

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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Legislative Council
Panel on Public Service

Minutes of special meeting
held on Friday, 20 August 1999 at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, JP (Deputy Chairman)
Hon LEE Kai-ming, SBS, JP
Hon CHAN Kwok-keung
Hon CHAN Wing-chan
Hon Howard YOUNG, JP
Hon Ambrose LAU Hon-chuen, JP

Members attending : Hon David CHU Yu-lin
Hon Albert HO Chun-yan
Hon Michael HO Man-ka
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Wing-tat
Hon NG Leung-sing
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Ambrose CHEUNG Wing-sum, JP
Hon CHAN Yuen-han
Hon LAU Kong-wah
Hon Emily LAU Wai-hing, JP

Members absent : Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, JP

Public officers attending : Mr LAM Woon-kwong
Secretary for the Civil Service

Miss Denise YUE
Secretary for the Treasury

Ms Anissa WONG
Deputy Secretary for the Civil Service 1

Mr Benedict LAI
Deputy Law Officer (Civil Law)

Mrs Alison CABRELLI
Senior Assistant Law Officer (Civil Law)

Clerk in attendance : Ms Pauline NG
Assistant Secretary General 1

Staff in attendance : Mr Jimmy MA
Legal Adviser

Mr Matthew LOO
Senior Assistant Secretary (1)7

Action

I. Confirmation of minutes of previous meeting
(LC Paper No. CB(1) 1810/98-99)

The minutes of the special meeting on 29 June 1999 were confirmed.

II. Follow-up discussion on the case of Mr WONG Ho-sang
(LC Paper No. CB(1) 1811/98-99(01) — Paper from the Administration)

Purpose of the meeting

2. The Chairman advised that the purpose of the special meeting was to enable the Administration to brief Members on the Report of the Director of Audit (D of A) on "Audit examination of the tax returns or submissions made or represented by J.

Enterprise Secretarial and Taxation Limited (JEST)" arising from the case of Mr WONG Ho-sang.

3. The Chairman also advised that he had requested the Legislative Council Secretariat to get in touch with Mr WONG Ho-sang to enquire if he wished to speak at meetings of the Panel in relation to D of A's Report. Mr WONG Ho-sang had verbally turned down the invitation and advised that his position had been well explained in his reply to D of A and in his press statement issued on 19 August 1999. The Panel agreed that Mr WONG should be asked to confirm in writing his wish to attend the Panel meeting or not.

(Post-meeting note: Mr WONG Ho-sang confirmed in writing on 23 August 1999 that he did not wish to speak at meetings of the Panel. His letter was circulated to members vide LC Paper No. CB(1) 1820/98-99.)

Meeting with the Administration

Briefing by the Administration

4. The Secretary for the Civil Service (SCS) advised that having considered the D of A's Report, the circumstances of the case and Mr WONG Ho-sang's written responses to the findings of the Report, the Administration had come to the view that Mr WONG was no longer suitable for appointment as the Commissioner of Inland Revenue (CIR) and had therefore decided, in accordance with the provisions of his contract of employment, to terminate his employment with effect from 19 August 1999 and to forfeit his contract gratuities.

5. SCS elaborated that the Administration's decision was based on the following three major findings of the D of A's Report:

- (a) The Civil Service Branch Circular No. 19/92 stated that an officer should report to his superior officer any private interest that might influence, or appear to influence, his judgement in the performance of his duties. Mr WONG Ho-sang should have reported his wife's interest in JEST to the Secretary for the Treasury (S for Tsy) in order to comply with this specific reporting requirement;
- (b) The Inland Revenue Department (IRD)'s Departmental Circular Nos. 32/93 and 27/98 stated that officers should avoid dealing with files where their spouses had been connected with the preparation of the returns in a professional or representative capacity. Mr WONG Ho-sang had failed to comply with this specific requirement, as he had, since 24 April 1996, personally dealt with seven tax cases in which JEST acted as the tax representative or tax consultant; and

- (c) In accordance with the requirement of the Civil Service Bureau (CSB) Circular No. 8/98, Mr WONG Ho-sang should have reported his shareholding in J. Enterprise Agency Limited.

6. SCS added that Mr WONG had been duly notified of the Administration's decision on 19 August 1999.

Clarification on D of A's Report

7. On paragraph 5(a) above, Mr LAU Kong-wah referred to Mr WONG's reply dated 23 July 1999 to D of A and sought clarification on whether Mr WONG had made full disclosure of his wife's professional practice as relating to taxation to the then Deputy Financial Secretary in around 1990. Mr LAU also sought to confirm whether such disclosure had again been made in the Extended Checking Questionnaire (ECQ) in early 1996 when Mr WONG assumed the post of CIR.

8. SCS advised that in order to verify Mr WONG's claims, the Administration had conducted a thorough search into the records of CSB and Finance Bureau (FB). It was revealed that the then CIR had written to the then Deputy Financial Secretary in 1988, responding to complaints against a group of officers including Mr WONG. The then CIR had reported that Mr WONG had told him about his wife's interest in JEST, and that he had looked into the matter but not found any problems. Apart from that internal document, the Administration was unable to find any other record showing that Mr WONG had personally reported his wife's interest in JEST. SCS further said that when Mr WONG was being considered for the post of CIR in 1996, he was required to undergo integrity checking and to complete the ECQ. However, in accordance with standing procedures for ECQ, all documents involved in integrity checks were destroyed after decisions on the suitability of officers were made. Hence the ECQ completed by Mr WONG in 1996 was not retrievable and it was therefore not possible to verify whether Mr WONG had reported his wife's interest in JEST on the ECQ or not. SCS stressed that notwithstanding the information in the EQC, Mr WONG should have acted in accordance with the revised guidelines on "Declaration of Investments by Civil Servants" issued under CSB Circular No. 8/98 in September 1998. According to available records, Mr WONG had not complied with the guidelines, and he had not disputed this point.

9. Referring to Case 1 in the D of A's report, Mr LAU Kong-wah enquired whether Mr WONG's act in providing the Assistant Commissioner of Inland Revenue with a copy of the Lease Agreement between Company A and Company B had constituted any criminal offence. Deputy Law Officer (Civil Law) (DLO(CL)) advised that Section 82 of the Inland Revenue Ordinance (IRO), Cap. 112 had provided that any person who wilfully with intent to evade or to assist any other person to evade tax made use of any fraud should be guilty of an offence. Having consulted the Director of Public Prosecutions (DPP), the Administration had come to the conclusion that on the basis of the present evidence, Mr WONG's misconduct did not constitute a criminal offence. As

to whether the basis on which the conclusion was drawn could be made available to members, DLO(CL) confirmed it was not appropriate to disclose the details of the advice of DPP. He also pointed out that from the findings of D of A's Report, there was no evidence indicating that Mr WONG had committed a criminal offence. Responding to Mr LAU's further enquiry, DLO(CL) said that he had no knowledge of whether further investigation into Mr WONG's case was being conducted by any of the law enforcement authorities.

10. In response to Mr NG Leung-sing's question on the details of those officers who claimed knowledge of Mrs WONG's ownership of JEST, S for Tsy pointed out that all the IRD officers involved in the Audit survey were required to return the completed questionnaires to the Audit Commission direct. The IRD management had made no attempt to request D of A to disclose the content of the completed questionnaires and the rank of the officers concerned in view of D of A's obligation to observe the official secrecy provisions under section 4 of IRO.

Scope of D of A's examination to cover the period before 24 April 1996

11. Mr Howard YOUNG noted that CE had requested D of A to examine the tax returns and submissions made or represented by JEST since Mr WONG's appointment as the Acting CIR on 24 April 1996. In order to ascertain whether the due collection of public moneys had been put at risk, Mr YOUNG considered that D of A's examination should be extended to cover the period before 24 April 1996. In this connection, Mr YOUNG pointed out that it was stated in the IRD Unit 2 Circular No. 26/95 that officers should refrain from handling files of one's own self or one's close relatives. Mr WONG should have been aware of this requirement as the circular was signed by he himself as the Assistant Commissioner of Inland Revenue. As revealed from D of A's Report, however, Mr WONG, as CIR, had failed to comply with this requirement. Mr YOUNG therefore considered that the Administration should take one more step to ascertain whether Mr WONG had failed to do so before his appointment as CIR.

12. SCS advised that in determining the scope of the investigation, the Administration had taken into account the fact that CIR had the authority to make the final decisions on tax cases. Moreover, apart from the possible under-charging of tax payable by Company A in Case 1 due to the granting of depreciation allowances to Company A, Audit could not find evidence in other cases which suggested that the due collection of public moneys had been put at risk. In the circumstances, the Administration considered it unnecessary to extend D of A's examination to cover the period before 24 April 1996. S for Tsy added that under normal circumstances, the case files of IRD were kept for six years and those involved fraud, ten years. As computerization of records only started in IRD in 1995, its staff would have to conduct a manual search into the case files if D of A's examination was to be extended to cover a 6-year or 10-year period. It would cause a serious drain on IRD resources and affect the daily operation of the department.

13. Mr Albert HO did not accept the points made by SCS. He pointed out that though CIR had the authority to make the final decisions on tax cases, his decisions were normally made with reference to his subordinates' proposals, as shown in Cases 2 to 7 in which Mr WONG, as CIR, had approved his subordinates' proposals. Mr HO therefore considered that the proposals of officers below the rank of CIR were also of importance and that it was in the public interest that the Administration should extend the investigation to cover the period before Mr WONG assumed the appointment of Acting CIR. In response, S for Tsy advised that officers below the rank of CIR were required to follow IRD's internal guidelines when making their proposals. As it was the CIR who made the final decisions, the Administration maintained that it was the period during which Mr WONG had assumed the post of CIR that had caused the greatest concern.

Need for disciplinary proceedings

14. Ms Emily LAU expressed her surprise that the Administration had made the decision to terminate Mr WONG Ho-sang's contract of employment without conducting further investigation into the case. She sought clarification on the difference between "termination of contract" and "dismissal", and asked whether Mr WONG's misconduct was serious enough to justify a dismissal.

15. SCS advised that in general, dismissal would only be awarded if considered justified after disciplinary hearings. Regarding Mr WONG's case, his contract of employment provided for "termination of contract" and "dismissal". In determining the appropriate form of punishment, the Administration had taken into account the gravity of Mr WONG's misconduct and his service record. In view of DPP's advice that there was no evidence of a criminal offence, and Mr WONG's good performance record over the previous 30 years, the Administration considered it appropriate to terminate his contract of employment and forfeit his contract gratuities. DLO(CL) added that the Administration had acted in accordance with the terms of Mr WONG's contract of employment, as required under section 15 of the Public Service (Disciplinary) Regulation.

16. Ms Emily LAU and Mr Albert HO were of the view that the Administration should conduct further investigation into the case, instead of drawing a conclusion at this stage. Ms LAU considered that D of A's examination was only a fact-finding process and that formal disciplinary hearings should follow. In this connection, she quoted paragraph 13 of IRD Departmental Circular No. 27/98 where it was stated that "an IRD officer should also avoid dealing with files where his/her spouse has been connected with the preparation of the returns in a professional or representative capacity. Failure to do so may render him/her liable to disciplinary action.". Mr Albert HO also considered that the Administration should follow the established procedure for handling cases involving similar kinds of misconduct, and conduct formal disciplinary hearings so that Mr WONG could have the opportunity of making his defence before the investigating committee.

17. SCS emphasized that the Administration had followed the established procedure in handling Mr WONG Ho-sang's case. In general, if there was a prima facie case for disciplinary proceedings, the Administration would set up an investigating committee for finding of facts. On the basis of the findings, recommendations on punishment, if appropriate, would be submitted to the Public Service Commission (PSC) for advice. The final decision would be made by the Administration, and not the investigating committee. SCS further added that Mr WONG's case had involved records and documents of IRD which were subject to the official secrecy provisions under section 4 of IRO. Any investigating committee comprising officers from other departments and bureaux, including S for Tsy who was the supervisor of CIR, could not have access to those records and documents. However, section 4(5) of IRO provided an exception for D of A or any authorized officer of his department to have access to such records and documents as might be necessary for the performance of his official duties. The Chief Executive (CE) had therefore decided to invite D of A to examine the relevant tax returns and submissions. In the course of the examination, D of A had invited Mr WONG to respond to the findings and after that, CSB had communicated with Mr WONG twice in writing on the findings of D of A's Report. Mr WONG should therefore have had sufficient opportunity of making his own defence. Furthermore, the Administration had submitted the case to PSC for advice before making its decision to terminate Mr WONG's contract of employment. In the light of the above, SCS did not see the need to conduct disciplinary hearings on Mr WONG's case.

18. Mr Michael HO was disappointed with SCS's reply. He considered that the lenient approach adopted by the Administration in handling Mr WONG's case would undermine the public confidence on the credibility of the government. In response, SCS reiterated that though no disciplinary hearings were conducted, the Administration had handled the case in an impartial manner. In fact, it was not necessary for the Administration to submit the case to PSC as Mr WONG was a contract staff. However, in view of the fact that Mr WONG had previously served on permanent and pensionable terms for many years, and that his appointment as CIR had been approved by PSC, the Administration did submit the case to PSC which endorsed its recommendation.

19. Ms Emily LAU considered it strange that the Administration had regarded D of A's examination as an alternative to disciplinary hearings. Mr Ambrose CHEUNG also pointed out that the two were quite different in terms of nature and procedures involved. He was concerned whether it would become a formal practice for disciplinary hearings to be replaced by D of A's examination. SCS reiterated that CE had decided to request D of A to examine Mr WONG's case mainly because other departments and bureaux could not have access to the records and documents of IRD. Mr CHEUNG pointed out that in future, there might be similar disciplinary cases involving CIR and therefore, requiring the examination of the records and documents of IRD. He suggested the Administration to review the existing mechanism for handling such cases. S for Tsy cautioned that this would have significant implications on the official secrecy provisions under section 4 of IRO. Any changes to the official secrecy provisions, which was an important part of the taxation system in Hong Kong, would have to be considered with great care. She

Admin nevertheless undertook to consider the way to address the situation where IRD records were involved and the need to amend section 4 of IRO. SCS shared S for Tsy's concern. He said that if the case involved the misconduct of CIR but did not involve the records and documents of IRD, an investigating committee comprising his supervisor, S for Tsy, could be set up and disciplinary hearings might be conducted.

20. Responding to Mr CHAN Kwok-keung's enquiry on the disclosure of the findings of investigations, SCS advised that disciplinary proceedings were conducted closed door and the relevant information would not be disclosed to the public. However, as Mr WONG Ho-sang's case had been widely reported by the media, CE had decided to publish D of A's Report to address the public concern.

21. Responding to Mr CHAN Wing-chan's enquiry on whether Mr WONG could submit his resignation before the commencement of D of A's examination, SCS pointed out that if the Administration had reasons to believe that the officer concerned had submitted his resignation in order to avoid disciplinary proceedings, it could refuse to accept his resignation.

Need for further review of the declaration system

22. Mr Howard YOUNG and Mr LEE Kai-ming considered that the existing declaration system of investments by civil servants had proved to be ineffective as revealed in Mr WONG's case. The fact that the case was first reported by the media indicated that it was inadequate to rely on individual officers to report any conflict of interest between their official duties and investments. To plug the loophole, Mr YOUNG and Mr LEE called for a review of the declaration system. Mr NG Leung-sing shared their view and pointed out that JEST had been incorporated in Hong Kong in 1985 and yet Mr WONG's interest in the company was only revealed after a lapse of 14 years. In response, SCS advised that a comprehensive review of the declaration system had been conducted in September 1998. The Administration's plan at that time was to review the operation of the revised guidelines one year afterwards. It was about time for the Administration to review the situation. SCS assured Members that the Administration would, in the light of the lessons learned in Mr WONG's case and Members' comments, explore how the system could be improved.

Admin

23. Mr Howard YOUNG, Mr CHAN Wing-chan and Mr LEE Wing-tat suggested the Administration to conduct random checking on the officers concerned so that any of them who had failed to report as required would be made known. SCS said that the Administration had reservations on this proposal which might infringe on officers' privacy and rights of individuals. SCS added that in fact, the Administration had sought legal advice and was advised that under the existing legal system, the Administration did not have the authority to investigate into the investments and properties of civil servants and their spouses without reasonable doubt.

Admin

24. Mr LEE Wing-tat pointed out that applicants for public housing were subject to income tests and he could not see why the directorate officers who were responsible for formulating major government policies should not be subject to random checking on what they had declared. SCS considered the two not comparable. He also pointed out that declaration systems of investments in various overseas governments shared the common feature that the onus of reporting any conflict of interests situations rested with individual officers. If a civil servant had deliberately not reported such information, he had to face serious consequences, like Mr WONG. Responding to Mr LEE's enquiry on overseas practices, Deputy Secretary for the Civil Service 1 (DSCS1) advised that the Administration had been conducting a preliminary research on the relevant declaration systems in overseas governments for reference. At Mr LEE's request, DSCS1 undertook to brief the Panel on the information collected, in particular on whether random checking had been conducted on the civil servants concerned.

25. As the Administration had reservations on the proposal of random checking, Mr Ambrose CHEUNG asked whether the declaration system would provide for a mechanism under which any non-compliance of the relevant requirements could be reported to the Administration. SCS advised that though there was no formal mechanism as such, the Administration would follow up on any complaints from within and outside the government, including the anonymous ones.

26. Mr NG Leung-sing suggested the Administration to provide tailor-made guidelines for IRD and other departments involving duties of a sensitive nature. SCS advised that CSB had been working closely with Heads of Department and the Independent Commission Against Corruption (ICAC) to promote a Civil Service Integrity Programme. Under the Programme, the Administration had assisted 20 departments in drawing up supplementary guidelines on avoidance of conflict of interest situations specific to departmental operations and would offer the same assistance to other departments in the following financial years. S for Tsy added that the supplementary guidelines for IRD had already been issued in December 1998.

Improvement measures adopted by IRD

27. In response to Ms Emily LAU's questions, S for Tsy advised that IRD had already got the policy and legal clearance to proceed with its plan to require officers at or above the Assistant Assessor rank to provide detailed information of the occupations of their spouses. These officers were referred to those who were not occupying Tier II posts but whose spouses were in the taxation-related businesses. As to whether the spouses and close relatives of the officers concerned should be prohibited from undertaking taxation-related jobs, S for Tsy considered the suggestion too harsh as it would deprive the spouses and close relatives of the officers concerned of their right to choose their own occupation.

28. In this respect, S for Tsy pointed out that in addition to the above new arrangement, IRD had also undertaken a number of improvement measures to enhance the effectiveness of its declaration system, including:

(a) Designation of additional Tier II posts

38 more officers in IRD were designated as Tier II officers, thus increasing the total number to 75;

(b) Monitoring interview

Officers occupying Tier II posts were interviewed by CIR and Deputy Commissioner of Inland Revenue (Operations) with a view to seeking further information on the occupations of their spouses who were working in the taxation-related businesses. Officers were reminded of the need to avoid handling files with returns prepared by their spouses in any manner. Points covered during the interviews were fully documented. Both parties were required to sign on the record to avoid any misunderstanding.

(c) ICAC assistance

With the assistance of ICAC, a series of seminars on the prevention of conflict of interests situations would be conducted for the IRD officers concerned.

29. Ms Emily LAU was pleased to note the improvement measure mentioned in paragraph 28(b) above. However, she did not understand why the Administration was willing to introduce this measure, but not random checking. S for Tsy explained that the purpose of "monitoring interview" was to clarify the information reported by the officers concerned, for example, the nature of business of the companies of their spouses. IRD would not verify the information with the companies in question. At the request of Ms LAU, SCS undertook to consider adopting the same measure in other departments and S for Tsy agreed to provide further information about the "monitoring interview", such as the number of officers interviewed and the number of spouses who were carrying on or employed in a taxation or taxation-related business outside IRD.

Admin

(Post-meeting note: The information provided by the Administration on the improvement measures adopted by IRD was circulated to all Members vide LC Paper No. CB(1) 1840/98-99 on 31 August 1999.)

Selection criteria for civil service appointments

30. To guard against recurrence of similar incidents, the Deputy Chairman was of the view that the Administration should, apart from improving the declaration system, take into account the standard of integrity of officers in assessing their suitability for

civil service appointments, in particular the directorate posts of sensitive nature. SCS responded that all along, the standard of integrity had been one of the selection criteria. However, it was in fact quite difficult for the recruitment/promotion board to make a judgement on the standard of integrity of an officer if he had not committed any misconduct. Despite the difficulties involved, SCS said that the Administration would consider how the situation could be improved.

The case of Dr CHOY Yu-leuk

31. At Members' request, SCS undertook to provide a paper to brief the Panel on the outcome of the investigation on Dr CHOI Yu-leuk, Director of Buildings, in respect of his ordering of his staff to estimate the cost of removing an illegal structure from a flat he intended to buy.

(Post-meeting note : The paper provided by the Administration after the meeting was circulated to all Members vide LC Paper No. CB(1) 1840/98-99 on 31 August 1999.)

Internal discussion

32. Mr Albert HO sought Legal Adviser's advice on whether the Police or ICAC could have access to records kept in IRD for the purpose of investigating disciplinary cases, despite section 4 of IRO. Legal Adviser agreed to provide his advice in writing.

(Post-meeting note : The two papers prepared by the Legal Service Division, LC Paper Nos. LS273/98-99 and LS 280/98-99, were circulated to all Members vide LC Paper Nos. CB(1)1900/98-99 and CB(1)1948/98-99 on 15 September and 23 September 1999 respectively.)

III. Any other business

33. There being no other business, the meeting ended at 1:10 pm.

Legislative Council Secretariat

11 January 2000