

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

Witness statement of Mr MAK Chai-kwong

I, MAK Chai-kwong, have been serving as the Permanent Secretary for Development (Works) (“PS(W)”) in the Works Branch (“WB”) of Development Bureau (“DEVB”) since 1 July 2007. I am responsible for assisting the Secretary for Development in the delivery of the Public Works Programme; in formulating policies in regard to slope safety, flood prevention, water supply, greening, heritage conservation and ensuring the efficient implementation of such policies. There are five departments under my policy responsibility, namely, Architectural Services Department, Civil Engineering and Development Department, Drainage Services Department, Electrical and Mechanical Services Department and Water Supplies Department. In preparing this witness statement, I set out the questions raised by the Select Committee and then provide my answers to the best of my knowledge. In answering the following questions, I have sought assistance from my colleagues of DEVB to provide relevant information and to peruse relevant files and records.

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

Q1. The procedure adopted by the WB of the DEVB in assessing post-service work applications from directorate civil servants and your role and participation in the matter

A1. The WB of DEVB processes the post-service work applications from directorate civil servants in accordance with the policy and guidelines set out in the Civil Service Bureau (“CSB”) Circular No. 10/2005 (Document No. CSB3). The key factors which would be taken into account are whether there is any real or potential conflict of interest between the applicant’s former government duties and the proposed work, and whether the applicant’s taking up of the proposed work is likely to give rise to negative public perception. The specific considerations include -

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

The post-service work applications from directorate officers processed by WB basically could be categorized into two groups:

- (i) Applications from directorate officers retiring from positions in WB or departments under its policy responsibility

For this group, WB is required to provide comments and recommendations on the applications by completing Part III of the application form. Our recommendations will be to support (with or without conditions), or not to support the application.

- (ii) Applications from officers NOT retiring from positions in WB or departments under its policy responsibility

For this group, WB is requested by CSB to give comments on the

applications in view of the business nature of the prospective employer. The prospective employers in this group are normally involved in real estate development, construction and management matters. WB is not required to make recommendations on the applications by completing Part III of the application forms. We will provide comments to the best of our knowledge.

The procedures adopted by WB in processing the applications at the material time are summarized below:-

- (a) upon receipt of CSB's / departments' requests to provide comments and/or recommendations on the applications, the Administration Unit ("the Administration Unit") of WB would examine the applications and seek clarifications / supplementary information from the applicants, CSB or departments concerned, where necessary;
- (b) if the prospective employer is engaged in the construction field, the Administration Unit would consult the Works Policies 2 Section of WB, which would conduct a search of the two contractor lists managed by WB, namely, List of Approved Contractors for Public Works and List of Approved Suppliers of Materials and Specialist Contractors for Public Works. These two lists include only the approved contractors with suitable qualifications and adequate technical, managerial and financial capabilities for bidding for the majority of Government construction works contracts. The purpose of the search is to ascertain if the company concerned or its related companies were / have been / are contractors of the Government departments to facilitate an assessment on whether there is any real or potential conflict of interest between the applicant's former government duties and the proposed post-service work;
- (c) the Administration Unit would then make a detailed analysis of the case, having regard to the guidelines promulgated in CSB Circular No. 10/2005. A written submission in the form of a minute will be made to PS(W) where the applicant is at the rank of D4 or above, or Deputy Secretary for Development (Works)1 ("DS(W)1") where the applicant is at a rank below D4, setting out information on the

proposed appointment, the prospective employer, CSB guidelines governing the case, factors considered in assessing the case, relevant precedent cases and a recommended reply to CSB;

- (d) the Administration Unit would convey to CSB the recommendations and / or comments as endorsed by PS(W) or DS(W)1 as appropriate.

As PS(W), I consider the analyses and recommendations made by the Administration Unit and endorse replies to CSB.

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

Q2. On 26 May 2008, the WB of the DEVB advised the CSB that the post-service work applied by Mr LEUNG with relativity to his former appointment as Director of Buildings might have a public perception issue, despite the operation of his prospective employer was outside Hong Kong, in the light of the business nature of Mr LEUNG's prospective employer in real estate development, construction and management matters. Please advise -

Q2(a) the internal consultation undertaken by the WB in the vetting of Mr LEUNG's application

A2(a) I noted that the Administration Unit had conducted an internal checking with our Works Policies 2 Section which maintains two lists of our approved contractors, i.e. List of Approved Contractors for Public Works and List of Approved Suppliers of Materials and Specialist Contractors for Public Works. The search revealed that, at the time of checking in May 2008, neither NWCL nor its parent company, New World Development Company Limited, were our listed contractors. However, the latter owned the NWS Holdings Limited which in turn, through some other companies, wholly owned nine companies which were our listed contractors and had 13 outstanding public works contracts at that time.

Q2(b) the views of the WB on the information provided by Mr LEUNG in the application form

A2(b) I noted the analysis made by the Administration Unit which was based on the information provided in the application that Mr LEUNG served as the Director of Buildings from October 1999 to June 2002 and Permanent Secretary for Housing /Director of Housing from July 2002 to January 2006. I understand that Mr LEUNG had not served in WB or any of the departments under its policy responsibility prior to his retirement. We were not familiar with Mr LEUNG's duties when he served in the civil service.

We noted from the application that the major business activities of Mr LEUNG's prospective employer was China-based, Mr LEUNG would be engaged as the Executive Director of the company on a full-time basis, and the company was involved in real estate development in the Mainland. I noted that the Administration Unit was unable to assess whether Mr LEUNG's proposed work would constitute any real or potential conflict of interest with the officer's former government duties based on the information in the application. We also noted that in CSB's memo dated 19 May 2008, Permanent Secretary for Transport and Housing (Housing) ("PS(H)") was invited to provide his comments and recommendations on Mr LEUNG's application by completing Assessment A of the application form, and PS(W) and Permanent Secretary for Development (Planning and Lands) ("PS(PL)") were invited to give comments on Mr LEUNG's application in view of the prospective employer's business nature.

In light of the above, I noted the Administration Unit would only focus on providing the factual information on the involvement of the applicant's prospective employer in public works contracts for CSB's information and consideration. In this connection, in the minute of 23 May 2008, acting Principal Executive Officer (Works) had pointed out to me that "since we do not have any substantial information on the previous duties of Mr LEUNG while he was serving as PS(H), we have verbally informed CSB that we would have difficulties to assess whether the present application would constitute any real or potential conflict of interest with the officer's former government duties". I noted that we would provide the factual data to CSB.

Q2(c) the reason for the WB's assessment that Mr LEUNG's application might have a "public perception issue"

A2(c) From the information provided in the application, I noted that Mr LEUNG was involved in the processing and approval of building plans from real estate developers when serving as the Director of Buildings. I also noted that like a previous case which had certain similarity, the Administration Unit had assessed that in the light of the business nature of Mr LEUNG's prospective employer in real estate development, construction and management matters, and the senior position he occupied prior to his retirement from the civil service as well as his previous government duties as the former Director of Buildings, there might be a public perception issue in his case.

Q2(d) factors considered by the WB in giving its views on Mr LEUNG's application, including whether consideration had been given to Mr LEUNG's involvement in works/building projects when serving as Director of Buildings and Building Authority

A2(d) As explained in A2(b) above, Mr LEUNG had not served in WB or any of its departments prior to his retirement. We were not familiar with Mr LEUNG's duties when he served in the civil service. From the information provided in the application, we noted that one of Mr LEUNG's main duties when serving as Director of Buildings was to process and approve building plans under the law. However, we had no knowledge what works/building projects Mr LEUNG had been involved in when serving as Director of Buildings. I therefore endorsed the assessment of the Administration Unit that in light of the business nature of Mr LEUNG's prospective employer in real estate development, construction and management matters, with relativity to Mr LEUNG's former appointment as Director of Buildings, there might be a "public perception issue", and agreed that we should draw CSB's attention to the issue.

Q3. In response to CSB's further enquiry, the WB advised on 24 June 2008 that as Mr LEUNG had not served in the WB nor its departments prior to his retirement, it was not in a position to comment on or object to the application. However, given Mr LEUNG's senior position when he was in the civil service and the business nature of his prospective employer, CSB's attention was drawn to the likelihood of public perception in the case. Please provide the reason for the WB not raising objection to Mr LEUNG's application despite its repeated view about the "public perception issue"

A3. Mr LEUNG had not served in WB or its departments prior to his retirement, and hence we had no knowledge of his former duties and involvement in works/building projects. We considered that we were not in a position to raise objection to Mr LEUNG's application. According to our procedures, we had therefore only focused on providing the factual information with regard to the involvement of Mr LEUNG's prospective employer in public works contracts, and highlighting our general observation pertaining to the "public perception issue".

Separately, I was not aware at that time that CSB had subsequently come back to ask if we had any objection to Mr LEUNG's application, citing that neither PS(H) nor PS(PL) raised objection to the application and suggesting to impose some work restrictions to address the "public perception issue". Nor did I know that Chief Executive Officer (Works) Administration had replied to CSB on 24 June 2008. However, I consider the reply is in accordance with WB's views stated above.

Q4. The personal relationship between you and Mr LEUNG

A4. I know Mr LEUNG as a colleague and do not have any social contacts with him.

MAK Chai-kwong
4 March 2009