transfer or second Mr LEUNG to work for NWCL's subsidiaries or associated companies, or subsidiaries or associated companies of NWCL's holding company. However, it was stated in the application submitted by Mr LEUNG to CSB that he would be based in a major city in the Mainland, and that he would not be involved in the business of NWDCL or any subsidiaries of NWCL. Furthermore, according to the first and fourth items of additional work restrictions imposed by CSB on Mr LEUNG's employment with NWCL, he should confine his work to NWCL and should not involve himself in any business of NWCL that was connected with Hong Kong. Therefore, the Select Committee considers that there is an obvious conflict between the transfer clause in the employment contract and the information provided by Mr LEUNG Chin-man in his application. The possibility of Mr LEUNG being transferred to NWDCL would have a potential conflict of interest with his previous duties in the Government. As such, the transfer clause could affect CSB's consideration of the application including the work restrictions to be imposed. The Select Committee considers it improper for Mr LEUNG to have signed the employment contract without seeking advice from CSB on the transfer clause in his contract. (please refer to paragraphs 4.14, 4.15, 4.35, 8.61, 8.64 to 8.66)

8.87 The Select Committee has to stress that the inclusion of a transfer clause in Mr LEUNG Chin-man's employment contract should not be taken lightly by the approving authority, as the problem arising from the transfer clause would very likely result in the approving authority making the same mistake which had previously triggered a review of the Control Regime. The review of the Control Regime conducted by the Government in 2004/2005 had arisen from a case of post-service employment taken up by a directorate civil servant. The case caused public controversy because the officer, who had been responsible for the formulation of housing policies in the public and

private sectors as well as drawing up plans and strategies for HA during her service with the Government, was given approval for taking up a post-service employment with a ferry company where the specified scope of duties only covered the fields of travel, transport, hotel, cultural, recreational and hospitality services. However, she had made public appearances, comments and presentation during the promotional activities hosted by a real estate developer (which was an associated company of the ferry company) for a proposal on a major cultural and real estate project. This was considered by CSB then to be tantamount to participation in the promotion of the developer's proposal to the public, which fell outside the scope of the approved work and hence was inappropriate and unacceptable. The Select Committee is of the view that as CSB has not requested applicants to submit a copy of the formal employment contract, CSB is unable to monitor effectively the taking up of approved post-service work by directorate civil servants (such as the above case and the inclusion of a transfer clause in Mr LEUNG Chin-man's employment contract). This reflects the presence of loopholes in the existing Control Regime which calls for improvement on the part of the Government.

8.88 In sum, in the view of the Select Committee, Mr LEUNG Chin-man, Dr Henry CHENG, Mr Stewart LEUNG and Mr CHUNG Kwok-cheong all played important roles and participated in the Hunghom Peninsula case, and they also had different levels of participation and roles in Mr LEUNG Chin-man's employment with NWCL. The employment of Mr LEUNG Chin-man has aroused public suspicion of whether he had acted impartially in the disposal of the Hunghom Peninsula development, and even public suspicion of the possibility of reward from the New World group of companies in return for the favour Mr LEUNG had done for the developer in the Hunghom Peninsula case. Having regard to the steering and co-ordinating role of Mr LEUNG in the Hunghom Peninsula case, the lease modification premium which was considered to be too low by the public, the circumstances surrounding

Mr LEUNG's employment with NWCL (including the possibility of the creation of the post in NWCL for Mr LEUNG), as well as the intricate connections among Dr Henry CHENG, Mr Stewart LEUNG, Mr CHUNG Kwok-cheong and Mr LEUNG Chin-man set out above, the Select Committee agrees with the view expressed by Mr Michael SUEN at the hearing that there were grounds for the public suspicion that Mr LEUNG Chin-man's taking up of the employment with NWCL was a deferred benefit related to the Hunghom Peninsula case. The Select Committee considers that there was conflict of interest in Mr LEUNG Chin-man's taking up of employment with NWCL, and it was inappropriate for Mr LEUNG to accept the appointment. (please refer to paragraphs 8.3 to 8.9, 8.12 to 8.17, 8.24 to 8.30, 8.50 and 8.69 to 8.81)