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Legislative Council

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Panel on Public Service
Meeting on 21 November 2005

Background Brief
on the review of the policy on post-service employment of
former directorate civil servants

Purpose

This paper summarizes the background of the Administration's review of the policy governing post-service employment of former directorate civil servants and gives a brief account of the major views and concerns expressed by Members at previous meetings of the Legislative Council (LegCo) and the Panel on Public Service (PS Panel).

Background

2. The existing policy and arrangement governing post-retirement employment were put in place in 1987. Under section 16 of the Pensions Ordinance (Cap. 89) and section 30 of the Pension Benefits Ordinance (Cap. 99), a retired civil servant who has been granted a pension is required to seek prior permission from the Chief Executive (CE) before he enters into business or takes up employment within two years after his retirement (or a longer period as determined by CE), if the principal part of the business or employment is carried on in Hong Kong. Retired officers at the Administrative Officer Staff Grade A1 (AOSGA1) rank or above have to seek permission within three years after retirement. Blanket approval is given for all staff remunerated on the Model Scale I Pay Scale. Since January 1997, officers on agreement term who are ranked at Directorate Pay Scale D3 and above are also required to seek prior permission before they take up employment outside the Government within one year after completion of their agreements.

3. The objective of the policy governing post-service employment of civil servants is to ensure that former civil servants do not enter into any business or take up any employment which may constitute a conflict of interest with their previous service in the Government or adversely affect the image of the Government. However, the

approval given by the Administration to a number of retired directorate officers to take up employment with private enterprises or public organizations shortly after their retirement or during their pre-retirement leave has caused the concern of LegCo Members and the public on any possible conflict of interests involved. Members have raised questions on the subject on a number of occasions at meetings of the LegCo and PS Panel. The relevant details are summarized in **Appendix I**. At the PS Panel meeting on 17 May 2004, members strongly questioned the effectiveness of the approval mechanism in upholding the integrity of civil servants especially in preventing directorate officers from giving favouritism to private consortia in the formulation of policies and decision-making during their service immediately prior to retirement. The Panel urged the Administration to review the existing policy and approval mechanism as soon as possible.

4. In March 2005, the Administration reported the findings of the review to the PS Panel and consulted the Panel on the preliminary proposals arising from the review. The Panel noted that the Administration would consult the staff sides and departmental management on the preliminary proposals, and that the Administration's plan was to commence operation of the revised mechanism in the latter half of 2005.

Existing policy and approval mechanism

Main features of the existing mechanism

5. According to the information provided by the Administration, in considering applications for taking up post-retirement employment, the basic principle to follow is that there should be no impropriety in the proposed employment. In this regard, the Administration takes into account the following factors:

- (a) Whether the officer, while serving in the Government, was involved in policy formulation or decisions which could have benefited his prospective employer;
- (b) Whether the prospective employer might gain an unfair advantage over competitors because of the officer's previous knowledge and experience; and
- (c) The public perception of the officer taking up the proposed business or employment.

6. As regards the approval mechanism, CE has delegated the approving authority for applications from directorate officers up to the rank of AOSGA1 to the Secretary for the Civil Service (SCS) and for applications from non-directorate officers to the Heads of Department (HoDs) or Heads of Grade (HoGs).

7. In respect of directorate officers, all applications are considered by the Advisory Committee on Post-retirement Employment (ACPE) which is an independent body to advise the Government on matters related to post-retirement employment of civil servants. The Committee, chaired by a High Court judge, comprises four other members^{Note}. The approving authority takes into account the advice and recommendations of ACPE before arriving at a decision on an application.

8. For applications which warrant approval, the Administration will, having regard to the factors set out in paragraph 5 above, consider whether it is necessary to specify a sanitization period (counting from the date of cessation of active service of the applicant) during which the applicant would be barred from taking up post-retirement employment. The length of the sanitization period, if any, varies depending on the specific circumstances of each case. Normally, a six-month sanitization period counting from the date of cessation of active service will be imposed in the case of directorate officers. For applications from directorate officers, the need for a sanitization period as well as its duration are put to ACPE for consideration and advice.

9. Where appropriate, the Administration may also impose restrictions on the scope of activities to be undertaken by the former civil servant, e.g. forbidding the applicant from being involved in dealings between the Government and his prospective employer, either absolute or with reference to a stated area or areas.

10. In accordance with the pensions legislation, monthly pension payment will be suspended for those retired civil servants who are re-appointed to the Government or appointed to subvented organizations determined as public service for the purpose of pension suspension by CE. This suspension of pension is not applicable to retired officers taking up employment with private enterprises.

Members' major views and concerns on the existing policy and approval mechanism

11. The major views and concerns previously expressed by Members at relevant meetings of the LegCo and the PS Panel are summarized as follows:

- (a) Given the high approval rate of applications for post-retirement employment, it is doubtful whether the existing mechanism is effective in achieving the objective of the post-retirement employment policy. A due process for handling the applications is important for maintaining the impartiality of the mechanism, safeguarding public interest, and inspiring public confidence in the probity and integrity of the civil service.

Note

In the past, ACPE comprised a chairman and four members, including three non-official members and one ex-officio member, i.e. SCS. Following a review, SCS ceased to be a member of the ACPE with effect from 1 June 2005 and an additional non-official member was appointed to the Committee.

- (b) To ensure that the post-service employment of former directorate civil servants will not constitute a conflict of interest with their previous service in the Government, the granting of approval for post-service employment should be tightened up by lengthening the sanitization period.
- (c) The sanitization period should be counted from the date on which the retired officers leave the civil service, instead of the date of cessation of active service. In other words, the officers should not be allowed to take up any employment during their final leave under any circumstances.
- (d) To facilitate the HoDs concerned in making their recommendations on applications for post-retirement employment, the Civil Service Bureau (CSB) should collate more information about the applications, such as information on whether the company was a subsidiary or associate of another business group.
- (e) The Administration should look into the approved cases of post-retirement employment and remind the civil servants concerned of the terms of approval, and explore means to strengthen its monitoring of the approved cases to ensure compliance with the terms of approval.
- (f) The Administration should examine how the existing approval mechanism could be enhanced, taking into account the need to strike a balance between the rights of individual civil servants to pursue employment or business after retirement on the one hand, and the public interests and the aspirations of the community regarding the integrity and impartiality of the civil service on the other.
- (g) The Administration should propose effective measures to improve the transparency of the existing mechanism and put in place a more stringent approval process.
- (h) Monthly pension payment should be suspended for those retired officers who have taken up employment with private enterprises.

Preliminary review proposals and members' major views

12. At the PS Panel meeting on 17 May 2004, members urged the Administration to review the existing policy and approval mechanism as soon as possible. The major areas covered by the review, as set out in **Appendix II**, include whether the length of the six-month sanitization period is appropriate, whether the officers concerned should be allowed to take up any employment during the period of their final leave, whether more restrictions should be imposed on the post-retirement employment of directorate officers, and how the transparency of the mechanism could be enhanced, etc.

13. At the PS Panel meeting on 21 March 2005, CSB put forward the preliminary proposed improvement measures arising from the review, details of which are in **Appendix III**. As a whole, members welcomed the preliminary proposals. The key preliminary proposed measures and members' major views are summarized in **Appendix IV**. Members' major views are highlighted as follows:

(a) Restriction on outside work during final leave

To address the dual identity problem and the negative public perception, officers on final leave should not be allowed to take up outside employment under any circumstances. Hence, the approving authority should not be given the discretionary power to grant exceptional approval for paid employment during final leave of any officers, even under very special circumstances.

(b) Control period

Concern has been raised by some members on whether the proposal for reducing the control period for directorate agreement officers with less than six years of service would have adverse impact on safeguarding against conflict of interest in post-service employment. The Administration has undertaken to take the concern into consideration.

(c) Approving criteria

One of the Administration's preliminary proposals is that the approving authority would normally focus on the duties of an applicant in the last three years of his/her active service. In the case of a senior directorate officer or if the work handled while in service is of particular sensitivity, his/her duties prior to the three-year period may also be taken into account by the approving authority. Concern has been raised by some members on how the term "particular sensitivity" would be defined. The Administration has undertaken that the definition of the term would be considered to facilitate future application of the approving criteria.

(d) Restrictions on scope of work

Concern has been raised by some members about the application of the proposed arrangement of imposing restrictions on ex-directorate officers from being involved, directly or indirectly, in the bidding for any government land, property, projects or contracts. A more specific or descriptive definition of the phrase "indirectly involved" would be necessary to prevent any ambiguity or loophole in the application of the proposed arrangement. The Administration has undertaken to examine whether and how "indirectly involved" could be defined.

(e) Sanitization period

- Some members have expressed the view that the sanitization period should be lengthened to three years for retired directorate officers, instead of one year as proposed by the Administration.
- Some other members have expressed support for the proposal to lengthen the sanitization period in general from six months to one year, but consider that this should not be applied to all applications across the board and special arrangement should be allowed for retired directorate officers of some professional and/or technical grades, such as doctors, engineers and accountants. Pointing out that it has received a similar suggestion from some civil service bodies, the Administration advises that the suggestion should be further examined having regard to the different views from different civil service grades and the feasibility of drawing up suitable eligibility criteria for this exceptional arrangement.

(f) Monitoring and sanction

To facilitate and strengthen the monitoring of approved cases and to enhance the power of the approving authority in imposing sanctions for non-compliance, some members have made the following suggestions which the Administration undertook to take into further consideration:

- To request the applicants to confirm their acceptance of certain conditions in undertaking post-retirement employment, for example, not to participate in activities or engage in work for companies which are the associate or subsidiary of the business group of their prospective employer; to respond to the enquiries and request for information by the approving authority for monitoring compliance of their approved applications; and to accept that the approving authority could terminate the approval if the officers concerned fail to provide the required information;
- To request the applicants to make statutory declaration on all the documents and information provided in their applications, so that they would be liable to civil action if the information they provide is proved to be false; and
- To include other penalties in the applications so that actions other than suspension of monthly pensions could be taken in the event of non-compliance with the terms of approval.

(g) Transparency

Members welcome the Administration's proposal to institute an administrative system whereby CSB will disclose basic information (such as last government post title of the officer, date of cessation of active service, identity of the outside employer) in respect of all cases in which the applicant has taken up the approved employment.

Recent development

14. The Administration has undertaken to report back to the PS Panel after consolidating views from the staff sides, departmental management and the community on the preliminary proposals arising from the review. The subject is scheduled for discussion at the PS Panel meeting on 21 November 2005.

Relevant Papers

15. A list of relevant papers is in **Appendix V** for members' reference.

Council Business Division 1
Legislative Council Secretariat
15 November 2005

Policy on post-service employment of former directorate civil servants

Previous discussions at meetings of the LegCo and Panel on Public Service

Date of meeting	Subject
LegCo meeting on 15 October 1997	A Member raised an oral question in connection with a former Assistant Director of Information Services being allowed to take up post-retirement employment during final leave.
LegCo meeting on 14 March 2001	A Member raised a written question in connection with the former Director of Highways being allowed to take up employment with the Kowloon-Canton Railway Corporation during final leave.
PS Panel meeting on 17 May 2004	<ul style="list-style-type: none"> ● In early 2004, Members noticed a trend of directorate officers taking up employment with private enterprises shortly after retirement or during final leave, and so raised the subject for discussion at the meeting of the Panel on Public Service (PS Panel). ● At the PS Panel meeting on 17 May 2004, members noted that of the 76 applications submitted by retired officers in 2003, only one was rejected, and 52 were approved without any sanitization period or conditions. Members seriously doubted the effectiveness of the approving mechanism in upholding the integrity of civil servants especially in preventing directorate officers from giving favouritism to private consortia in the formulation of policies and decision-making during their service immediately prior to retirement. The Panel urged that the mechanism be reviewed as soon as possible. The major areas to be covered by the review, as set out in Appendix II, included whether the length of the six-month sanitization period was appropriate, whether the officers concerned should be allowed to take up any employment during the period of their final leave, whether more restrictions should be imposed on the post-retirement employment of directorate officers, and how the transparency of the mechanism could be enhanced, etc. The Administration undertook to review the mechanism. It subsequently advised that it would report the outcome of the review to the Panel in March 2005.

Date of meeting	Subject
LegCo meeting on 1 December 2004	<ul style="list-style-type: none"> ● In view of the wide media coverage in November 2004 over the possible involvement of Ms Elaine CHUNG Lai-kwok, former Deputy Director of Housing/Deputy Secretary for Housing, in the bidding of the West Kowloon Cultural District (WKCD) development project by the Henderson Land Development (HLD) Co. Ltd, a Member raised an oral question about the approval given by the Administration for Ms Elaine CHUNG to take up post-retirement employment with the Hong Kong Ferry (Holdings) Co. Ltd. (HKF)^{Note}. ● Given the public concern about the subject, the PS Panel considered it necessary to advance the discussion on the policy governing post-retirement employment of civil servants. The subject was then discussed at the PS Panel meeting on 21 December 2004.
PS Panel meeting on 21 December 2004	At the request of the PS Panel, the Administration undertook to conduct a full investigation of Ms Elaine CHUNG's case, looking into complaints about possible conflict of interests between Ms CHUNG's post-retirement employment and her previous service in the Government and provide the Panel with a report on the outcome of the investigation. The Civil Service Bureau (CSB) subsequently informed the Panel in writing that it would conclude the findings in March 2005.
LegCo meeting on 5 January 2005	A Member raised a written question requesting information on civil servants ranked at Directorate Pay Scale point 4 or above who retired in the past ten years, and information on the post-retirement employment of those who had taken up employment in private or statutory bodies.
PS Panel meeting on 17 January 2005	When the PS Panel discussed the policy initiatives of CSB featuring in the CE's 2005 Policy Address, some members expressed concerns on the policy governing post-retirement employment of civil servants. Members queried whether it was appropriate to allow Ms Elaine CHUNG and Mr TSANG Yam-pui, former Commissioner of Police, to take up employment in the private sector during their final leave period when the officers concerned still maintained the status of civil servants and received civil service pay and

Note

As set out in Ms CHUNG's letter dated 25 November 2004 to the Secretary General of the LegCo Secretariat, to the best of her knowledge, HLD owns approximately 73.48% of Henderson Investment Ltd (HI) and HI in turn owns 31.33% of HKF.

Date of meeting	Subject
	allowances.
LegCo meeting on 2 February 2005	A motion on “monitoring the post-retirement employment of CE, principal officials under the accountability system and civil servants at directorate level with private-sector organizations” was passed with amendments.
PS Panel meeting on 21 March 2005	<p>The Administration reported to the PS Panel on its findings and assessments of Ms Elaine CHUNG’s case and the preliminary proposals arising from the review of the policy on post-service employment of former directorate civil servants.</p> <p><u>Ms Elaine CHUNG’s case</u></p> <ul style="list-style-type: none"> ● On Ms Elaine CHUNG’s case, the Administration concluded that her employment with HKF did not give rise to conflict of interest. However, her making public appearances, comments and presentations on the cultural aspects of a bid for the WKCD development project in October and November 2004 amounted to participation in the promotion of the relevant proposal to the public and fell outside the scope of approved work, and hence was inappropriate and unacceptable. The Administration also considered that Ms CHUNG did not exercise sound judgement commensurate with her previous senior government ranking to distance herself from any promotional activities connected with any bid for the WKCD development project, to the detriment of the image and public confidence in the integrity of the civil service. The Administration had openly expressed its strong criticism against Ms CHUNG’s misbehaviour and issued a warning against her. ● Members expressed dissatisfaction about the way the Administration had handled the case and considered its investigation findings and assessments unacceptable. Some members queried why CSB had not imposed any sanction or penalty on Ms CHUNG despite the severity of her misconduct. Members requested the Administration to conduct an independent investigation into the case and passed a motion at the Panel meeting in this respect. ● In April 2005, the Administration provided its response to the motion and emphasized that the investigation findings and the form of sanction were decided on the basis of facts and objective evidence, following a due

Date of meeting	Subject
	<p>process as well as consultation with the Government's legal adviser and the Advisory Committee on Post-retirement Employment. In the absence of new evidence or information, the Administration did not see a valid case for conducting another investigation.</p> <p><u>Preliminary proposals arising from the review of the policy on post-service employment of former directorate civil servants</u></p> <ul style="list-style-type: none">● Please refer to paragraph 13 of this paper.

**Panel on Public Service
Meeting on 17 May 2004**

**Review of the policy
governing post-retirement employment of civil servants**

The Administration undertook to review the existing post-retirement employment mechanism, covering the following aspects:

- (a) To examine whether the length of the six-month sanitization period was appropriate and to make reference to overseas practices in this aspect; to consider members' views, as follows:
 - The sanitization period for retired directorate officers should be lengthened, e.g. two or three years; and
 - The sanitization period should be counted from the date on which the retired officers left the civil service, instead of the date of cessation of active service. In other words, the officers should not be allowed to take up any other employment during the period of their pre-retirement leave.
- (b) To examine how the transparency of the mechanism could be enhanced, taking into account the need to strike a balance between the rights of individual civil servants to pursue employment or business after retirement on the one hand and the public interests and the aspirations of the community regarding the integrity and impartiality of the civil service on the other.
- (c) In connection with item (b) above, to seek legal advice on whether the disclosure of information would infringe the privacy rights of the retired officers concerned.
- (d) To consider whether more restrictions should be imposed on the post-retirement employment of directorate officers.
- (e) To consult the following parties on the review:
 - The Advisory Committee on Post-retirement Employment;
 - Civil servants; and
 - The Department of Justice.
- (f) To consider how the mechanism should be applied to officers joining the civil service under the new entry terms on or after 1 June 2000, i.e. those who would be eligible for Civil Service Provident Fund instead of pension upon retirement.

The Administration also undertook to convey members' views expressed at the Panel meeting to the Advisory Committee on Post-retirement Employment.

Control on Post-service Employment of Former Directorate Civil Servants

Existing Arrangement	Proposed Arrangement
1. Policy Objective	
<p>* To ensure that former civil servants will not enter into business or take up employment which may constitute conflict of interest (real, potential or perceived) or cause negative public perception, without unduly restricting former civil servants' right to employment.</p>	<p>* No change</p>
2. Coverage of staff	
<p>* Directorate Officers retiring / retired on pensionable terms</p> <p>* Agreement officers at D3 and above</p>	<p>* To extend the coverage to include all directorate officers i.e. -</p> <ul style="list-style-type: none"> - all pensionable directorate officers; - officers first appointed on new terms on or after 1 June 2000 upon their progression to the directorate level; and - all directorate agreement officers, <p>irrespective of the circumstances under which they leave the Government, i.e. retirement, contract termination or resignation.</p>
3. Restriction on outside work during final leave	
<p>* The taking up of paid outside work during pre-retirement leave, irrespective of whether such work is undertaken in Hong Kong or elsewhere, is</p>	<p>* All directorate officers, irrespective of their terms of appointments, ranking before leaving, or circumstances under which they leave the Government, will normally only be allowed to undertake, on a full-time or part-time basis, unremunerated or notionally remunerated work</p>

Existing Arrangement	Proposed Arrangement
subject to prior permission.	<p>for charitable / other non-profit-making organizations or public service during their final (i.e. pre-retirement, end-of-agreement or pre-resignation) leave.</p> <p>* The approving authority may exceptionally give approval for paid employment during final leave under very special circumstances, e.g. in cases where significant public interest is involved.</p>
4. Geographical scope of activities subject to control	
<p>* The taking up of a business / employment the principal part of which is carried on in Hong Kong is subject to prior permission.</p> <p>* All directorate officers retired on pensionable terms are required to inform CSB of any paid employment undertaken anywhere during the control period.</p>	<p>* No change.</p> <p>* For the avoidance of doubt, directorate officers (including those on agreement terms) who are leaving or have left government service should seek prior permission in respect of paid employment involving duties outside Hong Kong, if they are based in Hong Kong or are to work overseas for a company that has any business connections with Hong Kong.</p>
5. Control period (counted from leaving the Government during which prior permission is required for taking up outside employment)	
<p>* Directorate officers on pensionable terms</p> <p style="padding-left: 40px;">AOSGA1 – 3 years</p> <p style="padding-left: 40px;">Others – 2 years</p> <p>* Directorate officers on agreement terms</p> <p style="padding-left: 40px;">D3 and above – 1 year (only in respect of</p>	<p>* Directorate officers on pensionable terms and new permanent terms</p> <p style="padding-left: 40px;">AOSGA1 – 3 years</p> <p style="padding-left: 40px;">Others – 2 years</p> <p>* Directorate officers on agreement terms</p> <p style="padding-left: 40px;">With 6 or more years of government service – same periods as applicable to their</p>

Existing Arrangement	Proposed Arrangement
<p>employment in the same field as an officer's previous employment and where there is a possible conflict of interest)</p> <p>Others – nil</p> <p>* Directorate officers on new terms and resignees – nil</p>	<p>counterparts on permanent terms</p> <p>With less than 6 years of government service – half of the periods applicable to their counterparts on permanent terms.</p> <p>* Resignees – same periods as applicable to their respective counterparts who leave Government under normal circumstances.</p>
6. Approving criteria	
<p>* The key factors of consideration are conflict of interest (real, potential or perceived) and public perception.</p> <p>* In applying the tests of conflict of interest or possible negative public perception, the HoD/HoG and approving authority normally focus on the duties in which the applicant was involved in the last two years of his/her active service.</p>	<p>* The key factors of consideration remain to be conflict of interest (real, potential or perceived) and public perception.</p> <p>* The specific points to be taken account of by the approving authority include:</p> <p>(a) <i>Conflict of interest</i></p> <ul style="list-style-type: none"> - whether the officer was involved in policy formulation or decisions, the effects of which directly or specifically benefited or could directly or specifically benefit his/her prospective employer; - whether the prospective employer might gain unfair advantage over competitors because of the officer's access to sensitive information while in government service; - whether the officer was involved in any contractual or legal dealings to which the prospective employer was a party; and - whether the proposed employment would have any connection with the

Existing Arrangement	Proposed Arrangement
	<p>assignments / projects and/or regulatory / enforcement duties in which the officer was involved before leaving the service.</p> <p><i>(b) Public perception</i></p> <ul style="list-style-type: none"> - whether the officer's taking up of the proposed employment would give rise to public suspicion of impropriety or conflict of interest; and - whether the proposed employment would cause embarrassment to the Government. <p>* In applying the tests of conflict of interest or possible negative public perception, the HoD/HoG and approving authority would normally focus on the duties in which the applicant was involved in the last three years of his/her active service. However, where the applicant is a senior directorate officer or if the work he has handled is of particular sensitivity, his/her duties prior to the three-year period might also be taken into account.</p>
7. Restrictions on scope of work	
<p>* <i>Work-specific restrictions may be imposed on a case-by-case basis.</i></p>	<p>* <i>As across-the-board standard restrictions, in all cases of outside employment during final leave and/or control period, an ex-directorate officers should not –</i></p> <ul style="list-style-type: none"> – be involved, directly or indirectly, in the bidding for any government land, property, projects or contracts; – <i>undertake any work that is connected in any way with –</i> <ul style="list-style-type: none"> (a) policy formulation or decisions; (b) sensitive information; (c) contractual or legal dealings;

Existing Arrangement	Proposed Arrangement
	<p>(d) assignments or projects; and/or</p> <p>(e) enforcement or regulatory duties</p> <p>in which he/she was involved or to which he/she had access during his/her last three years of active service.</p> <p>– engage in any activities which will cause embarrassment or bring disgrace to the civil service.</p> <p>If in doubt, the officer should seek clarification and/or prior permission from the approving authority.</p> <p>* In addition, specific restrictions on the scope of work may be imposed on a case-by-case basis.</p>
8. Sanitization (counted from cessation of active service during which outside employment is not permitted)	
<p>* Directorate officers retired on pensionable terms – minimum 6 months counted from cessation of active service, may be shortened if there is no clear conflict of interest or be lengthened having regard to the circumstances of a case.</p> <p>* Directorate agreement officers – no specified minimum sanitization period.</p> <p>* Directorate officers on pensionable or new permanent</p>	<p>* In respect of directorate officers retired on pensionable / new permanent terms –</p> <p>– paid employment will normally be subject to a 12-month sanitization period counted from cessation of active service;</p> <p>– the above sanitization period may be shortened in cases where there are special considerations (e.g. significant public interest) and where there is clearly no real, potential or perceived conflict of interest. As a working guideline, the reduced sanitization should normally not be shorter than six months for paid employment. As a general rule, exception will not be given for paid employment with commercial</p>

Existing Arrangement	Proposed Arrangement
<p>terms who resign from government service – no specified minimum sanitization period.</p>	<p>organizations; and</p> <ul style="list-style-type: none"> – a longer than 12 months sanitization period may be imposed having regard to the circumstances of a case. <p>* In respect of directorate agreement officers and directorate officers on pensionable / new permanent terms who resign from government service – no minimum sanitization period will be specified; sanitization would be considered on a case –by-case basis.</p> <p>* Sanitization will normally be waived in respect of unremunerated or notionally remunerated work for charitable / other non-profit-making organizations or public service.</p>
9. Transparency	
<p>* Information pertaining to individual cases are not disclosed as a matter of policy, unless prior consent of the officers concerned has been obtained.</p>	<p>* The approving authority will disclose basic information on approved applications (limited to last government post title of the officer, date of cessation of active government service, identity of the outsider employer, position/title of the ex-officer in the company/ organization, a brief description of his/her main duties, restrictions/sanitization imposed on the employment, and commencement of the employment) where the approved employment has been taken up.</p>
10. Monitoring	
<p>* The former directorate officers concerned are required to notify the approving authority of any material change to their approved employment.</p>	<p>* Before commencing the approved employment, an applicant should confirm in writing to CSB whether he/she has taken up the approved employment, and whether the prospective employer has been informed of the terms of approval including the restrictions on the scope</p>

Existing Arrangement	Proposed Arrangement
<p>* Investigation would be launched as and when there are complaints or information showing a potential breach of the terms of approval.</p>	<p>of work. He/she would also be required to update CSB on the status of their approved employment annually within the control period.</p> <p>* Investigation would be launched by the approving authority as and when there are complaints or information showing a potential breach of the terms of approval.</p>

Existing Arrangement	Proposed Arrangement
<i>11. Sanction</i>	
<p>* Directorate officers on pensionable terms – pension suspension under pension legislation</p>	<p>* Directorate officers on pensionable terms – pension suspension under pension legislation, civil action to seek injunction or sue for damage, as well as Government and public criticism.</p> <p>* All other directorate officers – civil action to seek injunction or sue for damage, as well as Government and public criticism.</p>

Policy on post-service employment of former directorate civil servants

**Major preliminary proposals arising from the Administration's review
and major views expressed by members of the Panel on Public Service
at the meeting on 21 March 2005**

Administration's major preliminary proposals	Major views of members of the Panel
<p><u>Restriction on outside work during final leave</u> Directorate officers on final leave will only be permitted to take up unremunerated or notionally remunerated work for charitable/other non-profit making bodies or public services, either on a full-time or part-time basis. The approving authority, however, may exceptionally give approval for paid employment during final leave under very special circumstances, e.g. in cases where significant public interest is involved.</p>	<p>To address the dual identity problem and the negative public perception, officers on final leave should not be allowed to take up outside employment under any circumstances. Hence, the approving authority should not be given the discretionary power to grant exceptional approval for paid employment during final leave of any officers, even under very special circumstances.</p>
<p><u>Control period</u> Directorate officers on new permanent terms and directorate agreement officers with six or more years of government service should also be subject to a control period of two or three years, commensurate with their pensionable counterparts on the same ranks. For directorate agreement officers with less than six years of service, the control period will be reduced by half unless otherwise advised by individual HoGs.</p>	<p>Concern has been raised on whether the proposal for reducing the control period for directorate agreement officers with less than six years of service would have adverse impact on safeguarding against conflict of interest in post-service employment. The Administration has undertaken to take the concern into consideration.</p>
<p><u>Approving criteria</u> The key factors for consideration in vetting an application remain to be real, potential or perceived conflict of interest and public perception angle. The approving authority would normally focus on the duties of an applicant in the last</p>	<p>Concern has been raised on how the term "particular sensitivity" would be defined. The Administration has undertaken that the definition of the term would be considered to facilitate future application of the approving criteria.</p>

<p style="text-align: center;">Administration’s major preliminary proposals</p>	<p style="text-align: center;">Major views of members of the Panel</p>
<p>three years of his/her active service. In the case of a senior directorate officer or if the work handled while in service is of particular sensitivity, his/her duties prior to the three-year period may also be taken into account.</p>	
<p><u>Restrictions on scope of work</u> To better guard against conflict of interest and embarrassment to the Government, a set of standard restrictions is proposed to be applied on the scope of work across the board in all cases of outside employment during final leave and/or control period.</p>	<p>Concern has been raised about the application of the proposed arrangement of imposing restrictions on ex-directorate officers from being involved, directly or indirectly, in the bidding for any government land, property, projects or contracts. A more specific or descriptive definition of the phrase “indirectly involved” would be necessary to prevent any ambiguity or loophole in the application of the proposed arrangement. The Administration has undertaken to examine whether and how “indirectly involved” could be defined.</p>
<p><u>Sanitization period</u> To better guard against real, potential or perceived conflict of interest and to forestall negative public perception, it is proposed that the period of minimum sanitization for directorate civil servants retiring/retired on pensionable and new permanent terms be lengthened to 12 months during which paid employment is prohibited.</p> <ul style="list-style-type: none"> ● The approving authority may waive or shorten the period in exceptional cases where there are special considerations (e.g. significant public interest) and where there is clearly no real, potential or perceived conflict of interest. As a working guideline, the reduced sanitization period for paid employment should normally not be 	<ul style="list-style-type: none"> ● Some members have expressed the view that the sanitization period should be lengthened to three years for retired directorate officers, instead of one year as proposed by the Administration. ● Some other members have expressed support for the proposal to lengthen the sanitization period in general from six months to one year, but consider that this should not be applied to all applications across the board and special arrangement should be allowed for retired directorate officers of some professional and/or technical grades, such as doctors, engineers and accountants. Pointing out

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<p>shorter than six months.</p> <ul style="list-style-type: none"> ● As a general rule, exception of less than 12 months will not be given for paid employment with commercial organizations. ● A sanitization period longer than 12 months may be imposed having regard to the circumstances of a case. ● As the circumstances of directorate agreement officers (e.g. length of service, post-service financial security) are less uniform, it is more appropriate to determine the sanitization period on a case-by-case basis. ● Sanitization will normally be waived in all cases of unremunerated or notionally remunerated work for charitable/other non-profit making organizations or public service. 	<p>that it has received a similar suggestion from some civil service bodies, the Administration advises that the suggestion should be further examined having regard to the different views from different civil service grades and the feasibility of drawing up suitable eligibility criteria for this exceptional arrangement.</p>
<p><u>Monitoring and sanction</u></p> <ul style="list-style-type: none"> ● To facilitate and strengthen the monitoring of approved cases involving former directorate officers, it is proposed that in each case the applicant will be required to confirm in writing whether he/she has taken up the approved work and whether his/her prospective employer has been informed of the terms of approval including any sanitization or restrictions on the scope of work. He/ she will also be required to update CSB annually on the status of his/her employment. ● For officers appointed on pensionable terms, the sanction continues to be suspension of pension by virtue of the pension legislation and, where warranted, civil action may also be taken to seek injunction or sue for damage. For other 	<p>To facilitate and strengthen the monitoring of approved cases and to enhance the power of the approving authority in imposing sanctions for non-compliance, some members have made the following suggestions which the Administration undertook to take into further consideration:</p> <p>(a) To request the applicants to confirm their acceptance of certain conditions in undertaking post-retirement employment, for example, not to participate in activities or engage in work for companies which are the associate or subsidiary of the business group of their prospective employer; to respond to the enquiries and request for information by the approving authority for monitoring</p>

Administration's major preliminary proposals	Major views of members of the Panel
<p>officers, they will be liable to civil action taken against them for non-compliance.</p>	<p>compliance of their approved applications; and to accept that the approving authority could terminate the approval if the officers concerned fail to provide the required information;</p> <p>(b) To request the applicants to make statutory declaration on all the documents and information provided in their applications, so that they would be liable to civil action if the information they provide is proved to be false; and</p> <p>(c) To include other penalties in the applications so that actions other than suspension of monthly pensions could be taken in the event of non-compliance with the terms of approval.</p>
<p><u>Transparency</u> To enhance transparency, it is proposed that an administrative system be instituted whereby CSB will disclose basic information (such as last government post title of the officer, date of cessation of active service, identity of the outside employer) in respect of all cases in which the applicant has taken up the approved employment.</p>	<p>Welcome the preliminary proposal.</p>

Policy on post-service employment of former directorate civil servants

**List of relevant papers
(Position as at 15 November 2005)**

Paper/Document	LC Paper No.
Hansard of the LegCo meeting on 15 October 1997 (oral question raised by Hon CHAN Yuen-han on employment of civil servants on pre-retirement leave)	—
Hansard of the LegCo meeting on 14 March 2001 (written question raised by Hon LAU Kong-wah on post-retirement employment of civil servants in public organizations)	—
Paper provided by the Administration on “policy governing the acceptance of post-retirement employment of civil servants”	CB(1)1786/03-04(03) <i>(discussed at the PS Panel meeting held on 17 May 2004)</i>
“The Fifteenth Report on the Work of the Advisory Committee on Post-retirement Employment (1 January 2003 – 31 December 2003)” provided by the Administration	CB(1)1711/03-04 <i>(for reference at the PS Panel meeting held on 17 May 2004)</i>
Minutes of PS Panel meeting held on 17 May 2004	CB(1)2119/03-04 <i>(agenda Item III)</i>
Supplementary information provided by the Administration on the retired directorate officers who had taken up employment with private enterprises in the three years from 1 January 2001 to 31 December 2003	CB(1)2163/03-04(01) <i>(follow-up to members’ request at the PS Panel meeting held on 17 May 2004)</i>
Hansard of the LegCo meeting on 1 December 2004 (oral question raised by Hon KWONG Chi-kin on retired senior civil servants taking up job in private sector)	—

Paper/Document	LC Paper No.
Letter dated 25 November 2004 from Ms Elaine CHUNG Lai-kwok to the Secretary General of the LegCo (with press releases issued by the Hong Kong Ferry (Holdings) Co. Ltd. on 9 and 15 November 2004)	CB(1)354/04-05(01) <i>(for reference for the PS Panel meeting held on 21 December 2004)</i>
Joint letter dated 7 December 2004 from Hon CHEUNG Man-kwong and Hon KWONG Chi-kin to the Chairman of the Panel on their request for discussion of Ms Elaine CHUNG Lai-kwok's post-retirement employment at a PS Panel meeting	CB(1)473/04-05(01) <i>(for reference for the PS Panel meeting held on 21 December 2004)</i>
The Administration's reply dated 14 December 2004 to the Panel Clerk in relation to the request of Hon CHEUNG Man-kwong and Hon KWONG Chi-kin	CB(1)473/04-05(02) <i>(discussed at the PS Panel meeting held on 21 December 2004)</i>
Background brief prepared by the LegCo Secretariat on the policy governing post-retirement employment of civil servants	CB(1)532/04-05(04) <i>(for reference for the PS Panel meeting held on 21 December 2004)</i>
Minutes of PS Panel meeting held on 21 December 2004	CB(1)683/04-05 <i>(agenda Item III)</i>
Hansard of the LegCo meeting on 5 January 2005 (written question raised by Hon LEUNG Yiu-chung on retired directorate grade civil servants)	—
Paper provided by the Administration on "policy initiatives of the Civil Service Bureau"	CB(1)684/04-05(03) <i>(discussed at the PS Panel meeting held on 17 January 2005)</i>
Minutes of PS Panel meeting held on 17 January 2005	CB(1)901/04-05 <i>(agenda Item III)</i>

Paper/Document	LC Paper No.
Supplementary information provided by the Administration on “post-retirement employment of former civil servants”	CB(1)1239/04-05(01) <i>(follow-up to members’ request at the PS Panel meeting held on 17 January 2005)</i>
Hansard of the LegCo meeting on 2 February 2005 (motion with no legislative effect as raised by Hon CHEUNG Man-kwong and amended by Hon TAM Yiu-chung on “monitoring the post-retirement employment of the Chief Executive, principal officials under the accountability system and civil servants at directorate level with private-sector organizations”)	—
Progress report provided by the Administration on the major developments since the motion debate held at the Council meeting on 2 February 2005	—
Paper provided by the Administration on “post-retirement employment of Ms Elaine CHUNG, former Deputy Director of Housing/Deputy Secretary for Housing”	CB(1)1095/04-05(01) <i>(discussed at the PS Panel meeting held on 21 March 2005)</i>
Paper provided by the Administration on “review of policy on post-service employment of former directorate civil servants”	CB(1)1112/04-05(05) <i>(discussed at the PS Panel meeting held on 21 March 2005)</i>
Background brief prepared by the LegCo Secretariat on the policy on post-service employment of former directorate civil servants	CB(1)1112/04-05(06) <i>(for reference for the PS Panel meeting held on 21 March 2005)</i>
Minutes of PS Panel meeting held on 21 March 2005	CB(1)1247/04-05 <i>(agenda Item V)</i>
“The Sixteenth Report on the Work of the Advisory Committee on Post-retirement Employment (1 January 2004 – 31 December 2004)” provided by the Administration	CB(1)2205/04-05

Paper/Document	LC Paper No.
Paper provided by the Administration in response to the PS Panel's request to conduct an independent investigation on the post-retirement employment of Ms Elaine CHUNG	CB(1)1263/04-05(01) <i>(follow-up to a motion passed at the PS Panel meeting held on 21 March 2005)</i>