

**Select Committee to Inquire into Matters Relating to  
the Post-service Work of Mr LEUNG Chin-man**

**Witness statement of Miss Denise YUE Chung-yee**

I, Denise YUE Chung-yee, am the Secretary for the Civil Service. I am asked to appear before the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man (the "Select Committee"). The Select Committee has asked me to provide response to and information on a number of issues and questions. I attach herewith my response and information requested. In putting these together, I am assisted by my colleagues in the Civil Service Bureau.

I would also like to reiterate briefly that the policy objective of the current control regime (namely the "new arrangement"), which is applicable to most directorate civil servants, is to ensure that directorate civil servants on final leave or who have left the Government will not take up any work outside the Government which may constitute conflict of interest with their former government duties or cause negative public perception embarrassing the Government and undermining the image of the civil service, without at the same time unduly restricting their right to pursue employment or other work after ceasing government service.

As the decision authority, I am acutely aware that I must have regard to the stated policy objective when considering applications for post-service outside work from directorate civil servants; that I must consider each application on its own merits and take into account the assessments by the concerned parties within the Administration and the advice of the Advisory Committee on Post-service Employment of Civil Servants; that I must give full weight to the protection of the public interest; that I must also have regard to the protection of other legitimate though not absolute interests, namely, an individual's right to work and freedom of choice of occupation; and that my decision on each case must go no further than is reasonably necessary to protect the public interest and other legitimate interests. As the decision authority, I am responsible for the reasonableness of my decision on an application for post-service outside work from a directorate civil servant should my decision

cause public concern.

In response to the public concerns expressed over my decision to approve Mr LEUNG Chin-man's application to take up post-service employment with New World China Land Limited, the Chief Executive has set up an independent committee (the "Review Committee") to review the existing policy and arrangements relating to the post-service work control of directorate civil servants. The Review Committee has issued a public consultation document late last month. The public consultation process will end on 20 April 2009. It intends to submit its findings and recommendations to the Chief Executive in the middle of this year.

## WRITTEN RESPONSE TO QUESTIONS RAISED BY THE SELECT COMMITTEE

### *The history of development of the control regime governing post-service work of directorate civil servants in recent years ("the control regime")*

#### *Q1: The policy objective of the control regime*

A1: The policy objective of the control regime is to ensure that directorate civil servants on final leave or who have left the civil 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 ensure at the same time that the said individuals' right to pursue employment or other work after ceasing government service is not unduly restricted.

#### *Q2: Details of the control regime*

A2: The control regime has evolved over time. The last review, undertaken in 2004-2005, has led to the adoption of a new set of arrangements (the "new arrangement") since 1 January 2006. The "new arrangement" applies to most directorate civil servants, namely (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. 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 D3 or above (or equivalent) whose last agreement was entered into before 1 January 2006 remain subject to the old arrangement. Details of the control regime are set out in LC Paper No. CB(1) 84/08-09(1) (Administration Paper No. CSB1/SC Paper No. C6).

**Q3:** *Background leading to the review conducted in mid 2004, including the major problems/issues identified to be addressed in the review*

A3: Prior to the 2004-2005 review, members of the public and LegCo had expressed concern from time to time on the adequacy of the control measures. The areas of concern included whether civil servants should be permitted to undertake outside employment during final leave, the length of sanitisation period, and the need for more transparency. The Administration undertook to conduct a comprehensive review in mid 2004. The details of the background leading to the review of the policy on post-service employment of former directorate civil servants can be found at LC Paper No. CB(1)1112/04-05(05) (Administration Paper No. CSB2/SC Paper No. C7).

**Q4:** *Staff consultation of the preliminary proposals in the review, and feedback from staff, in particular, (i) on the control of post-service work outside Hong Kong, and (ii) on the issue of conflict of interest between a directorate civil servant's positions while in the civil service and the proposed employment/work; and the CSB's response to the feedback*

**Q5:** *Consultation of the public/other parties, if any, of the preliminary proposals in the review, the views received and CSB's response to the views*

A4&5: CSB consulted the Legislative Council Panel on Public Service on its preliminary proposals in March 2005, followed by consultation with the various civil service bodies and associations, including the Disciplined Services Consultative Council, Police Force Council, Senior Civil Service Council, staff sides and departmental management from mid-March to end April 2005. It also consulted the Advisory Committee on Post-service Employment of Civil Servants ("the Advisory Committee"). The views expressed by the civil service bodies and other parties on the preliminary proposals are summarised at **Annex**. Where appropriate, these views were

incorporated into the finalised arrangements. The Legislative Council Panel on Public Service was also briefed on this in November 2005.

**The parties and procedures involved in the vetting and approval of applications for post-service work from directorate civil servants**

***Q6 The operation of the vetting and approval mechanism for applications of post-service work from directorate civil servants under the “new arrangement”, including the procedure adopted after CSB has received an application for post-service work from a directorate civil servant; the procedure adopted by CSB after receiving the views of other bureaux which have been consulted on such an application; and the procedure adopted when there is divergence in views of the consulted bureaux, and how the difference in views is resolved by CSB***

A6: If a directorate civil servant subject to the “new arrangement” and who was a Permanent Secretary or Head of Department (“HoD”) immediately before ceasing active service and who wishes to take up post-service outside work (not covered by the blanket exemption), he should complete and send the specified application form to CSB. Upon receipt of the application from a former Permanent Secretary, CSB will invite the incumbent Permanent Secretary and Head of Grade (“HoG”) to which the applicant belongs to provide an assessment on the application form by completing Assessment A part and Assessment B part in the application form respectively. Upon receipt of an application from a former HoD, CSB will invite the Permanent Secretary of the bureau that oversees the work of the applicant and HoG (as relevant) to provide an assessment on the application by completing Assessment A part and Assessment B part in the application form respectively. For applications from both former Permanent Secretaries and former HoDs, CSB will – where necessary – invite, by memo form, the Permanent Secretary(ies) of the policy bureau(x) responsible for the policy area(s) into which the applicant’s prospective employment falls to comment on the application.

If a directorate civil servant subject to the “new arrangement” and who was not a Permanent Secretary or not a HoD immediately before ceasing active service and who wishes to take up post-service outside work (not covered by the blanket exemption), he should complete and send the specified application form to the Permanent Secretary of his last bureau if his last posting was in a policy bureau. The Permanent Secretary concerned should provide an assessment on the application by completing the Assessment A part in the application form and forward the application to the applicant’s HoG to provide an assessment by completing Assessment B part in the application form. The applicant should complete and send the specified application form to the HoD of his last department if his last posting was in a department. For an application made by a departmental grade directorate civil servant, the HoD concerned should provide an assessment on the application by completing Assessment A part in the application form and then forward the application to the relevant Permanent Secretary to provide an assessment by completing Assessment B part in the application form. If the HoG is not the same person as the HoD, the application should also be forwarded to the relevant HoG to provide an assessment on the application by completing another Assessment B part in the application form. For an application made by a general grade directorate civil servant, the HoD concerned should provide his assessment on the application by completing Assessment A part in the application form and then forward the application to the relevant Permanent Secretary to provide an assessment by completing Assessment B part in the application form. The application should then be forwarded to the relevant HoG to provide an assessment on the application by completing another Assessment B part in the application form. Upon receipt of the application form, CSB will – where necessary – invite the Permanent Secretary(ies) of the policy bureau(x) responsible for the policy area(s) into which the applicant’s prospective employment falls to comment on the application.

CSB will consider the assessments received from all the parties concerned on the application. Where there is difference of views expressed by the parties consulted on the application, CSB will not

take any action. This is because the purpose of seeking assessments from the different concerned parties within the Administration is to enable CSB to benefit from the insight of the concerned parties, which may view the application differently having regard to their different perspectives.

Upon receipt of the assessments by all the parties within the Administration on an application, CSB (up to the Deputy Secretary for the Civil Service 1 (“DS(CS)1”) level) will form its initial views on the application. It will then draft a paper containing relevant information of the applicant, the prospective employment and all the assessments of the relevant parties – including CSB’s initial views and recommendations at that stage – and other information that CSB deems relevant (e.g. decisions on similar cases in the past). The Secretary of the Advisory Committee will pass the draft paper to the Chairman of the Advisory Committee for consideration.

The Chairman will decide whether the application can be dealt with by paper circulation to Members of Advisory Committee or whether a meeting with Members should be convened. He will also offer his views on the application. Where the Chairman considers that the application can be dealt with by paper circulation, the draft paper will be finalised with the inclusion of a paragraph on “Views of the Chairman” and the paper will be circulated to Members with a copy to the Chairman. Upon receipt of the paper, each Member will provide his/her view on the application separately by completing a reply slip. Where the Chairman considers that the application should be dealt with by a meeting with Members, the Secretary of the Advisory Committee will arrange for a meeting date and circulate a paper without a paragraph on “Views of the Chairman” to Members before the meeting. Members will discuss and express their views on the application during the meeting. After the meeting, the Secretary will circulate the notes of meeting for confirmation by the Chairman and Members.

After the Advisory Committee has tendered its advice, CSB will put up a submission to the Secretary for the Civil Service (“SCS”) on the application, including relevant information of the applicant, the

prospective employment, all the assessments of the relevant parties within the Administration, the advice tendered by the Advisory Committee, and CSB's final recommendation. The submission will be routed via DS(CS)1 and the Permanent Secretary for the Civil Service ("PSCS"). DS(CS)1 and PSCS will separately advise whether or not they support CSB's final recommendation.

SCS, as the decision authority, will decide on whether the application should be rejected, or approved with standard work restrictions, or approved with standard and additional work restrictions.

Further information on the details of the procedures for processing post-service outside work applications from directorate civil servants can be found in the paper submitted to the Select Committee (Administration Paper No. CSB11/SC Paper No. C21).

***Q7: The respective responsibilities of each of the six tiers of officers within CSB responsible for processing and approving post-service work applications, in particular your role in approving such applications***

**A7** There are six tiers of officers within CSB who are responsible for processing post-service outside work applications from directorate civil servants. Their respective responsibilities are as follows –

SCS	<ul style="list-style-type: none"> <li>To decide whether an application should be approved with standard restrictions, or approved with standard and additional restrictions, or be rejected.</li> </ul>
PSCS and DS(CS)1	<ul style="list-style-type: none"> <li>To ensure that an application is processed according to the laid down procedures and that all relevant parties have been consulted;</li> <li>To tender advice to SCS on an</li> </ul>



	<p>application after comments, assessments, advice and recommendations from all concerned parties have been collected;</p> <ul style="list-style-type: none"> <li>• For applications from directorate Administrative Officers (“AO”), to provide an assessment as the Head of Grade (HoG).</li> </ul>
DS(CS)1	<ul style="list-style-type: none"> <li>• To clear CSB’s proposed preliminary view and recommendation for the purpose of consulting the Advisory Committee.</li> </ul>
Administrative Assistant to SCS (since 7 July 2008 ) / Principal Assistant Secretary(Appointments) (prior to 7 July 2008)	<ul style="list-style-type: none"> <li>• To oversee the processing of an application by Chief Executive Officer (Pensions) and Senior Executive Officer (Pensions)<sup>2</sup>, including giving directives, where necessary, on the parties to be consulted, overseeing the drafting of the paper to be submitted to the Advisory Committee;</li> <li>• To discuss as necessary CSB’s proposed preliminary view and recommendation with DS(CS)1 for the purpose of consulting the Advisory Committee;</li> <li>• To make a final recommendation on an application after advice from the Advisory Committee is available, and submit to SCS via DS(CS)1 and PSCS.</li> </ul>
Chief Executive Officer (Pensions)	<ul style="list-style-type: none"> <li>• To process an application, including to identify the parties to be consulted within the Administration and to consider, upon return of comments and</li> </ul>

	<p>assessments from the parties being consulted, whether further clarification needs to be sought;</p> <ul style="list-style-type: none"> <li>• To discuss as necessary CSB's proposed preliminary view and recommendation with Administrative Assistant to SCS (since 7 July 2008) / Principal Assistant Secretary (Appointments) (prior to 7 July 2008) and DS(CS)1 for the purpose of consulting the Advisory Committee;</li> <li>• To serve as Secretary of the Advisory Committee.</li> </ul>
Senior Executive Officer (Pensions)2	<ul style="list-style-type: none"> <li>• To assist Chief Executive Officer (Pensions) in processing an application and to seek comments, assessment and, where necessary, clarifications from relevant Permanent Secretaries, HoD and HoG as appropriate.</li> </ul>

**Q8:** *The purpose of requiring the relevant Permanent Secretary of Bureau, Head of Department and/or Head of Grade to provide assessments on applications for post-service work*

**A8:** According to the existing procedures, depending on the department or bureau of the applicant's last posting before cessation of active service and the grade to which the applicant belonged, the relevant Permanent Secretary and/or HoD and/or HoG are/is invited to provide assessments on the application because they are most familiar with the applicant's duties and responsibilities before cessation of active service, and are thus in an appropriate position to assess whether there would be any considerations that should be brought to the attention of SCS, including whether there would be any conflict of interest between the applicant's duties before cessation of government service

and his prospective employment, and whether the taking up of the prospective employment would cause embarrassment to the Government or bring disgrace to the civil service.

CSB also invites the Permanent Secretary(ies) of the policy bureau(x) responsible for the policy area(s) into which the applicant's prospective employment falls to comment on the application, as he/they are most familiar with the development and evolvement of government policies in the field of business that the applicant will be engaged in the prospective employment and thus is/are in an appropriate position to assess whether there would be any considerations that should be brought to the attention of SCS, including whether there would be any conflict of interest between the applicant's duties before cessation of government service and his prospective employment, and whether the taking up of the prospective employment would cause embarrassment to the Government or bring disgrace to the civil service.

**Q9:** *The guidelines, if any, provided to the relevant Permanent Secretary of Bureau, Head of Department and/or Head of Grade in assessing the applications for post-service work.*

A9 The policy and arrangements governing the taking up of post-service outside work by directorate civil servants/former directorate civil servants during their final leave and/or after they have left the Government are clearly set out in CSB Circular No. 10/2005 (Administration Paper No. CSB3/SC Paper No. C8). The key factors to be taken into account in vetting an application to take up post-service outside work and the specific considerations are laid down in the said Circular. All Permanent Secretaries/HoDs/HoGs are aware of the said Circular.

**Q10** *The measures, if any, taken to verify the information provided in the applications for post-service work*

A10 Under the prevailing control regime, an application will be assessed

and decided basing on the information provided by the applicant in the specified application form. In the specified application form, Section (E) of Part II states:

*“ (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.”*

**Q11**     ***The role and duties of Advisory Committee on Post-service Employment of Civil Servants (“ACPE”) in the vetting and approval mechanism for applications of post-service work***

A11     The terms of reference of the Advisory Committee are:

- (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; and*
- (c) To consider and advise on other applications which may be referred by the Secretary for the Civil Service.*

**Q12**     ***Guidelines and papers provided by CSB to assist ACPE’s work***

A12     To facilitate the Advisory Committee in considering an application for post-service outside work, CSB provides a brief on the Guiding Principles and Criteria for the Assessment of Applications for Post-service Employment by Directorate Civil Servants and a note on

Declaration of Interests (Administration Paper Nos. CSB8 and CSB 9/SC Paper Nos. C14 and C15) to the Chairman and every Member on first appointment to the Advisory Committee. A separate paper on each application is prepared by the Secretary of the Advisory Committee, in consultation with the Chairman, for the consideration of Members of the Advisory Committee.

***Q13 The measures adopted to enhance ex-directorate civil servants' understanding of the control regime and to ensure their compliance***

A13 CSB Circular No. 10/2005 on post-service outside work, which sets out the control regime clearly, is brought to the attention of all directorate civil servants. In the specified application form which directorate officers are required to fill in and submit if they wish to take up post-service outside work, specific reference is made to this Circular (Please refer to Section (E) in Part II of the application form, and to A10 above.). Where applications for post-service work are granted with conditions, the conditions will be stipulated in the approval letters. Paragraph 18 of the said Circular requires the directorate civil servants concerned to notify their prospective employer of the terms of approval including any sanitisation or restrictions imposed before commencing the approved outside work.

***Q14 The measures taken by CSB to monitor ex-directorate civil servants' compliance with the conditions imposed on approved applications for post-service work***

A14 The directorate civil servant concerned is required to notify CSB of any material change to his/her approved post-service outside work including cessation of work, and to update CSB on the status of his/her involvement in the approved work annually within the control period applicable to him/her or upon request by CSB. This requirement is stipulated in paragraph 18 of CSB Circular No. 10/2005.

**The vetting and approval of Mr LEUNG's application for post-service work with New World China Land Limited ("NWCL")**

**Q15** *Your role in vetting and approving Mr LEUNG's application.*

A15 I decided on Mr LEUNG's application, after considering the submission put up to me on this application.

**Q16** *On 19 May 2008, CSB sought the views of three Permanent Secretaries in the Transport and Housing Bureau and the Development Bureau on Mr LEUNG's application. Please provide the reasons for selecting the three Permanent Secretaries for comments on Mr LEUNG's application and advise what information was provided by CSB to the three Permanent Secretaries*

A16 Mr LEUNG served as the Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing from July 2002 to January 2006 before ceasing active service. Hence, the Permanent Secretary for Transport and Housing (Housing) was invited to complete the assessment of the application form in accordance with the existing procedures. In view of the nature of business of NWCL, the prospective employer, the Permanent Secretary for Development (Planning and Lands) and Permanent Secretary for Development (Works) were also invited to give comments on Mr LEUNG's application. When consulting the three Permanent Secretaries, a copy of Mr LEUNG's application was provided to them for their consideration. The policy and arrangement governing directorate civil servants' taking up post-service outside work were also mentioned for the reference of the three Permanent Secretaries.

**Q17** *On 4 July 2008, CSB put up a written submission to you as the SCS recommending your approval of Mr LEUNG's application. What were your views on the information provided by Mr LEUNG in the application form?*

A17 I had no particular view on the information provided by Mr LEUNG in the application form.

***Q18 In the written submission, CSB recommended the imposition of additional work restrictions to address the “public perception issue” raised by the Works Branch. What were your views on the “public perception issue”? Why did you consider that the additional work restrictions would be able to address the “public perception issue”?***

A18 When considering Mr LEUNG’s application, I noted that the prospective employer (NWCL) was a company involved in property development in the Mainland, that Mr LEUNG’s major duties would be performed in the Mainland, and that Mr LEUNG would be physically based in a major city in the Mainland under the proposed appointment. I further noted that Mr LEUNG had stated in his application that NWCL’s parent company was New World Development Company Limited and that he would not be involved in any way in the business of the parent company or any of its subsidiaries. I considered that the proposed appointment would unlikely constitute problems of real or potential conflict of interest, having regard to the business nature of the prospective employer and the duties involved in Mr LEUNG’s post-service work employment. I also took note of the “public perception issue” raised by the Works Branch. I considered there was a need to mitigate any negative public perception that might ensue by imposing additional work restrictions, in addition to the standard ones. I considered the additional work restrictions would further ensure that Mr LEUNG would not be involved in any business that was connected with Hong Kong, and that Mr LEUNG’s prospective employer would not have an unfair advantage over its competitors through obtaining classified or sensitive information that Mr LEUNG might have acquired during his government service or through any influence that Mr LEUNG would still have with serving officers in the Government or any pressure that Mr LEUNG would be able to bring upon serving officers in the Government in any discussion between his prospective employer and the Government.

**Q19** *You approved Mr LEUNG's application on 8 July 2008. Please provide the factors taken into account by you in considering Mr LEUNG's application, including the policy objective of the control regime, the criteria for assessment of applications for post-service work by directorate officers, and the "public perception issue" raised by the Works Branch on Mr LEUNG's application.*

A19 The policy of the control regime aims to ensure that civil servants will not take up any work outside the Government which may constitute real or potential conflict of interest with their former government duties or cause negative public perception, without however at the same time unduly restricting the individuals' right to pursue employment or other work after ceasing government service. The key factors that I had taken into account in considering Mr LEUNG's application included the policy objective of the control regime; and more specifically, whether there was any real or potential conflict of interest between his former government duties and the proposed work, whether his taking up of the proposed work was likely to give rise to negative public perception. I had also taken into account the specific considerations as set out in paragraph 7 of CSB Circular No. 10/2005, and the views expressed by the concerned parties within the Administration, including the "public perception issue" raised by the Works Branch. I had further given due consideration to the advice from the Advisory Committee on Mr LEUNG's application. After considering all that, I concluded that Mr LEUNG's proposed appointment would unlikely constitute problems of real or potential conflict of interest, but that there might be some negative public perception. Hence I decided to approve his application but with four additional work restrictions over and above the standard work restrictions.

**Q20** *Why was Mr LEUNG's involvement in the Hunghom Peninsula incident not considered?*

A20 When I considered Mr LEUNG's application, I took into account his past duties and the nature of his prospective employer's business. I



gave consideration to NWCL's business which was outside of Hong Kong. I also gave consideration to Mr LEUNG's statement that he had no involvement with NWCL when in government service; that he would not be involved in the business of the parent company of NWCL or any subsidiary of the parent company; and that if allowed to take up the employment, he would be based in a major city in the Mainland. It had not occurred to me that Mr LEUNG's involvement in the Hunghom Peninsula incident, in which NWCL had no involvement (as it was a company involved in property development in the Mainland only) as far as I understood, should be a relevant factor in the consideration of Mr LEUNG's application.

***Q21 On 9 July 2008, CSB informed Mr LEUNG of your decision. Please provide the measures adopted by CSB, if any, in monitoring Mr LEUNG's compliance with the conditions imposed in approving his application***

A21 In the letter of 9 July 2008 in which CSB informed Mr LEUNG of my decision, Mr LEUNG was requested to complete a case record on the approved work as soon as he had decided to accept the appointment and to notify CSB of any material change to his approved appointment, including cessation of work. Mr LEUNG completed the case record and returned it to CSB on 30 July 2008. Immediately thereafter, CSB put the case record on the register which was available for public inspection upon request. On 1 August 2008, NWCL made a public announcement on Mr LEUNG's appointment as an Executive Director and Deputy Managing Director of the company with effect from that date. Given my approval only covered Mr LEUNG's appointment with NWCL as Executive Director, CSB sent a letter to Mr LEUNG on 4 August 2008 requesting him to clarify the discrepancy. On 11 August 2008, Mr LEUNG clarified that "Deputy Managing Director" was the functional title and his duties remained totally unchanged as detailed in his application. Mr LEUNG informed CSB of his cessation of work on 16 August 2008, and his case record was removed from the public register forthwith.

**Q22     *The personal relationship between you and Mr LEUNG***

A22     Prior to taking up the position of SCS in January 2006, I was a serving officer of the AO Grade. Mr LEUNG also belonged to this Grade prior to his retirement. Other than being members of the same Grade, I was Mr LEUNG's superior during the period from November 1995 to July 1997 when I was Secretary for Trade and Industry and he was Director of the Toronto Economic and Trade Office. Both Mr LEUNG and I had also served on the AO Recruitment Board in 1983.

***Effectiveness of the control regime in the light of Mr LEUNG's case***

**Q23     *The Government's assessment of the effectiveness of the "new arrangement"***

**Q24     *The Government's review, if any, of the "new arrangement", and the findings***

**Q25     *The Government's plan, if any, to conduct a comprehensive review of the "new arrangement" in the wake of the case of Mr LEUNG***

A23, 24 & 25:

The "new arrangement" was promulgated in December 2005 and is applicable to directorate civil servants who cease active service or enter into new agreements on or after 1 January 2006. (Please refer to A1 above.) In the wake of public concern over my approval of Mr LEUNG's application to take up employment with NWCL, 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 of Post-service Outside Work for Directorate Civil Servants ("the Review Committee"). The Review Committee has issued a consultation document on 20 February 2009 inviting the views and

comments from the public. The public consultation will close on 20 April 2009. 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.

Denise YUE Chung-yee  
4 March 2009

**Views expressed by the Civil Service Bodies and other parties  
of the Preliminary Proposals in the Review**

Civil Service Bodies	Others
<b>1. General Comments</b>	
<p>(a) Control should be lawful (vis-à-vis Article 33 of the Basic Law on freedom of choice of occupation, Article 100 of the Basic Law on no less favourable terms of employment, the Hong Kong Bill of Rights Ordinance, Article 6 of the International Covenant on Economic, Social and Cultural Rights, as well as data protection principles) and should take account of the right of former civil servants to earn a living.</p> <p>(b) It was unreasonable to bar civil servants from contributing to the community when they had the capacity to do so.</p> <p>(c) Restrictions would hinder exchange of expertise between the public and the private sectors.</p> <p>(d) More restrictions would make appointments at the directorate level and civil service recruitment less attractive.</p>	<p>(a) The effectiveness of the control regime was doubtful given the high approval rate. It was important to handle applications properly in order to maintain the impartiality of the mechanism, safeguard public interest, and inspire public confidence in the probity and integrity of the civil service.</p> <p>(b) The Administration should examine how the existing vetting 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 on the integrity and impartiality of the civil service on the other.</p> <p>(c) The regulatory rules in Hong Kong appeared to be rather tough. As retired officers could have positive contribution to the society,</p>

Civil Service Bodies	Others
	<p>overly stringent rules would not be conducive to the healthy development of Hong Kong. Public perception was very often created and shaped by the media. While public perception was an important consideration, care should be taken to avoid attaching disproportionate importance to this aspect.</p>
<p><b>2. Coverage</b></p>	
<p>(a) Extension of coverage to directorate civil servants leaving the Government on different grounds (e.g. retirement, resignation, end of agreement, etc.) was supported as the risk of conflict of interest for civil servants handling similar duties would not vary simply due to differences in employment terms and reasons for leaving the Government.</p> <p>(b) Consideration should be given to subjecting non-civil service directorate civil servants to similar post-service outside work control.</p> <p>(c) Legal professionals in the civil service should be given blanket permission to take up employment as lawyer or enter</p>	<p>(a) The post-service outside work control for former non-directorate civil servants should be strengthened, as some of them would have access to sensitive information during their government service.</p>

Civil Service Bodies	Others
into private practice as soon as they cease government service.	
<b>3. Sanitisation Period</b>	
<p>(a) The lengthening of sanitisation period should not be imposed across the board and should have due regard to the need of civil servants in some professional/ technical grades.</p> <p>(b) Sanitisation period should be lengthened to 12 months to guard against conflict of interest.</p> <p>(c) The need to extend the sanitisation period to 12 months was not convincing. The sanitisation period should be determined on the merits of individual cases.</p> <p>(d) There should not be any sanitisation period for resignees.</p> <p>(e) A two-tier arrangement was recommended, i.e. a 6-month sanitisation period for directorate civil servants at D3 or below and a 12-month period for directorate civil servants at D4 and above.</p>	<p>(a) Sanitisation period should count from the date on which a retired civil servant left the civil service, instead of the date of cessation of active government service.</p> <p>(b) The minimum sanitisation period for directorate civil servants retired/retiring under pensionable terms should be lengthened to three years.</p> <p>(c) The sanitisation period should be lengthened to one year, but such extension should not be applied across the board. Special arrangement should be allowed for retired directorate civil servants of some professional and/or technical grades, such as doctors, engineers and accountants.</p> <p>(d) A minimum sanitisation period should be prescribed for directorate civil servants on agreement terms or non-civil service terms to ensure consistency in the handling of applications.</p>

Civil Service Bodies	Others
<p>(f) A compulsory sanitisation period of six months for all paid jobs (with no exception at all, including working in charitable organisations) should be sufficient as the total effective prohibition period (i.e. final leave plus sanitisation periods) would be quite lengthy already.</p> <p>(g) The special considerations for shortening the sanitisation period should be set out clearly.</p> <p>(h) The sanitisation and control periods should run concurrently.</p>	<p>(e) Public perception could be very negative if a senior civil servant was allowed to take up outside work immediately or shortly after his ceasing active service.</p>
<p><b>4. Outside Work during Final Leave Period</b></p>	
<p>(a) Prohibition on outside work during the final leave period was supported. There should be no exception even for reasons of major public interest which would be subject to interpretation and dispute.</p> <p>(b) It was unreasonable to impose more stringent restrictions on civil servants during the final leave period than those in active government service, especially for civil servants who needed to maintain professional qualifications or pursue employment after</p>	<p>(a) Civil servants on final leave should not be allowed to take up outside employment under any circumstances.</p>

Civil Service Bodies	Others
<p>completion of their service agreements with the Government.</p> <p>(c) Employment during the final leave period should continue to be permitted unless there was conflict of interest.</p> <p>(d) Civil servants taking up unpaid work during the final leave period should only be required to notify the Government instead of seeking prior approval.</p> <p>(e) Civil servants should be allowed to encash their final leave balance in order to avoid negative public perception on their taking up employment during the final leave period.</p>	
<p><b>5. Control Period</b></p>	
<p>(a) The same control period should apply to both directorate civil servants on agreement terms and those on pensionable terms since they had similar access to sensitive information.</p> <p>(b) The control period for directorate civil servants on agreement terms should be determined by their ranks and accessibility to sensitive</p>	<p>(a) The Government's proposal of a shorter control period for directorate civil servants on agreement terms with less than six years of service might not provide sufficient safeguards against conflict of interest.</p>



Civil Service Bodies	Others
<p>information rather than their length of government service.</p> <p>(c) The control period for resignees (who did not enjoy immediate pension benefits) was too long. It was a restraint on personal freedom to pursue employment. It was unfair to subject resignees to the same control period as that of retirees.</p>	
<p><b>6. Restriction on Scope of Work</b></p>	
<p>(a) It was unfair to impose across-the-board restrictions on all former directorate civil servants prohibiting them from being involved in the bidding for government land, property, projects or contracts in their post-service outside employment.</p>	<p>(a) Directorate/former directorate civil servants should seek prior permission for paid outside work regardless of the geographical location of the prospective employment/employers.</p> <p>(b) Former directorate civil servants should be forbidden from bidding any government land, property, projects or contracts in their post-service outside employment.</p> <p>(c) It should be the onus of the applicants to seek clarification and confirmation from the Civil Service Bureau where there was doubt on the interpretation of the restrictions.</p>

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<b>7. Assessment</b>	
<p>(a) It was difficult to assess public perception. Public perception was not a ground recognised under the law. "Perceived conflict of interest" should not be one of the assessment criteria.</p>	<p>(a) Given that land was an important and valuable asset to Hong Kong, former directorate civil servants involved in the formulation of land-related policy should be subject to more stringent assessment (e.g. a longer control period).</p> <p>(b) To facilitate assessment, more information should be collated on an application, such as information on prospective employers.</p> <p>(c) Applicants should be requested to make statutory declarations on all the documents and information provided in their applications.</p>
<b>8. Blanket Permission</b>	
	<p>(a) Blanket permission for unpaid work with specified non-commercial organisations would be subject to abuse by former directorate civil servants who took up unpaid work during the control period and subsequently took up paid work in the same organisations.</p> <p>(b) While prior notification would suffice for cases involving unremunerated work, it would</p>

Civil Service Bodies	Others
	<p>be prudent to require applications for cases involving notional remuneration and permission would be granted if the approving authority was satisfied that the remuneration was indeed notional or token in nature</p>
<p><b>9. Transparency</b></p>	
<p>(a) Proposed transparency measures would infringe upon personal privacy.</p> <p>(b) There was no objection to disclosing information on approved applications upon the request of the media or the LegCo, but not for indiscriminate disclosure to the general public.</p> <p>(c) There should be different disclosure requirements for upper and lower bands of directorate civil servants.</p>	<p>(a) The transparency of the existing control regime should be enhanced.</p> <p>(b) Information on post-service outside work taken up by all directorate civil servants irrespective of their ranks should be made available for public inspection.</p>
<p><b>10. Sanction and Monitoring</b></p>	
<p>(a) The cost-effectiveness of civil action was doubtful.</p> <p>(b) Civil action should be taken only in exceptional cases in view of the cost and time involved.</p>	<p>(a) The deterrent effect of the sanctions was doubtful, especially where the prospective employment would generate financial gains exceeding the monthly pension payments.</p>

Civil Service Bodies	Others
<p>(c) For legal professionals in private professional practice, reporting to the Bar Association and the Law Society should be substituted for the sanctions of injunction and suing for damages.</p> <p>(d) Power to impose sanction against directorate civil servants on agreement terms was not provided under the law; hence it would not be easy to enforce such sanction.</p>	<p>(b) Monthly pension payment should be suspended for those retired civil servants who had taken up employment with private enterprises.</p> <p>(c) There should be effective means to monitor the approved cases to ensure compliance with the terms of approval.</p> <p>(d) Directorate/former directorate civil servants who had taken up approved work should be required to respond to enquiries and request for information by the approving authority for monitoring compliance of their approved applications; and the approving authority might terminate the approval if the directorate/former directorate civil servants concerned failed to provide the required information.</p> <p>(e) The regulatory system was basically an honour system based on trust and the integrity of applicants.</p>
<p><b>11. Other Comments</b></p>	
<p>(a) New measures should not take retrospective effect.</p> <p>(b) An appeal mechanism should</p>	<p>(a) The established practice for handling appeals or requests for review of decision should be maintained and it was not</p>

<b>Civil Service Bodies</b>	<b>Others</b>
be put in place.	necessary to introduce new or elaborate appeal procedures.