

Executive Summary

Introduction

On 1 August 2008, New World China Land Limited ("NWCL") announced the appointment of Mr LEUNG Chin-man as an Executive Director and Deputy Managing Director of the company with effect from that date. The announcement aroused public controversy as Mr LEUNG was the former Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing prior to his retirement from the Government on 10 January 2007, and was involved in the disposal of the Private Sector Participation Scheme flats in the Hunghom Peninsula development which were sold to the developer at a lease modification premium considered to be too low at the time by the public. The public was greatly concerned that the appointment smacked of being a reward for favours given to the developer by Mr LEUNG during his tenure, and questioned the propriety of the Secretary for the Civil Service ("SCS") giving approval for Mr LEUNG to take up the appointment.

2. Immediately upon commencement of the Fourth Legislative Council ("LegCo") in October 2008, Members took up the matter. On 10 December 2008, LegCo passed a resolution to appoint a select committee to inquire into the post-service work of Mr LEUNG and related matters ("the Resolution"). The Resolution also authorized the Select Committee, in the performance of its duties, to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the attendance of witnesses to give evidence and the production of papers, books, records or documents by witnesses.

3. The terms of reference, membership, areas of study and work plan, practice and procedure of the Select Committee to Inquire into

Matters Relating to the Post-service Work of Mr LEUNG Chin-man ("the Select Committee") are set out in detail in Chapter 1. The Select Committee held nine meetings from 18 December 2008 to 10 March 2009 to undertake preparatory work for the inquiry. A total of 23 public hearings were held between 17 March and 17 November 2009 during which evidence was taken from 24 witnesses attending the hearings. The Select Committee also held 81 meetings to discuss the evidence obtained and deliberate on the report of the Select Committee, and matters relating to the inquiry.

Conclusions of the Select Committee

4. The Select Committee has conducted a thorough inquiry into the post-service employment of Mr LEUNG Chin-man with NWCL and his participation in the Hunghom Peninsula case, the details of which are set out in Chapters 4, 5, 7 and 8. Based on its observations, the Select Committee has come to the following conclusions:

- (1) Mr LEUNG Chin-man was deeply and directly involved in the disposal of the Hunghom Peninsula flats, and assumed a steering and co-ordinating role in the matter.
- (2) The Hunghom Peninsula development was developed by a company owned by a subsidiary of the parent company of NWCL. The business interests of the subsidiaries are inseparable from those of the parent company. There is plainly conflict of interest for Mr LEUNG to take up employment with NWCL. Mr LEUNG's taking up the employment with NWCL was therefore inappropriate.
- (3) In his application to the Civil Service Bureau ("CSB") for approval to take up the employment with NWCL,

Mr LEUNG did not give all information relevant to his application in a frank and honest manner, and thus failed to observe the good practices expected of civil servants when taking up post-service work as set out in the "Civil Servants' Guide to Good Practices". Mr LEUNG's conduct was unbecoming of a former senior official, and was liable to bring the civil service into disrepute.

- (4) A great majority of the officials involved in processing Mr LEUNG's application had adopted a blinkered view in considering the application. They had not fully considered the six assessment criteria set out in CSB Circular No. 10/2005. Their understanding of the assessment criteria differed among themselves. The practices they adopted in processing the application varied, the way they handled the process was careless and perfunctory, and they placed too much dependence on the honour system.

Recommendations of the Select Committee

5. The Select Committee's recommendations on improvements to the control regime governing post-service work of directorate civil servants ("the Control Regime") are highlighted below. A detailed account of the recommendations is set out in Chapter 9.

- (1) Restrictions on the taking up of post-service work

Recommendation 1 – It is inappropriate for the Government to impose a total prohibition on the taking up of post-service work by directorate civil servants in the same field of work as those in which they

have engaged in their past government duties, nor is it appropriate to impose a ban on the taking up of post-service work by directorate civil servants either across-the-board or on a sectoral basis.

Recommendation 2 – The Government should put in place a system of vetting and approving post-service work applications from directorate civil servants for the protection of the public interest and an individual's right to work, but under all circumstances, protection of the public interest must be the overriding concern.

Recommendation 3 – The existing sanitization period for the taking up of post-service work by directorate civil servants leaving the Government on retirement is appropriate and does not need to be changed, while there is a need for the Government to review the sanitization period for the taking up of post-service work by directorate civil servants leaving the Government on grounds other than retirement.

Recommendation 4 – In processing applications from directorate civil servants at Directorate Pay Scale Point 1 ("D1") to D3, the assessing parties make assessments with reference to the information on the service history of their last three years of government service. This assessment period is appropriate and may remain unchanged. In respect of applications from D4 to D8 officers, the Government should consider taking their last

six years of active government service as the assessment period.

Recommendation 5 – The control period for directorate civil servants leaving the Government on retirement should:

- (a) remain unchanged for D1 to D3 directorate civil servants;
- (b) be extended to four years for D4 to D7 directorate civil servants; and
- (c) be extended to five years for D8 directorate civil servants.

(2) Inclusion of public suspicion of deferred reward or benefit in return as a factor for consideration in the assessment criteria

Recommendation 6 – The Government should consider revising the assessment criteria so that public suspicion of deferred reward or benefit in return would be included in the specific considerations for making assessments by the approving authority.

Recommendation 7 – CSB should provide clear guidelines to officials concerned and the Advisory Committee on Post-service Employment of Civil Servants ("ACPE") on how assessment of public suspicion of deferred reward or benefit in return should be made to facilitate the vetting and consideration of applications.

(3) The responsibilities of applicants

Recommendation 8 – The Government should consider revising the application procedure to clearly reflect that before submitting an application to CSB, it is incumbent upon an applicant to provide the information as required in the application form (including disclosing possible conflict of interest involved in his application) and to assess and evaluate his application for post-service work against the assessment criteria set out in the relevant circulars in a frank and honest manner.

Recommendation 9 – The Government should consider specifying in the relevant CSB circulars the good conduct expected of civil servants in respect of their taking up of post-service work, as stated in the "Civil Servants' Guide to Good Practices".

Recommendation 10 – The Government should consider requiring an applicant to provide information on major assignments or projects relating to the prospective employer and other companies within the same group as the prospective employer in which he was involved during the last three years (for D1 to D3 applicants) or the last six years (for D4 to D8 applicants) of his government service for consideration by the approving authority.

Recommendation 11 – The Government should require an applicant to provide information on his previous dealings

while in government service with the prospective employer and with other companies within the same group as the prospective employer.

Recommendation 12 – The Government should also require an applicant to provide any other information pertaining to his prospective employer and proposed employment during his government service.

Recommendation 13 – The Government should consider developing guidelines which would enable the applicants to have a clear understanding of the requirements under the Control Regime as set out in the relevant CSB circulars, including the assessment criteria and coverage, as well as the way in which the applicants should assess and evaluate their applications. The Government should also consider specifying clearly in the relevant circulars that, upon a breach of the requirements under the Control Regime, the approval given for an application will become invalid and the applicant will be liable to sanctions.

Recommendation 14 – Bureaux/departments should render assistance to an applicant in providing the information required for his application, and allow him to have access to information on his last three years or six years of service history in the Government as well as major assignments or projects in which he had been involved.

(4) Standardization of the processing and vetting practices

Recommendation 15 – The Government should improve the current practices in processing and vetting applications, including giving consideration to the following measures:

- (a) devising a set of standardized practices for processing and vetting applications for adoption by bureaux/departments;
- (b) providing clear guidelines with examples of precedent cases to officials responsible for vetting and assessing applications to ensure that they fulfil their responsibilities, and to assist them in making sound judgment in assessing issues of conflict of interest, public perception and public suspicion of deferred reward or benefit in return;
- (c) reviewing and enhancing communication with civil servants to ensure that they fully understand the policy objective of the Control Regime and the relevant assessment criteria, and that they would consider applications from a broad perspective; and
- (d) strengthening measures so that officials responsible for vetting and assessing applications in individual bureaux/

departments would have a thorough understanding of their due responsibilities, thereby ensuring that the vetting and approval work is carried out in a prudent and conscientious manner.

(5) Undesirability of relying solely on the honour system

Recommendation 16 – The assessing parties should thoroughly and proactively vet the information provided by the applicants, and CSB should step up efforts in monitoring the compliance of successful applicants with the conditions imposed on the approved work, in order to enhance the effectiveness of the honour system.

Recommendation 17 – An applicant should provide a copy of the appointment letter or employment contract to CSB within a specified period after the granting of the approval to enable verification of the terms of employment; otherwise the approval granted to him would become invalid.

Recommendation 18 – In the event of any subsequent changes to an approved application, including those which may impact on the relevant information provided by the applicant and considered by the approving authority in granting the approval, the applicant should report such changes to CSB.

(6) Improvement to the application form

Recommendation 19 – The Government should revise the application form to ensure that an applicant would provide the following information:

- (a) the channels through which the applicant has acquired the job;
- (b) relevant information including the name of the introducer of the job and his relationship with the prospective employer;
- (c) the assessment and evaluation made by the applicant on his application; and
- (d) information on major assignments and projects in which the applicant had been involved, as well as any previous dealings, that were connected with his prospective employer and other companies within the same group as the prospective employer.

(7) Extension of coverage and accessibility of the public register

Recommendation 20 – The coverage of the public register should be extended to include all approved cases of D1 to D8 directorate civil servants, and the register be made accessible to the public on the Government website.

(8) Improvement to the operation of the Advisory Committee on Post-service Employment of Civil Servants

Recommendation 21 – The Government should consider whether the existing role of ACPE should be revamped to expand its functions and enhance its independence.

Recommendation 22 – ACPE should improve its operation by measures including holding regular meetings to consider post-service work applications, and inviting officials responsible for vetting and assessing applications in CSB and in other relevant bureaux/departments to the meetings to present their views and explain their recommendations on the applications.

Recommendation 23 – The Government should enhance the importance of ACPE, including giving consideration to the following measures: expanding the composition of ACPE, making it a practice for SCS to attend the meetings of ACPE in keeping with the importance the Government attaches to ACPE, reviewing the relevant guidelines on declaration of interests on a regular basis, and enhancing the transparency of ACPE, such as having the annual report on its work laid on the Table of LegCo.