

# **CHAPTER 1: Review on Post-service Outside Work for Directorate Civil Servants**

## **Overview**

- 1.01 This chapter sets out the background of the establishment of the Committee on Review of Post-service Outside Work for Directorate Civil Servants, the progress of the Committee's work to-date, and the plan for its work ahead.

## **Establishment of Committee on Review of Post-service Outside Work for Directorate Civil Servants**

- 1.02 In August 2008, the public expressed grave concern over the approval given by the Secretary for the Civil Service to Mr Leung Chin-man<sup>1</sup>, a retired directorate civil servant, to take up post-service employment with New World China Land Limited, which is involved in real estate and property developments in the Mainland of China and whose parent company is New World Development Company Limited. The public's concern centres around the propriety of the approval given to Mr Leung's post-service employment in the light of his previous official dealings with another subsidiary company of New World Development Company Limited.
- 1.03 In response to the public concern over the control of employment for senior civil servants after leaving the civil service, the Chief Executive (CE) announced on 16 August 2008 that he would set up an independent committee to review the existing policy and arrangements relating to post-service work control of directorate civil servants. On 30 September 2008, the CE announced the terms of reference and membership of the Committee on Review

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<sup>1</sup> Mr Leung Chin-man served as Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing from July 2002 to January 2006 and as Director of Buildings from August 1999 to June 2002. He ceased active duty on 10 January 2006 and retired from the civil service on 10 January 2007.

of Post-service Outside Work for Directorate Civil Servants (hereafter referred to as ‘the Review Committee’).

1.04 The membership of the Review Committee is as follows (in alphabetical order) –

**Chairman :** The Honourable Ronald Arculli

**Members :** Mr Haider Barma

The Honourable Chan Mo-po Paul

Professor Chan Yuk-shee

Professor Chen Hung-yee Albert

Mr Chen Nan-lok Philip

The Honourable Eu Yuet-mee Audrey

The Honourable Ho Chun-yan Albert

The Honourable Leung Kwan-yuen Andrew

The Honourable Tam Yiu-chung

Secretary for the Civil Service  
(The Honourable Yue Chung-yee Denise)

1.05 The terms of reference of the Review Committee are –

- (a) to review the existing policy and arrangements governing post-service outside work for directorate civil servants;
- (b) in the course of conducting the review in (a) above, to invite and consider submissions and representations; and
- (c) to submit findings and recommendations to the CE in mid-2009.

### **Progress of Work To-date**

1.06 The Review Committee has examined in detail the current

post-service outside work<sup>2</sup> control regime for former directorate civil servants<sup>3</sup>. It has held 14 meetings so far to discuss the broad principles, policy objective, legal and implementation aspects of the control regime. It has also made reference to practices in selected overseas jurisdictions provided by a consultant commissioned by the Administration.

- 1.07 The Review Committee set up a dedicated website ([www.dcspostservice-review.org.hk](http://www.dcspostservice-review.org.hk)) in October 2008 to keep the public posted of its work and to receive written submissions from members of the public. The agenda of each of its meetings is uploaded onto the website.
- 1.08 This consultation document sets out a number of salient issues on which the Review Committee wishes to consult widely before formulating its recommendations to the CE. A copy of the consultation document is available on its website.

## **Plan of Work Ahead**

- 1.09 The Review Committee welcomes your views and comments on the consultation document. The public consultation will close on **20 April 2009**.
- 1.10 The Review Committee will reach out to the public and to relevant stakeholders (including civil service groups and individual serving or former directorate civil servants) through

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<sup>2</sup> Outside work refers to paid or unpaid, full-time or part-time appointment, employment or any other work, the principal part of which is undertaken in Hong Kong. It includes entering into business on one's own account, becoming a partner in a partnership, becoming an executive or non-executive director of a company, becoming an employee, etc. Re-employment with the Government of the Hong Kong Special Administrative Region or appointment to a government advisory board/committee is not regarded as outside work.

<sup>3</sup> In this consultation document, unless otherwise specified, the term 'former directorate civil servants' include directorate civil servants who have left the Government, as well as those who have ceased active duty and are on final leave before leaving the Government.

three public forums and a number of consultative sessions. It will also consult the Legislative Council Panel on Public Service, the Chairmen and Vice-chairmen of the 18 District Councils, academics and other interested bodies.

1.11 The Review Committee will study and deliberate on the comments and views received. It will submit a report on its findings and recommendations to the CE in mid-2009.

1.12 The CE will make public the Review Committee's report.

## **CHAPTER 2: Principles Underlying Current Control Regime**

### **Overview**

- 2.01 This chapter sets out the broad principles underlying the current post-service outside work control regime for former directorate civil servants, namely -
- (a) protection of the public interest; and
  - (b) protection of an individual's right.

### **Protection of Public Interest**

- 2.02 The Government has a duty to protect the public interest. There are many facets of public interest. The current post-service outside work control regime for former directorate civil servants is designed to take into consideration the following facets of public interest –
- (a) public trust;
  - (b) good governance; and
  - (c) integrity and impartiality of the civil service.
- 2.03 **Public trust** in any government is the foundation of any civilised society. Therefore to earn and keep the public trust, the Government of the Hong Kong Special Administrative Region must ensure that it exercises its powers of governance properly and fairly.
- 2.04 To achieve **good governance**, the Government must uphold the rule of law. Its decision-making and implementation processes must be as transparent as possible within the legal framework. It must always guard against abuse and corruption.

- 2.05 The civil service is the backbone of the Government. It supports the Government of the day to deliver its visions and missions. It is therefore essential to maintain **the integrity and impartiality of the civil service**. Civil servants must perform their functions in a professional, honest and unbiased manner. They must not misuse their official position. In discharging their responsibilities, they must not be improperly influenced by private interests, pecuniary or otherwise.
- 2.06 Therefore, much of the **public trust** in the Government rests upon whether there is good governance; and whether the civil service is impartial and of high integrity.
- 2.07 In the post-service outside work control regime for former directorate civil servants, a key consideration is whether the prospective outside work to be undertaken by a former directorate civil servant will give rise to **real, potential or perceived conflict of interest** with his previous official duties. The existence of conflict of interest will undermine the integrity and impartiality of the civil service, adversely affect good governance, and erode public trust in the Government.

## **Protection of Individual's Right**

- 2.08 Similar to public interest, there are different facets of an individual's right. In the context of the current post-service outside work control regime for former directorate civil servants, the principle of protection of an individual's right is mainly manifested through the protection of the following rights –
- (a) the right to work and freedom of choice of occupation;
  - (b) the right against unlawful discrimination;
  - (c) the right against unlawful infringement of personal data privacy.
- 2.09 An individual's **right to work and freedom of choice of occupation** is a fundamental right enshrined in the **Basic Law**

and two international covenant and labour convention applicable to Hong Kong (Articles 33 and 39 of the Basic Law).

- 2.10 The **International Covenant on Economic, Social and Cultural Rights** (Article 6) and the **Employment Policy Convention, 1964** (Article 1(2)(c)) state that a government should take appropriate steps to safeguard an individual's right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, irrespective of who he is.
- 2.11 An individual's **right against unlawful discrimination** is provided for under the **Basic Law**, which stipulates that all Hong Kong residents shall be equal before the law (Article 25). The **Hong Kong Bill of Rights Ordinance** (Articles 1(1) and 22, Part II of Chapter 383 of the Laws of Hong Kong) provides that the rights recognised therein shall be enjoyed without distinction of any kind.
- 2.12 An **individual's personal data privacy** is protected by the **Personal Data (Privacy) Ordinance** (Chapter 486 of the Laws of Hong Kong). Under the Ordinance, personal data including an individual's employment details could only be disclosed under certain circumstances.
- 2.13 Extracts of the relevant articles in the Basic Law, the two quoted international covenant and labour convention, as well as the two quoted Ordinances are set out in **Annex A**.
- 2.14 Notwithstanding the protection of an individual's right to work and freedom of choice of occupation under the Basic Law and the two quoted international covenant and labour convention applicable to Hong Kong, **such right should not be taken as absolute**.
- 2.15 The employment of civil servants by the Government is not simply a question of contractual relationship between employee and employer. The Government employs civil servants to serve

the public. Given the distinctive nature of the civil service, some **reasonable restrictions** of a civil servant's right to work after he leaves the civil service may need to be imposed for the protection of public interest.

- 2.16 One example that such right should not be taken as absolute can be found when Fredman and Morris set out the position in the United Kingdom in their book entitled 'The State as Employer, Labour Law in the Public Services' (Mansell, 1989) –

*“There is a ‘public’ dimension to the way in which the civil service and the rest of the public services are administered, which means that the State owes duties to the general public as well as to its workforce. **It is necessary to find a balance between these interests.** (emphasis added)”*  
(page 66)



## **CHAPTER 3: Current Control Regime for Directorate Civil Servants**

### **Overview**

3.01 This chapter looks at the policy objective and coverage of the current post-service outside control regime for former directorate civil servants. It sets out the key features of the control regime, which may be summed up as the ‘**3-Ps**’, namely ‘**P**eriods of restriction’; ‘**P**rocess’; and ‘**P**ublic disclosure’. It also offers a summary of the applications dealt with in the last three years.

### **Policy Objective**

3.02 The policy objective of the current regime is formulated with regard to the broad principles of protection of the public interest and protection of an individual’s right (discussed in Chapter 2 above). The aim is to –

- (a) ensure that directorate civil servants on final leave or who have left the service will not take up any work outside the Government which may constitute a real or potential conflict of interest with their former government duties or cause negative public perception embarrassing the Government and undermining the image of the civil service; and
- (b) ensure at the same time that the said individuals’ right to pursue employment or other work after ceasing government service is not unduly restricted.

3.03 The first part of the policy objective embodies the principle of protection of the public interest. The existence of a real or potential conflict of interest, or negative public perception, would adversely affect good governance and the integrity and impartiality of the civil service, which in turn would undermine the public trust in the Government.

3.04 The second part of the policy objective embodies the principle of protection of an individual’s right to work and freedom of choice

of occupation. This right, though not absolute, should not be unduly restricted.

- 3.05 The inclusion of both parts of the policy objective at the same time highlights the need to strike an appropriate balance between the protection of the public interest and the protection of an individual's right.

## Coverage

- 3.06 The current regime has evolved over time. (Please refer to **Annex B** for more details.) The last review, undertaken in 2005, has led to the adoption of a new set of arrangements (hereafter referred to as the 'new arrangement') since 1 January 2006. The new arrangement applies to –

- (a) directorate civil servants on pensionable terms<sup>4</sup> or new permanent terms<sup>5</sup> who cease active service **on or after 1 January 2006**; and
- (b) directorate civil servants on agreement terms<sup>6</sup> whose last

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<sup>4</sup> Civil servants on pensionable terms are eligible for pensions after they retire in accordance with the Pensions Ordinance and the Pension Benefits Ordinance, which govern two different pension schemes. The Government has ceased appointing new recruits to the civil service on pensionable terms since 1 June 2000.

<sup>5</sup> 'New permanent terms' refers to a set of terms of appointment and conditions of service applicable to civil servants appointed on or after 1 June 2000. New recruits to basic ranks are normally appointed on probationary terms for a specified period (normally three years) and then on agreement terms for a specified period (normally three years) before they are appointed on the prevailing permanent terms, i.e. 'new permanent terms'. Civil servants appointed on 'new permanent terms' are eligible for retirement benefits under the Civil Service Provident Fund Scheme.

<sup>6</sup> A small number of directorate civil servants are employed on agreement terms for various operational reasons. Agreement terms provide for a fixed-term appointment (normally up to three years), which may be renewed as necessary on a case-by-case basis. A directorate civil servant on agreement terms, after satisfactory completion of a fixed-term of service, receives an end-of-agreement gratuity in the form of a lump-sum payment expressed as a percentage of his total salary during the employment agreement.

agreements, including renewals of agreement, are entered into **on or after 1 January 2006**.

- 3.07 Directorate civil servants on pensionable terms who ceased active service **before 1 January 2006** and who retired on pensionable terms, or directorate civil servants on agreement terms at Directorate Pay Scale (DPS)<sup>7</sup> D3 (or equivalent) or above whose last agreement was entered into **before 1 January 2006** remain subject to the old arrangement, which was put in place in 1995 and revised in 1997. (Please refer to **Annex B** for more details on the old arrangement.)
- 3.08 The old arrangement will be phased out completely in a few years' time, when the applicable periods of restrictions imposed on the concerned directorate civil servants come to an end. At present, less than 20 serving and former directorate civil servants are still subject to the old arrangement.
- 3.09 Since almost all directorate civil servants are (and all future directorate civil servants will be) subject to the new arrangement, **the reference to the current control regime and the discussions in this consultation document are based on the new arrangement.**

### **Key Features - The '3-Ps'**

- 3.10 The key features of the current control regime may be summed up as the '**3-Ps**', namely:
- (a) '**Periods of restriction**' which denote the specified durations during which a directorate civil servant is subject to post-service outside work control;
  - (b) '**Process**' which includes the application procedure, internal

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<sup>7</sup> Directorate civil servants are remunerated under the Directorate Pay Scale (DPS) D1 to D8 (or equivalent), with D8 being the highest rank.

and external assessment, decision-making by the authority, conditions of approval (if granted), and sanctions for non-compliance; and

(c) ‘**Public disclosure**’ of information on approved and taken-up post-service outside work.

**(I) Periods of restriction**

3.11 In general, the specified periods of restriction for post-service outside work for a directorate civil servant are longer if he is more senior and has longer years of service<sup>8</sup>. This is premised on the consideration that a more senior civil servant would usually have greater involvement in the formulation of government policies and access to confidential information. In addition, the level of control varies according to the different specified periods of restriction. In general, the closer the period of restriction is to the time of cessation of active duty, the greater the control. This is premised on the consideration that knowledge of, and perceived influence in, government policies/operations diminishes with the passage of time.

**(a) *Final Leave Period***

3.12 It is common for directorate civil servants to have accumulated some earned but untaken leave by the time they cease active duty either because they have reached their normal retirement age or because they are to leave the government service on other grounds. In such circumstances, they will proceed on leave – usually known as ‘final leave’ – before formally leaving the Government.

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<sup>8</sup> For the purpose of periods of restriction, directorate civil servants are divided into three bands: (i) those at D8 (or equivalent) (mostly Permanent Secretaries); (ii) those at D4 to D7 (or equivalent) (mostly Heads or Deputy Heads of Departments and Deputy Secretaries); and (iii) junior directorate civil servants at D1 to D3 (or equivalent).

- 3.13 Because of the proximity to previous active duty, the concern over conflict of interest arising from post-service outside work by a directorate civil servant is usually the greatest during the final leave period. Because a directorate civil servant on final leave remains on full pay, the concern over an individual's right to work is the least. Because a directorate civil servant on final leave retains his status as a civil servant, the concern over dual identity needs to be addressed if he applies to work for another entity.
- 3.14 For the above reasons, the authority will not, as a rule, approve any application to take up post-service outside work with a non-specified organisation (please see paragraphs 3.15 and 3.16 below) from a directorate civil servant during his final leave. The authority will only give positive consideration to such an application if there are very exceptional considerations and if there is no concern over conflict of interest and dual identity.
- 3.15 The authority will consider an application to take up part-time and paid or notionally remunerated work with a specified non-commercial organisation from a directorate civil servant on final leave on its own merits. In doing so, the authority will have regard to whether or not there would be any concern over conflict of interest and dual identity. The specified non-commercial organisations are listed below –
- (a) charitable, academic or other non-profit making organisations not primarily engaged in commercial operations;
  - (b) non-commercial regional or international organisations; and
  - (c) the Central Authorities of the People's Republic of China.
- 3.16 The authority has given blanket permission to directorate civil servants on final leave to take up **unpaid** work in the above specified non-commercial organisations. Directorate civil servants who do so are required to notify the Civil Service Bureau (CSB) beforehand.

(b) *Minimum Sanitisation Period*

- 3.17 The sanitisation period counts from the date of cessation of active duty (i.e. on final leave, if any) of a directorate civil servant, during which his knowledge of the Government's operation and policies may still be fresh and relevant. The specification of a **minimum** sanitisation period is to forestall real or potential conflict of interest or negative public perception, by providing for a break between the time when a former directorate civil servant ceases active duty and the time when he commences any post-service outside work.
- 3.18 The current prescribed minimum sanitisation period ranges from six months to one year (depending on rank<sup>9</sup>) for directorate civil servants leaving the Government on retirement ground. No minimum sanitisation period is prescribed for directorate civil servants leaving the Government on grounds other than retirement (e.g. on completion of agreement or resignation). For these civil servants, the authority will consider the need for, and length of, sanitisation period on a case-by-case basis<sup>10</sup>.
- 3.19 Because of concern over conflict of interest, the authority will normally not approve an application to take up post-service work with a commercial organisation from a directorate civil servant who is still subject to the minimum sanitisation period. The authority may, where justified and on a case-by-case basis, shorten the minimum sanitisation period to allow for paid work in specified non-commercial organisations (listed in paragraph 3.15 above). For all other outside work, the minimum sanitisation period may only be shortened where there are special considerations, and subject to there being no conflict of interest

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<sup>9</sup> The minimum sanitisation period is one year for directorate civil servants at DPS D4 or above (or equivalent) (mostly Permanent Secretaries, Heads or Deputy Heads of Departments, and Deputy Secretaries) and six months for those at DPS D1 to D3 (or equivalent).

<sup>10</sup> Generally, the sanitisation period, if imposed, would not exceed that applicable to directorate civil servants (of the same rank) leaving the Government on retirement ground.

and the work being unlikely to cause negative public perception.

**(c) *Control Period***

3.20 The control period for post-service outside work counts from a directorate civil servant's formal departure from the Government (i.e. on exhaustion of final leave if any). During the control period, a former directorate civil servant may take up post-service outside work with prior permission from the authority (other than that covered by the blanket permission explained in paragraph 3.16 above). The current specified control period ranges from two to three years (depending on rank<sup>11</sup> or length of service<sup>12</sup>) for former directorate civil servants.

**(II) Process**

3.21 Former directorate civil servants who wish to take up post-service outside work (other than that covered by the blanket permission explained in paragraph 3.16 above) are required to apply for prior permission from the authority. Every application is assessed internally within the Administration and externally by the Advisory Committee on Post-service Employment of Civil Servants. The authority is to decide on each application, reject or approve it, and impose conditions as necessary on approved applications on a case-by-case basis. Failure by a former directorate civil servant to obtain prior permission before taking up post-service outside work during the specified periods of restriction or failure to comply with the authority's decision constitutes a breach of the control regime for which sanctions (please see paragraph 3.36 below for details) are imposed on the concerned former civil servant.

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<sup>11</sup> The current control period is three years for directorate civil servants at DPS D8 (or equivalent) and two years for those at DPS D1 to D7 (or equivalent).

<sup>12</sup> The duration of the control period is halved for a directorate civil servant leaving the Government on grounds other than retirement with less than six years of continuous government service.

(a) *Application Requirement*

- 3.22 Under the current regime, a former directorate civil servant has to apply for prior permission for each and every post-service outside work (other than that covered by the blanket permission described in paragraph 3.16 above) he wishes to take up during the final leave period (if any), the minimum sanitisation period (if any), and the control period applicable to him. Where the post-service work involves duties outside Hong Kong, a former directorate civil servant still has to apply for prior permission if he is to be based in Hong Kong, or if he is to work outside Hong Kong but his prospective employer has business connection with Hong Kong.
- 3.23 An applicant is required to complete and submit a prescribed application form. He is required to provide in the application form his own particulars and his former government duties covering three to six years (depending on rank<sup>13</sup>) before his cessation of active duty. He is required to provide details of the prospective outside work (including position, major duties and responsibilities, etc.) and the prospective employer (including name, major clientele, parent company and subsidiaries, etc.). He is also required to advise whether he has any contractual, non-contractual or official contacts with the prospective employer, etc. during his last few years of active service in the Government. Where his prospective employment will involve dealings with or businesses of the prospective employer's parent or any of its subsidiaries, he is required to advise whether he has any contractual, non-contractual or official contacts with the parent or any of the subsidiaries during his last few years of active service in the Government. A copy of the application form is at **Annex C**.

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<sup>13</sup> Applicants at DPS D4 and above (or equivalent) are required to provide past six years of service history before leaving the Government, while those at DPS D1 to D3 (or equivalent) are required to provide past three years of service history.



(b) *Internal Assessment*

3.24 Depending on the grade or department to which the applicant belonged to when he was a directorate civil servant and the nature of his prospective outside work, an application is assessed internally within the Administration by the relevant Permanent Secretary (or Permanent Secretaries), the Head of Grade, the Head of Department (or Heads of Department). To safeguard the political neutrality of the civil service, no politically appointed official (other than the Secretary for the Civil Service who is responsible for the management of the civil service) is involved in the assessment of applications for post-service outside work from former directorate civil servants.

(c) *External Assessment*

3.25 Every application, after going through the internal assessment procedure, is put to the Advisory Committee on Post-service Employment of Civil Servants (hereafter referred to as the 'Advisory Committee') for advice.

3.26 The Advisory Committee is appointed by the Chief Executive to advise on all applications for post-service outside work from directorate civil servants. Its current membership comprises a serving High Court judge, a member of the Public Service Commission<sup>14</sup> who is not a former public officer, and three other members of the public. (Please refer to **Annex D** for the terms of reference and current membership of the Advisory Committee.)

3.27 The Advisory Committee is guided by a set of declaration of interest rules. When a member (including the chairman) considers there is a potential conflict of interest in respect of an

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<sup>14</sup> The Public Service Commission is a statutory body responsible for advising the Chief Executive on matters relating to appointment, promotion and discipline of civil servants.

application, he has to make full disclosure of his interest. If deemed necessary, he has to return the discussion paper on that application and refrain from giving comments on it.

*(d) Assessment Criteria*

3.28 Every application is assessed having regard to the following criteria –

- (a) whether the applicant, while in the civil service, had been involved in the formulation of any policy or decision, the effects of which directly or specifically benefited or could directly or specifically benefit his own business or prospective employer;
- (b) whether the applicant or his prospective employer might gain an unfair advantage over its competitors because of the applicant's access to sensitive information while in the civil service;
- (c) whether the applicant, while in the civil service, had been involved in any contractual or legal dealings to which his prospective employer was a party;
- (d) whether the proposed work would have any connection with the assignments/projects and/or regulatory/enforcement duties in which the applicant had been involved while in the civil service;
- (e) whether the applicant's taking up of the proposed work would give rise to public suspicion of conflict of interest or other impropriety; and
- (f) whether any aspects of the proposed work would cause embarrassment to the Government or bring disgrace to the civil service.

3.29 The above assessment will be made against the duties in which the applicant was involved during his last three years of active government service. The service history may be traced back to the last six years of active service if the applicant was at DPS D4

(or equivalent) or above level (mostly Permanent Secretaries, Heads or Deputy Heads of Departments and Deputy Secretaries), or if the work handled is of particular sensitivity.

(e) ***Decision Authority***

3.30 The authority to decide on all applications for post-service outside work from former directorate civil servants is the Secretary for the Civil Service. The authority may reject, or approve under specific conditions, an application, after taking into account the internal assessment and the advice tendered by the Advisory Committee.

(f) ***Conditions***

3.31 To better address or mitigate public concern about conflict of interest and embarrassment to the Government, the authority has imposed the following standard work restrictions on all approved applications under the new arrangement –

*“The applicant should not -*

(a) *be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises;*

(b) *undertake, or represent any person in, any work including any litigation or lobbying activities that are connected in any way with –*

(i) *the formulation of any policy or decision;*

(ii) *sensitive information;*

(iii) *contractual or legal dealings;*

(iv) *assignments or projects; and/or*

(v) *enforcement or regulatory duties,*

*in which he had been involved or to which he had access during his last three years of service; or*

*(c) engage in any activities which would cause embarrassment to the Government or bring disgrace to the civil service.”*

3.32 In addition to the above standard work restrictions, the authority may, as necessary, impose further specific work restrictions for approved post-service work applications on a case-by-case basis.

3.33 An additional restriction that has been imposed where appropriate on approved applications of post-service outside work from retired civil servants on pensionable terms is the suspension of payment of their monthly pension upon their taking up paid and full-time work<sup>15</sup> in any of the 16 gazetted subvented organisations listed in **Annex E**.

**(g) *Appeal Mechanism***

3.34 If a former directorate civil servant is aggrieved by the decision of the authority on his application for post-service outside work, he can require the authority to review the decision. The authority will do so having regard to the justifications and any supplementary information provided by the applicant; and will decide on the appeal.

3.35 The applicant may also make representations to the Chief Executive under section 20 of the Public Service (Administration) Order<sup>16</sup>.

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<sup>15</sup> Part-time paid work with conditioned hours of no more than 24 hours per week or full-time paid work for a period of no more than three months for these 16 subvented organisations is not subject to pension suspension.

<sup>16</sup> Section 20 of Public Service (Administration) Order provides that (1) every officer who has any representations of a public or private nature to make to the Government of the Hong Kong Special Administrative Region should address them to the Chief Executive. The Chief Executive shall consider and act upon each representation as public expediency and justice to the individual may require; (2) the Chief Executive may appoint a review board to advise him on such representations addressed to him relating to appointment, dismissal and discipline of public servants as he thinks fit.

*(h) Sanctions*

3.36 Failure to obtain prior permission from the authority before taking up post-service outside work during the specified periods of restriction or failure to comply with the conditions imposed by the authority on an approved application constitutes a breach of the control regime. The authority may invoke either one or a combination of the following forms of sanction against a former directorate civil servant for such breach –

- (a) suspension of monthly pension payments under the pension legislation if the concerned former directorate civil servant was appointed on pensionable terms and is in receipt of pension payment (please see paragraphs 3.38 to 3.40 below);
- (b) initiating civil action to seek an injunction or sue for damages;
- (c) withdrawal of approval;
- (d) suspension of approval for a specified period;
- (e) reporting of an incident to the relevant professional body where it concerns professional negligence or misconduct or may involve a possible breach of the code of conduct of the relevant profession;
- (f) issue of a public statement of criticism;
- (g) placing a warning or reprimand on a register for public inspection;
- (h) issue of a reprimand letter which may be copied to the outside employer; and/or
- (i) issue of a warning letter which may be copied to the outside employer.

3.37 The sanction at paragraph 3.36(a) above is founded on the statutory basis of the control regime, as explained in paragraphs 3.39 and 3.40 below. It is only applicable to former directorate civil servants appointed on pensionable terms. As the Government has ceased appointing new recruits to the civil

service on pensionable terms since June 2000, in time, there will be no directorate civil servants appointed on pensionable terms. When this happens, pension suspension as a form of sanction for non-compliance with the post-service outside work control regime will no longer be available.

(i) ***Statutory and Contractual Bases***

3.38 The post-service outside work control regime for directorate civil servants appointed on pensionable terms is based on both statute and contract, while that for directorate civil servants appointed on non-pensionable terms (including those on Mandatory Provident Fund and on Civil Service Provident Fund) is based on contract.

3.39 The statutory basis is provided for in the relevant provisions of the two pension-related ordinances, namely the Pensions Ordinance and the Pension Benefits Ordinance (Chapters 89 and 99 of the Laws of Hong Kong respectively). The relevant part of section 30 of the Pension Benefits Ordinance (governing the New Pension Scheme<sup>17</sup>) states that –

*“(1) The Chief Executive may direct that any pension granted to a person shall be suspended as from such date as the Chief Executive shall specify if such person has, within two years after his retirement and without the prior permission in writing of the Chief Executive<sup>18</sup> (footnote added) –*

- (a) entered business on his own account;*
- (b) become a partner in a partnership;*
- (c) become a director of a company; or*
- (d) become an employee,*

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<sup>17</sup> The New Pension Scheme (NPS) is for civil servants appointed on pensionable terms from 1 July 1987 to 31 May 2000, and those civil servants on the Old Pension Scheme but have opted to switch to the NPS.

<sup>18</sup> The Chief Executive has delegated this statutory power to the Secretary for the Civil Service.

*if the principal part of such business or the business of such partnership or company or of his employment is, in the opinion of the Chief Executive, carried on in Hong Kong, and such direction shall be forthwith notified in writing by the Secretary for the Civil Service to the person concerned.*

*(2) The Chief Executive may specify a period of more than two years for the purposes of subsection (1) where he thinks fit, and such specification shall be forthwith notified in writing by the Secretary for the Civil Service to the person concerned.”*

3.40 Section 16 of the Pensions Ordinance lays down similar provisions in respect of the Old Pension Scheme<sup>19</sup>.

3.41 The contractual basis for control over post-service outside work for directorate civil servants appointed on pensionable as well as non-pensionable terms takes the form of civil service regulations and circulars promulgated from time to time (including those relating to the taking up of post-service outside work) which form part of the employment contract between the Government and civil servants. For directorate civil servants appointed on non-pensionable terms, it also takes the form of the terms and conditions of service as set out in a Memorandum on Conditions of Service accompanying their letters of appointment. By implication, those contractual obligations relating to the taking up of post-service outside work continue to survive after the concerned civil servants have left the government service.

**(j) *Other Statutory Control***

3.42 Apart from the two pension-related Ordinances and the contractual instruments which provide for the bases of control, a

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<sup>19</sup> The Old Pension Scheme is for civil servants appointed on pensionable terms before 1 July 1987.

serving or former directorate civil servant is bound by, among others, the requirements under the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong), and the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong).

- 3.43 The Official Secrets Ordinance prohibits, among others, unauthorised obtaining and disclosure of official information protected under the Ordinance. Under it, the maximum punishment for committing an offence of disclosing specified information without lawful authority is a fine of \$500,000 and two-year imprisonment if convicted on indictment and a fine at level 5 and six-month imprisonment if convicted summarily.
- 3.44 Under the Prevention of Bribery Ordinance, an offence committed by a civil servant for soliciting or accepting any advantage as an inducement to or reward for certain acts will attract a maximum punishment of ten-year imprisonment and a fine of \$500,000 if convicted on indictment or three-year imprisonment and a fine of \$100,000 if convicted summarily. In addition, a civil servant who has been granted or is eligible for pension benefits and is convicted of the offences under the Prevention of Bribery Ordinance may have his pension benefits cancelled, suspended or reduced under the two-pension related Ordinances<sup>20</sup>.

### **(III) Public disclosure**

#### **(a) *Public Register***

- 3.45 Before taking up approved outside employment, a former directorate civil servant is required to advise CSB of the commencement date of the work. He is also required to notify the prospective employer of the conditions of approval imposed by the authority, including any sanitisation period or work

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<sup>20</sup> Section 15 of the Pensions Ordinance and section 29 of the Pension Benefits Ordinance.



restrictions.

- 3.46 A case record on each post-service outside work approved and taken up by a former directorate civil servant at DPS D4 (or equivalent) or above is placed on a register for public inspection upon request. The case record is kept on the register until the expiry of the periods of restriction applicable to the said former directorate civil servant, or after he has notified CSB of the cessation of the outside work, whichever occurs first.
- 3.47 A case record contains information on the name of the concerned former directorate civil servant, his last civil service post title, date of cessation of active government service, conditions imposed by the authority on the approved outside work, commencement date and a brief description of the approved work, and where applicable, identity of the outside employer and the applicant's position in the outside organisation. A sample case record on the public register is at **Annex F**.
- 3.48 For approved post-service outside work taken up by former directorate civil servants below DPS D4 (or equivalent), the relevant information is not put on the public register, but may be disclosed on a case-by-case basis where there is public concern. The same applies to unpaid work covered by the blanket permission (described in paragraph 3.16 above) and taken up by former directorate civil servants.
- 3.49 Any member of the public is free to access the public register. Members of the public or the media may also approach CSB if they have any queries; and CSB will take appropriate action where there is public concern.

**(b) *Annual Updating***

- 3.50 A former directorate civil servant is required to notify CSB of any material change to his approved and taken up post-service outside work (including cessation of work) during the periods of restriction applicable to him. CSB also obtains updates, on an

annual basis, from former directorate civil servants who have taken up approved post-service outside work until the expiry of the periods of restriction applicable to them, or until they have notified CSB of the cessation of their outside work, whichever occurs first. Relevant case records on the public register are revised based on the updated information.

(c) ***Publication of Information on Applications***

3.51 The Advisory Committee (please see paragraph 3.25 above) submits an annual report on its work to the Chief Executive. The report provides information on applications processed on an aggregated basis. It is submitted to the Public Service Panel of the Legislative Council for information and is uploaded to the CSB's website.

**Applications for Post-service Outside Work from Directorate Civil Servants Processed in Last Three Years**

3.52 For the last three years of 2006 to 2008, there were around 560 former directorate civil servants subject to post-service outside work control, i.e. within the specified periods of restriction.

3.53 Among them, 89 (16%), made up of 39 subject to the old arrangement and 50 subject to the new arrangement, submitted a total of 175 applications (as a separate application is required for each prospective post-service outside work)<sup>21</sup>.

3.54 Of the 175 applications, 76 (43%) were from former directorate civil servants at DPS D4 or above (or equivalent) and 99 (57%) from those at DPS D1 to D3 (or equivalent).

3.55 Of the 175 applications, 4 were rejected. For all the approved applications from former directorate civil servants subject to the

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<sup>21</sup> Data under this section are prepared on the basis of the date of approval or rejection of an application.

new arrangement, standard work restrictions (please see paragraph 3.31 above) were imposed. Among the 171 approved applications, 58 (34%) were approved with specific work restrictions in addition to the standard ones.

- 3.56 Of the 171 approved applications, 69 (40%) were for outside work with commercial entities and 102 (60%) for work with entities other than private commercial organisations, such as academic institutions, statutory organisations and charitable organisations.
- 3.57 An analysis of the applications received by the rank of applicants when in government service, the work nature of employers and the functional nature of the approved outside work is set out in Tables 1 to 5 of **Annex G**.

## **CHAPTER 4: Post-service Employment Control in Selected Overseas Jurisdictions**

### **Overview**

- 4.01 This chapter gives an overview of the arrangements governing the post-service employment of former senior civil servants in seven selected overseas jurisdictions (namely Australia, Canada, France, New Zealand, Singapore, the United Kingdom and the United States of America), based on the findings of a consultancy study completed in recent months.
- 4.02 For ease of reference, the findings are described under the following headings –
- (a) policy objective;
  - (b) basis of control; and
  - (c) key features – the ‘**3-Ps**’ (‘**P**eriods of restriction’, ‘**P**rocess’ and ‘**P**ublic disclosure’, where applicable).

### **Selection of Overseas Jurisdictions**

- 4.03 The Review Committee considers information on the arrangements governing the post-service employment of former senior civil servants at the central (or federal) government level in overseas jurisdictions could provide useful reference. It has selected Australia, Canada, France, New Zealand, Singapore, the United Kingdom and the United States of America for study, as these countries were among the top twenty jurisdictions on the Transparency International Corruption Perceptions Index and/or the ‘Freedom from Corruption’ List compiled by the Heritage Foundation as part of the Index of Economic Freedom for 2007 and 2008. New Zealand, in particular, topped both rankings in 2008. They are also developed economies from different parts of the world.

4.04 Upon the Review Committee’s advice, the Administration (through the Civil Service Bureau) commissioned a consultant (Hay Group Limited) to conduct and complete a fact-finding study within ten weeks (from mid-November 2008 to January 2009) on the control arrangements for post-service employment of former senior civil servants in the selected jurisdictions. The consultancy report is put on the Review Committee’s website. Hardcopies of the report are available upon request. (Please refer to paragraph 6.06 in Chapter 6 for Review Committee’s contact details.)

## Australia

### (I) Policy Objective

4.05 The approach of the Australian Government to post-service employment of former civil servants “*is not to restrict the flow of skills, experience and information between the Australian Public Service (APS) and other sectors but to manage conflicts of interest when APS employees, including those about to take up appointments with the private sector, deal with outside organisations and individuals*”<sup>22</sup>. Australia considers that the taking up of post-service employment by former civil servants in the private sector can bring about benefits to both the public and private sectors of Australia.

### (II) Basis of Control

4.06 The Australian control regime is based on **mutual agreement** reached between the civil servants and the government agencies they work for on a **voluntary** basis. While the Government may

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<sup>22</sup> Circular No. 2007/3 “Post Separation Employment: Policy Guidelines” issued by the Australian Public Service Commission.

impose restrictions, their compliance by former civil servants concerned relies on goodwill. The Australian official guideline on post-service employment states that it is “*not currently possible under Australian law to impose post separation employment restrictions on all or certain classes of APS employees and to ensure that those restrictions are enforceable*”<sup>22</sup>.

4.07 The APS Values and Code of Conduct requires employees to disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment; and not make improper use of inside information or the employee’s duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.

4.08 In addition, former civil servants are subject to statutory control on communication or disclosure of information received while working in government service.

### **(III) Key Features**

#### **(a) Periods of restriction**

4.09 The control arrangement applies to all civil servants. Certain groups within the civil service are seen as more concerned by post-service employment issues, namely those belonging to the Senior Executive Service; those in sensitive positions (e.g. contracting and procurement); those in the defence area of work; and those with knowledge of information system infrastructure requirement and practices.

4.10 Since control is implemented through mutual agreement reached between the Government and individual civil servants, there is no one single standard period of restriction for former senior civil servants. Government agencies may put in place broad policy guidelines which include, for example, the length of time a person should wait after leaving the APS before he could work in

business areas that have direct contact with his former agency, or ‘gardening leave’ which requires an employee to stay away from the government offices for a specific period of time while still on government pay.

- 4.11 From July 2008 onwards, former civil servants belonging to the Senior Executive Service are restricted from working as **professional lobbyists** (defined as any person, company or organisation that represents, or whose employees represent, the interests of a third party) within **one year** from leaving the government service on any matters on which they have had official dealings in their last year of government service. Government agencies will need to ensure that the systems they put in place to manage contacts with lobbyists include a requirement for staff to seek assurances from the lobbyists who approach them that they are not subject to any of these post employment restrictions. A lobbyist who gives false or misleading information in response to this request could be in breach of the Lobbying Code of Conduct. Agencies could reinforce this system by *“seeking assurances from staff on separation that they will adhere to the restrictions, but such assurances would rely primarily on goodwill and may not be legally binding”*<sup>23</sup>.

## **(b) Process**

### ***Prior Approval***

- 4.12 As restrictions with binding effect have to be mutually agreed, there is no application or prior approval procedure for post-service employment by former senior civil servants. Individual government agencies may put in place specific policies and procedures requiring civil servants to inform their agency heads as soon as they are offered post-service employment where a conflict of interest could arise.

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<sup>23</sup> Circular No. 2008/4 “Requirements relating to the Lobbying Code of Conduct and Post Separation Contact with Government” issued by the Australian Public Service Commission.

### ***Work Restrictions***

- 4.13 Specific post-service work restrictions may be agreed voluntarily by a civil servant with his government agency before departure from the government service. Some examples of such mutually agreed restrictions include not taking up employment in a specific domain of activity within six to 24 months after leaving government service, and declaration about previous access and limitations on future use of information.

### ***Other Forms of Control***

- 4.14 To address conflict of interest, the Australian Government may impose restrictions on companies bidding for and being awarded with government contracts. Under the APS Values and Code of Conduct, a government agency may include provisions in its tender invitations precluding the solicitation, enticement or engagement of former civil servants during the tender process. A government agency may also approach and caution companies which may gain an unfair advantage by hiring former civil servants on the importance to avoid any conflict of interest situation in business dealing with the Government.

### ***Sanctions***

- 4.15 As restrictions imposed by the Government on post-service employment may not be enforced by law, their compliance by former civil servants relies solely on goodwill (please see paragraph 4.06 above). Sanction for non-compliance may only take the form of moral censure, which is rarely exercised.
- 4.16 Under the Crimes Act, it is an offence for a person who has left the APS to publish or communicate without authority any fact or document which he became aware of or obtained while employed by the Australian Government. An offence may attract a two-year maximum prison term. Also, the Criminal Code (abuse of public office) makes it an offence for a person who has left the APS to use official information obtained while employed to obtain dishonestly a benefit for himself or another person or to cause detriment to another. An offence may attract a five-year



maximum prison term.

**(c) Public disclosure**

4.17 Information on post-service employment taken up by former senior civil servants and on the specific arrangements (if any) agreed between the individuals concerned and their government agencies is not disclosed to the public on grounds of privacy and confidentiality. Individual cases may come to the public knowledge through parliamentary scrutiny or press coverage.

<b>Canada</b>
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**(I) Policy Objective**

4.18 The aim of the Canadian control regime is to ensure that public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office and to minimise the possibilities of -

- (a) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public office;
- (b) obtaining preferential treatment or privileged access to the Government after leaving public office;
- (c) taking personal advantage of information obtained in the course of official duties before it becomes generally available to the public; and
- (d) using public office to unfair advantage in obtaining opportunities for outside employment.

**(II) Basis of Control**

4.19 Canadian public servants are bound by their employment contracts to comply with the post-service employment arrangements. The Values and Ethics Code for Public Service

forms part of the conditions of employment in the Public Service of Canada. The Code sets out, amongst others, measures concerning conflict of interest issues and rules of conduct concerning post-service employment.

- 4.20 In addition, former public servants are subject to statutory control on communication or disclosure of information received while working as public servants.

### (III) Key Features

#### (a) **Periods of restriction**

- 4.21 The post-service employment arrangements apply to public servants in the Executive Group (EX) positions, EX minus 1 and EX minus 2 positions and their equivalents. These positions include public servants in the three levels down the hierarchical level of a Deputy Head of a department or agency, who is a political appointee. In addition, a Deputy Head may, after consultation with the Secretariat of the Treasury Board of Canada (which serves as the general manager and employer of the public servants), designate other positions as being subject to post-service employment arrangements where the official duties involved raise post-employment concerns, or exclude positions where the official duties do not raise such concerns.

- 4.22 Former public servants subject to the post-service employment control measures shall not, within **one year** after leaving office (known in the Canadian context as the ‘limitation period’) -

- (a) accept appointment to a board of directors of, or employment with, entities with which they personally, or through their subordinates, had significant official dealings during the period of one year immediately prior to the termination of their service;
- (b) make representations for, or on behalf of, persons to any department or organisation with which they personally, or through their subordinates, had significant official dealings

during the period of one year immediately prior to the termination of their service; or

- (c) give advice to their clients using information that is not available to the public concerning the programmes or policies of the departments or organisations with which they were employed or with which they had a direct and substantial relationship.

4.23 Upon application from a public servant or former public servant, the Deputy Head concerned may waive or reduce the one-year limitation period. In making such a decision, the Deputy Head should take into account various factors, including the general employment prospect of the applicant; the significance to the Government of information possessed by the applicant during his government service; the authority and influence possessed by the applicant; the degree to which the prospective employer may gain an unfair commercial or private advantage by employing the applicant; and the circumstances under which the termination of the applicant's service occurred, etc.

## **(b) Process**

### ***Prior Approval***

4.24 There is no application or prior approval procedure for post-service employment by former senior public servants, other than that related to a waiver or reduction of the one-year limitation period (please see paragraph 4.23 above).

### ***Work Restrictions***

4.25 Other than the work restrictions set out in paragraph 4.22 above, there are no specific restrictions on post-service work.

### ***Other Forms of Control***

4.26 Bidders of contracts to supply work and services for the Canadian Government are required to declare any involvement of former public servants in EX positions. Under the Code of Conduct for

Procurement, vendors are not permitted to hire directly, or through a third party, former public servants during their one-year limitation period where this would constitute a violation of post-employment measures under the Values and Ethics Code for the Public Service.

### *Sanctions*

- 4.27 The Values and Ethics Code for Public Services does not provide for any sanctions on non-compliance with the post-service employment measures by former public servants.
- 4.28 Former public servants are subject to the provisions of the Canadian Security of Information Act on unauthorised disclosure of official information. Any violation is liable for a 14-year maximum prison term.

### **(c) Public disclosure**

- 4.29 Information on post-service employment taken up by former senior public servants is not disclosed to the public.

<b>France</b>
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### **(I) Policy Objective**

- 4.30 The aim of the French post-service employment arrangement is to –
- (a) protect both the integrity of senior civil servants and the political neutrality of the public service; and
  - (b) mitigate public concerns over possible impropriety in post-service appointment.

**(II) Basis of Control**

4.31 The control is provided for in the French Penal Code ('Code Pénal' in French) decreed in 1993 and subsequently amended in 2007. The legislation decreed in 1993 is concerned mostly with prevention of corruption and transparency of economic activities and public procedures. The 2007 amendment re-defines what constitute taking interests illegally.

4.32 Former civil servants are also subject to the control of the Penal Code concerning unauthorised disclosure of secret information and information which is prejudicial to national defence.

**(III) Key Features**

**(a) Periods of restriction**

4.33 All civil servants are subject to post-service employment control. Since 2007 onwards, the period of restriction has been shortened to within **three years** after leaving the government service (formerly five years), having regard to the practice in other countries. Within three years of leaving the government service, a former senior civil servant is not allowed to take up employment with a particular enterprise which he has regulated or monitored or with which he has negotiated or signed contracts on behalf of the public authorities during the three years before leaving government service (the concerned company). This prohibition also covers companies in the same group to encompass the parent and subsidiary company of the concerned company and other companies, subject to a minimum stake of 30%, i.e. parent or other companies holding a minimum 30% stake of the concerned company, or a company with a minimum 30% stake held by the concerned company.

## **(b) Process**

### ***Prior Approval***

4.34 Former civil servants are required to submit applications for outside work during the period of restriction. The applications will be referred to an external body, the Ethics Commission ('La commission de déontologie' in French), for advice. The Ethics Commission has 14 members, comprising a magistrate of the Auditors Court (i.e. the national audit office, 'Cour des comptes' in French), a Judiciary magistrate, qualified persons who are familiar with the work of the state/territorial public service and public health service, persons who are familiar with the field of research, and the Director General of Administration and Public Service ('Le directeur général de l'administration et de la fonction publique' in French).

### ***Work Restrictions***

4.35 A former senior civil servant, when taking a job in the private sector within three years of leaving the government service, must not try to reach his former colleagues for seeking information that may not be available to the public.

### ***Sanctions***

4.36 It is an offence under the French Penal Code if a former civil servant, within three years of leaving the government service, takes up a job in a company that he regulated or monitored in the last three years of his government service. A two-year prison term and a fine of €30,000 may be imposed. Disciplinary sanctions also exist, but are difficult to enforce, especially when the senior civil servant concerned has retired.

4.37 Unauthorised disclosure of secret information under the French Penal Code is punishable by a one-year prison term and a fine of €15,000. Separately, disclosure of information which is prejudicial to national defence under the Penal Code is

punishable by a seven-year prison term and a fine of €100,000.

**(c) Public disclosure**

4.38 The Ethics Commission publishes an annual report on its work and on the opinions it has offered on selected applications but not on the identity of the concerned former civil servants. The report is available to the public. Information on post-service employment taken up by former senior civil servants is not disclosed to the public.

<b>New Zealand</b>
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**(I) Policy Objective**

4.39 New Zealand aims to balance the perceived merits and demerits of post-service employment of its former senior civil servants. It recognises the considerable advantages that ex-civil servants could bring to their new employers, including knowledge of research results and administrative processes. It also accepts that the interests of former senior civil servants must be properly balanced with the wider public interest. It does not favour constraint on post-service employment unless there is conflict of interest or breach of confidentiality.

**(II) Basis of Control**

4.40 New Zealand courts have overwhelmingly ruled against employers wanting to apply restraint of trade provisions. The post-service control regime for senior civil servants is therefore largely built on the basis of mutual agreement and trust. The control for post-service employment is set forth in the employment contracts of the most senior civil servants, namely the Chief Executive Officers (please see paragraph 4.42 below).

4.41 Former civil servants are subject to statutory control concerning communication of official information.

### **(III) Key Features**

#### **(a) Periods of restriction**

4.42 The most senior civil servants, namely heads of government departments and Crown Entities (known as Chief Executive Officers or ‘CEOs’) are subject to control. In the employment contracts of some CEOs, there is a period of restriction of typically one year. During this period of restriction, a former CEO has to seek consent from the State Services Commissioner (SSC) who is responsible for the appointment and management of senior civil servants. The agreement of SSC will not be unreasonably withheld.

#### **(b) Process**

##### ***Prior Approval***

4.43 CEOs will have to obtain the prior agreement of SSC before taking up post-service employment during the period of restriction if one such period is stipulated in their employment contracts.

4.44 SSC will counsel an outgoing senior civil servant and suggest what he may or may not want to consider in terms of future plans.

##### ***Work Restrictions***

4.45 CEOs are prohibited during and after the term of their employment contracts to –

(a) disclose to any person any official information that has come to their knowledge in the course of the performance of the employment contracts with the Government; and

(b) use or attempt to use any such official information for their



own personal benefit, or for the benefit of any other person or organisation, or in any manner whatsoever, other than in accordance with their duties and responsibilities and consistent with the obligation of honesty expected of a person holding a position of CEO.

### *Sanctions*

4.46 As the control regime is largely built on the basis of mutual agreement and trust (please see paragraph 4.40 above), sanction on former civil servants for non-compliance can only take the form of moral censure which is rarely exercised.

4.47 Under the Crimes Act 1961, a person, including a former civil servant, is liable to a three-year maximum prison term for unauthorised disclosure of official information in the knowledge that such communication is likely to prejudice the security and defence of New Zealand.

### **(c) Public disclosure**

4.48 New Zealand does not disclose to the public post-service employment taken up by former senior civil servants.

## **Singapore**

4.49 Information on Singapore's post-service employment control for senior civil servants is graded confidential and not accessible to the consultant. The limited description provided below is based on information available from different sources in the public domain.

### **(I) Policy Objective**

4.50 No information can be found in the public domain.

**(II) Basis of Control**

- 4.51 The post-service outside work control applicable to pensioners is provided for under the Pensions Act.
- 4.52 Civil servants have to comply with the code of conduct as stipulated in the Instruction Manual, which forms part of their employment contracts with the Government.
- 4.53 In addition, all civil servants are subject to the Official Secrets Act on disclosure of official information.

**(III) Key Features**

**(a) Periods of restriction**

- 4.54 In Singapore, only certain categories of civil servants are on pension payments. The post-service outside work control arrangements only apply to these civil servants. Within **five years** from retirement, former civil servants in certain categories have to obtain permission from the President of Singapore before –
- (a) becoming directors of any company, the principal part of whose business is in any way directly concerned with Singapore or Malaysia;
  - (b) becoming staff employed in Singapore or in Malaysia by any such company; or
  - (c) engaging in any occupation for gain in Singapore or in Malaysia.

**(b) Process**

***Prior Approval***

- 4.55 No information can be found in the public domain on the application, assessment and decision-making procedures.

### ***Work Restrictions***

4.56 No information can be found in the public domain.

### ***Sanctions***

4.57 Under the Pensions Act, failure to obtain prior permission from the President before taking up post-service employment within five years from retirement may result in cessation of the pension payment. Pension payment may be restored, with retrospective effect if the President sees fit, after the cessation of the specified post-service employment.

4.58 Unauthorised disclosure of official information is an offence under the Official Secrets Act and is liable to a maximum fine of SIN\$2,000, or a two-year maximum prison term, or both.

### **(c) Public disclosure**

4.59 No information can be found in the public domain.

<b>United Kingdom</b>
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### **(I) Policy Objective**

4.60 The aim of the UK control regime is to maintain public trust in the Crown services and in the people who work in them, and in particular -

(a) to avoid any suspicion that the advice and decisions of a serving officer might be influenced by the hope or expectation of future employment with a particular firm or organisation; or

(b) to avoid the risk that a particular firm might gain an improper advantage over its competitors by employing someone who, in the course of his official duties, has had access to technical or other information which those

competitors might legitimately regard as their own trade secrets or to information relating to proposed developments in government policy which may affect that firm or its competitors.

**(II) Basis of Control**

4.61 The control on post-service employment is included in the employment terms and conditions of all civil servants. The Civil Service Management Code, which contains the Rules on the Acceptance of Outside Appointments by Crown Servants (commonly known as ‘the Business Appointment Rules’), and the Civil Service Code form part of the employment contract between a civil servant and the Crown.

4.62 In addition, all civil servants are subject to the Official Secrets Act concerning unauthorised disclosure of official information.

**(III) Key Features**

**(a) Periods of restriction**

4.63 The control regime applies to all civil servants. Specific control arrangements applicable to individual civil servants will depend on their rank and whether they had previous official dealings with their prospective employers, etc.

4.64 Within **two years** of leaving Crown employment (excluding the final leave period), civil servants must obtain prior approval before taking up any form of full, part-time or fee-paid employment –

(a) in the United Kingdom; or

(b) overseas in a public or private company or in the service of a foreign government or its agencies.

4.65 All Permanent Secretaries, including Second Permanent Secretaries, and their direct equivalents are subject to an automatic minimum waiting period of **three months** between

leaving Crown employment and taking up an outside appointment, unless they have been appointed from outside the civil service on a limited period contract. The Advisory Committee on Business Appointments (please see paragraphs 4.68 and 4.69 below) has the discretion to recommend waiving the minimum waiting period if, in its view, the appointment is entirely unconnected with the applicant's previous official work and no questions of impropriety arise.

## **(b) Process**

### ***Prior Approval***

- 4.66 Former civil servants are required to submit applications for outside work during the period of restriction. In considering an application for post-service employment, departments are advised to consider, in particular, whether the applicant has been –
- (a) dealing with the receipt of tenders from the prospective employer;
  - (b) dealing with the award of contracts to the prospective employer;
  - (c) dealing with the administration or monitoring of contracts with the prospective employer;
  - (d) giving professional or technical advice about such contracts whether before or after they were awarded;
  - (e) involved in dealings of an official but non-contractual nature with the prospective employer.
- 4.67 If the applicant had some degree of contact with the prospective employer while in government service, the concerned department has to take the following into account –
- (a) how much of the contact was in the course of official duties;
  - (b) how significant was the contact;
  - (c) the nature of the proposed employment; and

- (d) the connection between the new job and the applicant's previous official duties.

The concerned department will take into account contacts in the course of official duty which have taken place at any time in the two years immediately before resignation or retirement, or earlier where the association was of a continued or repeated nature.

4.68 Applications from the most senior civil servants (e.g. Permanent Secretaries) are put to the Advisory Committee on Business Appointments for advice. The advice is taken into account by the decision authority (which is the Prime Minister). Applications from other civil servants are not referred to the Advisory Committee for advice unless the decision authority (which is the Minister in charge of the department where the applicant previously worked in) and the Head of the Home Civil Service consider necessary.

4.69 The Advisory Committee on Business Appointments is appointed by the Prime Minister to give independent advice on post-service outside work applications from civil servants at the most senior levels. It is currently chaired by a member of the House of Lords and consists of five members, including members of the House of Lords, former senior civil servants and a leading light in the business sector. It is supported by a small secretariat in the Cabinet Office.

### ***Work Restrictions***

4.70 Applications for post-service outside work will be approved either –

- (a) unconditionally; or
- (b) subject to conditions which may apply for up to two years from the final day in Crown employment, or where different, the final day in post, as appropriate.

4.71 Conditions for approval may include –

- (a) a waiting period before taking up the appointment;
- (b) an absolute or qualified ban on the involvement of the applicant in dealings between the prospective employer and the Government;
- (c) a ban on the involvement by the applicant in dealings between the prospective employer and a named competitor (or competitors) of that employer;
- (d) in the case of consultancies, a requirement to seek official approval before accepting commissions of a particular nature, or from named employers.

### ***Sanctions***

4.72 Sanctions for non-compliance with the post-service employment measures are covered by employment contract law. Civil servants in breach of employment contracts may be sued by the Government or the Government may apply to the court for an injunction order to prevent or stop the outside employment.

4.73 The Official Secrets Act 1989 makes it unlawful to disclose information relating to defence, security and intelligence, international relations, intelligence gained from other departments or international organisations, intelligence useful to criminals, or the interception of communications. The law is binding on serving civil servants, those departed and any other persons who possess official information. The penalties for violation of the Act are a two-year maximum prison term or an unlimited fine, or both, if the offence is tried on indictment; and a maximum six-month imprisonment term or a maximum fine of £2,000, or both, if the offence is tried summarily.

### **(c) Public disclosure**

4.74 The advice of the Advisory Committee on Business Appointments given on each approved application by former senior civil servants is published online and in its annual report if the employment is taken up. Statistics on applications are also available in the annual report. Applications approved and taken

up by other former civil servants (i.e. those that were not submitted to the Advisory Committee for consideration) are not disclosed.

## **United States of America**

### **(I) Policy Objective**

4.75 The key concern for post-service employment of former civil servants of the Federal Government of the US is conflict of interest. Statutory controls are put in place to address conflict of interest and to prohibit certain acts by former civil servants which involve, or may appear to involve, the unfair use of information and contacts obtained during government employment.

4.76 Another important objective is to prevent professional lobbying activities by ex-civil servants who may have insider information through their previous work within the Government.

### **(II) Basis of Control**

4.77 The restrictions on post-service employment for former employees of the Executive Branch of the Federal Government are set out in law, namely section 207 of Title 18 of the United States Code, which is a criminal statute. This section prohibits a former employee from providing certain services to or engaging in certain activities on behalf of persons or entities other than the United States, whether or not done for compensation. The “United States” refers to any employee of any department, agency, court or court-martial of the United States (but not of the District of Columbia), but excluding the Congress.

4.78 In addition, any person, including a former civil servant, is subject to control under the United States Code concerning disclosure of classified information.



### (III) Key Features

#### (a) Periods of restriction

- 4.79 The post-service employment control arrangements apply to all employees of the Executive Branch. ‘Senior employees’ and ‘very senior employees’ are subject to more restrictions.
- 4.80 None of the provisions in section 207 of Title 18 of the United States Code bar any individual, regardless of rank or position, from accepting employment with any private or public employer after government service.
- 4.81 The post-service employment restrictions provided under section 207 only prohibit former employees of the Executive Branch from engaging in **certain activities** on behalf of persons or entities other than the United States for **one or two years or for life** after leaving office.

#### *One-year ban on certain activities*

- 4.82 Within one year of leaving the government service, no **former employee** of the Executive Branch may knowingly represent, aid or advise on the basis of covered information<sup>24</sup>, on behalf of someone other than the United States, on an ongoing treaty or trade negotiation under the Omnibus Trade and Competitiveness Act of 1988 in which, during his last year of government service, he participated personally and substantially as an employee.
- 4.83 Within one year of leaving the government service, a former **senior employee** of the Executive Branch is also barred from communicating to or appearing before the agency in which he served during his last year of government service, with the intent to influence, on behalf of another person other than the United

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<sup>24</sup> Covered information means agency records which were accessible to the employee, which he knew or should have known were designated as exempt from disclosure under the Freedom of Information Act and which concerns a negotiation in which the employee participated personally and substantially during his last year of government service.

States on a matter on which he seeks official action. This provision does not prohibit ‘behind the scenes’ assistance rendered by a former senior employee.

- 4.84 Within one year of leaving the government service, a former **senior employee** and a former **very senior employee** of the Executive Branch are also barred from representing a foreign entity before an agency of the United States or aiding, or advising a foreign entity with the intent to influence certain government officials, even without direct representations to officials concerned on the behalf of a foreign entity. A foreign entity refers to the government of a foreign country or a foreign political party.

*Two-year ban on certain activities*

- 4.85 Within two years of leaving the government service, no **former employee** of the Executive Branch may communicate with or appear before any court or federal agency with the intent to influence on behalf of someone other than the United States on a particular matter involving specific parties that he knows or reasonably should know was actually pending under his official responsibility during his last year of government service and in which the United States is a party or has a direct and substantial interest.
- 4.86 Within two years of leaving the government service, a **very senior employee** of the Executive Branch is also barred from communicating to or appearing before any official appointed to an Executive Schedule position or any employee of the agency in which he served during his last year of government service, with the intent to influence, on behalf of another person other than the United States in connection with any matter on which he seeks official action. This restriction is similar to the ‘one-year ban’ applicable to a senior employee mentioned in paragraph 4.83 above but the length of the period of restriction is longer.

### *Life-long ban on certain activities*

4.87 A **former employee** of the Executive Branch is prohibited permanently from communicating with or appearing before any court or federal agency with the intent to influence on behalf of someone other than the United States on a particular matter involving specific parties in which he participated personally and substantially while with the Government and in which the United States is a party or has a direct and substantial interest. “Particular matter” includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest or judicial or other proceeding. The particular matter has to involve specific parties, e.g. parties involved in a contract. General rulemakings do not usually involve specific parties. This provision does not prohibit ‘behind-the-scenes’ assistance rendered by a former employee in connection with the representation of another person, or self-representation.

### **(b) Process**

#### *Prior Approval*

4.88 Prior approval for taking up post-service employment is not required.

4.89 Before an employee leaves the government service, he has to give a notice of leave to his supervisor/manager. The agency will arrange pre-termination counselling and provide him with information on post-employment regulations and restrictions.

#### *Work Restrictions*

4.90 Apart from the restrictions with a specific timeframe (as set out in section 207 of Title 18 of the United States Code and explained in paragraphs 4.82 to 4.87 above), there are no other work restrictions applicable to former employees of the Executive Branch on taking up of post-service employment.

## ***Sanctions***

- 4.91 A person convicted of an offence under section 207 of Title 18 of the United States Code shall be liable to a one-year maximum prison term, or a maximum fine of to US\$50,000, or both. If the conduct is done wilfully, the maximum penalty will be imprisonment of five years, or a fine of US\$50,000, or both.
- 4.92 The Attorney General may bring a civil action against any person who engages in conduct constituting an offence under section 207 of Title 18 of the United States Code and such person shall be subject to a civil penalty of up to US\$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The Attorney General may also petition for an order prohibiting that person from engaging in such conduct. The imposition of such a civil penalty or the filing of a petition for prohibition order does not preclude any other criminal or civil statutory, common law or administrative remedy.
- 4.93 Under the United States Code, unauthorised disclosure of classified information is liable to a fine, or imprisonment for not more than ten years, or both.

### **(c) Public disclosure**

- 4.94 Information on post-service employment taken up by former employees, including senior and very senior employees, is not disclosed to the public.

## CHAPTER 5: Areas for Review

### Overview

- 5.01 Over the past few months, the Review Committee has examined the current control regime in detail, from the underlying principles on which the control regime is built to individual questions set out in the application form for post-service outside work.
- 5.02 The Review Committee has identified a number of salient issues. It has not come to any conclusion on these issues and would like to hear from the public and stakeholders before forming its recommendations. To facilitate discussion, this consultation document sets out some considerations for each identified issue.
- 5.03 The salient issues are concerned with -
- (a) the principles underlying the control regime;
  - (b) the policy objective of the control regime; and
  - (c) the design and operation of the control regime.
- 5.04 With regard to the principles underlying the control regime, the Review Committee seeks views on whether protecting the public interest and protecting an individual's right should continue to be recognised as the two underlying principles of the control regime.
- 5.05 With regard to the policy objective of the control regime, the Review Committee seeks views on whether or not the current policy objective is appropriate; and whether or not any changes should be made.
- 5.06 With regard to the design and operation of the control regime, the Review Committee seeks views on whether or not the key features, summed up as the '3-**P**s' (namely '**P**eriods of restriction', '**P**rocess' and '**P**ublic disclosure'), is adequate having regard to

the (existing or may be modified) underlying broad principles and policy objective; and whether or not any changes should be made.

5.07 The Review Committee also welcomes views on other issues which may be relevant but are not specifically raised in this chapter.

## **Underlying Principles**

5.08 The Review Committee notes that the community do not have any disagreement over one of the two broad principles underlying the current post-service outside work control regime, namely protection of the public interest. It further notes that although all the seven overseas jurisdictions studied have not articulated clearly the principle(s) underlying their post-service employment control regimes, the policy objectives that they seek to achieve reflect that the same principle of protecting the public interest is embedded in their control regimes (see Chapter 4).

5.09 The Review Committee notes that some in the local community consider that protection of the public interest should be the only principle governing the post-service outside work control regime for former directorate civil servants, since there is nothing more important than the well-being of the community at large. They consider that protecting an individual's right, in particular, the right to work and freedom of choice of occupation, should not be an underlying principle.

**Issue 1: Should protecting the public interest and protecting an individual's right continue to be recognised as the two underlying principles of the control regime?**

5.10 A consideration in favour of just upholding protecting the public interest as the only underlying principle of the control regime is that the post-service outside work applications will be more

stringently assessed because there will be no need to take into account an individual's right to work. Public concern over the propriety of any approved post-service outside work by former directorate civil servants would therefore be reduced. This will in turn help foster public trust in the integrity and impartiality of civil servants.

5.11 Some considerations against not upholding the protection of an individual's right to work as one of the two underlying principles of the control regime include -

- (a) The right to work and freedom of choice of occupation is a human right enshrined in the Basic Law and the two international covenant and labour convention applicable to Hong Kong. While such right should not be taken as absolute, ignoring it altogether will be problematic.
- (b) A post-service outside work control regime which does not give any regard to an individual's right will be difficult to justify from the policy perspective. It will cause morale problem in the civil service. It will reduce the attractiveness of the civil service and discourage quality individuals from choosing the civil service as a career. It may also not be conducive to putting limited human resources (namely former directorate civil servants) to gainful use for the benefit and development of Hong Kong. All these would be at the expense of rather than in the public interest.
- (c) The current control regime, which is governed by the two underlying principles of protecting the public interest and protecting an individual's right, has worked well by and large. This is demonstrated by the fact that less than a handful of post-service outside work applications from former directorate civil servants, out of an average of 60 applications each year, have caused public concern.

- (d) No overseas jurisdictions studied ignore an individual's right to work in their post-service employment control regimes for senior civil servants. On the contrary, some jurisdictions explicitly state that one of the objectives of their control regimes is to encourage ex-civil servants to continue to be of service and contribute to society. The legal systems in Australia and New Zealand place great emphasis on an individual's right to work to the extent that post-service work restrictions imposed by the governments without the civil servants' agreement are deemed to be legally not enforceable.

## **Policy Objective**

- 5.12 The Review Committee notes that as currently articulated (please see paragraph 3.02 in Chapter 3), the policy objective requires an appropriate balance to be struck between avoiding conflict of interest, or causing negative public perception embarrassing the Government and undermining the image of the civil service on the one hand; and not unduly restricting the right to pursue employment on the other hand.
- 5.13 The Review Committee notes that the community places great importance on the integrity and impartiality of the civil service; and is thus concerned about post-service outside work taken up by former directorate civil servants that may give rise to a real or potential conflict of interest with their former official duties.
- 5.14 The Review Committee further notes that the management of conflict of interest is an objective embedded in the post-service employment control regimes for former senior civil servants in most of the seven overseas jurisdictions studied. It further notes that balancing the wider public interest and the interests of ex-civil servants is also present in most of the control regimes of the overseas jurisdictions studied.



**Issue 2: Is the current policy objective appropriate? What is the view on including the following specific references in the policy objective –**

- (a) avoidance of suspicion or perception of ‘deferred reward’ for past favour done during government service?**
- (b) gainful use of limited human resources and attractiveness of the civil service as a career?**

5.15 The appropriateness or otherwise of the current policy objective will hinge on whether protecting the public interest and protecting an individual’s right are to remain as the two underlying principles (which is discussed under Issue 1). If it is considered that protecting the public interest should be the only underlying principle, the policy objective would need to be amended. If it is considered that the two principles should continue to be upheld, the currently articulated policy objective, requiring a balance to be struck between the two underlying principles, appears to be appropriate. Nonetheless, it may still be useful to discuss whether the current articulation of the policy objective can be improved.

#### **(I) Suspicion or Perception of ‘Deferred Reward’**

5.16 The Review Committee notes that some in the local community have expressed concern that a directorate civil servant may use his official position to benefit a particular entity or individual in return for lucrative post-service employment (i.e. a form of ‘deferred reward’). On the other hand, some have expressed the view that if a company or a person wants to reward a former directorate civil servant for his past favour, there are other ways of doing it. The Review Committee considers that ‘deferred reward’, if substantiated, would constitute a form of corruption; and the parties involved would be liable to criminal prosecution under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong).

- 5.17 The Review Committee, however, notes that public concern may sometimes arise out of no more than suspicion or perception that the post-service appointment may be a reward for past favour. In view of this, the issue is whether the policy objective of the post-service outside work control regime for former directorate civil servants should make specific reference to the avoidance of suspicion or perception of ‘deferred reward’ for past favour done during government service.
- 5.18 Some considerations in favour of making a specific reference to avoidance of suspicion or perception of ‘deferred reward’ in the policy objective include -
- (a) It will mitigate (but not eliminate) public concern over ‘deferred reward’.
  - (b) It will enhance public trust in the integrity and impartiality of the civil service.
  - (c) The avoidance of public suspicion that the advice and decisions of a serving civil servant might be influenced by the hope or expectation of post-service employment with a particular firm or organisation features in the policy objective of the post-service employment control regimes in some overseas jurisdictions studied, such as Canada and the United Kingdom (UK).
- 5.19 Some considerations against making a specific reference to avoidance of suspicion or perception of ‘deferred reward’ in the policy objective include -
- (a) Two of the six assessment criteria under the current control regime (please see paragraphs 3.28(e) and (f) in Chapter 3) cover whether an application for post-service outside work would give rise to suspicion of conflict of interest or other impropriety, or would cause embarrassment to the Government or bring disgrace to the civil service. They are broad enough to cover, where applicable, suspicion or

perception of ‘deferred reward’. There is, therefore, no need to make specific reference to avoidance of suspicion or perception of ‘deferred reward’ in the policy objective.

- (b) Specific reference to avoidance of suspicion or perception of ‘deferred reward’ in the policy objective may subject applications to an unduly high degree of speculative consideration in the assessment process.
- (c) Applications for post-service employment rejected primarily on the ground of suspicion or perception of ‘deferred reward’ may be more susceptible to legal challenge through application for judicial review.

## **(II) Gainful Use of Human Resources and Maintaining the Attractiveness of Civil Service**

- 5.20 The Review Committee believes that the experience and expertise of former directorate civil servants could be usefully harnessed to the overall benefit for the community of Hong Kong, provided the concern over real, or potential, or perceived conflict of interest is properly addressed and mitigated. It further notes that some of the experience and expertise accumulated in the civil service may be unique (e.g. specialists in some medical fields) or mostly found in directorate civil servants (e.g. corporate governance).
- 5.21 The Review Committee notes that at present, most directorate civil servants retire at the age of 55 to 60. Having regard to the average lifespan of Hong Kong people, retired directorate civil servants will still be able to contribute to the development of Hong Kong if they wish – and are allowed – to take up post-service outside work. By way of background, as at end December 2008, there were about 1 200 serving directorate civil servants; and an average of about 100 (or 8%) directorate civil servants left the civil service (mostly upon reaching retirement age) each year in the last few years.

- 5.22 Separately, the Review Committee notes that the community places great importance on an effective, efficient and permanent civil service for the good governance of Hong Kong. To secure this, the Government must be able to recruit and retain quality individuals in the civil service. The Review Committee further notes that many factors affect the attractiveness of the civil service as a career; and that the institution and implementation of a reasonable, fair and even-handed post-service outside work control regime for former directorate civil servants may be one such factor.
- 5.23 The issue, therefore, is whether the policy objective of the post-service outside work control regime for former directorate civil servants should make a specific reference to the gainful use of limited human resources and maintaining the attractiveness of the civil service as a career.
- 5.24 Some considerations in favour of making this specific reference in the policy objective include -
- (a) Making good use of limited human resources and facilitating the recruitment and retention of quality people in the civil service are in the wider public interest and, therefore, its inclusion in the policy objective will be in line with the underlying principle of protecting the public interest.
  - (b) The gainful use of limited human resources is explicitly recognised in the post-service employment control regimes of some of the overseas jurisdictions studied. Australia and New Zealand acknowledge that post-service employment of former civil servants can bring about benefits to other non-government sectors and the community. The New Zealand control regime recognises that such benefits to the new employers, including knowledge of research results and administrative processes, are considerable. The primary purpose of the Australian post-service employment control is not to restrict the flow of skills, experience and information between the civil service sector and other sectors, but to

manage conflict of interest.

5.25 Some considerations against making this specific reference in the policy objective include -

- (a) While gainful use of human resources and maintaining the attractiveness of the civil service as a career are some aspects of the public interest, they may sometimes be at variance with other aspects of the public interest, such as avoidance of real or potential conflict of interest, avoidance of suspicion of ‘deferred reward’, etc. For example, rejecting an application from a former directorate civil servant – who is a medical specialist and was responsible for the regulation of the private medical sector during his government service – to take up post-service work in a private hospital may be in accordance with the objective of avoiding real, potential or perceived conflict of interest, but it may be at variance with the objective of gainful use of limited human resources.
- (b) Public acceptance of the control regime may be lessened in the attempt to balance the management of conflict of interest on the one hand, and the fostering of gainful use of limited human resources and attractiveness of the civil service as a career on the other.
- (c) The assessment process of post-service outside work applications may become more complicated as the authority will need to strike an appropriate balance amongst the various factors articulated in the policy objective.

### **Design and Operation of ‘3-Ps’**

5.26 The Review Committee notes that the key features of the current control regime consist of ‘Periods of restriction’, ‘Process’ and ‘Public disclosure’, namely the ‘**3-Ps**’.

## **(I) Periods of Restriction**

- 5.27 The Review Committee notes that currently, the control over post-service outside work for former directorate civil servants is time-specific, as opposed to an indefinite or life-long control.
- 5.28 The Review Committee further notes that three different types of ‘periods of restriction’ (namely ‘final leave period’, ‘minimum sanitisation period’ and ‘control period’) are provided for in the current control regime, with more restrictions imposed on the type of ‘period of restriction’ closest to cessation of active duty by a directorate civil servant. It also notes that the prescribed length of the minimum sanitisation period and the control period is the longest for the most senior former directorate civil servants. (Please see paragraphs 3.11 to 3.20 in Chapter 3.)
- 5.29 The Review Committee notes that some form of restriction period features in the control regimes of all the overseas jurisdictions studied. It further notes that the approach to and design of ‘periods of restriction’ is the most elaborate in the Hong Kong regime, compared to those of the other jurisdictions studied. Nonetheless, the issue is whether or not the length of the periods of restriction in the current control regime is appropriate and whether or not improvements can be made.
- 5.30 The Committee further notes that some members of the public advocate that retired civil servants in receipt of monthly pension payments should be banned for life from taking up any paid employment or paid employment with commercial organisations on the ground that there is no financial need for these retired civil servants to pursue paid post-service work.

**Issue 3: Is the current length of ‘periods of restriction’ for post-service outside work appropriate? What is the view on –**

- (a) a lifetime ban on any paid employment or paid employment with commercial organisations for retired civil servants in receipt of monthly pension payments?**
- (b) the length of ‘periods of restriction’ for former directorate civil servants engaged in specified fields of work while in government service?**
- (c) the length of ‘periods of restrictions’ for post-service outside work in the same field as that pursued by a former directorate civil servant before leaving government service?**

*(a) Current Length of Periods of Restriction*

5.31 Some considerations in favour of lengthening the periods of restriction include -

- (a) It may further mitigate concern about conflict of interest, including suspicion or perception over ‘deferred reward’, as former directorate civil servants will be subject to a longer period of time during which they have to seek prior permission from the authority before they can take up post-service outside work (other than work covered by the blanket permission explained in paragraph 3.16 in Chapter 3).
- (b) It may reduce the likelihood of conflict of interest if the minimum sanitisation period is lengthened since the authority will normally not approve applications to take up post-service outside work with commercial organisations during this period of restriction.

5.32 Some considerations against lengthening the existing periods of restriction include -

- (a) The existing length of periods of restriction in the Hong Kong control regime is already among the longest compared to the overseas jurisdictions studied –
  - (i) **Hong Kong** – a one-year minimum sanitisation period and a three-year control period (which may run concurrently or sequentially) for the most senior former directorate civil servants, and a half-year minimum sanitisation period and a two-year control period for most of the other former directorate civil servants<sup>25</sup>, during which prior permission from the authority is required before post-service outside work may be taken up.
  - (ii) **Australia** – no prescribed periods of restriction (other than for professional lobbying work). Any restriction has to be mutually agreed between the Government and a departing senior civil servant.
  - (iii) **Canada** – a one-year period of restriction during which certain types of post-service employment are prohibited. (Please refer to paragraph 4.22 in Chapter 4.). The one-year period of restriction may be waived or reduced upon application and where justified.
  - (iv) **France** – a three-year period of restriction (reduced from five years in 2007 having regard to the practices in other countries) during which prior permission from

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<sup>25</sup> Directorate civil servants at DPS D8 (or equivalent) (mostly Permanent Secretaries) are subject to a one-year minimum sanitisation period and a three-year control period. Those at DPS D4 to D7 (or equivalent) (mostly Heads or Deputy Heads of Departments or Deputy Secretaries) are subject to a one-year minimum sanitisation period and a two-year control period. The more junior directorate civil servants (at DPS D1 to D3 (or equivalent)) are subject to a half-year sanitisation period and a two-year control period.



the authority is required before post-service outside work may be taken up. There is no sanitisation period.

- (v) *New Zealand* – no period of restriction unless specified in individual employment contracts. For those contracts with such specification, a one-year period of restriction is the norm for the most senior civil servants.
- (vi) *UK* – a two-year period of restriction for all senior civil servants during which prior permission from the authority is required before post-service outside work may be taken up. The most senior civil servants (namely Permanent Secretaries and Second Permanent Secretaries and their equivalents) are subject to an additional three-month waiting period (similar to Hong Kong’s six-month to one-year minimum sanitisation period).
- (vii) *Singapore* – a five-year period of restriction for certain categories of retired civil servants on pension payments<sup>26</sup>. According to public information, it appears that there is no sanitisation period.
- (viii) *US* – a one-year, two-year or lifetime ban on certain former civil servants for taking up very specific and narrowly defined activities and matters. None of the provisions in the control regime prohibit post-service employment with any private or public entities. (Please refer to paragraph 5.34 (d) below.)

(b) Longer periods of restriction may be more susceptible to challenge on whether they are reasonable and proportionate to the objective the control regime aims to achieve (namely

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<sup>26</sup> It is observed that there are cases where former very senior civil servants (e.g. Permanent Secretaries) have joined the private sector or taken up board appointments after a short break from retirement.

protecting the public interest).

- (c) Lengthening the periods of restriction may be at variance with the public interest of gainful use of limited human resources.
- (d) Lengthening the periods of restriction may reduce the attractiveness of the civil service as a career and in turn affect the recruitment and retention of quality individuals in the civil service.

***(b) Lifetime Ban on Paid Employment for Retired Civil Servants in Receipt of Monthly Pension Payments***

5.33 A consideration in favour of a lifetime ban on any paid employment or paid employment with commercial organisations for retired directorate civil servants in receipt of monthly pension payments is that it will, to a significant extent, mitigate public concern over the propriety of post-service outside work as there will be no more post-service outside paid work taken up by these retired directorate civil servants.

5.34 Some considerations against a lifetime ban on any paid employment or paid employment with commercial organisations for retired civil servants in receipt of monthly pension payments include –

- (a) It will likely be subject to legal challenge on grounds that the ban is not reasonable and is not proportionate to the objective (namely protecting the public interest) it aims to achieve.
- (b) It will be difficult to justify as reasonable and fair. Pension payments are retirement benefits earned by a directorate civil servant appointed on pensionable terms for his service rendered to the Government in the past. They are not meant to be a form of compensation for deprivation of the right to engage in paid work for life after retirement from the civil service. Whether a retired directorate civil servant in

receipt of a monthly pension payment has a financial need to seek post-service employment depends on individual circumstances.

- (c) It will give rise to very inequitable treatment between retired directorate civil servants in receipt of monthly pension payments and their counterparts who are appointed on a provident fund scheme basis and receive – when they leave the service – the accrued benefits in the form of lump sums (instead of monthly payments) in accordance with the terms laid down in the relevant provident fund scheme. Such differential treatment would be difficult to justify on the ground of avoidance or mitigation of conflict of interest, since there is no distinction in the official duties performed by directorate civil servants while in the service on the ground of their appointment terms (i.e. pensionable or provident fund terms).
  
- (d) No overseas jurisdiction studied imposes a total lifetime ban on post-service paid employment for their senior ex-civil servants. The lifetime ban imposed in the US is for very limited, specific and narrowly defined activities and matters, namely, communicating with or appearing before any court or federal agency with the intent to influence on behalf of someone other than the US on a particular matter involving specific parties in which a former civil servant participated personally and substantially while with the Government and in which the US is a party or has a direct or substantial interest <sup>27</sup> . Behind-the-scenes assistance on the afore-mentioned specific matters and activities is not prohibited. The US regime also does not prohibit any individual, regardless of rank or position, from accepting employment with any private or public employer after government service.

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<sup>27</sup> Section 207(a)(1) of Title 18 of the United States Code.

*(c) Specified Fields of Work While in Government Service*

- 5.35 The Review Committee notes that the prescribed length of the different types of periods of restriction does not have regard to the fields of work (e.g. financial services, education, planning and land, etc.) undertaken by former directorate civil servants during their government service.
- 5.36 The Review Committee further notes that some in the community have expressed particular concern about the post-service employment of former directorate civil servants who had dealings with the property sector while in government service. They have suggested that directorate civil servants who worked in those fields of work particularly prone to suspicion or perception of conflict of interest (e.g. land and property development) while in the government service should be subject to longer periods of restriction.
- 5.37 The Review Committee considers it is not possible to completely eliminate suspicion or perception of conflict of interest. It notes that the authority has imposed standard work restrictions on all approved post-service outside work applications under the new arrangement since 1 January 2006, which are aimed to address or mitigate public concern over conflict of interest between a former directorate civil servant's post-service outside employment and his previous official duties (see paragraph 3.31 in Chapter 3 and further discussion under Issue 5 in paragraphs 5.47 to 5.52 below).
- 5.38 Some considerations in favour of lengthening the periods of restriction for former directorate civil servants engaged in specified fields of work while in government service include -
- (a) It will ensure more targeted control and is, therefore, easier to justify and defend than an across-the-board extension.
  - (b) It will mitigate public concern over conflict of interest or suspicion of 'deferred reward' in the specified areas of work.

5.39 Some considerations against lengthening the periods of restriction for former directorate civil servants engaged in specified fields of work while in government service include -

- (a) It will be difficult to devise a set of objective criteria to determine which fields of government work are prone to suspicion or perception of conflict of interest. Any selection would likely be arbitrary and subject to legal challenge. Any selection would need to be reviewed from time to time, and revised as necessary having regard to prevailing community sentiments. In practice, whether or not conflict of interest may arise needs to be considered on the facts of each post-service outside employment application and the applicant's previous official duties.
- (b) Any selected field of government work will need to be clearly and carefully delineated. Take the property sector as an example, it cuts across many different areas of government work such as land, planning, public transport, environment, housing, surveying, architecture, building and legal, just to name a few. It may not be fair, reasonable or proportionate to the objective to be achieved (namely protecting the public interest) to subject former directorate civil servants who have worked in any one of these fields while in the government service to longer periods of restriction.
- (c) The suggestion will have implications on the management of the civil service as it may engender difficulties in posting civil servants to serve in the selected fields of government work in view of the additional post-service outside work restrictions.
- (d) The existing standard work restrictions imposed on all approved applications for post-service outside work already serve to mitigate concern over conflict of interest. These restrictions prohibit, among others, a former directorate civil

servant from being personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises in his post-service outside employment during the periods of restriction applicable to him. (Please refer to paragraphs 5.48 and 5.49 below.)

- (e) It is not in line with the practices adopted by the overseas jurisdictions studied.

***(d) Post-service Outside Work in Same Field of Previous Government Duties***

5.40 The Review Committee notes that some in the community have suggested that a ban for a limited number of years, say, five to ten years, after leaving government service may be imposed for post-service outside work by a former directorate civil servant in the same field of work as he was engaged in while in the last few years of his service in the Government.

5.41 Some considerations in support of lengthening the periods of restriction for outside work which is in the same field of previous government duties include -

- (a) The suggestion will not give rise to concern over an arbitrary selection of particular areas of government work as discussed in paragraph 5.39(a) above.
- (b) It will mitigate public concern over conflict of interest as such conflict would more likely arise from post-service outside work in the same field as an applicant's previous government duties.

5.42 Some considerations against lengthening the periods of restriction for outside work which is in the same field of previous government duties include -

- (a) The suggestion will have the greatest negative impact on

former directorate civil servants in specific professions (such as doctors, engineers and lawyers, etc.) since by qualification and experience, they are less likely to wish to take up post-service employment outside their own professions. An unduly long period of restriction may be susceptible to legal challenge through judicial review.

- (b) The suggestion will also impose more extensive restrictions on former generalist directorate civil servants. These civil servants were posted to work in different fields while in government service and most would have worked in several fields of work in the last few years before leaving the civil service. An unduly long period of restriction may be susceptible to legal challenge through judicial review.
- (c) It will not be straight-forward to delineate what constitutes 'work in the same field'. For example, would a retired directorate-ranking policeman be considered to be performing work in the same field if he is to seek permission to serve as the security chief of a corporation?
- (d) The existing standard work restrictions imposed on all approved post-service outside work applications serve to mitigate the concern over conflict of interest. They prohibit, among others, a former directorate civil servant, in his approved outside work, from undertaking, or representing any person in any work including any litigation or lobbying activities that are connected in any way with the formulation of any policy or decision; sensitive information; contractual or legal dealings; assignments or projects; and/or, enforcement or regulatory duties in which he had been involved or to which he had access during his last three years of government service. (Please refer to paragraphs 5.48 and 5.50 below.)
- (e) No overseas jurisdictions studied have included such a restriction in their control regimes.

## (II) Process

### (a) *Assessment over Past Dealings with ‘Prospective Employer’ and Related Companies*

5.43 The Review Committee notes that at present, a former directorate civil servant applying for permission to take up post-service outside work is required to disclose his past contractual, legal, official and other contacts/dealings (if any) with the prospective employer in his last few years of government service. It also notes that if the applicant, in his applied-for post-service work, will be involved in the business of the prospective employer’s parent company or any of its subsidiary companies, he is required to disclose his past contractual, legal, official and other contacts/dealings (if any) with these entities in his last few years of government service as well. It further notes that the requested information is to enable an assessment to be made on whether conflict of interest may arise from the prospective post-service work (Please refer to paragraph 3.23 in Chapter 3.)

5.44 The Review Committee notes that some in the community have suggested that **irrespective of** whether the applicant, in his applied-for post-service work, will be involved in the business of the parent or subsidiary companies of the prospective employer, an applicant should be required to disclose his past contractual, legal, official and other contacts/dealings (if any) with these entities in his last few years of government service, in order to enable a fuller assessment to be made on conflict of interest.



**Issue 4: Should the past contacts/dealings of a former directorate civil servant with the prospective employer's parent and/or other related companies during his last few years of government service be disclosed and assessed for the purpose of conflict of interest, irrespective of whether the former directorate civil servant, in his applied-for post-service work, will be involved in the business of these entities?**

5.45 Some considerations in favour of broadening the disclosure and assessment to cover the past contacts/dealings (if any) of a former directorate civil servant during his last few years of government service with the prospective employer's parent and/or subsidiary companies – irrespective of whether the former directorate civil servant, in his applied-for post-service work, will be involved in the business of these entities – include -

- (a) It will better safeguard against conflict of interest, through a comprehensive disclosure and assessment of the former directorate civil servant's past contacts/dealings (if any) with not just the prospective employer but also all the companies in the same group as the prospective employer.
- (b) It should go some way to address suspicion of a company rewarding a former directorate civil servant for past favours extended during his government service through post-service employment in a related company.

5.46 Some considerations against such broadening of disclosure and assessment include -

- (a) It may not be effective. If a company is minded to reward a former directorate civil servant for past favour done, this could be done through one of its business partners which is neither its parent nor subsidiary company, or through other even more 'arm's length' means.

- (b) It may present practical difficulties for former directorate civil servants to comply with the broadened disclosure requirement. A conglomerate may have many subsidiary companies. A former directorate civil servant applying for post-service employment may not know that an entity he had contacts/dealings with during his former government service is a subsidiary company belonging to the same group as the prospective employer of his applied-for employment. A former directorate civil servant may also not be able to recall all his past contacts/dealings with companies belonging to the same group as his prospective employer while in his last few years of government service. For example, a directorate civil servant in the Buildings Department may be involved in approving a large number of new building plans from different companies during his last few years of government service.
- (c) It may present practical difficulties for the assessment process as well. It would be very time- and labour-intensive to verify whether or not a former directorate civil servant has made an exhaustive disclosure.
- (d) An exhaustive disclosure and assessment may not be very meaningful. What matters most for the assessment of conflict of interest is those past contacts/dealings by a former directorate civil servant with the prospective employer's parent and/or subsidiary companies which are of material significance.

***(b) Work Restrictions***

5.47 The Review Committee notes that the authority imposes **standard work restrictions** on each approved application for post-service outside work. It further notes that the authority may, on a case-by-case basis, impose additional **job specific work restrictions**. The imposition of these standard and job specific work restrictions aims to address or mitigate potential or

perceived conflict of interest.

**Issue 5: Is the current imposition of work restrictions on approved taken-up outside work appropriate? Can the imposition of work restrictions address and mitigate public concern over potential or perceived conflict of interest?**

5.48 The standard work restrictions are –

*“The applicant should not -*

*(a) be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises;*

*(b) undertake, or represent any person in, any work including any litigation or lobbying activities that are connected in any way with –*

*(i) the formulation of any policy or decision;*

*(ii) sensitive information;*

*(iii) contractual or legal dealings;*

*(iv) assignments or projects; and/or*

*(v) enforcement or regulatory duties,*

*in which he had been involved or to which he had access during his last three years of service; or*

*(c) engage in any activities which would cause embarrassment to the Government or bring disgrace to the civil service.”*

5.49 Standard work restriction item (a) above prohibits a former directorate civil servant from being involved in the bidding of any government projects, etc. within the specified periods of restriction. This minimises the public concern over a former directorate civil servant exerting influence on his ex-colleagues in the Government.

5.50 Standard work restriction item (b) above prohibits a former directorate civil servant from undertaking or representing his prospective employer or client in any work that is in any way connected with duties/projects, etc. in which he had been

involved or had access to during his last three years of government service. In short, a former directorate civil servant is not allowed to make use of his past government knowledge to give an unfair advantage to his prospective employer.

- 5.51 Standard work restriction item (c) above is a catch-all provision to safeguard against any negative public perception arising from the taking-up of post-service outside work.
- 5.52 The Review Committee notes that in the UK, among the 167 applications considered by its Advisory Committee on Business Appointments during the two-year period of April 2006 to March 2008<sup>28</sup>, 72 were given unconditional support while 95 were supported subject to conditions (such as the earliest time for commencement of post-service employment; prohibition of personal involvement in lobbying government officials within a specified period of time, and reclude from personal involvement in the prospective employer's business dealings with the Government for a defined period of time).

***(c) Advisory Committee on Post-service Employment of Civil Servants***

- 5.53 The Review Committee notes that the Advisory Committee on Post-service Employment of Civil Servants tenders advice to the authority on individual applications for post-service employment from former directorate civil servants. It further notes that among the seven overseas jurisdictions studied, only France and the UK have set up similar independent body to give advice to the decision authority on post-service outside work applications. This may be because most of the other jurisdictions studied do not require prior approval before a former senior civil servant takes up outside employment.
- 5.54 The Review Committee notes that the independent body in France (known as the French Ethics Commission, 'La commission de déontologie' in French) comprises a magistrate of

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<sup>28</sup> The advice tendered by the Advisory Committee on Business Appointments on all the applications put before it was accepted by the UK authority.

the Auditors Court (i.e. the national audit office, ‘Cour des comptes’ in French), a Judiciary magistrate, qualified persons who are familiar with the work of the state/territorial public service and public health service, persons familiar with the field of research, and the Director General of Administration and Public Service (‘Le directeur général de l’administration et de la fonction publique’ in French). The independent body in the UK (known as the Advisory Committee on Business Appointments) is currently chaired by a member of the House of Lords and comprises a handful of serving members of the House of Lords, former senior civil servants and a leading light in the business sector.

- 5.55 The Review Committee notes that some in the community have called for changes to the composition of and/or the institutional support for the Advisory Committee on Post-service Employment of Civil Servants.

**Issue 6: Should there be any change to the composition of and/or institutional support for the Advisory Committee on Post-service Employment of Civil Servants?**

- 5.56 The credibility of the Advisory Committee on Post-service Employment of Civil Servants contributes significantly to the confidence of the public in the control regime for post-service outside work of former directorate civil servants. The credibility of the Advisory Committee on Post-service Employment of Civil Servants is also important for former directorate civil servants who need to have confidence in the impartiality of the advice it tenders to the authority. The credibility of the Committee may be affected by its composition and mode of operation.

(i) Composition

- 5.57 The Advisory Committee of Post-service Employment of Civil Servants is currently made up of five members (including the

chairman) (please refer to paragraph 3.26 in Chapter 3), compared with the 14-member strong French Ethics Commission and the 6-member strong UK Advisory Committee on Business Appointments. A (serving or retired) judge to serve as the chairman of the Advisory Committee on Post-service Employment of Civil Servants can help to underline its impartiality. A membership with a broad spread and balance of experience and expertise (including but not limited to individuals with a good grasp of public sentiments; a good understanding of the wide public interest and an individual's rights; and knowledge of the Government's workings, the civil service and the business sector) can help to enhance the credibility of the Advisory Committee on Post-service Employment of Civil Servants as well as enable it to offer broader spectrum of advice.

(ii) Institutional Support

5.58 At present, the secretariat of the Advisory Committee on Post-service Employment of Civil Servants is provided by the Civil Service Bureau, which is under the Secretary for the Civil Service (namely the decision authority for all post-service outside work applications by former directorate civil servants). This institutional arrangement may have the inadvertent effect of undermining the perceived independence of the Advisory Committee. Depending on the volume of work of the Advisory Committee, an independent secretariat which only serves the Advisory Committee, or an independent secretariat shared with other independent advisory committees, may be alternatives to the existing arrangement.

***(d) Suspension of Pension for Paid Employment with Specified Subvented Organisations***

5.59 The Review Committee notes that under the current control regime, the monthly pension payments of a retired directorate civil servant will be suspended if he takes up full-time paid work in any one of the 16 specified subvented organisations. (Please refer to paragraph 3.33 in Chapter 3.) The suspension applies

irrespective of the pay he receives and the suspension continues for as long as he remains in the employment of one of these organisations. The specified subvented organisations cover the eight tertiary education institutions, the Housing Authority, the Hospital Authority, the Monetary Authority, Office of the Ombudsman, Equal Opportunities Commission, etc. (Please refer to **Annex E** for the full list of the 16 subvented organisations.) The pension suspension arrangement does not apply to post-service work in other subvented organisations or in any commercial entity.

5.60 The Review Committee understands that the pension suspension arrangement is based on the provisions in the two pension-related Ordinances. Section 26(1) of the Pension Benefits Ordinance (Chapter 99 of the Laws of Hong Kong) governing the New Pension Scheme<sup>29</sup> provides that *‘if an officer who is eligible for a pension or to whom a pension has been granted is re-appointed to the public service, or appointed to service in any subvented organisation which is determined to be public service for the purposes of this section by the Chief Executive by notice in the Gazette, the payment of the pension may be suspended during the period of his service after his re-appointment or appointment, as the case may be’*. There is a similar provision under section 11 of the Pensions Ordinance (Chapter 89 of the Laws of Hong Kong) governing the Old Pension Scheme<sup>29</sup>, with the exception that the consent of the person concerned over pension suspension is required under the Pensions Ordinance, but not under the Pension Benefits Ordinance.

5.61 The Review Committee further understands that the Chief Executive’s power to suspend monthly pension payments under the two pension-related Ordinances is discretionary and not mandatory. The Chief Executive may determine whether or not

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<sup>29</sup> The Old Pension Scheme is for civil servants appointed on pensionable terms before 1 July 1987. The New Pension Scheme is for civil servants appointed on pensionable terms from July 1987 to May 2000 and those civil servants of the Old Pension Scheme who have opted to switch to the New Pension Scheme. The appointment of civil servants on pensionable terms came to an end on 1 June 2000.

to exercise his discretion to suspend pension payment depending on individual circumstances.

- 5.62 The Review Committee notes that some in the community have suggested that former directorate civil servants should be encouraged to contribute their expertise and experience to the non-commercial sector as the public concern over conflict of interest should be far less when compared to post-service employment in the commercial sector.

**Issue 7: Should there be any change to the pension suspension arrangement for post-service employment in specified subvented organisations by retired civil servants?**

- 5.63 Some considerations in favour of changing the current pension suspension arrangement include -

- (a) The experience and expertise of former directorate civil servants may be of particular relevance to the operation of many subvented organisations. The suggestion will facilitate the 16 specified subvented organisations to tap into this source of human capital more readily, as former directorate civil servants will be more receptive to working in these organisations.
- (b) The suggestion will remove an existing inconsistency between post-service work by former directorate civil servants in the 16 specified subvented organisations on the one hand, and that in all the other subvented organisations on the other.
- (c) The suggestion will overcome the disparity treatment between retired civil servants on pensionable terms and those on provident fund scheme basis. While both types of civil servants are appointed on permanent terms and are provided with retirement benefits, at present the former will be subject to pension suspension if they take up full-time



post-service employment in one of the 16 specified subvented organisations while such suspension will not (and cannot) be imposed on the latter.

(d) The suggestion is in line with the practice in other jurisdictions. In all the seven overseas jurisdictions studied, the taking up of approved post-service outside work outside the civil service will not result in reduction in retirement benefits.

5.64 A consideration against the above suggestion is that it will result in a retired and pensionable civil servant receiving two incomes from the public purse at the same time (namely a monthly pension payment and a monthly pay for his post-retirement work with one of the 16 specified organisations receiving public subvention). However, the receiving of two incomes from the public purse at the same time already exists for retired and pensionable civil servants working in other subvented organisations.

(e) *Sanctions*

5.65 The Review Committee notes that the existing control regime is backed by very detailed and explicit sanctions. (Please refer to paragraph 3.36 in Chapter 3.) The range of sanctions exists in one form or another in the control regimes of the overseas jurisdictions studied.

**Issue 8: Are the sanctions provided under the current control regime adequate?**

5.66 The Review Committee notes that the very specific and narrow post-service outside work restraints in France and the US are backed up by legislation and any breach of the statutory requirements will constitute an offence punishable by imprisonment and/or fine. In the case of the US, the Attorney

General may also bring a civil action against the former civil servant concerned who may be subject to a civil penalty and/or injunction order.

5.67 Canada and the UK impose the post-service outside work control restraints through administrative codes which form part of the employment contract between the civil servants concerned and the governments. New Zealand imposes post-service outside work control restraint on some of the most senior civil servants through employment contract, although its enforceability is doubtful under the New Zealand law. The Australian post-service outside work control regime relies on mutual agreement with a departing civil servant. None of these four jurisdictions specify the sanctions applicable for breaches of the post-service outside work restraints. In theory, the concerned governments may take civil action against a former civil servant for a breach of employment contract or breach of mutual agreement where such exists.

5.68 Instead of imposing post-service work restrictions on civil servants, the Australian Government seeks to manage perception of conflict of interest through companies bidding for and securing government contracts. It may approach and caution those companies which may gain an unfair advantage by hiring former civil servants on the importance to avoid any conflict of interest in their dealings with the Government. Canada has a similar approach. It is a condition of all contracts to supply work and services for the Canadian Government that the vendors are not permitted to hire former public servants during their one-year period of restriction where this would constitute a violation of post-employment measures under the Values and Ethics Code for the Public Service.

5.69 The Singapore control regime is based on its Pensions Act, under which the President may cease the pension or allowance granted to certain categories of civil servants if such a civil servant, without the prior permission of the President, engages in work within five years from his retirement.

5.70 Similar to Hong Kong, there are other general laws in the overseas jurisdictions studied governing unauthorised disclosure of official information.

### **(III) Public Disclosure**

5.71 The Review Committee notes that under the current control regime, the approved post-service outside appointments taken up by the more senior former directorate civil servants (including mostly Permanent Secretaries, Heads of Departments and Deputy Secretaries) under the current control regime are disclosed to the public through the public register and annual updating arrangements. (Please refer to paragraphs 3.46 to 3.50 in Chapter 3.)

5.72 The Review Committee notes that the public register mechanism has been in operation since 2006. It aims to strike a reasonable balance between disclosure of information in the interest of transparency on the one hand, and protection of an individual's right to privacy on the other.

5.73 The Review Committee notes that in the UK, where a post-service appointment is taken up by an applicant on which advice from its Advisory Committee on Business Appointments has been sought, the advice of the Advisory Committee on that appointment will be published online and in the Advisory Committee's annual report. As the Advisory Committee normally only considers applications from very senior civil servants (e.g. Permanent Secretaries) the disclosure arrangement is therefore applied to these former civil servants only. The information disclosed includes: the name of the former civil servant, his most recent former government position, the title and taken-up date of his post-service appointment, the advice of the Advisory Committee and the date of the advice was tendered. The control regimes of the other six overseas jurisdictions studied do not include a systematic disclosure mechanism for individual post-service appointments taken up by their former senior civil

servants.

- 5.74 The Review Committee considers that disclosure of information to the public will help build public trust in the Government. It notes that some in the community have suggested that the public register should be extended to cover the post-service appointments approved and taken up by former junior directorate civil servants as well in order to enhance transparency.

**Issue 9: Is the current public disclosure arrangement appropriate? What is the view on -**

- (a) disclosing the post-service outside work taken up by former junior directorate civil servants as well?**
- (b) disclosing the advice of Advisory Committee on Post-service Employment of Civil Servants on each of the post-service appointments taken up by former directorate civil servants?**

*(a) Disclosure of Approved Post-service Outside Work Taken Up by Former Junior Directorate Civil Servants*

- 5.75 Some considerations in favour of extending the current public register arrangement to former junior directorate civil servants include -

- (a) The suggestion will achieve greater transparency. It will enable the public to have an oversight on the approved post-service outside work taken up by every former directorate civil servant during the specified period of time. In the past three years of 2006 to 2008, about 60% of applications were from former junior directorate civil servants who are currently not covered by the public register mechanism.

- (b) The suggestion should not give rise to concern over infringement of personal data privacy, as former senior directorate civil servants have been subject to the public disclosure arrangement since 2006.

5.76 Some considerations against extending the current public register arrangement to all former junior directorate civil servants include -

- (a) Since the public is more concerned about post-service outside work taken up by more senior directorate civil servants, it may not be necessary to extend the disclosure arrangements to former junior directorate civil servants.
- (b) The current control regime already allows for the disclosure of information on the post-service outside work taken up by former junior directorate civil servants on a case-by-case basis in the event of public concern.
- (c) The current disclosure arrangements are already more stringent compared to the practices in the overseas jurisdictions studied. None of the jurisdictions, except the UK, has in place a systematic disclosure arrangement on individual approved and taken-up post-service outside work. Even in the UK, the disclosure is normally on post-service appointments taken up by former very senior civil servants only.

***(b) Disclosure of Advice of Advisory Committee on Approved Post-service Appointments Taken Up by Former Directorate Civil Servants***

5.77 The Review Committee notes that some in the public have suggested that more information should be included on the public register, such as the advice of the Advisory Committee on Post-service Employment of Civil Servants on every approved and taken up post-service outside appointment.

- 5.78 The Review Committee notes the advice tendered by the independent advisory body in the UK on each post-service application taken up by a former senior civil servant is disclosed (as described in paragraph 5.73 above). In France, the disclosure is more limited as its independent advisory body only publishes the advice it has tendered on a selective basis and without revealing the identity of the applicants concerned in its annual report.
- 5.79 A consideration in favour of disclosing the advice of the Advisory Committee on Post-service Employment of Civil Servants on those post-service applications approved and taken up by former directorate civil servants is that it will further enhance transparency. The public and the former civil servants concerned will be able to know whether or not the authority has adhered fully to the Advisory Committee's advice when making its decision.
- 5.80 A consideration against disclosing the advice of the Advisory Committee on those post-service applications approved and taken up by former directorate civil servants is that it may inadvertently politicise the work of the Advisory Committee. It may not be essential to disclose the advice of Advisory Committee on each approved and taken up post-service employment because the Advisory Committee already publishes an annual report on its work to provide an analysis on information about the applications, including the number of applications recommended for approval or rejection, the nature of outside work of recommended approved applications, and background of the applicants. (Please see paragraph 3.51 in Chapter 3). A copy of the latest Advisory Committee's annual report is available on both the websites of the Review Committee and the Civil Service Bureau. Hard copy of the Advisory Committee's annual report is available upon request. (Please refer to paragraph 6.06 in Chapter 6 for Review Committee's contact details).

# **CHAPTER 6: Summary of Issues Raised and Channels for Comments**

## **Overview**

- 6.01 This chapter recapitulates the issues for review raised in Chapter 5 and sets out the channels for letting us have your views and comments.
- 6.02 To allow us to draw up practicable recommendations to be submitted to the Chief Executive, we look to you to send in your valuable views and comments on the 9 issues set out in Chapter 5 as well as other areas concerning the post-service outside work control regime for directorate civil servants. Please send in your views by post, fax or email on or before 20 April 2009. The Review Committee will also reach out to the public and stakeholders by organising three public forums and consultative sessions. Details are given in the paragraphs below.

## **Summary of Issues Raised**

- 6.03 The following issues have been raised for discussion and review –

### **Underlying Principles**

- Issue 1: Should protecting the public interest and protecting an individual's right continue to be recognised as the two underlying principles of the control regime?

## **Policy Objective**

Issue 2: Is the current policy objective appropriate?

What is the view on including the following specific references in the policy objective –

- (a) avoidance of suspicion or perception of ‘deferred reward’ for past favour done during government service?
- (b) gainful use of limited human resources and attractiveness of the civil service as a career?

## **Design and Operation of ‘3-Ps’**

### Periods of restriction

Issue 3: Is the current length of ‘periods of restriction’ for post-service outside work appropriate?

What is the view on –

- (a) a lifetime ban on any paid employment or paid employment with commercial organisations for retired civil servants in receipt of monthly pension payments?
- (b) the length of ‘periods of restriction’ for former directorate civil servants engaged in specified fields of work while in government service?
- (c) the length of ‘periods of restrictions’ for post-service outside work in the same field as that pursued by a former directorate civil servant before leaving government service?

### Process

Issue 4: Should the past contacts/dealings of a former directorate civil servant with the prospective employer’s parent and/or other related companies during his last few years of government service be disclosed and assessed for the purpose of conflict of interest, irrespective of whether the former directorate civil



servant, in his applied-for post-service work, will be involved in the business of these entities?

- Issue 5: Is the current imposition of work restrictions on approved taken-up outside work appropriate? Can the imposition of work restrictions address and mitigate public concern over potential or perceived conflict of interest?
- Issue 6: Should there be any change to the composition of and/or institutional support for the Advisory Committee on Post-service Employment of Civil Servants?
- Issue 7: Should there be any change to the pension suspension arrangement for post-service employment in specified subvented organisations by retired civil servants?
- Issue 8: Are the sanctions provided under the current control regime adequate?

#### Public disclosure

- Issue 9: Is the current public disclosure arrangement appropriate?

What is the view on -

- (a) disclosing the post-service outside work taken up by former junior directorate civil servants as well?
- (b) disclosing the advice of Advisory Committee on Post-service Employment of Civil Servants on each of the post-service appointments taken up by former directorate civil servants?

- 6.04 The Review Committee also welcomes views on other issues which may be relevant but are not specifically raised in this consultation document.

## Your Views

6.05 We welcome your views and comments. The public consultation will close on **20 April 2009**.

6.06 Please send your views and comments to the Secretariat, Committee on Review of Post-service Outside Work for Directorate Civil Servants through –

Post: Secretariat, Committee on Review of Post-service  
Outside Work for Directorate Civil Servants  
10/F, West Wing, Central Government Offices  
11 Ice House Street  
Central  
Hong Kong

Fax: 2147 5241 (Attention: Secretariat, Committee on  
Review of Post-service Outside Work for Directorate  
Civil Servants)

Email : [comment@dcspostservice-review.org.hk](mailto:comment@dcspostservice-review.org.hk)

6.07 Written submissions received will be posted on the Review Committee's website together with the name of the organisation or person making the submissions. The same may be included in the Review Committee's report to the Chief Executive which will be published. **If you do not want your submission to be published or you wish to remain anonymous, please state this clearly in your submission.** Unless you specify a reservation, the Review Committee and the Government shall assume that you have licensed them to reproduce and publish your views in whole or in part and in any form; and to use, adapt or develop any proposals put forward without the need for your permission or subsequent acknowledgement.

6.08 All personal data submitted will only be used for purposes which are directly related to the Review Committee's terms of reference. Any personal contact details (e.g. telephone number or email

contacts) provided on a voluntary basis may be used by the Review Committee for follow up purpose such as to seek clarifications.

## **Public Forums**

6.09 You are also cordially invited to attend one of the three public forums to be hosted by the Review Committee.

6.10 Details of the public forums are as follows –

### (1) Hong Kong Island

Date : 9 March 2009 (Monday)

Time : 7:00 p.m. - 9:00 p.m. (registration and arrangement of seating starts at 6:45 p.m.)

Venue : Auditorium, 1<sup>st</sup> Floor,  
Hong Kong Council of Social Service,  
Duke of Windsor Social Service Building,  
15 Hennessy Road,  
Wanchai

*(MTRC Wanchai Station Exit B1)*

### (2) Kowloon

Date : 17 March 2009 (Tuesday)

Time : 7:00 p.m. - 9:00 p.m. (registration and arrangement of seating starts at 6:45 p.m.)

Venue : Mong Kok Community Hall,  
Level 2, Mong Kok Complex,  
557 Shanghai Street,  
Mong Kok

*(MTRC Mongkok Station Exit C4)*

(3) New Territories

Date : 28 March 2009 (Saturday)  
Time : 3:00 p.m. - 5:00 p.m. (registration and arrangement of seating starts at 2:45 p.m.)  
Venue : Lai King Community Hall,  
205 Lai King Hill Road,  
Kwai Chung

*(MTRC Lai King Station Exit A1)*

6.11 For reservation of seats for the public forums, please send your request to [comment@dcspostservice-review.org.hk](mailto:comment@dcspostservice-review.org.hk), or fax at 2147 5241, or telephone at 2810 2579.

6.12 The public forums will be conducted in Cantonese. English/Putonghua interpretation service will be available for the session to be held on Hong Kong Island. Participants are kindly requested to indicate such requirement when making reservation of seats for the Hong Kong Island session. Please visit the Review Committee's website for details: <http://www.dcspostservice-review.org.hk>

### **Consultative Sessions with Relevant Stakeholders**

6.13 The Review Committee will also host dedicated consultative sessions with **civil service groups or serving or former directorate civil servants**. Details are as follows –

Date : 21 March 2009 (Saturday)  
Time : To be agreed with relevant parties  
Venue : 1st Floor, New Annexe  
Main Wing, Central Government Offices  
20 Lower Albert Road  
Central

- 6.14 Other relevant stakeholders who would like to meet with the Review Committee are welcome to contact the Secretariat of the Committee (contact details in paragraph 6.06 above).
- 6.15 We look forward to hearing from you.

**Provisions Relevant to Protection of Individual's Right  
in Basic Law, International Covenant and  
Convention and Other Ordinances**

**Right to Work and Freedom of Choice of Occupation**

**Basic Law**

1. Article 33:  
*“Hong Kong residents shall have freedom of choice of occupation.”*
  
2. Article 39:  
*“The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.*

*The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”*

**International Covenant on Economic, Social and Cultural Rights**

3. Article 6:  
*“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.”*

**Employment Policy Convention, 1964**

4. Article 1(2)(c):  
*“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,*

*color, sex, religion, political opinion, national extraction or social origin.”*

## **Right Against Unlawful Discrimination**

### **Basic Law**

5. Article 25:

*“All Hong Kong residents shall be equal before the law.”*

### **Hong Kong Bill of Rights Ordinance (Chapter 383 of the Laws of Hong Kong)**

6. Article 1(1):

*“The rights recognized in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status<sup>1</sup> (footnote added).”*

7. Article 22:

*“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

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<sup>1</sup> The United Nations Human Rights Committee has not issued a detailed consensus comment on the meaning of ‘any other status’, preferring to decide on a case-by-case basis. Generally, a group of separate individuals may constitute a distinct group if they are linked by a common status. Retired civil servants could be regarded as sharing a common status.

## **Personal Data Privacy**

### **Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)**

8. Data Protection Principle 3 (use of personal data) in Schedule 1:  
*“Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than (a) the purpose for which the data were to be used at the time of the collection of the data; or (b) a purpose directly related to the purpose referred to in paragraph (a).”*



**Evolution of Hong Kong's Control Regime on  
Post-service Outside Work for Directorate Civil Servants**

**The 1940s**

1. The Pensions Ordinance<sup>1</sup> (Chapter 89 of the Laws of Hong Kong), which was enacted in 1949, contained provisions that a pensioner's monthly pension payment would be suspended if he had taken up outside work without the prior permission in writing from the then Governor. These provisions were also applicable to non-directorate civil servants.

**The 1970s**

2. The Government promulgated in 1973 that certain types of retiring or retired expatriate civil servants would only be allowed to take up post-service outside work in Hong Kong under exceptional circumstances within two years of the date of their pre-retirement leave or retirement, whichever was the earlier. This policy was subsequently modified in 1974 to confine the restrictions to retiring or retired expatriate civil servants holding posts at Head of Department level or above.

**The 1980s**

3. In 1984, the post-service outside work control arrangements were extended to both retiring and retired local and expatriate civil servants at the level of Head of Department or above. The Government also promulgated that the then Governor would normally grant permission after three months from the last day of active service but had the discretion to withhold permission for up to two years under exceptional circumstances, e.g. if a conflict of interest might arise.

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<sup>1</sup> The Pensions Ordinance governs the Old Pension Scheme and covers civil servants appointed on pensionable terms before 1 July 1987.

4. In July 1987, the Pension Benefits Ordinance<sup>2</sup> (Chapter 99 of the Laws of Hong Kong) was enacted and consequential amendments were made to the Pensions Ordinance. The two Ordinances stipulate that within two years of his retirement, or such longer period as may be determined by the then Governor, a retired civil servant requires the Governor's prior approval before taking up any post-retirement employment or engaging in any business activity the principal part of which is carried on in Hong Kong<sup>3</sup>.
5. The Advisory Committee on Post-retirement Employment was set up in October 1987 to advise the then Governor on the principles and criteria to be adopted to deal with applications for post-retirement employment, and to consider and advise him on all applications from retiring and retired directorate civil servants. The Advisory Committee was subsequently renamed as 'The Advisory Committee on Post-service Employment of Civil Servants' and its terms of reference were expanded to include post-service outside work of directorate civil servants leaving the Government on grounds other than retirement.
6. Another change brought about in 1987 was the imposition of a minimum sanitisation period of six months for all retiring and retired former directorate civil servants on pensionable terms, in addition to the two-year control period (or any longer period determined by the then Governor) for retirees on pensionable terms as provided under the two pension-related Ordinances.

## **The 1990s**

7. Refinements to the control regime were made in 1990 covering, among others, clarifications on the calculation of the minimum

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<sup>2</sup> The Pension Benefits Ordinance governs the New Pension Scheme (NPS) and covers civil servants appointed on pensionable terms on or after 1 July 1987 or those civil servants of Old Pension Scheme who have decided to join the NPS within a specified opting period. The appointment of civil servants on pensionable terms came to an end on 1 June 2000.

<sup>3</sup> The provisions continue to apply as at today except that the authority has changed to the Chief Executive since 1 July 1997.

sanitisation period.

8. In 1995, the geographical scope of activities subject to post-service outside work control was clarified. In gist, if a retiring or retired directorate civil servant on pensionable terms intended to take up paid part-time or full-time work based in Hong Kong but involving duties outside Hong Kong or if he was to work overseas but the prospective employer had business connection with Hong Kong, he had to ascertain with the Government on whether prior permission was required. In addition, the control period for retiring and retired directorate civil servants on pensionable terms at the level of the then Branch Secretary (equivalent to today's Policy Bureau Secretary) or above was extended from two to three years.
9. In 1997, the post-service outside work control was extended from retirees to directorate civil servants on agreement terms at Directorate Pay Scale (DPS) D3 (or equivalent) or above, although the degree of control imposed was more relaxed. In gist, former directorate civil servants on agreement terms at DPS D3 (or equivalent) or above were subject to a one-year control period after completion of their agreement, during which they were required to seek approval if they wished to take up post-service work in the same field as their government service and where there was a possible conflict of interest.
10. The control arrangements governing post-service outside work revised in 1995 and supplemented by the changes made in 1997 are termed collectively as the 'old arrangement', as opposed to a new set of arrangements termed the 'new arrangement' introduced after a review in 2005.

### **The 2005 Review**

11. In 2005, the Administration conducted a major review on the control regime. Salient changes brought about by the review included –
  - (a) the control was extended to all directorate civil servants on agreement terms, irrespective of rank;

- (b) the control was extended to all directorate civil servants leaving the Government other than on retirement, e.g. resignation;
- (c) the minimum sanitisation period for directorate civil servants at DPS D4 (or equivalent) or above was extended from six months to twelve months;
- (d) standard work restrictions were imposed on all approved applications; and
- (e) transparency was enhanced through the provision of a public register recording information on each approved and taken-up post-service outside employment by former directorate civil servants at DPS D4 (or equivalent) or above during the periods of restriction applicable to them.

12. The above 'new arrangement' introduced through the review in 2005 remains valid today. It is applicable to-

- (a) directorate civil servants on pensionable terms or new permanent terms who cease active service **on or after** 1 January 2006; and
- (b) directorate civil servants on agreement terms whose last agreements, including renewals of agreement, are entered into **on or after** 1 January 2006.

13. Directorate civil servants who ceased active service **before** 1 January 2006 or agreement directorate civil servants at DPS D3 (or equivalent) or above whose last agreement was entered into **before** 1 January 2006 remain subject to the 'old arrangement' mentioned in paragraph 10 above.

Form CSB/PSE/1 (12/2005)

**Application for Permission to Take up Outside Work  
after Ceasing Active Government Service**

**PART I: PARTICULARS OF THE APPLICANT** *(To be completed by the applicant)*

1. Name (English): \_\_\_\_\_ (Chinese): \_\_\_\_\_

2. Last substantive rank : \_\_\_\_\_

3. Address & telephone no.: \_\_\_\_\_

4. Date of cessation of active service  
*(commencement of final leave)* : \_\_\_\_\_

5. Date of leaving the Government  
*(on expiry of final leave)* : \_\_\_\_\_

6. Terms of appointment:

- Pensionable
- New Permanent
- Agreement (local / locally modelled / overseas / common / new probationary / new agreement / re-employed without a break in service after retirement \*)

7. Circumstances of leaving the Government:

- Retirement under Old Pension Scheme / New Pension Scheme / Civil Service Provident Fund Scheme \*
- Completion / termination \* of agreement
- Resignation
- Others (Please specify)

8. Service history during the **last three years** of government service:

Title & rank of post	Dates		Description of major duties (list five items for each post)
	From	To	

8. Service history during the **last three years** of government service (Cont'd)

Title & Rank of post	Dates		Description of major duties (list five items for each post)
	From	To	

9. Service history in **the three years prior to the three-year period referred in item 8** above:  
*(To be completed by the applicant if he/she is/was at D4 or above(or equivalent))*

Post title & rank	Dates		Description of major duties (list three items for each post)
	From	To	

- Please tick in the appropriate box.
- \* Please delete whichever is inappropriate.

**PART II: INFORMATION ON PROPOSED OUTSIDE WORK** *(To be completed by the applicant)*

**(A) The Prospective Employing Company/Organization (hereafter called the employer)**

10. Name of the employer (English): \_\_\_\_\_ (Chinese): \_\_\_\_\_

11. Address: \_\_\_\_\_

12. The employer belongs to the following category –

- charitable / academic / other non-profit making organizations not primarily engaged in commercial operations \*
- non-commercial regional/international organization \*
- Central Authorities
- none of the above

13. Major business activities of the employer (please list at least 4 items and provide company prospectus, information sheet, website address, etc):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

14. The employer's major clientele: \_\_\_\_\_

\_\_\_\_\_

15. The employer's parent company, if applicable: \_\_\_\_\_

16. The \_\_\_\_\_ employer's \_\_\_\_\_ subsidiaries, \_\_\_\_\_ if \_\_\_\_\_ applicable:

\_\_\_\_\_

\_\_\_\_\_  
*(Please use and attach a separate sheet if space provided is insufficient.)*

**(B) The Proposed Outside Work**

17. Job title (English): \_\_\_\_\_ (Chinese): \_\_\_\_\_

18. Work address (if different from the address in item 11 above): \_\_\_\_\_

\_\_\_\_\_

- Please tick in the appropriate box.
- \* Please delete whichever is inappropriate.

19. Field(s) of work (you may tick more than one items):

- |   |  |
|---|--|
| <input type="checkbox"/> Academic /education / research*                              | <input type="checkbox"/> Manufacturing / retail / trading*   |
| <input type="checkbox"/> Banking / financing / insurance / related business services* | <input type="checkbox"/> Public utilities                    |
| <input type="checkbox"/> Community / social* services                                 | <input type="checkbox"/> Security service                    |
| <input type="checkbox"/> Land / real estate or property* development                  | <input type="checkbox"/> Tourism / hospitality service*      |
| <input type="checkbox"/> Legal service  | <input type="checkbox"/> Transport and logistics             |
| <input type="checkbox"/> Management consulting  | <input type="checkbox"/> Works / engineering / construction* |
| <input type="checkbox"/> Medical service  | <input type="checkbox"/> Others (please specify): _____      |
- \_\_\_\_\_

20. Nature of work (you may tick more than one items):

- |  |  |
|--|--|
| <input type="checkbox"/> Corporate governance / management*          | <input type="checkbox"/> Teaching / academic research / education-related* |
| <input type="checkbox"/> Corporate support / general administration* | <input type="checkbox"/> Voluntary work                                    |
| <input type="checkbox"/> Consultancy /advisory service*              | <input type="checkbox"/> Others (please specify): _____                    |
| <input type="checkbox"/> Professional service                        | _____  |
| <input type="checkbox"/> Sales and marketing                         |  |

21. Major duties and responsibilities (please list at least 4 items):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

22. Will you be involved in any way in the business of the employer's parent company or any of its subsidiaries listed in items 15 and 16? If yes, please provide details.  Yes  No

\_\_\_\_\_

23. Proposed commencement date of the outside work: \_\_\_\_\_

Please tick in the appropriate box.  
\* Please delete whichever is inappropriate.



24. The outside work is

- (a)  full time  part time \_\_\_\_\_ hours / days \* per week/ month/ year\*  
 one-off from \_\_\_\_\_ to \_\_\_\_\_

- (b)  paid  unpaid

Approximate amount of remuneration : \$ \_\_\_\_\_ per month / annum / assignment\*

25. How did the offer of outside work arise? \_\_\_\_\_  
\_\_\_\_\_

*(Please answer the questions in items 26 to 30 on the basis of your duties during the **last three years of your government service**. If you will be involved in the business of the employer's parent company or any of its subsidiaries (see item 22 above), the reference to the employer in items 26 to 30 also includes the parent company and/or the subsidiaries, as applicable.)*

26. (a) Did/do you have any contractual dealings to which the employer was/is a party? If yes, please provide details (e.g. receipt and award of a contract, contract administering and monitoring, giving professional / technical advice before or after the award of the contract, the number/value/nature of the contracts etc.)  Yes  No

\_\_\_\_\_  
\_\_\_\_\_

- (b) Did/do you have any legal dealings with the employer? If yes, please provide details.  Yes  No

\_\_\_\_\_  
\_\_\_\_\_

- (c) Did/do you have any other official contacts / dealings (e.g. disbursement of funds, approval of applications, regulation of business etc.) with the employer? If yes, please provide details.  Yes  No

\_\_\_\_\_  
\_\_\_\_\_

- (d) Did you have any unofficial contacts/dealings with the employer before the work offer was made? If yes, please provide details.  Yes  No

\_\_\_\_\_  
\_\_\_\_\_

Please tick in the appropriate box.

\* Please delete whichever is inappropriate.

27. Were/are you involved in the formulation of any policy or decisions (other than those covered in item 26), the effects of which directly or specifically benefited, or could directly or specifically benefit the employer / your own business? If yes, please provide details.  Yes  No

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28. Were/are you involved in any assignments/projects and/or regulatory/enforcement duties (other than those covered in items 26 and 27) which are connected in any way with your duties and responsibilities under the proposed outside work? If yes, please provide details.  Yes  No

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29. (a) Did/do you have any access to commercially sensitive information, including that of competitors of the employer / your own business? If yes, please provide details and assess whether as a result of such access the employer / your own business would gain an unfair advantage over the competitors.  Yes  No

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(b) Did/do you have any contacts or dealings with companies which may be considered as competitors of the employer / your own business? If yes, please provide details.  Yes  No

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30. Apart from the information / knowledge gained through the means mentioned in items 26 to 29 above, did/do you gain any other information / knowledge while in government service which is relevant to the business of the employer / your own business? If yes, please provide details.  Yes  No

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Please tick in the appropriate box.

\* Please delete whichever is inappropriate.

### **(C) Note on Standard Restrictions**

The taking up of any outside work by a (former) directorate officer during final leave and / or the specified control period is subject to the standard restrictions that the officer should not –

- (i) be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises;
- (ii) undertake or represent any person in any work, including any litigation or lobbying activities, that are connected in any way with –
  - (a) the formulation of any policy or decisions;
  - (b) sensitive information;
  - )
  - (c) contractual or legal dealings;
  - (d) assignments or projects; and/or
  - )
  - (e) enforcement or regulatory duties  
in which he/she was involved or to which he/she had access during his/her last three years of government service; or
- (iii) engage in any activities which will cause embarrassment to the Government or bring disgrace to the civil service.

### **(D) Notes on Use of Personal Data**

#### Purpose of Collection

- (i) The personal data and other related information provided by the applicant in this form or through subsequent communication will be used for the purposes of
  - (a) processing the application by government departments / bureaux;
  - (b) verifying information with government departments / bureaux and/or parties outside the Government which are relevant to the application;
  - (c) disclosing the basic information on approved outside work to the public; and
  - (d) applying sanctions against the applicant in case of non-compliance with any of the stipulated rules or arrangements;in accordance with the rules and arrangements promulgated in Civil Service Bureau (CSB) Circular No. 10/2005 and any other circulars/circular memoranda to be issued by CSB from time to time on the taking up of outside work by (former) directorate officers after ceasing active government service.
- (ii) The provision of personal data and other related information is obligatory. The application will not be processed if the applicant fails to provide adequate and accurate data as requested in this application form or through subsequent communication.

#### Classes of Transferees

- (iii) The personal data and other related information provided in this form or through subsequent communication may be disclosed to:
  - (a) government departments / bureaux for the purposes stated in paragraph i (a) and (b) above;

- (b) parties outside the Government which are relevant to the application for the purpose stated in paragraph i (b) above;
- (c) the public including the media and the Legislative Council (LegCo) for the purpose stated in paragraph i (c) above; and
- (d) the outside employer of the applicant, the relevant professional body and/or the public including the media and LegCo for the purpose stated in paragraph i (d) above.

Access to Personal Data

- (iv) The applicant has the right to request access to or correction of the personal data and other related information provided in this form or through subsequent communication with the approving authority in accordance with the provisions of the Personal Data (Privacy) Ordinance (Cap. 486). Such requests should be made in writing to the Pensions Section of the Appointments Division, Civil Service Bureau, 11/F, West Wing, Central Government Offices, 11 Ice House Street, Hong Kong, or to e-mail address: [csbpen@csb.gov.hk](mailto:csbpen@csb.gov.hk)

**(E) Declaration**

- (i) I have read CSB Circular No. 10/2005 and the Notes on Use of Personal Data above.
- (ii) I confirm that the information provided in this application is full and accurate. I understand that if I wilfully give any false information or withhold any material information in this application form, the approving authority may suspend or withdraw the approval granted for my application and where necessary, invoke appropriate sanction including legal action.

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Signature of applicant

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Date

### **PART III: ASSESSMENTS ON THE APPLICATION**

#### **Please read the following notes before completing the assessment**

- (i) An application made by a **Permanent Secretary** should be forwarded to CSB direct for arranging assessment(s) as appropriate and for processing.
- (ii) For other applications, assessments should be completed in the sequences shown below before the applications are forwarded to CSB for further processing -
  - (a) An application made by a **Head of Department (HoD)**: The relevant Permanent Secretary to complete Assessment A.
  - (b) An application made by a **departmental grade directorate officer serving / formerly served in a bureau**: The relevant Permanent Secretary to complete Assessment A → the relevant Head of Grade (HoG), if applicable, to complete Assessment B.
  - (c) An application made by a **departmental grade directorate officer (not a HoD) serving / formerly served in a department**: The relevant HoD to complete Assessment A → the relevant Permanent Secretary to complete Assessment B → the relevant HoG (if not the same person as the HoD) to complete another Assessment B.
  - (d) An application made by a **general grade directorate officer serving / formerly served in a bureau**: The relevant Permanent Secretary to complete Assessment A → the relevant HoG to complete Assessment B.
  - (e) An application made by a **general grade directorate officer serving / formerly served in a department**: The relevant HoD to complete Assessment A → the relevant Permanent Secretary to complete Assessment B → the relevant HoG to complete another Assessment B.

#### **ASSESSMENT A**

31. If the applicant is/was a directorate officer at **D4 or above (or equivalent) or if the work that he/she handles/handled is of particular sensitivity**, please refer to his/her service history in items 8 and 9 above, and advise on the period of government service before cessation of active service which should be taken into account in assessing the application and provide your assessment below accordingly.

- last 3 years of active government service       last 6 years of active government service

32. If any of the information provided by the applicant in Parts I and II is, to your knowledge, incorrect, please indicate below –

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33. (a) Did/does the applicant have any contractual dealings to which the employer was/is a party? If yes, please elaborate on his/her involvement (e.g. receipt and award of a contract, contract administering and monitoring, giving professional / technical advice before or after the award of the contract, the number/value/nature of the contracts etc.)  Yes  No

Please tick in the appropriate box.

\* Please delete whichever is inappropriate.

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(b) Did/does the applicant have any legal dealings with the employer? If yes,  Yes  No please provide details.

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(c) Did/does the applicant have any other official contacts / dealings with the employer? If yes, please provide details.  Yes  No

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34. Was/is the applicant involved in the formulation of any policy or decisions (other than those covered in item 33), the effects of which directly or specifically benefited, or could directly or specifically benefit the employer or his/her own business? If yes, please provide details.  Yes  No

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35. Was/is the applicant involved in any assignments/projects and / or regulatory/enforcement duties (other than those covered in items 33 and 34) which are connected in any way with his/her duties and responsibilities under the proposed outside work? If yes, please provide details.  Yes  No

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36. (a) Did/does the applicant have any access to commercially sensitive information, including that of competitors of the employer / the applicant's own business? If yes, please provide details and assess whether as a result of such access the employer / the applicant's own business would gain an unfair advantage over the competitors.  Yes  No

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(b) Did/does the applicant have any contacts or dealings with companies which may be considered as competitors of the employer or his/her own business? If yes, please provide details.  Yes  No

Please tick in the appropriate box.

\* Please delete whichever is inappropriate. \_\_\_\_\_

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37. Apart from the information / knowledge that the applicant gained through the means mentioned in items 33 to 36 above, did he/she gain any other information / knowledge while in government service which is relevant to the business of the employer or his/her own business?  Yes  No  
If yes, please provide details.

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38. Do you have any additional points to make on the connection between the applicant's former government duties and his/her proposed outside work?  Yes  No  
If yes, please provide details.

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39. Do you think the applicant's duties and responsibilities under the proposed outside work would constitute any real or potential conflict of interest with his/her former government duties?  Yes  No  
If yes, please provide details.

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40. Please give an assessment on whether the applicant's taking up the proposed outside work would give rise to any negative public perception (e.g. public suspicion of conflict of interest, any other impropriety or unfair advantage), cause embarrassment to the Government or bring disgrace to the civil service (e.g. because of the nature of the outside work or the background of the employer).

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- Please tick in the appropriate box.
- \* Please delete whichever is inappropriate.

41. Recommendation on the application –

- Approve the application without sanitisation or any restriction (other than the standard restrictions set out in Part II Section (C) above).
- Approve the application subject to the following conditions –
  - a sanitisation period of \_\_\_\_\_ months from cessation of active service; and
  - the following restrictions (in addition to the standard restrictions on scope of work set out in Part II Section (C) above) –

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- Reject the application.

Reasons: \_\_\_\_\_

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Signature	Name	Rank / Post	Date
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- Please tick in the appropriate box.
- \* Please delete whichever is inappropriate.



**ASSESSMENT B**

42. If the applicant is/was a directorate officer at **D4 or above (or equivalent)** or if the work that he/she handles/handled is of particular sensitivity, please refer to his/her service history in items 8 and 9 above, and advise on the period of government service before cessation of active service which should be taken into account in assessing the application and provide your assessment below accordingly.

- last 3 years of active government service
- last 6 years of active government service

43. Having regard to the information provided in items 26 to 30 and 33 to 38, do you have any additional points to make on the connection between the applicant's former government duties and his/her proposed outside work? If yes, please provide details.  Yes  No

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44. Do you think the applicant's duties and responsibilities under the proposed outside work would constitute any real or potential conflict of interest with his/her former government duties? If yes, please provide details.  Yes  No

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45. Please give an assessment on whether the applicant's taking up the proposed outside work would give rise to any negative public perception (e.g. public suspicion of conflict of interest, any other impropriety or unfair advantage), cause embarrassment to the Government or bring disgrace to the civil service (e.g. because of the nature of the outside work or the background of the employer).

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46. Recommendation on the application –

- Approve the application without sanitisation or any restriction (other than the standard restrictions set out in Part II Section (C) above).
- Approve the application subject to the following conditions –
  - a sanitisation period of \_\_\_\_\_ months from cessation of active service; and
  - the following restrictions (in addition to the standard restrictions on scope of work set out in Part II Section (C) above) –

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- Reject the application.

Reasons: \_\_\_\_\_

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Signature	Name	Rank / Post	Date
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- Please tick in the appropriate box.
- \* Please delete whichever is inappropriate.

**Terms of Reference and Current Membership of  
Advisory Committee on Post-service Employment of Civil Servants**

**Terms of Reference**

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

**Current Membership** (by alphabetical order)

Chairman: The Hon Justice PANG Kin-kee

Members: Mr Simon IP Sik-on, JP (Member, Public Service Commission)

Mr James Edward THOMPSON, GBS

Ms Marina WONG Yu-pok, JP

Mr YEUNG Ka-sing, SBS, JP

**List of Subvented Organisations Gazetted  
for Pension Suspension Purpose**

**Organisations** (by alphabetical order)

1. City University of Hong Kong
2. Equal Opportunities Commission
3. Hong Kong Baptist University
4. Hong Kong Housing Authority
5. Hong Kong Monetary Authority
6. Hospital Authority
7. Lingnan University
8. Office of The Ombudsman
9. Office of the Privacy Commissioner for Personal Data
10. The Chinese University of Hong Kong
11. The Hong Kong Institute of Education
12. The Hong Kong Polytechnic University
13. The Hong Kong University of Science and Technology
14. The Legislative Council Commission
15. The University of Hong Kong
16. Vocational Training Council

**Sample Case Record on Public Register**

**Serial No.:** XX/2009

**(A) Information on the officer**

**Name** Mr. CHAN Tai-man

**Last government post title**

Director, XX Department

**Date of cessation of active government service**

31 January 2008

**(B) Information on the approved outside work**

**Name of employing company/organisation or own company\***

ABC Company Limited

**Position/title**

Executive Director, Business Development

**Commencement date of approved work**

1 February 2009

**Brief description of main duties**

- (a) Formulating and executing ABC Company Limited's strategies and business plans;
- (b) Exploring the market potential and establishing the distribution network for the products in the Asia-Pacific Region; and
- (c) Taking charge of the day-to-day management and operation of the Business Development Unit of ABC Company Limited.

**Sanitisation period**

12 months (up to and including 30 January 2009)

**Restrictions on scope of work (in addition to the applicable standard restrictions set out at the end of this form)**

Mr. Chan should not represent ABC Company Limited in any discussion with the Government.

I confirm that the above particulars are correct and understand that the information may be disclosed<sup>1</sup> to the public in accordance with the provisions set out in CSB Circular No. 10/2005.

Signature:	(Signed)
Name	CHAN Tai-man
Date:	20 January 2009

\* Delete as appropriate

Standard Restrictions on Scope of Work

The officer should not –

- (a) be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises;
- (b) undertake or represent any person in any work including any litigation or lobbying activities that are connected in any way with –
  - (i) the formulation of any policy or decisions;
  - (ii) sensitive information;
  - (iii) contractual or legal dealings;
  - (iv) assignments or projects; and/or
  - (v) enforcement or regulatory duties

in which he/she was involved or to which he/she had access during his/her last three years of government service; or

- (c) engage in any activities which will cause embarrassment to the Government or bring disgrace to the civil service.

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<sup>1</sup> For officers at D4 or above, this record will be placed in a register for public inspection.

**Statistics on Applications for Post-service Outside Work  
from Directorate Civil Servants Processed in 2006 to 2008<sup>1</sup>**

**Breakdown by Applicants and Applications**

1. Table 1 below shows the breakdown of the number of applicants and applications by the rank of applicants during the three-year period of 2006 to 2008. It should be noted that a directorate civil servant may submit more than one application for post-service outside work. For the purpose of Table 1, such civil servants are counted only once.

**Table 1: Number of Applicants and Applications by Rank (1.1.2006 to 31.12.2008)**

<b>Directorate Rank (or equivalent)</b>	<b>1.1.2006 – 31.12.2006</b>	<b>1.1.2007 – 31.12.2007</b>	<b>1.1.2008 – 31.12.2008</b>	<b>Applicants Total (3 years)</b>	<b>Applications Total (3 years)</b>
D1	10	5	4	19	25
D2	6	11	10	27	49
D3	11	5	3	19	25
D4	1	2	2	5	8
D5	5	0	1	6	28
D6	3	3	1	7	22
D7	0	0	0	0	0
D8	4	1	1	6	18
<b>Total</b>	<b>40</b>	<b>27</b>	<b>22</b>	<b>89</b>	<b>175</b>

<sup>1</sup> Data are prepared on the basis of the date of approval/rejection of an application.

## **Breakdown by Nature of Approved Outside Work**

2. The approved post-service outside work may be broken down into –
  - (a) the nature of business of the prospective employer; or
  - (b) the functional nature of the approved work.
3. By way of illustration, a former directorate civil servant has been approved to take up post-service outside work as a manager in the information technology department of a bank. For this application, the nature of business of the prospective employer is ‘Banking’ while the nature of the approved outside work is ‘Information Technology’.

### ***(A) Nature of Prospective Employers***

4. Table 2 below shows that of the total approved applications over the three-year period of 2006 to 2008, 69 (or 40%) were for work (paid or unpaid) with private commercial organisations; and 102 (or 60%) for work (paid or unpaid) with entities other than private commercial organisations (e.g. academic institutions, statutory organisations and charitable organisations). Paid work is defined as work attracting honorarium or remuneration of any sort (including subsistence or per diem allowance etc).

**Table 2: Approved Post-service Outside Work Applications by Nature of Prospective Employer (1.1.2006 to 31.12.2008)**

<b>Work Nature</b>	<b>Private commercial organisations</b>	<b>Other Entities</b>	<b>Total</b>
Paid work	58	85	143
Unpaid work	11	17	28
<b>Total</b>	<b>69</b>	<b>102</b>	<b>171</b>



5. Table 3 below shows a breakdown of the approved outside work applications in commercial organisations. It is noted that –

- (a) 58 (or 84%) were for paid work and 11 (or 16%) for unpaid work. Examples of unpaid work included honorary consultants, members of advisory boards, etc.
- (b) 47 (or 68%) were for work on a part-time basis or project basis and 22 (or 32%) for work on a full-time basis.

**Table 3: Approved Post-service Outside Work Applications with Private Commercial Organisations by Nature of Business (1.1.2006 to 31.12.2008)**

Nature	Paid Work			Unpaid Work			Total
	Part-Time	Project	Full-time	Part-time	Project	Full-time	
Banking/ Finance	3	0	2	0	0	0	5
Education	0	1	0	0	0	0	1
Information Technology	0	2	0	0	0	0	2
Legal Service	0	1	3	0	0	0	4
Management Consultancy	2	0	0	0	1	0	3
Manufacturing/ Trading	4	0	2	2	0	0	8
Medical	2	0	1	0	0	0	3
Real Estate/ Property Development	2	1	4	0	0	0	7
Security	1	0	1	0	0	0	2
Transport and Logistics	3	0	3	4	0	0	10
Works	4	0	2	0	0	0	6
Others	6	4	4	3	1	0	18
<b>Total</b>	<b>27</b>	<b>9</b>	<b>22</b>	<b>9</b>	<b>2</b>	<b>0</b>	<b>69</b>

6. Table 4 below shows the breakdown of the approved post-service outside work applications with entities other than private commercial organisations (e.g. statutory organisations, academic institutions, charitable organisations). It is noted that –

- (a) 85 (or 83%) were for paid work and 17 (or 17%) for unpaid work. Examples of unpaid work included appointments as members of boards/committees of statutory organisations.
- (b) Work with academic institutions and non-profit making organisations not primarily engaged in commercial operation together took up about two-thirds of the 102 approved applications.
- (c) As the taking up of **unpaid** work with specified non-commercial organisations is covered by the blanket permission since January 2006, such post-service work is not captured in the Table below, save for seven approved applications for unpaid work in these organisations submitted before the introduction of the blanket permission and were approved in early 2006.

**Table 4: Approved Post-service Outside Work Applications with Non-commercial Entities (1.1.2006 to 31.12.2008)**

Nature	Paid Work			Unpaid Work			Total
	Part-Time	Project	Full-time	Part-time	Project	Full-time	
Statutory organisations	4	1	10	10	0	0	25
Academic Institutions	29	6	1	0	0	0	36
Charitable organisations	1	1	1	0	0	0	3
Non-profit making organisations not primarily engaged in commercial operation	7	7	9	7 (see para. 6(c))	0	0	30
Regional/international organisations	1	7	0	0	0	0	8
<b>Total</b>	<b>42</b>	<b>22</b>	<b>21</b>	<b>17</b>	<b>0</b>	<b>0</b>	<b>102</b>

***(B) Functional Nature of Outside Work***

7. Table 5 below shows the breakdown of the 171 approved post-service outside work applications by the functional nature of outside work. Post-service outside work in the areas of management and education took up 30% and 24% respectively of the total approved work.

**Table 5: Approved Post-service Outside Work Applications by Functional Nature (1.1.2006 to 31.12.2008)**

<b>Nature</b>	<b>1.1.2006 – 31.12.2006</b>	<b>1.1.2007 – 31.12.2007</b>	<b>1.1.2008 – 31.12.2008</b>	<b>Total</b>
Education	10	16	15	41
Finance & Accounting	4	2	0	6
Information Technology	0	0	3	3
Legal Service	0	0	3	3
Management	19	16	16	51
Medical	2	1	2	5
Real Estate/ Property Development	0	0	0	0
Security	4	1	1	6
Works	4	3	0	7
Others	20	16	13	49
<b>TOTAL</b>	<b>63</b>	<b>55</b>	<b>53</b>	<b>171</b>