

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

Witness statement of Mrs Susan MAK LOK Suet-ling

I, Susan MAK LOK Suet-ling, worked as the Deputy Secretary for Development (Planning and Lands)1 (“DS(PL)1”) in the Planning and Lands Branch (“PLB”) of the Development Bureau (“DEVB”) from 9 July 2007 to 11 February 2009. During the period, I was responsible for policy issues under the purview of the Lands and Planning Division of PLB. In preparing this statement, I set out the questions raised by the Select Committee and provide my answers to the best of my knowledge.

The vetting and assessment of post-service work applications from directorate civil servants

Q1. The procedure adopted by the Planning and Lands Branch of the Development Bureau in assessing post-service work applications from directorate civil servants and your role and participation in the matter.

A1. The PLB of the DEVB normally assesses post-service work applications from directorate civil servants in the following manner:

- (a) Arrangements governing the taking up of outside work by directorate officers and former directorate officers during their final leave and / or after they have left the Government are set out in Civil Service Bureau (“CSB”) circulars. Generally, directorate officers who wish to take up outside work, paid or unpaid, full-time or part-time, during their final leave period before their formal departure from the Government, and / or within a specified control period counting from the said departure, should apply for prior permission from the Secretary for the Civil Service (“SCS”). An application made by a Permanent Secretary should be forwarded to the Civil Service Bureau (“CSB”) direct for arranging assessment as appropriate and for processing. When all the requested information and assessments are available, CSB will submit the application, together with the assessments made by the relevant Head of Department, Head of Grade and / or Permanent Secretary, to the Advisory Committee on Post-service Employment of Civil Servants for advice before submitting the application to SCS for a decision. Other applications are handled by relevant parties including Heads of Department, Heads of Grade and Permanent Secretaries in accordance with the procedures prescribed before transmitting to CSB for further processing.

- (b) According to my understanding, for cases referred from CSB to policy bureaux, SCS will normally issue a memorandum setting out the advice sought from individual Permanent Secretaries in processing the application concerned. Such a request for advice may include the provision of information relating to the application e.g. dealings between a prospective employer and a department, comments on the application, assessment and/or recommendation on the application from the bureau's perspective.
- (c) Upon receipt of CSB's memorandum, the Administration Unit ("the Administration Unit") of PLB will examine the application and seek clarifications from CSB on the information sought where required. To respond to the advice sought by CSB in processing an application, PLB will seek information from the department concerned on the dealings between a prospective employer and its subsidiaries and the department. PLB will also search the internet to gather any supplementary information of the prospective employer and the proposed employment.
- (d) Based on the information provided by CSB and the application, departments and / or those found in the public domain, the Administration Unit will make a detailed analysis of the case. The Administration Unit follows the relevant guidelines promulgated by CSB as set out in the relevant CSB Circular in considering post-service work applications by directorate civil servants. The responsible officer of the Administration Unit will prepare a minute for submission to the Permanent Secretary for Development (Planning and Lands) ("PS(PL)") for endorsement, via Principal Executive Officer (Administration) ("PEO(A)") and the respective Deputy Secretary for Development (Planning and Lands) ("DS(PL)"). The minute will set out the information concerning the proposed appointment, the prospective employer, CSB's guidelines governing the case, factors to be considered in assessing the case, precedent cases (if any) and a recommended response to CSB. There are two DS(PL) in PLB, namely DS(PL)1 and DS(PL)2. DS(PL)2 is responsible for policy issues including those relating to the Buildings Department.
- (e) The Administration Unit will respond to the CSB's memorandum on the application after seeking the endorsement of PS(PL) on its recommendation.

My participation in the processing of post-service work applications from directorate civil servants is as follows :

As DS(PL)1 of PLB, I gave comments on applications concerning the Lands Department and Planning Department when such applications were routed through me for PS(PL)'s consideration. From time to time, I doubled up PS(PL)'s post in addition to DS(PL)1's duties during the former's absence. During such periods, I considered and endorsed replies to CSB on applications in the capacity of acting PS(PL).

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

Q2. On 30 May 2008, the Planning and Lands Branch of the Development Bureau advised the Civil Service Bureau ("CSB") that Buildings Department had no contractual dealings with NWCL or its parent company, New World Development Company Limited ("NWDCL"). However, there were building plans submissions for development projects under the Buildings Ordinance made by the subsidiary companies of NWDCL. Please advise-

(a) your role in vetting Mr LEUNG's application;

A2 (a) On 19 May 2008, SCS referred Mr LEUNG's application to Permanent Secretary for Transport and Housing (Housing) ("PS(H)", PS(PL) and Permanent Secretary for Development (Works) ("PS(W)"). In the memorandum, PS(H) was invited to provide his comments and recommendations on Mr LEUNG's proposed appointment by completing Part III Assessment A of the application form. That part of the form was not forwarded to PS(PL) and PS(W) for completion. PS(PL) and PS(W) were invited to give comments on Mr LEUNG's application in view of the business nature of NWCL, noting that its parent company was NWDCL.

According to the information provided by Mr LEUNG in paragraph 13 of Part II of his application form, the major business activities of the employer are China-based:

- (1) operation of and investment in hotels in China;
- (2) development of real estate in China;
- (3) operation of golf courses in China; and
- (4) operation of holiday resorts in China.

On 26 May 2008, I received a minute of the same date from the Chief Executive Officer (Administration) ("CEO(A)") via PEO(A) and DS(PL)2. I received the minute in my capacity as acting PS(PL) as I doubled up the post in addition to DS(PL)1 during the period from 21 to 28 May 2008 (except on 24 and 25 May 2008 being a Saturday and a Sunday).

In the submission to PS(PL), CEO(A), in consultation with the Buildings Department ("BD"), recommended our proposed reply to CSB:

“20. Subject to your kind consideration, the following is our proposed reply to CSB-

- (a) We have no objection to the proposed application from Mr LEUNG as his tenure (October 1999 – June 2002)¹ as Director of Buildings ceased almost six years ago.
- (b) According to the Buildings Department, they have no contractual dealings with New World China Land Limited (NWCL) or its parent company (i.e. New World Development Company Limited). However, there are building plans submissions for development projects (e.g. HungHom Peninsula project, Tsim Sha Tsui New World redevelopment project) made under the Buildings Ordinance by the subsidiary companies of New World Development Company Limited.”

It was noted that there are standard restrictions for any outside work by a former directorate officer :

- not to be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises;
- not to undertake or represent any person in any work including any litigation or lobbying activities that are connected in any way with the formulation of any policy or decisions, sensitive information, contractual or legal dealings, assignments or projects and / or enforcement or regulatory duties in which he / she was involved or to which he /she had access during his / her last three years of government service; and
- not to engage in any activities which will cause embarrassment to the Government or bring disgrace to the civil service.

It was also noted that Mr Leung’s proposed appointment was China-based and the major duties and responsibilities of the proposed appointment involved were outside Hong Kong.

In the minute of CEO(A), PEO(A) added her comments as follows :

“As SCS has asked us to comment on Mr Leung’s application in view of the business nature of the company, we should refrain from giving a recommendation on Mr Leung’s proposed appointment. I therefore suggest that Para 20(a) be omitted from our reply. Although Mr Leung ceased being DB six years ago, the ICI only completed its inquiry on the Sai Wan Ho case in 2006. It is for PSH to provide his recommendations on the case and CSB to make a decision.”

¹ It has been verified subsequently that Mr Leung’s tenure should be from August 1999 to June 2002.

DS(PL)2 added the comment that :

“If Mr Leung’s proposed full-time job with NWCL outside HK will not involve official dealings with any part of the HKSAR Government, I fail to see why we would have any comment on the referral from CSB at all, notwithstanding the nature of business of the parent company.”

I considered that PS(PL) was not asked to give an assessment of Mr LEUNG’s application. Having considered the minute prepared by CEO(A), endorsed by PEO(A) and supported by DS(PL)2, I endorsed PEO(A)’s and DS(PL)2’s recommendation. The assessment of both conflict of interest and public perception, as contained in Part III Assessment A of the application form, included the giving of a recommendation on whether the application should or should not be rejected. As Part III Assessment A of the application form was to be completed by PS(H) as required by CSB, I, as acting PS(PL), instructed on 28 May 2008 that in our reply to CSB, the reference to “no objection” comment should be excluded. PLB’s reply to CSB on 30 May 2008 was as follows:

“According to the Buildings Department, they have no contractual dealings with New World China Land Limited or its parent company (i.e. New World Development Company Limited). However, there are building plans submissions for development projects (e.g. HungHom Peninsula project, Tsim Sha Tsui New World redevelopment project) made under the Buildings Ordinance by the subsidiary companies of New World Development Company Limited.”

(b) the internal consultation undertaken by the Planning and Lands Branch in vetting Mr LEUNG’s application;

- A2 (b) As Mr LEUNG was the Director of Buildings from August 1999 to June 2002, we consulted BD on the dealings including the contractual dealings between NWCL and its parent company, namely NWDCL, and BD, and sought their comments on Mr LEUNG’s application. BD advised that they did not have contractual dealings with NWCL or its parent company NWDCL. However, there were building plans submissions for development projects (e.g. HungHom Peninsula project, Tsim Sha Tsui New World redevelopment project) made under the Buildings Ordinance by the subsidiary companies of NWDCL.

(c) the views of the Planning and Lands Branch on the information provided by Mr LEUNG in the application form;

- A2 (c) Information provided by Mr LEUNG in the application form mainly dealt with his personal particulars, service history in respect of his

former duties as the then PS(H) and Director of Buildings, information on the prospective employer and the proposed outside work and a self-declaration concerning his duties during the last three years of his government service. Mr LEUNG was the Director of Buildings from August 1999 to June 2002. His tenure as Director of Buildings ceased almost six years on the day when he submitted the application. In considering Mr LEUNG's application, we focused on the period during which he served as the Director of Buildings.

(d) factors considered by the Planning and Lands Branch in giving its response on Mr LEUNG's application, including whether consideration had been given to Mr LEUNG's involvement in lands/building projects when serving as Director of Buildings and Building Authority; and

- A2 (d) Mr LEUNG's application was assessed by PLB, having regard to CSB guidelines on post-service outside work by directorate civil servants after ceasing active service. Given Mr LEUNG's previous service as the Director of Buildings from August 1999 to June 2002, the Administration Unit consulted BD on the dealings including contractual dealings between NWCL and its parent company, namely NWDCL and BD, and sought their comments on Mr LEUNG's application.

In considering Mr LEUNG's application, the Sai Wan Ho case did feature in the internal consideration process within PLB, as Mr LEUNG served as Director of Buildings from August 1999 to June 2002. It was noted that in November 2005, the Audit Commission published a report to the Legislative Council critical of the way in which Mr LEUNG exercised his discretion as the Building Authority in processing the building plan application for a residential development in Sai Wan Ho in 2001. The Public Accounts Committee had also considered the matter and in its report did not consider Mr Leung had acted ultra vires or abused his power in exercising his discretion. In view of the public concern about the incident, the Chief Executive set up an Independent Committee of Inquiry ("ICI") in November 2005 to look into the case. In ICI's report submitted to the CE in April 2006, it was concluded that Mr LEUNG should bear no blame for exercising his discretionary powers in the Sai Wan Ho development. PLB has taken this into account in considering Mr LEUNG's application in connection with the Sai Wan Ho case.

In considering Mr LEUNG's application concerned, it was noted that Mr LEUNG would be based in a major city in China and undertake duties and responsibilities relating to China. Apart from the above, we have also taken into account a relevant precedent case and other previous applications approved by CSB for Mr LEUNG to take up post-service appointments when assessing the case.

(e) the reason for the Planning and Lands Branch to highlight the fact that there were building plans submissions for development projects under the Buildings Ordinance made by the subsidiary companies of NWDCL.

A2 (e) When the Administration Unit sought comments from BD on Mr LEUNG's application, BD provided the information that "there are building plans submissions for development projects (e.g. HungHom Peninsula project, Tsim Sha Tsui New World redevelopment project) made under the Buildings Ordinance by the subsidiary companies of New World Development Company Limited". This was factual and I instructed this be conveyed to CSB for information.

Q3. CSB sought views from the Planning and Lands Branch as to whether they had any specific comments on Mr LEUNG's application. In its reply, the Planning and Lands Branch had made no comment. Please provide the reason for the Planning and Lands Branch not providing any specific comments on Mr LEUNG's application.

A3. In its memo dated 19 May 2008, CSB has invited the PS(H) to provide comments and recommendations on Mr LEUNG's application by filling in Part III Assessment A of the application form. On the other hand, CSB did not request PS(PL) to complete this part of the application form. As such, my understanding was that PS(PL) was only invited to give comments on the application "in view of the business nature" of NWCL noting that its parent company was NWDCL. In this connection, I understand that PLB provided CSB with a reply on 30 May 2008.

I ceased to act as PS(PL) on 29 May 2008 and did not know that CSB had subsequently (on 30 May 2008) come back to ask PLB if there was any specific comments on Mr LEUNG's application. Nor did I know that CEO(A) had replied on the same day with a "Nil" response.

Q4. The personal relationship between you and Mr LEUNG

A4. Apart from the fact that I knew Mr LEUNG in the civil service when I joined as an administrative officer in 1981, and he was my supervisor for a period of about 4 months in 1981 from August to November, I did not have personal relationship with Mr LEUNG at all.

Susan MAK LOK Suet-ling

4 March 2009