

## **Chapter 9 Conclusions and recommendations**

9.1 According to the Resolution passed by LegCo, the terms of reference of the Select Committee are to inquire into the vetting and approval for Mr LEUNG Chin-man to take up post-service work with NWCL and other real estate organizations, and whether there was any connection between such work and the major housing or land policies which Mr LEUNG had taken part in their formulation or execution and decisions which he had made pursuant to such policies while serving as D of B, PSH and D of H, that had given rise to any potential or actual conflict of interest, as well as related matters, and based on the results of the above inquiry, to make recommendations on the policies and arrangements governing post-service work of directorate civil servants and other related matters.

9.2 The Select Committee has given in Chapters 3 and 4 an account of Mr LEUNG Chin-man's applications for post-service employment with four organizations which are related to the real estate sector, namely HKHS, TCL, Fineland and NWCL. When studying these applications, the Select Committee notes that the first three appointments had not aroused public concern: Mr LEUNG's appointment with HKHS was unpaid, while his appointments with TCL and Fineland were of a part-time and non-executive nature; and Mr LEUNG had ceased the work with HKHS and Fineland in September 2007 and August 2008 respectively. In the course of its study on these three appointments, the Select Committee does not find any issues that warrant special attention. As such, the Select Committee has not made further inquiry into these three post-service appointments of Mr LEUNG. (please refer to paragraphs 3.23 to 3.26)

9.3 The Select Committee has focused its inquiry on the fourth appointment of Mr LEUNG Chin-man: an employment with NWCL, a

subsidiary company of NWDCL, with a remuneration of more than \$3 million per annum. The announcement of that employment had aroused widespread public concern. Mr LEUNG, while serving as PSH/D of H, was involved in the sale of the Hunghom Peninsula flats to the developer which belonged to the New World group of companies. The public at that time considered that the lease modification premium received by the Government was "ludicrous". The public was concerned that there was a conflict of interest between Mr LEUNG's acceptance of a lucrative job offered by NWCL less than two years after his retirement from the Government and his previous duties in the Government, to the extent that there was suspicion of this appointment being a reward given by NWDCL to Mr LEUNG for his handling of the Hunghom Peninsula case. The Select Committee is of the view that Mr LEUNG's taking up of the appointment had damaged the public's confidence in the proper conduct of former government officials. Thus, the central questions of the Select Committee's inquiry are whether it was inappropriate for Mr LEUNG to accept the appointment, and if it was inappropriate, why did the approving authority approve his application?

9.4 Before answering the above questions, the Select Committee considers it necessary to set out its views on the protection of the public interest and the individual's right to work, as well as what is the responsibility of directorate civil servants in considering taking up post-service work.

### **Protection of the public interest and an individual's right to work**

9.5 The Select Committee is of the view that the public interest involved in the Control Regime governing the post-service work of directorate civil servants includes the public's confidence in the Government and its effective governance, and the trust in the civil service. The Government is duty-bound to ensure that such public interest is

protected when it considers post-service work applications and monitors applications which have been approved. At the same time, the Government is also bound to safeguard an individual's right to work and freedom of choice of occupation under the Control Regime<sup>64</sup>.

9.6 The Select Committee respects the right of directorate civil servants to work and their freedom of choice of occupation. The Select Committee also recognizes the contribution directorate civil servants can make to the community with their rich experience and expertise by continuing to work after their civil service career. They should not be deprived of their right to take up post-service work. However, the Select Committee has to point out that such a right is not without restriction, but must be subject to the public interest not being compromised. The Select Committee is of the view that safeguarding the public interest is the cornerstone of the Control Regime. While an appropriate balance has to be struck between the protection of the public interest and protection of the individual's right to work, the Select Committee is firmly of the view that the protection of the public interest must take precedence at all times. Only by doing so can the credibility of the civil service be upheld and effective governance be achieved by the Government.

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<sup>64</sup> Such rights are enshrined by Article 33 of the Basic Law and also protected under the International Covenant on Economic, Social and Cultural Rights and the Employment Policy Convention, 1964. Article 33 of the Basic Law provides that: "*Hong Kong residents shall have freedom of choice of occupation*". Article 6(1) of the International Covenant on Economic, Social and Cultural Rights states that: "*The State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right*". Article 1(2)(c) of the Employment Policy Convention, 1964 states that: "*There is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin*".

## **Responsibility of directorate civil servants in the taking up of post-service work**

9.7 The Select Committee understands that the effective governance of the Hong Kong Special Administrative Region depends to a considerable extent on a civil service which upholds its core values and observes good practices. These core values underpinning the standards of conduct expected of civil servants include: commitment to the rule of law; honesty and integrity; objectivity and impartiality; political neutrality; accountability for decisions and actions; and dedication, professionalism and diligence<sup>65</sup>. The Select Committee has to point out that civil servants should always put the protection of the public interest first. The more senior the position of the civil servant, the greater his powers, responsibilities and access to sensitive and confidential information, the higher will be the standard of conduct and integrity the public expects him to meet. The Select Committee has to stress in particular that it is the responsibility of directorate civil servants, when they are in service, to make the public believe that they are performing their official duties impartially in order to protect the credibility of the Government. This remains their responsibility after they have left the Government.

9.8 The Select Committee believes that overall, our civil servants have great integrity and are dedicated to their duties. The Select Committee notes that in the course of the execution of their duties and exercise of their powers within the Government structure directorate civil servants make policies and administrative decisions which may in fact be to the interest of some sectors or organizations. At the same time, civil servants leaving the Government are among the targets of senior recruitment for business organizations. While there is nothing against this practice in a free society, this nevertheless creates a situation in

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<sup>65</sup> The core values underpinning the standards of conduct expected of civil servants are set out in the Civil Service Code as annexed to CSB Circular No. 9/2009.

which the public may be concerned about possible conflict of interest, particularly the concern that a directorate civil servant may so exercise his powers and functions while in government service as to pave his way for post-service employment in a related sector or organization. The concern is not confined to the situation where an unlawful agreement or actual transaction exists between the civil servant and the organization, whether or not such agreements or transaction can be substantiated. The real possibility of the directorate civil servant unilaterally doing something in the hope that he may stand a better chance of getting some lucrative post-service employment with these organizations or sectors is enough to affect the public's confidence in his impartiality in the performance of his public duties. Conversely, business organizations which benefited as a result of the policy or administrative decision made by directorate civil servants may offer employment to the officers concerned after they left the Government, and this may influence serving directorate civil servants as an encouragement. In these circumstances, the public will be worried about the presence of a conflict of interest. Public confidence in the good administration where powers are exercised with fairness and impartiality by the directorate civil servant concerned will be undermined and the credibility of the Government will suffer, if proper measures are not put in place to deal with these concerns effectively. The Select Committee considers it necessary for the Government to adopt effective policies and measures which will prevent civil servants from taking up inappropriate post-service employment, so as to address the public's concern.

9.9 The Select Committee considers that both serving civil servants and those who have left the service should uphold the core values and responsibility of the civil service stated in paragraph 9.7. The Select Committee also believes that this is the public's reasonable expectation on them. In respect of the pursuit of post-service employment by civil servants, the following requirements are set out clearly in Chapter 8 of

the "Civil Servants' Guide to Good Practices" issued by CSB (version published in March 2005):

*"To maintain the standing and integrity of the civil service, it is important that civil servants, even after they have left the service, should continue to conduct themselves in an appropriate manner as the activities which they take up would continue to be seen by the public as a reflection of the culture and character of the civil service. Retired civil servants should act with good sense and propriety in pursuing post-service employment or business and avoid engaging themselves in activities which could be construed as being in conflict with their previous duties in the Government, or might bring the civil service into disrepute, or expose them or the Government to public controversy."*

Therefore, the Select Committee is of the view that directorate civil servants should consciously exercise self-discipline and abide by the code of good practices governing the pursuit of post-service work. They should act with good sense and propriety in pursuing post-service employment to avoid taking up work which may constitute real or potential conflict of interest with their duties during government service, or give rise to negative public perception.

### **Findings and conclusions of the Select Committee**

9.10 To answer the questions in paragraph 9.3 above, the Select Committee looked carefully into the taking up of post-service work with NWCL by Mr LEUNG. The findings and conclusions of the Select Committee are set out below.

(1) Mr LEUNG Chin-man's participation in the Hunghom Peninsula case

9.11 Mr LEUNG Chin-man had deeply and directly participated in the disposal of the Hunghom Peninsula flats, and took a steering and co-ordinating role throughout the process. Since Mr LEUNG took up the post of PSH/D of H in July 2002, he had participated in formulating strategies on the disposal of the Hunghom Peninsula project and implementing decisions relating to the disposal exercise. He was in charge of co-ordinating the entire exercise, in particular the final mediation process leading to settlement, and recommended the Government to accept the developer's offer of the lease modification premium. The evidence obtained by the Select Committee when inquiring into Mr LEUNG's participation in the Hunghom Peninsula case also reveals that there was inconsistency in the evidence given by Mr LEUNG to the Select Committee about his role in the case. The Select Committee considers that Mr LEUNG has attempted to play down his role and participation. (please refer to paragraphs 8.69 to 8.73)

(2) The taking up of employment with NWCL by Mr LEUNG Chin-man

9.12 NWDCL owns 70% shareholding of NWCL, while another subsidiary of NWDCL owns 50% of FSDL which was the developer of the Hunghom Peninsula development. Considering Mr LEUNG's deep involvement and steering role in the Hunghom Peninsula case, the inseparable business interests of the developer of Hunghom Peninsula which was owned by a subsidiary of the parent company of Mr LEUNG's prospective employer, the Select Committee has come to the conclusion that there is plainly a conflict of interest for Mr LEUNG to take up employment with NWCL. In these circumstances, it was inappropriate for Mr LEUNG Chin-man to take up the employment with NWCL. (please refer to paragraphs 4.47, 4.48, 8.69 to 8.73 and 9.11)

(3) Mr LEUNG Chin-man's withholding of the relevant facts in his application for employment with NWCL

9.13 In the course of its inquiry, the Select Committee has discovered the following matters in relation to Mr LEUNG Chin-man's taking up of employment with NWCL: at the request of Dr Henry CHENG, Mr Stewart LEUNG had approached Mr LEUNG Chin-man personally to find out the latter's interest in joining New World; during the lunch meeting on 8 May 2008, Dr CHENG discussed directly with Mr LEUNG Chin-man the job offer and the main terms of employment, which were accepted by Mr LEUNG subject only to specific details to be followed up by Mr Adrian CHENG (the son of Dr CHENG) and Ms Lynda NGAN (another Executive Director of NWCL). (please refer to paragraphs 4.4, 4.8 and 8.58)

9.14 The Select Committee has found that when making the application to CSB for employment with NWCL, Mr LEUNG Chin-man gave the evasive answer of "*a family friend*" to hide the fact that the job offer had come directly from the top management of NWDCL; he did not disclose in the application his role and participation in the sale of the Hunghom Peninsula flats to NWDCL; and he gave inconsistent evidence at the hearings about his participation in the handling of the Hunghom Peninsula case and attempted to play down his role and participation. The above have led the Select Committee to the view that Mr LEUNG had deliberately withheld the truth. Mr LEUNG claimed that it was not his responsibility to consider public perception in respect of his application, and he could accept the employment with NWCL without the need to avoid public suspicion of conflict of interest. The Select Committee notes that, although he knew that the Hunghom Peninsula case would cause the approving authority to be concerned and was an important factor in vetting and approving his application, he did not provide the approving authority with the relevant information on his



participation in the Hunghom Peninsula case to enable the approving authority to consider such issues as conflict of interest and public perception this may provoke. The Select Committee considers that Mr LEUNG had not fulfilled his responsibility to provide, in a frank and honest manner, all relevant information for his application, and had failed to observe the good practices that civil servants are expected to follow when taking up post-service work as set out in the "Civil Servants' Guide to Good Practices". Mr LEUNG's conduct was unbecoming of a former senior official and liable to bring the civil service into disrepute. (please refer to paragraphs 8.69 to 8.73 and 8.82 to 8.84)

(4) Failure of the assessing parties to fulfil their due responsibilities

9.15 Notwithstanding the attempt of Mr LEUNG Chin-man to deliberately withhold certain facts when making his application to CSB and the weaknesses in the existing vetting and approving mechanism, the approval of Mr LEUNG's application would not have happened if the officials involved in the vetting and approving process had done their duty diligently and seriously in a way that the public has a right to expect. The Select Committee finds that, when making its inquiry into Mr LEUNG's application, most officials involved in the vetting and approval process took a blinkered view and did not take into full consideration the six assessment criteria set out in CSB Circular No. 10/2005. Moverover, they had different understanding of the assessment criteria. The practices they adopted in the processing of the application varied, and the way they handled the process was careless and perfunctory. They over-relied on the honour system and accepted information provided by Mr LEUNG in the application form at face value. The Select Committee's observations on the vetting and approval of Mr LEUNG's application by the officials concerned are set out in Chapter 5. (please refer to paragraphs 5.17 to 5.21, 5.34 to 5.36, 5.47, 5.48 and 5.105 to 5.118)

9.16 One point which particularly surprised the Select Committee is that of the three branches involved in vetting and assessing the application, the only branch that had raised a public perception alert to CSB was WB, which had the least connection with Mr LEUNG during his previous government service. The Select Committee is of the view that HB could have discovered Mr LEUNG's significant role in handling the Hunghom Peninsula case had it conducted some file search. PLB, from which LD officials had been deployed to assist the then HD in the negotiation and mediation with NWDCL, could similarly have noticed Mr LEUNG's participation in the Hunghom Peninsula case. CSB, while having to rely on information provided by the above branches, could have prevented the fiasco which caused the Government great embarrassment if it had taken an independent and objective view of the application and asked questions critically instead of just nodding it through and imposing four additional work restrictions which did not address the real issue. The public expects CSB to discharge its role properly as the gatekeeper. In failing to fulfil this primary function in the vetting and approval procedure, CSB had let the public down. (please refer to paragraphs 5.17 to 5.21, 5.34 to 5.36, 5.47, 5.48 and 5.105 to 5.118)

9.17 The Select Committee is of the view that the ultimate responsibility rests with Miss Denise YUE. As the approving authority for post-service work applications from directorate civil servants, it is for her to ensure that the policy objective of the Control Regime is met before any application for post-service work is approved. Regrettably, her approval of Mr LEUNG's application had resulted in not only the public's suspicion being aroused about conflict of interest and deferred reward or deferred benefit, but also embarrassment to the Government and damage to the prestige of the civil service. The Select Committee considers that as reflected in Mr LEUNG's case, Miss YUE had neither given precedence to the protection of the public interest nor upheld the approval criteria of the Control Regime, resulting in the Government's

credibility being damaged. (please refer to paragraphs 5.100, 5.111 and 5.112)

### **Recommendations of the Select Committee on improvements to the Control Regime**

9.18 It is essential for the Government to put in place an effective regime to govern the post-service work of directorate civil servants for the protection of the public interest. However, the evidence obtained in the inquiry shows that there are inadequacies in the existing Control Regime. The Select Committee urges the Government to consider the following recommendations with a view to improving the Control Regime.

(1) Restrictions on the taking up of post-service work

*Restriction/ban on type of work*

9.19 As directorate civil servants have built up extensive influence within the Government, and the policies which they have taken part in formulating and decisions which they have made in the exercise of discretionary powers vested in their office have great impact on the parties concerned and the community as a whole, in the Select Committee's observation, the taking up of post-service employment by these civil servants in the same field of work as those in which they have engaged in or have exercised discretionary powers during their government service would give rise to public suspicion of conflict of interest and negative public perception. In the case of Mr LEUNG Chin-man, for instance, as he had assumed a steering and co-ordinating role in handling the Hunghom Peninsula case, his taking up post-service employment with NWCL would give rise to public suspicion as to whether he had acted impartially in the disposal of the Hunghom

Peninsula PSPS flats. The Select Committee has pointed out in Chapter 6 that Mr LEUNG had exercised the discretionary power in his capacity as BA in regulating and controlling building developments during his government service, and since the nature and areas of the discretionary power BA exercised affected the real estate sector in numerous ways, Mr LEUNG's taking up of post-service work with organizations related to the real estate sector would also cause public concern about the fairness and impartiality of BA in the exercise of discretionary power.

9.20 As pointed out in paragraph 9.6, the Select Committee recognizes the contribution that directorate civil servants can make to the community with their expertise by continuing to work after their civil service career, and they should not be deprived of their right to take up post-service work. At the same time, the Select Committee notes from the report of the Review Committee that none of the seven overseas jurisdictions<sup>66</sup> studied by the Review Committee specifically prohibits a former senior civil servant from taking up post-service work in the same field as he did while in government service.

9.21 Having regard to the above considerations, the Select Committee does not consider it appropriate to impose a total prohibition on the taking up of post-service work by directorate civil servants in the same field of work as those in which they have engaged in their past government duties. Neither does the Select Committee consider it appropriate to impose a ban on the taking up of post-service work by directorate civil servants either across-the-board or on a sectoral basis.

9.22 The Select Committee believes that it is most important for an effective system to be put in place to strike the right balance between the protection of the public interest and an individual's right to work, while at

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<sup>66</sup> The seven overseas jurisdictions are Australia, Canada, France, New Zealand, Singapore, the United Kingdom and the United States of America.

the same time ensuring that each application would be carefully and critically considered by the vetting and approving officials as well as ACPE which advises on the applications. Of equal importance is that when making an application, the applicant should assess and evaluate his application and provide all relevant information in a frank and honest manner for consideration by the approving authority. In short, the Select Committee advocates a system which would ensure fairness to all parties, and holds that, under all circumstances, protection of the public interest must be the overriding concern.

*Length of the sanitization period*

9.23 The Select Committee notes that under the existing Control Regime, directorate civil servants are normally not allowed to take up full-time paid work or work of a commercial nature during their final leave period or the sanitization period (the latter counting from the date when a directorate civil servant proceeds on final leave). The length of the final leave period varies depending on the period of untaken leave of the directorate civil servants. The minimum sanitization period is six months for retired directorate civil servants ranked at D1 to D3, and 12 months for those at D4 to D8. No minimum sanitization period is prescribed for the taking up of post-service work by directorate civil servants leaving the Government on grounds other than retirement (e.g. on completion of agreement or resignation). For these civil servants, the approving authority will consider the need for and length of sanitization period on a case-by-case basis.

9.24 The Select Committee considers that the existing sanitization period for the taking up of post-service work by directorate civil servants leaving the service on the ground of retirement is appropriate and does not recommend any change. However, during the Select Committee's inquiry, there was public concern about the approval given to directorate civil servants for taking up post-service employment with public bodies

shortly after their resignation. The Select Committee notes that the sanitization period imposed on these directorate civil servants was shorter than the usual sanitization period for civil servants of the same ranks retiring from the Government. Such cases have drawn the Select Committee's attention to the fact that, while a minimum sanitization period is specifically prescribed for the taking up of post-service work by civil servants upon retirement, no such period is imposed on directorate civil servants leaving the service on grounds other than retirement. The Select Committee is concerned that, with such a great difference in the extent of control in respect of the sanitization period over the taking up of post-service work by the two groups of civil servants mentioned above, some directorate officers who resign from the Government may be able to avoid the more stringent control. From the perspective of public interest, it will affect the operation of the Government, and the Control Regime will be rendered meaningless. The Select Committee sees a need for the Government to review the sanitization period for the taking up of post-service work by directorate civil servants leaving the Government on grounds other than retirement.

*Assessment period*

9.25 Under the existing Control Regime, applicants ranked at D1 to D3 are required to provide information on the service history of their last three years of government service, or their last six years of government service for those at D4 to D8. The assessing parties would in general assess an application from a directorate civil servant with reference to his last three years of government service. Where the applicant is a directorate officer at D4 or above or if the work undertaken by him is of particular sensitivity, duties prior to the three-year period may also be taken into account. When assessing applications made by these applicants, the assessing officials responsible for completing Assessments A and B in Part III of the application form may take into account either

the last three years or six years of the applicants' active government service.

9.26 In the case of Mr LEUNG Chin-man, both Mr Thomas CHAN (who was responsible for completing Assessment A in Part III of the application form) and Mrs Sarah KWOK (who was responsible for completing Assessment B in Part III of the application form as Head of the AO Grade Management) decided to take Mr LEUNG's last three years of government service as the assessment period. As Mr LEUNG was a senior civil servant at D8 who had taken part in the formulation and execution of major policies and decisions, the Select Committee finds it grossly inadequate for the assessing parties to have considered his application only on the basis of his last three years of service.

9.27 The Select Committee considers that the assessment period for directorate civil servants at D1 to D3 is appropriate and may thus remain unchanged. For those at D4 to D8, given the more senior positions they had occupied, their greater access to sensitive government information and their extensive involvement in the formulation of major policies, the Select Committee considers that a longer assessment period of the service history of these officers is required in order to facilitate a thorough and comprehensive assessment of their applications for post-service work. Therefore, the Select Committee recommends that the Government should consider removing the discretion, which may be exercised by the assessing parties, in adopting the assessment period of either the last three years or six years of active government service for D4 to D8 officials making post-service work applications, so that all such applications will be assessed with reference to the applicants' last six years of service.

*Length of the control period*

9.28 The taking up of post-service work by directorate civil servants is also subject to a control period which counts from the date of their

formal departure from the Government upon exhaustion of final leave. During the control period, they are required to seek prior permission from SCS before taking up any post-service work. Under the existing Control Regime, the control period is two years for directorate civil servants at D1 to D7, and three years for those at D8 who have retired from the civil service. In the case of directorate civil servants leaving the Government on grounds other than retirement and who have six or more years of continuous government service, the control period is the same as that for those leaving the Government on retirement; for those with less than six years of continuous government service, the control period is one year for D1 to D7 directorate civil servants, and one and a half years for those at D8.

9.29 The Select Committee is of the view that the control period applicable to the taking up of post-service work by directorate civil servants would not constitute unreasonable restriction on an individual's right to work, as these civil servants can undertake post-service work subject to prior approval. In this regard, the Select Committee notes that the period of restriction for taking up post-service work in overseas control regimes ranges from one to five years after the civil servants concerned have left the government. The Select Committee has considered if the length of control period should be determined on the basis of the duties of the directorate civil servants during their government service, rather than their ranks as under the existing Control Regime. Having regard to the fact that civil servants in more senior positions have greater powers, higher responsibilities and greater access to sensitive and confidential information, the Select Committee considers it justified for the length of the control period to be determined by ranks. The Select Committee therefore takes the view that the length of the control period should be based on the ranks of directorate civil servants.

9.30 Taking into account the more senior and more important positions held by directorate civil servants in the Government, the public



is particularly concerned about whether their post-service work would constitute conflict of interest with their duties during government service. The Select Committee is of the view that by imposing a longer control period on directorate civil servants at more senior positions, it would reduce the possibility of conflict of interest, thereby strengthening the protection of the public interest.

9.31 Directorate civil servants at D1 to D3 include mainly junior deputy secretaries and principal assistant secretaries of bureaux, assistant heads of departments and chiefs of some professional grades. Given their level of participation in policy formulation is relatively lower, the Select Committee considers that the control period of two years for these directorate officers may remain unchanged. As for directorate civil servants at D4 to D7, they are mainly heads of departments and senior deputy secretaries of bureaux, who will deputize for permanent secretaries when the need arises. In comparison with D1 to D3 directorate civil servants, they have greater powers and stronger influence over the formulation or execution of government policies, as well as greater access to confidential information. As there is a notable difference in powers and responsibilities between the two groups of officers above, the Select Committee recommends that the Government should consider extending the control period for D4 to D7 officers to four years. D8 officers are the most senior civil servants who assume an important role in the formulation of government policies and have the most access to confidential and sensitive information. The public would have a greater concern about whether the post-service work taken up by these directorate officers might constitute conflict of interest with their duties during government service. The Select Committee therefore considers that the control period for D8 officers should be the longest. Nevertheless, having regard to the fact that the powers and functions of some D4 to D7 officers are not far from those of D8 officers and that it would be undesirable if there is a large gap between the control periods for these two groups of directorate civil servants, the Select Committee

recommends that the Government should consider extending the control period for D8 officers to five years.

9.32 The following table summarizes the Select Committee's recommendations on improvements to the assessment period, sanitization period and control period under the Control Regime as set out in paragraphs 9.23 to 9.31:

| Directorate Pay Scale | Assessment period<br>(directorates civil servants retiring from the Government or leaving the Government on grounds other than retirement) |                | Sanitization period<br>(directorates civil servants retiring from the Government) |                | Control period<br>(directorates civil servants retiring from the Government) |                |
|-----------------------|--|----------------|---|----------------|--|----------------|
|                       | Existing arrangement   | Recommendation | Existing arrangement  | Recommendation | Existing arrangement   | Recommendation |
| D1 to D3              | 3 years  | 3 years        | 6 months  | 6 months       | 2 years  | 2 years        |
| D4 to D7              | 3 or 6 years   | 6 years        | 1 year  | 1 year         | 2 years  | 4 years        |
| D8                    | 3 or 6 years   | 6 years        | 1 year  | 1 year         | 3 years  | 5 years        |

(2) Inclusion of public suspicion of deferred reward or benefit in return as a factor for consideration in the assessment criteria

9.33 The Select Committee has pointed out in paragraph 5.114 that Miss Denise YUE told the Select Committee at the hearings that CSB Circular No. 10/2005 did not use expressions such as "deferred reward" and, if interpreted from a broad perspective, the six key factors set out in the circular could include the consideration of public suspicion about a deferred reward. However, other officials involved in the processing of Mr LEUNG Chin-man's application (including Mrs Sarah KWOK and Mrs Susan MAK) had a different understanding. They told the Select Committee that deferred reward was not a specified factor for consideration under the existing Control Regime.

9.34 The Select Committee considers that public suspicion of deferred reward or benefit in return is an important factor for consideration in assessing post-service work applications, and should be spelt out explicitly in the assessment criteria. It would convey a clear message to applicants, officials concerned and ACPE that this factor has to be taken into account when making and assessing applications. The Select Committee recommends that the Government should consider revising the assessment criteria so that public suspicion of deferred reward or benefit in return would be included in the specific considerations when making the assessment. The Select Committee further recommends that CSB should provide clear guidelines to officials concerned and ACPE on how assessment of public suspicion of deferred reward or benefit in return should be made to facilitate the vetting and consideration of applications.

(3) The responsibilities of applicants

*Providing information and assessing applications in a frank and honest manner*

9.35 The Select Committee considers that it is incumbent upon an applicant to provide the information as required in the application form and to assess and evaluate his application for post-service work against the assessment criteria set out in the relevant CSB circulars in a frank and honest manner before submitting the application to the Government. Since he best knows the work he did while in government service, the applicant has the responsibility to draw to the attention of the approving authority matters which should be noted, including disclosing possible conflict of interest involved in his application. The Select Committee recommends the Government to consider revising the application procedure to clearly reflect the above responsibilities of applicants when submitting applications to CSB. Furthermore, the Government should consider specifying in the relevant CSB circulars the good conduct

expected of former civil servants in respect of their taking up of post-service work, as stated in the "Civil Servants' Guide to Good Practices".

*Information on service history and information relating to prospective employer*

9.36 The Select Committee notes that under the existing regime, an applicant is required to provide in the application form his service history with description of major duties undertaken while in government service, but he is not required to provide information on his involvement in major assignments or projects relating to the prospective employer. The Select Committee considers that such information is essential to facilitating a comprehensive assessment of the conflict of interest and public perception issues (including public suspicion of deferred reward or benefit in return) relating to the application. The Select Committee recommends that the Government should consider requiring an applicant to provide information on major assignments or projects relating to the prospective employer and other companies within the same group as the prospective employer in which he was involved during the last three years (for D1 to D3 applicants) or the last six years (for D4 to D8 applicants) of his government service for consideration by the approving authority.

9.37 The Select Committee also notes that under the Control Regime, if an applicant has indicated in item 22 of the application form that he would not be involved in the business of the prospective employer's parent company or the prospective employer's subsidiaries, he is not required to provide information on his previous dealings with these companies in items 26 to 30 of the application form, and the subsequent assessment of the application by the officials concerned will not cover these companies. The Select Committee considers that information on the applicant's previous dealings with companies within the same group

as the prospective employer is essential for assessing conflict of interest and public perception relating to post-service work applications. Even if the applicant has indicated that he would not be involved in the business of other companies within the same group as the prospective employer, as the business interests of these companies are inseparable and it is possible for the applicant to have had previous dealings with these companies, the Government should not turn a blind eye to this, and should examine the information pertinent to these companies when assessing the application. The Select Committee therefore recommends that an applicant should be required to provide information on his previous dealings while in government service with the prospective employer and with other companies within the same group as the prospective employer. Moreover, the applicant should be required to provide any other information pertaining to his prospective employer and proposed employment during his government service.

9.38 The Select Committee has to stress that in considering an application, the Government should examine in detail all the information provided by the applicant in order to make a comprehensive assessment. As to how the scope of other companies within the same group as the prospective employer should be defined, it is a matter for the Government to consider thoroughly.

*Assisting applicants in fulfilling responsibilities*

9.39 To facilitate the applicants in fulfilling their responsibilities, the Select Committee recommends that the Government should consider developing guidelines which would enable the applicants to have a clear understanding of the requirements under the Control Regime as set out in the relevant CSB circulars, including the assessment criteria and coverage, as well as the way in which the applicants should assess and evaluate their applications. Furthermore, the Government should consider specifying clearly in the relevant circulars that, upon a breach of the

requirements under the Control Regime, the approval given for an application will become invalid and the applicant will be liable to sanctions. If an applicant encounters difficulties in providing the information required for his application, the Select Committee recommends that he may seek such information from the bureaux/departments in which he has served during his last three years or six years of service, and the respective bureaux/departments should render assistance to the applicant where necessary.

(4) Standardization of the processing and vetting practices

9.40 The evidence obtained from the Select Committee's inquiry shows that the officials in different policy bureaux and branches had adopted different practices in vetting and assessing post-service work applications from directorate civil servants: some officials would collate information and conduct file research before making analysis and recommendations, while some would accept in full the information provided by applicants without undertaking research and would even make subjective judgment. The Select Committee considers it necessary for the Government to ensure that officials processing the applications are conscious of the important responsibilities they have in the vetting and assessment process, and that they should perform their duties in a prudent and conscientious manner. All of them should understand clearly the policy objective of the Control Regime with full regard given to the assessment criteria, and consider applications from a broad perspective.

9.41 The Select Committee has pointed out in paragraph 5.113 that at the public hearings, the officials concerned unanimously made the remark that they had not associated Mr LEUNG's application with the Hunghom Peninsula case. In the view of the Select Committee, this reflects a need for the Government to strengthen the officials' awareness and alertness to relevant issues which may impact on the vetting and approval of applications, and to raise their sensitivity to possible public perception

issues. Moreover, most of the officials involved in processing Mr LEUNG's application had assessed public perception from a narrow perspective. Their only considerations were that Mr LEUNG's duties with NWCL were to be carried out in the Mainland and Mr LEUNG would not be involved in the business of his prospective employer's parent company, NWDCL. But they had neglected the fact that the business interests of a subsidiary company cannot be segregated from those of the parent company.

9.42 The Select Committee considers that it is necessary for the assessing parties in different bureaux/departments to adopt consistent practices and be conversant with the assessment criteria for processing, vetting and assessing applications. The Select Committee recommends that improvements should be made by the Government, including giving consideration to the following measures:

- (a) devising a set of standardized practices for processing and vetting applications for adoption by bureaux/departments;
- (b) providing clear guidelines with examples of precedent cases to officials responsible for vetting and assessing applications to ensure that they fulfil their responsibilities, and to assist them in making sound judgment in assessing issues of conflict of interest, public perception and public suspicion of deferred reward or benefit in return;
- (c) reviewing and enhancing communication with civil servants to ensure that they fully understand the policy objective of the Control Regime and the relevant assessment criteria, and that they would consider applications from a broad perspective; and

- (d) strengthening measures so that officials responsible for vetting and assessing applications in individual bureaux/ departments would have a thorough understanding of their due responsibilities, thereby ensuring that the vetting and approval work is carried out in a prudent and conscientious manner.

(5) Undesirability of relying solely on the honour system

9.43 The Select Committee agrees that there is a need for the Control Regime to operate on an honour system. However, the approving authority should not rely solely on the honour system and take the information provided by applicants at face value and neglect to closely monitor the approved cases. The Select Committee considers that the assessing parties should thoroughly and proactively vet and verify the information provided by the applicants, and CSB should step up efforts in monitoring the compliance of successful applicants with the conditions imposed on the approved work. Only in this way could the effectiveness of the honour system be enhanced.

9.44 The Select Committee also recommends that an applicant should be required to provide a copy of the appointment letter or employment contract to CSB within a specified period after the granting of the approval to enable verification of the terms of employment; otherwise, the approval granted to him would become invalid. If there are subsequent changes to the terms and conditions in the contract, the applicant should also provide the revised version to CSB within a specified period. The Select Committee further recommends that in the event of any subsequent changes to an approved application, including those which may impact on the relevant information provided by the applicant and considered by the approving authority in granting the approval, the applicant should report such changes to CSB. The



requirements recommended above should be stated clearly in the relevant CSB circulars as well as the approval letter issued to the applicant.

(6) Improvement to the application form

9.45 The Select Committee considers that the information required in item 25 of the application form (i.e. "How did the offer of outside work arise?") should serve the purpose of informing officials responsible for vetting and approving applications of the channels through which an applicant has acquired the job (including open recruitment, personal arrangement or other contacts), the name of the introducer of the job and relevant information regarding his relationship with the prospective employer. Such information will enable the officials concerned to be alerted to any relationship which the introducer may have with the prospective employer and its group of companies, thereby facilitating them in ascertaining whether there is any real or potential conflict of interest between the proposed work and the applicant's previous duties in the Government. However, the existing item 25 of the application form falls short of this. The Select Committee considers that the Government should make improvements to address the issue. Furthermore, as stated in paragraphs 9.35 to 9.37 above, it is incumbent upon an applicant to assess and evaluate his application before submitting it to the Government, and an applicant should also be required to provide information on major assignments or projects in which he had been involved, as well as any previous dealings, that were connected with his prospective employer and other companies within the same group as the prospective employer. The Select Committee is of the view that the application form should be revised to ensure the provision of such information by applicants.

(7) Extension of coverage and accessibility of the public register

9.46 Currently, CSB would enter a case record on the post-service work taken up by a directorate civil servant at D4 or above on a public register which is available for public inspection upon request within the control period of the directorate civil servant concerned as long as he is still engaged in the work. This arrangement does not apply to cases of approved post-service work for directorate civil servants below D4.

9.47 The Select Committee recommends that the coverage of the public register be extended to include all approved cases of D1 to D8 directorate civil servants, and the register be made accessible to the public on the Government website. In respect of the period during which information in the public register should be made available for public inspection, the Select Committee takes the view that it should tally with the length of the control periods for the directorate civil servants, or upon their notification to CSB that they have ceased the work, whichever is the earlier. The Select Committee believes that by enhancing the disclosure of information on approved cases, not only will it increase the transparency of the Control Regime, thereby enabling greater public scrutiny, but it will also foster public confidence in the regime. In the view of the Select Committee, this "sunshine policy" could help to ensure that the officials concerned exercise prudence in processing and approving the applications, and that the successful applicants would be alert to the fact that their post-service employment is under public scrutiny and they should comply with the conditions of the approval and restrictions imposed at all times.

(8) Improvement to the operation of the Advisory Committee on Post-service Employment of Civil Servants

9.48 The Select Committee has to point out that ACPE is the only external assessment body under the Control Regime responsible for

advising SCS on post-service work applications from directorate civil servants. The Select Committee notes, however, that in handling post-service work applications from directorate civil servants, ACPE has often relied solely on information provided by CSB, and seldom offered advice or convened meetings to consider the applications.

9.49 The Select Committee appreciates that the Chairman and members of ACPE perform a public service on a voluntary and part-time basis. The Select Committee also understands the limits within which they operate, including not having their own secretariat and the limited resources available. Nonetheless, given the important role of ACPE, the Select Committee considers that ACPE should give independent and impartial advice to SCS. On the other hand, CSB should attach greater importance to the work of ACPE and strengthen its role. Only then would ACPE be able to meet its responsibilities and play its role effectively.

9.50 In examining the role of ACPE, the Select Committee has considered whether the existing Control Regime should be overhauled. The options that have been explored by the Select Committee include: entrusting the power of the approving authority for post-service work applications to a body completely independent of the Government; keeping the advisory function of ACPE but turning it into a statutory body with an independent secretariat; and expanding the remit of an existing advisory body, such as the Public Service Commission, to take on the functions of ACPE. As these options represent a departure from the current regime, the Select Committee believes that the Government should seriously consider the feasibility and desirability of these options, and decide on the follow-up action.

9.51 The Select Committee takes the view that even if the role and organizational structure of ACPE remain unchanged, its mode of operation will have to be improved in order to enhance its credibility and

effectiveness. The Select Committee recommends that ACPE should improve its operation by, inter alia, holding regular meetings to consider applications, and inviting officials responsible for vetting and assessing post-service work applications in CSB and in other relevant bureaux/departments to the meetings to present their views and explain their recommendations on the applications. The Select Committee is of the opinion that through the exchange of views on the applications and ACPE members' proactive involvement in the process, members would have a better understanding of the views and concerns of the assessing parties, and this would facilitate their formulation of independent views on the applications in an informed manner.

9.52 In parallel, the Select Committee considers that the Government should enhance the importance of ACPE. The Select Committee recommends that the Government should consider expanding the composition of ACPE, making it a practice for SCS to attend the meetings of ACPE in keeping with the importance the Government attaches to ACPE, reviewing the relevant guidelines on declaration of interests on a regular basis, and enhancing the transparency of ACPE, such as having the annual report on its work laid on the Table of LegCo.

9.53 The Select Committee trusts that the above recommendations would enable the Government to improve the Control Regime so as to strengthen the protection of the public interest in the taking up of employment by directorate civil servants after retirement, enhance the credibility of the civil service and maintain public trust in the Government.

**The control over post-office employment of politically appointed officials and over the taking up of post-service work by directorate civil servants on grounds other than retirement**

9.54 In the course of its inquiry, the Select Committee has noted that the post-office employment of politically appointed officials are subject to a different set of control arrangements which are less stringent than those governing the taking up of post-service work by directorate civil servants. The Select Committee recognizes that politically appointed officials are different from civil servants in that they have no fixed tenure of office and will very likely pursue employment after leaving the Government. Nevertheless, as politically appointed officials have greater access to sensitive information and stronger influence on policy formulation than directorate civil servants, the Select Committee is of the view that it is essential for the post-office employment of politically appointed officials to be subject to control, and the relevant control arrangements should also be very stringent. The Select Committee is aware that the control over the post-office employment of politically appointed officials is not within its purview. Nevertheless, it believes that members of the public may have an even greater concern about the post-office employment of these officials. The Select Committee urges the Government to expeditiously conduct a review of the matter.

9.55 On the other hand, during the Select Committee's inquiry, there was public concern about the approval given to directorate civil servants for taking up post-service employment with public bodies shortly after their resignation. The Select Committee notes that the sanitization period imposed on these directorate civil servants is shorter than the usual sanitization period for civil servants of the same ranks leaving the service on retirement. While a minimum sanitization period is specifically prescribed for the taking up of post-service work by civil servants upon retirement, no such period is imposed on directorate civil servants leaving the service on grounds other than retirement. The Select Committee is

concerned that, given such a great difference in the extent of control in respect of the sanitization period over the taking up of post-service work by the two groups of civil servants mentioned above, some directorate officers who resign from the Government may be able to avoid the more stringent control and can take up employment with organizations in a relatively short time. Such situations will render the Control Regime meaningless. Not only does this deal a blow to the operation of the Government, but it also affects public confidence in its governance.

9.56 The Select Committee urges the Government to conduct reviews on the two matters above, and also recommends that LegCo should follow up the issues in question.

**Good practices to be observed by directorate civil servants taking up post-service work and attitude expected of officials in vetting and approving the applications**

9.57 The Select Committee observes that it is increasingly common for directorate civil servants to pursue post-service employment. These civil servants may become the targets of employment by business organizations or public bodies on account of the network they have established within the Government, as well as their familiarity with public policies and government procedures. If the post-service work taken up by directorate civil servants does constitute real or potential conflict of interest with their previous government duties, or if it gives rise to negative public perception, public interest would be prejudiced. This problem should not be overlooked by the Government.

9.58 While agreeing that it is the right of directorate civil servants to take up post-service work, the Select Committee must stress again that such a right should be subject to the requirement that the public interest is not compromised. With respect to the pursuit of post-service

employment by civil servants, the Select Committee reiterates that it is already stated in the "Civil Servants' Guide to Good Practices" issued by CSB that they are required to

*"act with good sense and propriety.....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 has to point out that without a culture of honesty and integrity in the civil service, and vigilance of the officials involved in the vetting and approval of post-service work applications, improvement to the procedures of the Control Regime or related stipulations alone would not be able to ensure effective operation of the Regime for the genuine protection of the public interest.

9.59 Given their senior positions, substantial powers and access to a lot of sensitive and confidential information, directorate civil servants are required and expected by the public to meet a high standard of conduct and integrity. Directorate civil servants who wish to make post-service work applications should not just focus on whether their applications comply with the procedural requirements and stipulated provisions of the Control Regime. In deciding whether they should submit applications, directorate civil servants should consciously exercise self-discipline and abide by the code of good practices governing the taking up of post-service work, with full appreciation of the relevant policy objective and assessment criteria and giving overriding consideration to the protection of the public interest. If an applicant decides to submit an application, he should provide in a frank and honest manner all information which may affect the consideration of the application so as to

help the approving authority to achieve the policy objective of the Control Regime.

9.60 It is equally important that officials responsible for the vetting and approval of the applications exercise initiative in carrying out their responsibilities, fully understand the policy objective and assessment criteria of the Control Regime, and handle the applications in a careful and conscientious manner. In deciding whether an application should be approved or recommended for approval, they should give prime consideration to the protection of the public interest.

9.61 The Select Committee takes the view that both directorate civil servants and officials responsible for the vetting and approval of the applications should make a conscious effort to act responsibly. Only in this way will the recommendations on improvements to the Control Regime achieve the intended effects and the Regime meet the expectations of the community.