

**The Administration's Response to the Legislative Council Panel on Public Service's Motion Requesting the Administration to Conduct an Independent Investigation**

**Purpose**

On 11 March 2005, the Administration provided an information paper (*LC Paper No. CB(1)1095/04-05(01)*) to the Legislative Council Panel on Public Service (LegCo Panel) presenting a comprehensive account of the Administration's findings and views on the post-retirement employment of Ms Elaine Chung, former Deputy Director of Housing / Deputy Secretary for Housing. At the meeting of the LegCo Panel held on 21 March 2005, Members expressed further views on the matter and passed a motion requesting the Administration to conduct an independent investigation into the matter. The Secretary for the Civil Service (SCS) answered all the questions raised at the LegCo Panel meeting on 21 March. This note sets out the Administration's response to those questions in more detail and to the motion.

**Background**

2. Ms Chung's application to take up employment with Hong Kong Ferry (Holdings) Co. Ltd (HKF) was approved in March 2004. The scope of the employment applied for, as given in her application, included work in the fields of travel, transport, hotel, cultural, recreational and hospitality services. As indicated in our past submissions to the LegCo / the LegCo Panel, Civil Service Bureau (CSB) has repeatedly communicated with Ms Chung with a view to ascertaining whether she has worked within the approved scope of work, especially in respect of her association with a proposal of Henderson Land Development Co. Ltd (Henderson) on the development of the West Kowloon Cultural District (WKCD). The steps taken include -

September 2004	Correspondence with Ms Chung on her association with Henderson's bidding for the WKCD development project.
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- November 2004 Further correspondence with Ms Chung on her association with Henderson's bidding for the WKCD project. The Advisory Committee on Post-retirement Employment met to discuss Ms Chung's case. CSB subsequently wrote to explicitly prohibit Ms Chung from taking part in the bidding or promotional activities of any bidding team for the WKCD project. On receipt of that letter, Ms Chung ceased all further involvement in the WKCD project.
- December 2004 Correspondence with Ms Chung on her involvement, if any, in an application for change in land use in relation to a proposed concrete batching plant in Tsing Yi.
- January 2005 Following the LegCo Panel meeting on 21 December 2004, further correspondence with Ms Chung on her work assignments for HKF. CSB also communicated with the District Officer (Kwai Tsing) (DO(K&T)) on an allegation that Ms Chung lobbied Kwai Tsing District Council (K&TDC) members, at a briefing and luncheon, for support in respect of an application for change in land use for a proposed concrete batching plant in Tsing Yi.
- February 2005 Meeting with Ms Chung to seek her further clarification on details of her employment with HKF.
- March 2005 DO(K&T) conducted further inquiry into the allegation relating to the change in land use application involving a concrete batching plant in Tsing Yi.

3. Amidst concerns expressed by the public and LegCo Members on the matter, SCS has already answered questions on the matter on a number of occasions –

- 1 December 2004 Replies to questions raised by Hon Kwong Chi-kin and other LegCo Members at a LegCo sitting
- 14 December 2004 Written reply to the Clerk to the LegCo Panel
- 21 December 2004 Discussion with LegCo Panel on CSB's written reply dated 14 December 2004.
- 2 February 2005 Response to a LegCo Motion Debate on the policy governing post-retirement employment.
- 21 March 2005 Discussion with LegCo Panel on CSB's report of findings on the case at another LegCo Panel meeting.

## **CSB's Findings and Assessments**

### Guiding principles for the investigation

4. In the present investigation, as in others, we must rely on facts and objective evidence in considering whether there is or has been conflict of interest between Ms Chung's employment with HKF and her former government duties. Where the evidence is inconclusive, it is only fair to give the former officer the benefit of the doubt.

5. As part of the due process to ensure the fairness of our investigation, we have also taken steps to make sure that Ms Chung had an opportunity to respond to our preliminary views on her case, and we have been guided throughout by legal advice in making our assessments. We have also consulted the Advisory Committee on Post-retirement Employment, which is an independent body appointed by the Chief Executive and is presently chaired by a High Court Judge with three non-official members, on our assessments.

### Ms Chung's association with Henderson's bidding for the WKCD development project

6. We have detailed our views on Ms Chung's association with Henderson's bidding for the WKCD development project in paragraphs 9 to 20 of *LC Paper No. CB(1)1095/04-05(01)* which was submitted to the LegCo Panel on 11 March 2005.

7. At the Panel meeting on 21 March 2005, two Members questioned that Ms Chung's provision of advisory service on the cultural aspect of Henderson's WKCD proposal might still constitute conflict of interest given that the cultural and property development elements of the WKCD project were intertwined. Our view is that while the WKCD project has both cultural and property development elements, how to source advisory services on these two different aspects of any bid for the project is a matter for the individual bidders to consider. Ms Chung, HKF and Henderson confirmed categorically on various occasions that Ms Chung's advisory service was limited to the cultural aspect of Henderson's WKCD proposal and neither she nor HKF had been involved in property-related matters in connection with the proposal. We have no evidence suggesting that the advisory services on the two aspects of Henderson's WKCD proposal could not be provided separately, or that Ms Chung has worked on the property development aspect of Henderson's WKCD proposal.

8. As such, we had to consider the question of conflict of interest on the basis of the claim of Ms Chung, HKF and Henderson that she provided advisory service only on the cultural aspect of Henderson's WKCD proposal. As Ms Chung had ceased to handle cultural matters in any official capacity for nearly five years before she took up the employment with HKF, any sensitive data or influence that she possessed in her official capacity would have become out-dated by the time she commenced the employment. We therefore accept that her provision of advisory service on only the cultural aspect of Henderson's WKCD proposal did not constitute conflict of interest with her former government duties.

9. In the above connection, we would like to clarify that as a general rule, in considering whether a proposed employment of a former civil servant would bring unfair advantage to his/her prospective employer over competitors, we are mainly concerned about whether the former officer would apply special knowledge / information (e.g. sensitive or time-sensitive information) or influence acquired from his/her government duties for the benefit of the prospective employer.

10. On a question as to whether CSB has taken necessary actions to monitor Ms Chung's compliance with the terms of approval of her employment with HKF, as mentioned in paragraph 7 of *LC Paper No. CB(1)1095/04-05(01)* and updated in paragraph 2 above, in the past few months CSB repeatedly

approached Ms Chung for clarifications with a view to ascertaining whether she stayed within the approved scope of work in working for HKF. In connection with the allegation that Ms Chung participated in the lobbying connected with a land use application, we have also sought assistance from DO(K&T) (see paragraph 22 of *LC Paper No. CB(1)1095/04-05(01)* and paragraphs 13 and 14 below).

11. As detailed in paragraphs 18, 20 and 27 of *LC Paper No. CB(1)1095/04-05(01)*, we consider that Ms Chung's making public appearances, comments and presentation on the cultural aspects of Henderson's WKCD proposal in October and November 2004 amounted to participation in the promotion of Henderson's proposal to the public and fell outside the scope of approved work, and hence was inappropriate and unacceptable. We also consider that Ms Chung did not exercise sound judgement commensurate with her previous senior government ranking to distance herself from any promotional activities connected with any bid for the WKCD project, to the detriment of the image and public confidence in the integrity of the civil service. At the LegCo Panel meeting on 21 March, one Member opined that the "punishment" of issuing a warning to Ms Chung was insufficient, and questioned the rationale for not suspending Ms Chung's monthly pension for her participation in certain promotional activities of Henderson in October and November 2004.

12. In considering the form of sanction, we need to take account of the circumstances of the case and the gravity of the misjudgement, as well as the legal threshold for invoking the pension legislation to suspend Ms Chung's monthly pension. The legislative provision on pension suspension should only be invoked on the basis of evidence and fairness; it could not and should not be invoked on the basis of personal views or sentiments. In the case of Ms Chung, we were guided by legal advice in not pursuing the suspension of Ms Chung's monthly pension. **We are of the view that in this case, the open expression of our strong criticism against Ms Chung's misbehaviour in attending certain promotional activities and the issue of a warning against her, given the level of publicity, is in substance a severe, official rebuke of her misbehaviour.**

Whether Ms Chung was involved in lobbying support for an application for change in land use in respect of a proposed concrete batching plant in Tsing Yi

13. Members queried that the Administration had accepted Ms Chung's claim that she did not participate in lobbying support from K&TDC members for Hong Kong Shipyard (HKS)'s application for change in land use in relation to its concrete batching plant project in Tsing Yi without conducting a thorough investigation into the allegation. To this, we would like to reiterate that our position was taken after a review by DO(K&T) of Ms Chung's written representation on her attendance at HKS's briefing and luncheon for K&TDC members, as well as his enquiries with some K&TDC members and his staff who were present at both events. We also note that in December 2004, in response to press enquiries, the K&TDC Chairman stated that Ms Chung did not play any active role on the occasion nor give any presentation on the land use proposal. He subsequently confirmed the accuracy of the relevant press report to DO(K&T).

14. After a K&TDC member said in a phone-in radio programme on 15 March 2005 that he had the impression that Ms Chung's attendance at the two events was to lobby support for the land use application, on 17 March 2005 DO(K&T) spoke to all K&TDC members who were present at the two events. **The enquiry result shows that except two K&TDC members, none of the other 12 members have an impression or recollection that Ms Chung lobbied support for the land use application at those two events.**

15. As none of the officers in CSB attended any of the said events, we have to rely upon the recollection of the attendees, including staff of the Kwai Tsing District Office, K&TDC Chairman and members in judging the propriety of Ms Chung's attendance at the said events. **Since the overwhelming majority of those present did not have the impression that Ms Chung had used the occasions to lobby support for the land use application, we consider that she should be given the benefit of the doubt.**

Ms Chung's office accommodation

16. On Members' questions on Ms Chung's office accommodation in Henderson's premises in Central, Ms Chung explained that her second office in Central was solely for convenience, and both HKF and Henderson made open statements that Ms Chung was an employee of HKF. **We have no objective**

evidence that substantiates the allegation that Ms Chung has been working for Henderson, not HKF, which would be outside the scope of SCS's approval.

## Conclusion

17. To sum up, our findings and conclusion are based on evidence unveiled and established through enquiries and examination of relevant facts. We have taken account of all relevant materials and information available to us, and have sought the independent views of the Advisory Committee on Post-retirement Employment and legal advice from the Department of Justice before reaching the conclusions detailed in *LC Paper No. CB(1)1095/04-05(01)*. We have tried our best to address the detailed concerns of the public and LegCo whilst at the same time being reasonable and fair in our approach to the investigation. We have concluded that Ms Chung's attending certain promotional activities of Henderson in October and November 2004 was inappropriate and unacceptable. We are of the view that in this case, the open expression of our strong criticism against Ms Chung's misbehaviour in attending the said promotional activities and the issue of a warning against her, given the level of publicity, is in substance a severe, official rebuke of her misbehaviour. **In the absence of new evidence or information, we do not see a valid case for conducting another investigation. However, we would be prepared to re-examine any particular issue in this case in the light of new information or evidence.**

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Civil Service Bureau  
April 2005