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9 February 2006

Mr Martin WHEATLEY  
Chairman  
Securities and Futures Commission Hong Kong  
8/F Chater House  
8 Connaught Road Central  
Central  
Hong Kong

Dear Mr Wheatley,

**Panel on Financial Affairs**

**Policies on remuneration for and post-termination employment of  
senior executives of the Securities and Futures Commission**

On behalf of Hon Bernard CHAN, Chairman of the Panel on Financial Affairs, I write to invite you to provide information requested by the Panel on the above subjects.

When the Panel was briefed at its meeting on 6 February 2006 on the work of the Hong Kong Monetary Authority (HKMA), members expressed concern about the policies on remuneration for and post-termination employment of senior executives of HKMA. The Panel would like to examine in detail such policies of the two regulators, HKMA and the Securities and Futures Commission (SFC). In this connection, SFC is invited to provide information on the remuneration policies applicable to its senior executives, including the criteria and factors for consideration in determining the remuneration package for the first three tiers of the senior executives, and the mechanism for pay review.

As regards the policy governing post-termination employment of senior executives of SFC, the Panel noted the brief information provided by the Administration in response to the oral question raised by Hon KWONG Chi-kin at the Council meeting held on 14 December 2005. The Panel would like to invite SFC:

- (a) to provide details about the existing policy, including the control period, sanitization period, approving criteria and authority, and sanctions (if any); and

- (b) to consider the need to review the existing policy in the light of the new arrangements for post-service employment of former directorate civil servants promulgated in January 2006, so as to ensure that former senior executives of SFC will not enter into business or take up employment which may constitute conflict of interest (real, potential or perceived) with their former duties or cause negative public perception. In this connection, SFC is invited to make reference to the improvement measures introduced by the Administration on 1 January 2006, which are finalized after consultation and detailed consideration. In particular, former directorate civil servants at D4 or above (or equivalent) will be subject to a minimum 12-month sanitization period so as to forestall real or potential conflict of interest and/or negative public perception by instituting a 12-month break between the officer's government duties and outside work. For ease of reference, a copy of the paper provided by the Administration to the Panel on Public Service on "Arrangements governing the taking up of outside work by directorate civil servants after ceasing active government service" is attached.

I should be grateful if you would let me have your reply with the relevant information (in both Chinese and English) by 15 March 2006. Please forward the soft copy of your reply and the information to Ms May LEUNG at [mleung@legco.gov.hk](mailto:mleung@legco.gov.hk).

Please note that unless you raise objection, the information provided to the Panel will be made available to the media and public and placed in the Library of the Legislative Council. The information may also be made available on the Web Site of the Council on the Internet.

Yours sincerely,

(Miss Salumi CHAN)  
Clerk to Panel

Encl.

c.c. Hon Bernard CHAN, JP  
Chairman of LegCo Panel on Financial Affairs

Mr Frederick MA Si-hang, JP  
Secretary for Financial Services and the Treasury  
(Fax: 2537 1736)

Dr York LIAO, SBS, JP  
Chairman of Remuneration Committee, SFC  
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Information Paper

21 November 2005

## **Legislative Council Panel on Public Service**

### **Arrangements Governing the Taking Up of Outside Work by Directorate Civil Servants After Ceasing Active Government Service**

#### **PURPOSE**

This paper sets out the revised policy and arrangements governing the taking up of outside work by directorate civil servants after they have ceased active government service.

#### **PRESENT POSITION**

2. Following a review, on 21 March 2005 the Secretary for the Civil Service briefed the Panel on Public Service on a set of preliminary proposals to modify the existing policy and arrangements governing the taking up of outside work by directorate civil servants after ceasing active government service. Staff consultation on the preliminary proposals subsequently ended in May 2005. Taking account of the feedback received during the staff consultation, views expressed by the general public and Members of the Legislative Council, as well as advice of an independent Advisory Committee on Post-retirement Employment, the Administration has finalized the revised policy and arrangements on the taking up of outside work by directorate officers after they have ceased active government service.

#### **REVISED POLICY AND ARRANGEMENTS**

3. Compared to the existing arrangements governing the taking up of outside work by directorate officers, **the revised arrangements are generally more stringent**. For example, they make a more explicit distinction between work for non-commercial organizations and work of a commercial nature, spell out in clear terms a set of across the board standard restrictions on scope of work for all cases of outside work involving directorate officers, as well as apply more stringent rules on

sanitization and disclosure of information especially for directorate officers at Directorate Pay Scale Point 4 (D4) or above (or equivalent). A comparison between the existing and revised arrangements governing outside work of directorate officers is at the **Annex**. The key elements of the revised control regime are highlighted in the ensuing paragraphs.

#### Control Coverage

4. **All directorate civil servants, irrespective of their terms of appointment and circumstances under which they leave the Government**, are required to seek prior permission if they wish to take up outside work, paid or unpaid, part-time or full time, if the principal part of the work is carried on in Hong Kong, during their final leave period and/or within a specified control period after they have left the Government.

#### Control Period

5. The control period is to count from an officer's formal departure from the Government (on exhaustion of final leave if any), and during the control period prior permission is required for taking up outside work. The control periods for different categories of directorate officers vary depending on their length of service before leaving the Government, with the great majority being subject to a two-year control period and the most senior ones to a three-year control period. We believe the control periods are long enough for the purpose of exercising control over ex-civil servants' outside work.

#### Approving Criteria

6. The two primary factors to be taken into account when considering an application for permission to take up outside work are whether there is real or potential conflict of interest between the applicant's former government duties and the proposed work, and whether any aspects of the proposed work would give rise to negative public perception. We will promulgate the specific pointers for consideration to help ensure thorough vetting and consistent handling of applications by the relevant parties, including the Permanent Secretaries, Heads of Department and Heads of Grade.

### Standard Restrictions on Scope of Work

7. We will **apply a set of standard restrictions on scope of work across the board in all cases of outside work taken up by directorate officers during the final leave and/or control period** i.e up to two years or more after they have left the Government, to better guard against conflict of interest and negative public perception. In essence, a directorate officer cannot be personally involved, whether directly or indirectly, in any bidding for government land, property, projects, contracts or franchises, or be engaged in work which is connected with certain aspects of his/her former duties (e.g. the formulation of policy or decisions, access to sensitive information) undertaken during the last three (or more) years of government service. There is also a general restriction that the officer should not engage in any activities which will cause embarrassment to the Government or bring disgrace to the civil service. Instead of implicitly referenced to these considerations in the vetting process as is the present practice, setting out the said restrictions in clear terms, and upfront, will go a long way to more comprehensively forestall conflict of interest and embarrassment to the Government/civil service, to ensure consistent handling among cases, and to facilitate enforcement by removing possible grey area.

8. In addition to the standard restrictions mentioned above, further restrictions on scope of work may be imposed depending on the circumstances of a case.

### Sanitization Period

9. The purpose of specifying a sanitization period is to forestall real or potential conflict of interest and/or negative public perception by instituting a break between an officer' government duties and outside work. During the sanitization period the officer is not permitted to take up any outside work, except for that covered by the blanket permission mentioned in paragraph 14 below. The sanitization period is to count from the date of an officer's ceasing active government service.

10. Diverse comments have been received on our original proposal of extending the minimum sanitization period across the board from six months to 12 months in respect of all directorate officers retired/retiring on pensionable or new permanent terms. There, however, seems to be general acceptance towards setting a more stringent sanitization requirement for higher ranking directorate officers than their junior counterparts, having regard to the difference in their levels of responsibilities. In light of the feedback received , we will put in place a two-tier

system whereby **officers at D4 or above (or equivalent) who have retired/are retiring on pensionable or new permanent terms will be subject to a minimum 12-month sanitization period, whereas directorate officers below D4 (or equivalent) will continue to be subject to a six-month minimum sanitization period.** We believe the difference in the minimum sanitization period is justified having regard to the general differences in the level of responsibilities and access to sensitive information between these two groups of officers. A longer sanitization period may be specified where such is required to more fully forestall conflict of interest or negative public perception. It is worth noting again that all directorate officers, in taking up any outside work during the final leave and/or control periods, will be subject to the standard restrictions mentioned in paragraph 7 above.

11. Under the new arrangements, consideration may be given to shortening the minimum sanitization period for outside work to be taken up with the non-commercial organizations listed in paragraph 14 below, where the work will not give rise to conflict of interest and is unlikely to cause negative public perception. The minimum sanitization period will be strictly adhered to in respect of other outside work (in particular that of a commercial nature), save in cases where there are special considerations and where there is clearly no conflict of interest and no negative public perception. For illustration, special considerations may include significant public interest that will be advanced by the taking up of the proposed work, and personal circumstances that warrant compassionate consideration.

12. No minimum sanitization periods are specified for directorate officers not retiring / retired on pensionable or new permanent terms such as agreement officers and resignees as the circumstances of these officers vary from case to case. For outside work involving these officers, the length of the sanitization period will be considered on a case-by-case basis.

#### Restrictions on Outside Work During Final Leave

13. The taking up of outside work during the final leave period is subject to the rules governing sanitization. In addition, **as directorate officers on final leave remain civil servants on full pay, they are not permitted to take up any full-time remunerated work or any work of a commercial nature (including self-employment) during the final leave period,** unless there are special considerations and no problem of dual identity. In this regard, directorate officers on final leave may, on application, normally only take up part-time or notionally remunerated work with the non-commercial organizations listed in paragraph 14

below, subject to the sanitisation rules and there being no problem of dual identity. We believe the new arrangement, as compared to the existing one, will be more effective in guarding against possible dual identity problem.

### Blanket Permission

14. To streamline procedure and to facilitate the taking up of voluntary work by directorate officers after ceasing active service, blanket permission will be given for all directorate officers to take up unremunerated work with the following non-commercial organisations –

- (a) charitable, academic or other non-profit-making organizations not primarily engaged in commercial operations;
- (b) non-commercial regional / international organizations; or
- (c) the Central Authorities,

throughout the final leave and control periods.

### Transparency

15. To enhance transparency, and since the public is generally more concerned with the taking up of outside work by senior directorate officers who, compared to their junior counterparts, have more access to sensitive information and are more likely to have built up influence within the Government, **we will place the basic information** (e.g. the last government post title of the officer, date of cessation of active government service, identity of the outside employer if applicable etc.) **on approved outside work taken up by officers at D4 or above** (or equivalent), **in a register for public inspection upon request.** Relevant information in the register will be removed as and when an officer's control period has expired or he/she has ceased the outside work, whichever happens earlier. For approved outside work taken up by directorate officers below D4 (or equivalent), the relevant information will be disclosed in response to public enquiries / queries on a case-by-case basis, where there is public concern about the propriety of the outside work.

### Sanctions and Monitoring

16. While the post-service employment control regime will remain essentially an honour system, we will make it clear to all directorate officers from the outset that where there is a breach of the rules governing the taking up of outside

work after ceasing active service, depending on the nature and gravity of the breach, SCS may consider invoking suspension of pension under the pension legislation and /or any other forms of sanction listed in item 12 of the **Annex**.

17. To facilitate compliance with any restrictions placed on an approved employment, the officer concerned will be required, before commencing the employment, to notify the prospective employer of the terms of approval including any sanitisation or restrictions imposed. In all cases of approved outside work, the officers concerned will need to confirm the commencement date of the approved work, report any material change to the approved work, and provide updates on their involvement in the approved work annually or as requested by the Civil Service Bureau.

#### Advisory Committee on Post-service Employment of Civil Servants

18. Directorate officers' applications to take up outside work will continue to be forwarded to the independent Advisory Committee on Post-service Employment of Civil Servants for advice (currently known as the Advisory Committee on Post-retirement Employment). This is an important feature of the vetting procedure that helps ensure that all cases are handled impartially.

### **WAY FORWARD**

19. We believe the finalized arrangements represent a reasonable balance between addressing the community's concern about any conflict of interest connected with the taking up of outside work by senior civil servants, and respecting the individual civil servants' right to employment or other work after they have ceased government service. We have informed the staff sides of the revised arrangements through the issue of an advance copy of the relevant circular in accordance with established practice. Our plan is to implement the new arrangements with effect from 1 January 2006.

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