













## FINDINGS AND RECOMMENDATIONS

4. The Review Committee examined in detail the Control Regime and deliberated on the response made by the public and stakeholders. It also made reference to the overseas practices. It made a total of 23 recommendations, covering the following different aspects of the Control Regime –

- (a) underlying principles (Recommendation 1);
- (b) policy objective (Recommendation 2);
- (c) design and operation (Recommendations 3 to 20); and
- (d) public monitoring (Recommendations 21 to 23).

### I. Underlying Principles

**Recommendation 1** – Protection of the public interest and protection of an individual’s right should continue to be the two principles underlying the Control Regime, with protection of the public interest taking precedence over protection of an individual’s right.

5. The Review Committee believes that both the protection of the public interest and protection of an individual’s right, the two current underlying principles of the Control Regime, are important. On the one hand, the Government has the duty to uphold the public interest. On the other hand, an individual’s right, in particular the right to work and freedom of choice of occupation, is a fundamental right enshrined in the Basic Law and an international covenant and a labour convention applicable to Hong Kong. This right, however, should not be taken as absolute.

6. Civil servants are employed by the Government to serve the public. Thus for the protection of the public interest, the imposition of reasonable restrictions on a civil servant’s right to work after he leaves the civil service is justified. The Review Committee recommends that

protection of the public interest and protection of an individual's right should continue to be the two principles underlying the Control Regime, with protection of the public interest taking precedence over protection of an individual's right.

## II. Policy Objective

**Recommendation 2** –The policy objective should be expanded to make specific references to –

- (a) avoiding suspicion or perception of ‘deferred reward’; and
- (b) making good use of limited human resources.

There is no need to make a specific reference in the policy objective to maintaining the attractiveness of the civil service as a career.

7. The Review Committee is keenly aware of public concern over the possibility of a directorate civil servant making use of his public office to benefit specific entities/individuals while in government service in return for, or in the hope of, post-service employment, namely the so-called ‘deferred reward’. While actual ‘deferred reward’ should be tackled by the existing law (such as the Prevention of Bribery Ordinance), perception or mere suspicion of ‘deferred reward’ is a different matter altogether.

8. The Review Committee notes that the current policy objective has not made specific reference to ‘avoiding suspicion or perception of deferred reward’, and that Canada and the United Kingdom (UK) have specifically referred to such concerns in the policy objective of their control regimes of post-service employment for senior civil servants. The Review Committee recommends that the policy objective should be expanded to include such reference. This would underline the importance of taking these factors into account by both –

- (a) directorate civil servants when they submit applications for post-service outside work; and
- (b) the internal and external assessment parties when such applications are examined.



It would also mitigate, although not eliminate, public concern on this issue.

9. Furthermore, the Review Committee considers that experience and expertise of former directorate civil servants should be usefully harnessed to the overall benefit of the Hong Kong community. It also notes that the benefits of former civil servants' taking up post-service outside work are explicitly recognised in the post-service employment control regimes for civil servants in Australia and New Zealand. It considers that the policy objective should be expanded to include an explicit reference to putting limited human resources to good use.

10. Separately, the Review Committee considers that while it is important for the Government to be able to recruit and retain quality individuals in the civil service for the good governance of Hong Kong, there are other factors besides the stringency of the Control Regime which may affect the attractiveness of the civil service as a career. As it is difficult to ascertain the relative importance of all the relevant factors, the Review Committee therefore considers that there is no need to make a specific reference in the policy objective to maintaining the attractiveness of the civil service as a career.

### **III. Design and Operation**

#### **(a) Periods of Restriction**

**Recommendation 3** – A *lifetime total ban* on paid post-service outside work should not be imposed. A *lifetime specific ban* on particular types of post-service employment should also not be imposed (with the Honourable Albert Ho registering a different view). The Honourable Albert Ho considers that the possibility of a lifetime 'employer-specific' ban on a former directorate civil servant who has had dealings in land, property or award of franchise matters when in government service should be further explored.

11. Public views were received on two forms of lifetime ban on paid post-service employment. One form was a lifetime total ban on any

paid employment, in particular for retired directorate civil servants in receipt of monthly pension payments. The other form was a lifetime specific ban targeting particular types of paid employment.

12. The Review Committee does not recommend imposing a lifetime total ban based on the following considerations –

- (a) it violates an individual's right to work and freedom of choice of occupation as enshrined in the Basic Law and an international covenant and a labour convention applicable to Hong Kong;
- (b) retirement benefits are earned by a directorate civil servant for his past service to the Government. They are not a form of compensation for deprivation of his right to engage in paid work for life after leaving the Government;
- (c) it is in the best interest of the community for limited human resources to be put to good use; and
- (d) no overseas jurisdiction studied imposes a lifetime total ban on its former senior civil servants.

13. There were views supporting a lifetime specific ban targeting particular types of paid employment, e.g. post-service work in the same field as that undertaken by a former directorate civil servant while in government service. Given the difficulty in delineating the exact scope of such a draconian measure (see paragraphs 16 to 19 below), the Review Committee (except the Honourable Albert Ho) does not recommend imposing a lifetime specific ban on paid post-service employment. The Honourable Albert Ho recognises the difficulty but considers that a lifetime 'employer-specific' ban on a former directorate civil servant who has had dealings in land, property or award of franchise matters when in government service should be further explored.

<p><b>Recommendation 4</b> – No change should be made to the minimum sanitisation period.</p>
---

14. The minimum sanitisation period (namely 6 or 12 months depending on the rank of directorate civil servants) is a specified period

of restriction counting from the date of cessation of active duty of a directorate civil servant. During this period, permission will normally not be given to a directorate civil servant to take up post-service outside work with a commercial organisation. The Review Committee notes that among the seven overseas jurisdictions studied, only the UK has a similar blanket prohibition of post-service outside work, which covers a period of three months and is only applicable to very senior civil servants. The current length of the minimum sanitisation period in the Hong Kong's Control Regime is the longest compared with all the overseas control regimes studied. The decision authority may also lengthen or shorten the minimum sanitisation period in respect of an application for post-service outside work if needed.

15. The Review Committee considers that further lengthening of the minimum sanitisation period across-the-board may contravene one of the underlying principles of the Control Regime, namely protection of an individual's right to work. In addition, it would be unreasonable to prohibit former directorate civil servants who have resigned from the Government or who have completed termed contracts from taking up outside work for a protracted period of time after they have left government service.

**Recommendation 5** – The length of the control period should not be determined by specified fields of work during government service.

16. There were views that directorate civil servants working in certain fields of work during government service, such as property-related or land-related matters, were more prone to conflict of interest and suspicion or perception of 'deferred reward' in their post-service outside work. Hence, a longer prohibition (but not lifetime ban) or control period (see paragraph 20 below) should be imposed on such directorate civil servants.

17. The Review Committee does not recommend imposing control by specified fields of government work having regard to the following considerations –

- (a) it is difficult to devise a set of objective criteria for the selection of specified fields of government work;

- (b) it may not be fair or reasonable to subject former directorate civil servants who have worked in a specified field while in government service to more stringent post-service outside work control, irrespective of the actual extent of their involvement in the specified field;
- (c) it may engender difficulties in posting civil servants to serve in the specified fields of work; and
- (d) it is not in line with overseas practices.

**Recommendation 6** – The length of the control period should not be determined by post-service outside work in the same field as a directorate civil servant’s past government duties.

18. There were views that the risk of conflict of interest between former government duties and post-service outside work would be greater if a former directorate civil servant took up post-service employment in the same field as his past government duties. This was because such a civil servant was more likely to have had past dealings with the prospective employer or its competitors, and/or access to industry-specific information, during his past government service. Hence, there were calls for imposing a longer control period for post-service outside work in the same field as a directorate civil servant’s past government duties.

19. The Review Committee does not recommend imposing a longer control period for post-service outside work in the same field as past government duties having regard to the following considerations –

- (a) it will have the greatest negative impact on directorate civil servants in professional grades (such as doctors and engineers) and those working in dedicated single fields of work for their entire civil service career (such as education officers and police officers) since by qualification and experience, they are likely to wish to take up post-service employment in their respective professions or fields;
- (b) it will also adversely affect generalist directorate civil servants. These civil servants will be prohibited from

taking up post-service outside work in more than one field if they have worked in several bureaux/departments during their last few years of government service;

- (c) it is not straight-forward to delineate what constitutes ‘work in the same field’;
- (d) the work restrictions currently imposed on all approved post-service outside work applications (see paragraphs 36 to 37 below) should be able to mitigate the concern over conflict of interest arising from contacts and/or information obtained during past government service; and
- (e) no such restriction exists in any of the overseas jurisdictions studied.

**Recommendation 7** – The length of the control period should be as follows (with the Honourable Audrey Eu and the Honourable Albert Ho registering a different view) –

- (a) two years for Directorate Pay Scale (DPS) D1 to D3 (or equivalent) civil servants (i.e. no change to the length of the existing period);
- (b) three years for DPS D4 to D7 (or equivalent) civil servants (i.e. lengthening the existing period by one year); and
- (c) five years for DPS D8 (or equivalent) civil servants (i.e. lengthening the existing period by two years).

The Honourable Audrey Eu and the Honourable Albert Ho recommend that the length of the control period should be –

- (a) three years for DPS D1 to D3 (or equivalent) civil servants (i.e. lengthening the existing period by one year); and
- (b) five years for DPS D4 to D8 (or equivalent) civil servants (i.e. lengthening the existing period by three years for DPS D4 to D7 (or equivalent) civil servants and by two years for DPS D8 (or equivalent) civil servants).

20. The control period is a specified period of restriction counting from a directorate civil servant’s formal departure from the Government (i.e. on exhaustion of his final leave if any). Under the Control Regime, directorate civil servants are divided into two groups, each of which is

subject to different lengths of control period, namely: two years for Directorate Pay Scale (DPS) D1 to D7 (or equivalent) civil servants who occupy a wide range of posts from chiefs in some professional grades to heads of departments; and three years for DPS D8 (or equivalent) civil servants who are the most senior civil servants and mostly serve as permanent secretaries.

21. The Review Committee considers the requirement for a former directorate civil servant to seek prior permission before taking up post-service outside work during the specified control period and the ability of the decision authority to impose additional work restrictions as necessary when approving an application are two practical and effective tools in the Control Regime. These tools would not cause an individual's right to work to be restricted unreasonably.

22. While Members of the Review Committee have different preferences on the appropriate length of the control period, they believe it is in the best public interest for them to reconcile their different preferences, if possible. With this objective in mind, the Review Committee (except the Honourable Audrey Eu and the Honourable Albert Ho) considers that the control period for directorate civil servants at DPS D1 to D3 (or equivalent) should remain unchanged at two years, as the public is relatively less concerned about the post-service outside work of this group of directorate civil servants given their limited discretionary powers and involvement in policy formulation. It further considers that the control period for the more senior directorate civil servants should be lengthened to a different extent having regard to their level of responsibilities, access to confidential information and influence over policy formulation. Specifically, it considers the control period should be lengthened from two to three years for DPS D4 to D7 (or equivalent) civil servants and from three to five years for DPS D8 (or equivalent) civil servants.

23. The Honourable Audrey Eu and the Honourable Albert Ho consider that to better mitigate public concern, the control period for all directorate civil servants should be lengthened. Specifically, they recommend that the control period should be lengthened from two to three years for DPS D1 to D3 (or equivalent) civil servants, and that for

DPS D4 to D8 (or equivalent) civil servants should be lengthened and standardised at five years (i.e. lengthened from two to five years for DPS D4 to D7 (or equivalent) civil servants, and from three to five years for DPS D8 (or equivalent) civil servants).

**(b) Internal Assessment Process**

**Recommendation 8** – The provision of information by an applicant in the application form should be improved as follows –

- (a) irrespective of whether or not an applicant will be involved in the business of the parent or related companies of the prospective employer, he should be required to disclose his material past contractual, legal, official and other contacts/dealings (if any) with these entities during his last three years of government service if he is at DPS D1 to D3 (or equivalent), and during his last six years of government service if he is a DPS D4 or above (or equivalent) civil servant;
- (b) an applicant should be required to provide any other information which he considers relevant to the assessment of his application; and
- (c) the policy objective and the assessment criteria should be stated upfront on the application form so as to remind an applicant of the factors that would be taken into account in the assessment process. This should help him to decide what other relevant information to provide as required under (b) above.

24. Currently, an application for post-service outside work is first assessed internally by the relevant parties in the Administration. In making their assessment, these parties will refer to files and records in the concerned bureau(x)/department(s) as well as the information provided by the applicant in his application form.

25. At present, an applicant is required to provide information, in the application form, on his past contractual, legal, official and other contacts/dealings (if any) with the prospective employer as well as its parent or any of its subsidiary companies in his last three years of government service. However, if the applicant will not be involved in

the business of the prospective employer's parent company or any of its subsidiary companies, he is *not* required to provide such information with those entities.

26. The Review Committee believes that the public concern over any impropriety of approved and taken-up post-service outside work could be alleviated if public trust in the assessment process is enhanced. It further believes that the additional information proposed under Recommendation 8 will help provide the assessment parties with the necessary information to properly assess an application.

**Recommendation 9** – All applications from DPS D4 to D8 (or equivalent) directorate civil servants should be assessed with reference to the applicants' last six years of active government service.

27. The Review Committee notes that the internal assessment parties may assess an application from a directorate civil servant at DPS D4 to D8 (or equivalent) with reference to his last three or six years of active government service. The Review Committee believes that a uniform period should be set, and that this period should be the last six years of active service.

### **(c) External Assessment Process**

28. Under the Control Regime, an application is put to the Advisory Committee on Post-service Employment of Civil Servants (hereafter referred to as 'the Advisory Committee') for advice before the decision authority (namely the Secretary for the Civil Service) makes the final decision. The Advisory Committee is an independent advisory body appointed by the Chief Executive.

**Recommendation 10** – The Advisory Committee should retain its advisory role (with the Honourable Audrey Eu registering a different view). The Honourable Audrey Eu considers that the Control Regime, including the power to approve or reject post-service outside work applications, should be placed in a body independent of the Administration.



29. The Review Committee (except the Honourable Audrey Eu) considers that post-service outside work control is an integral part of the contractual relation between the Administration as an employer and a directorate civil servant as an employee. The Administration has a duty to determine and enforce this contractual obligation. The Administration should also be held accountable for any challenge, legal or otherwise, against any aspect of the Control Regime and any decision taken by the decision authority. As such, the Advisory Committee should retain its advisory role. The Honourable Audrey Eu considers that the Control Regime, including the power to approve or reject post-service outside work applications, should be placed in a body independent of the Administration.

**Recommendation 11** – The membership of the Advisory Committee should be expanded to nine members (including the chairman) with a broadened composition. Possible categories of candidates for appointment on an *ad personam* basis include (but not restricted to) academics, representatives from civil service groups, former directorate civil servants, personalities from professional fields and/or the business sector, as well as former or serving members of the Executive Council, the Legislative Council and the District Councils.

30. The Advisory Committee is currently chaired by a serving High Court judge and has five other members coming from different sectors of the community. Its membership size is relatively small compared to similar independent advisory bodies set up in France and the UK.

31. The Review Committee considers that expanding the size of the Advisory Committee and drawing in more members with different backgrounds and expertise would enable the Advisory Committee to offer a broader spectrum of advice and in turn enhance its credibility.

**Recommendation 12** – The Advisory Committee should be given the power to invite outside expert(s) in the field(s) relevant to a post-service outside work application to give advice if necessary.

32. The Review Committee notes some respondents proposed that representatives from professional fields relevant to an application should be invited to assess the concerned application on an *ad hoc* basis. It has reservation about such a proposal as it may result in a lack of consistency in assessing applications. It considers that the Advisory Committee should be given the power to invite relevant outside experts to offer views if necessary.

**Recommendation 13** – The Advisory Committee should draw up guidelines on its mode of operation, which should provide for the holding of meetings when appropriate or upon request by its chairman or any of its members. In addition, these guidelines should be made known to the public and applicants.

33. Currently, the Advisory Committee processes post-service outside work applications mainly through circulation of discussion papers. The Review Committee notes that more than half of the applications processed in 2006 to 2008 were straight-forward and involved work in non-commercial organisations or subvented educational bodies, and that they might not necessitate discussion through meetings.

34. The Review Committee considers that meetings would facilitate exchange of views and help bring out questions not apparent on papers. Recognising that the Advisory Committee should continue to decide for itself whether or not to meet to discuss a particular application, the Review Committee recommends that the Advisory Committee should draw up guidelines on its mode of operation covering, among other things, the holding of meetings, and should make public such guidelines.

**Recommendation 14** – The secretariat of the Advisory Committee should be independent of the Civil Service Bureau. Depending on workload, it may be a dedicated secretariat, or it may be an existing independent secretariat for advisory bodies on civil service-related matters with an expanded ambit.

35. The secretariat of the Advisory Committee is currently part of the Civil Service Bureau (CSB). This arrangement may inadvertently undermine the perceived independence of the Advisory Committee. The











































































































































































































































































































































