

立法會

Legislative Council

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Panel on Public Service

**Minutes of special meeting held on
Monday, 13 July 2009, at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon LEE Cheuk-yan (Chairman)
Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon IP Wai-ming, MH
Dr Hon PAN Pey-chyou
- Member attending** : Hon WONG Kwok-hing, MH
- Members absent** : Hon LEUNG Kwok-hung
Hon WONG Sing-chi
- Public officers attending** : **Agenda item I**
Miss Denise YUE, GBS, JP
Secretary for the Civil Service

Mr Andrew H Y WONG, JP
Permanent Secretary for the Civil Service

Mrs Ingrid YEUNG, JP
Deputy Secretary for the Civil Service 1

Hon Ronald ARCULLI, GBS, JP
Chairman
Committee on Review of Post-Service Outside
Work for Directorate Civil Servants

Ms Ivy LAW
Secretary
Committee on Review of Post-Service Outside
Work for Directorate Civil Servants

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (1)2

Staff in attendance : Ms Sarah YUEN
Senior Council Secretary (1)6

Miss Winnie CHENG
Legislative Assistant (1)5

Action

I Report on Review of Post-service Outside Work for Directorate Civil Servants

- Report on Review of Post-Service Outside Work for Directorate Civil Servants

(LC Paper No. CB(1)2236/08-09(01) — Paper on report on review of post-service outside work for directorate civil servants provided by Committee on Review of Post-service Outside Work for Directorate Civil Servants

LC Paper No. CB(1)2241/08-09 — Updated background Brief prepared by the Legislative Council Secretariat)

Mr Ronald ARCULLI, Chairman of the Committee on Review of Post-Service Outside Work for Directorate Civil Servants (the Review Committee), briefed members on the contents of the report from the Review Committee to the Chief Executive (the Report).

General views and comments

2. Mr WONG Kwok-hing was keen to ensure that comments made by relevant parties in the Administration on directorate civil servants' applications for post-service outside work would be properly taken into consideration when the applications were processed. Mr ARCULLI responded that recommendations put forward in the Report, in particular Recommendation 22 therein that the Advisory Committee on Post-service Employment of Civil Servants (the Advisory Committee)'s advice on every approved and taken up post-service outside work be disclosed on the public register should help ensure the above. The Secretary for the Civil Service (SCS) added that Recommendation 8 on improving the provision of information by an applicant in the application form would also greatly help improve the internal assessment process.

3. Ms LI Fung-ying highlighted senior civil servants' concern about and resistance to tightening up the arrangements governing post-service outside work for directorate civil servants (the Control Regime). She enquired SCS how confident she was, in the face of the above, of taking forward the Review Committee's recommendations and whether the arrangements applicable to civil servants who were in receipt of pension and those who were not would vary.

4. SCS responded that the Chief Executive had yet to consider the recommendations. She also had to consult the staff side on the recommendations. The Department of Justice would be consulted on whether the recommendations were in compliance with the Basic Law and relevant international covenants and labour conventions regarding freedom of choice of occupation and the right to work. The above process would take some months. She said that the recommendations, if implemented, would apply to all directorate civil servants whether pensionable or not. The only difference would be that the sanction of suspending a retired directorate civil servant's monthly pension payments, as one form of sanction that could be invoked when there was a breach of the control regime, would not be applicable to directorate civil servants appointed on non-pensionable terms. In this connection, the Review Committee had already asked the Administration to keep the matter under review.

The control period

5. Mr WONG Kwok-hing welcomed the Report and said that he was glad to note Recommendation 7 therein, which recommended that the length of the control period should be as follows –

- (a) two years for Directorate Pay Scale (DPS) D1 to D3 (or equivalent) civil servants (i.e. no change to the length of the existing period);
- (b) three years for DPS D4 to D7 (or equivalent) civil servants (i.e. lengthening the existing period by one year); and

- (c) five years for DPS D8 (or equivalent) civil servants (i.e. lengthening the existing period by two years).

6. Mr CHEUNG Man-kwong opined that notwithstanding Recommendation 7, the Report could not tackle at root suspicion or perception of "deferred reward" for past favour done by a former directorate civil servant in his official position to benefit a particular entity or individual in return for lucrative post-service employment (the issue of "deferred reward"). In his view, unless lifetime ban would be imposed in cases where the former civil servant concerned had during government service been involved in significant contractual or legal dealings to which his/her prospective employer was a party, there would be difficulty in ensuring that protection of the public interest would take precedence over protection of an individual's right.

7. Mr ARCULLI responded that the above proposed lifetime 'employer-specific' ban had been included in the Democratic Party's submission to the Review Committee. The Review Committee had examined in detail such a proposal together with the proposal of a lifetime total ban on paid post-service outside work. However, given the difficulty in delineating the exact scope of a lifetime ban, the Review Committee (except Mr Albert HO who was a member of the Review Committee) did not recommend imposing a lifetime ban.

8. Mr CHEUNG Man-kwong considered it undesirable that the Review Committee had not acceded to Mr Albert HO's request in his capacity as member of the Review Committee that it should further explore introducing a lifetime 'employer-specific' ban. In his view, the request was in fact restrained when compared to a lifetime total ban on paid post-service outside work, and was necessary if the Control Regime was to have any effect. Implementation of the above lifetime 'employer-specific' ban proposal could help send a positive message to the public that the Administration was tackling the issue of "deferred reward" seriously. In response, Mr ARCULLI explained the difficulty in completely eliminating suspicion or perception of 'deferred reward' in post-service outside work.

9. Mr CHEUNG Man-kwong stressed the need to demonstrate to the public the Administration's determination to tackle the issue of "deferred reward" seriously. He emphasized the importance of giving due regard to the views of every member on the Review Committee, and urged SCS to ensure that Mr Albert HO's request above would be taken forward instead of being left in the minority report. SCS echoed Mr ARCULLI's points above, and added that under the Prevention of Bribery Ordinance (Cap. 201), a former or incumbent civil servant making use of his former or serving public office to benefit specific entities/individuals in return for a reward would constitute a criminal offence if substantiated. In consideration of the above and the fact that actual 'deferred reward' could be tackled by existing law (such as the Prevention of Bribery

Ordinance), it might not be reasonable to propose draconian measures to prevent perception or mere suspicion of 'deferred reward'. In fact, of the 171 post-service outside work applications approved in the past three years, 60% involved applications for taking up post-service work in charitable, academic or other non-profit making organizations not primarily engaged in commercial operations. Of the remaining 40%, only seven applications were related to private commercial organizations engaged in Real Estate/Property Development.

10. Mr CHEUNG Man-kwong pointed out that a directorate civil servant could in his official position tactfully do favour to benefit a particular entity or individual by continuing negotiation with that entity or individual for various reasons when the circumstances were against the Government, so that the deal struck would at the end benefit the entity or individual. In this way, the directorate civil servant concerned could hardly be caught. He opined that to prevent the above from happening, draconian measures might be necessary to plug the loopholes in the Control Regime.

11. Mr ARCULLI responded that as he understood from relevant departments, various safeguards had already been built into the procedures to be followed in dealings related to land, property or award of franchise matters, and no individual civil servants, however senior, could make such decisions single-handedly. Instead, most of the decisions were made by relevant committees involving representatives from a number of departments. The deliberations concerned were all duly recorded and the process subject to internal checks. In addition, the Independent Commission Against Corruption (ICAC) helped departments to identify and plug loopholes in operations that might induce corruption. The Audit Commission also kept operation of various Government departments under review. The opportunities for malpractising for "deferred reward" should have therefore been minimized. The Review Committee had taken all the above factors into consideration when conducting the review of the Control Regime. Mr CHEUNG Man-kwong, however, maintained that there was a need to give due regard to Mr Albert HO's request.

12. Pointing out that decisions regarding building plans by the Building Authority would take effect even if proved wrong unless challenged by judicial review, Dr Margaret NG opined that in recognition of such significant consequences, there was a need to restrict the former civil servants concerned from taking up post-service outside work in the relevant field. Mr ARCULLI responded by reiterating ICAC's role in plugging loopholes from the angle of anti-corruption, and the point that discretion was rarely exercised by individual civil servants. Most decisions were made by committees the operation of which was duly recorded in writing. Where a discretion was exercised by an individual civil servant, the decision would be made in accordance with relevant guidelines and precedents and if not, the relevant justifications given in writing. Where a party was aggrieved by the exercise of such discretion, appeal channel was available.

13. Dr Margaret NG pointed out that despite the operation of related committees, the final decisions regarding land, property or franchise matters might be made by individual civil servants whose relationship with the parties concerned was difficult to track because it was common practice for property developers to set up new companies to take up new projects. Mr ARCULLI responded that the proposed tightened requirement of an applicant for post-service outside work to disclose his material past contacts/dealings with the parent or "related" companies of the prospective employer should help tackle the above concern. He further reiterated that building plan applications had to go through many steps and officials with every twist and turn duly minuted before decisions were reached notwithstanding the exercise of discretion. Dr NG remained unconvinced, pointing out that disclosure alone could not help augment public confidence in the Control Regime and address public concern about transfer of interests in relation to property-related or land-related matters. Mr ARCULLI stressed that the above proposed improvement to the disclosure of information in post-service outside work applications should be able to make the application process more transparent to minimize suspicion of "deferred reward".

14. While glad to note the Review Committee had given due regard to protection of the public interest, Dr PAN Pey-chyou highlighted the need to also protect a directorate civil servant's right to work after he left the civil service in recognition of the increase in life expectancy in general, and that civil servants appointed under the New Terms were no longer eligible for pension. He also opined that to address the issue of "deferred reward", a more focused approach should be adopted instead of extending the control period across the board. He therefore shared Mr CHEUNG Man-kwong's view on the need to further explore the introduction of a lifetime 'employer-specific' ban. Mr ARCULLI reiterated his response to Mr CHEUNG in paragraph 11, and advised that suspicion of "deferred reward" could never be completely eliminated.

15. Dr PAN Pey-chyou said that it was technically feasible to single out special cases involving significant interests that warranted special treatment. Mr ARCULLI responded that the recommendations in the Report concerning disclosure should help identify such cases for special consideration by the Advisory Committee.

16. The Chairman said that the recommendations of the Report, which in his view mainly aimed at tightening disclosure requirements, could not effectively address public concern about "deferred reward". He shared Mr CHEUNG Man-kwong's view on the need for a lifetime employer-specific ban, and opined that it was reasonable to restrict former directorate civil servants' right to pursue post-service outside work because they were well remunerated during their service with the Government and enjoyed generous retirement benefits. The argument that with the increase in life expectancy a directorate civil servant should be allowed to continue to contribute to society in his post-retirement years could also

be addressed by deferring the retirement age. Moreover, there were many channels to contribute to society. The Administration noted the views of the Chairman.

Politically appointed officials

17. While welcoming the recommendations in the Report to strengthen the Control Regime, Mr WONG Kwok-hing opined that since politically appointed officials had wider powers, to ensure fairness and acceptability of the recommendations, similar stringent control arrangements should also be applied to politically appointed officials. Mr IP Wai-ming and Mr CHEUNG Man-kwong shared his views.

18. Mr ARCULLI replied that the subject was outside the terms of reference of the Review Committee. However, some Review Committee members were of the view that it was important for the Administration to consider whether parity or consistency between politically appointed officials and directorate civil servants should be introduced. There were also various views received on post-office employment control of politically appointed officials during public consultation. The Review Committee had thus decided to draw the Chief Executive's attention to the views by summarizing them in Chapter 6 of the Report and had in fact urged the Chief Executive to carry out a separate review. In response to Mr WONG Kwok-hing's further enquiry, Mr ARCULLI explained that since the matter was outside its terms of reference, the Review Committee had not examined the rationale behind the post-office employment control arrangements governing politically appointed officials and was therefore not in a position to provide a considered view on the matter.

19. Mr WONG Kwok-hing considered it unfair that while the control period of political appointed officials was only one year, the proposed control period of directorate civil servants ranged from two to five years. Senior civil servants considered the above double standard unacceptable and were discontented and demoralized. To ensure fairness and proper co-operation between the two types of Government officials, he stressed the need to apply the Review Committee's recommendations to politically appointed officials, and to impose more stringent control arrangements on them. SCS responded that the Control Regime and the control arrangements governing post-office employment for politically appointed officials were separate systems. She agreed to relay to the relevant authorities members' concerns about the post-office employment control of politically appointed officials. The Chairman commented that control arrangements governing politically appointed officials should be followed up by the Panel on Constitutional Affairs.

20. The Deputy Chairman shared the views of Mr WONG Kwok-hing above, and pointed out that the control arrangements governing politically appointed officials were definitely insufficient considering the expansion of the Political

Appointment System whereby politically appointed officials could come from different walks of life and might be closely related to various private consortia. She urged SCS and Mr ARCULLI to relay her views to the senior level of the Government including the Secretary for Constitutional Affairs and the Chief Secretary for Administration. SCS responded that the Review Committee had already urged the Chief Executive to carry out a separate review on control arrangements governing politically appointed officials. The Chief Executive would consider all views put forward in the Report.

21. Mr CHEUNG Man-kwong said that the control arrangements governing politically appointed officials were too lenient and powerless, having regard that the advice of the Advisory Committee on Post-Office Employment for Former Chief Executives and Politically Appointed Officials on an employment or appointment that a former politically appointed official intended to take up was not binding on him. He considered that with the appointment of political assistants and under secretaries under the expansion of the Political Appointment System, political appointees were relatively young and would likely take up post-office employment. Given these, a review of the relevant control arrangements was important not only to address the grievances of senior civil servants about unfairness but also because the above inadequacy might induce corruption. He called upon the Administration to conduct the above separate review during the some three-year remaining tenure of the existing political appointees, so as to ensure that the terms of appointment of new political appointees could be revised by tightening post-office work restrictions on them, for the purpose of achieving a balance between the control arrangements of the two types of Government officials.

22. The Chairman enquired whether the review could be conducted earlier to subject politically appointed officials to tighter control instead of taking three years as estimated by Mr CHEUNG Man-kwong. SCS responded that there was a need to examine the respective employment contracts of the politically appointed officials in consultation with the Department of Justice to ascertain whether there were any legal or contractual constraints to the introduction of additional restrictions on them under their existing contracts.

Disclosure recommendations to enhance transparency and facilitate public monitoring

23. The Deputy Chairman considered it difficult to implement Recommendation 8, which required an applicant for post-service outside work to disclose in the application form his material past contractual, legal, official and other contacts/dealings (if any) with the parent or related companies of the prospective employer during his last three years of government service if he was at DPS D1 to D3 (or equivalent), and during his last six years of government service if he was a DPS D4 or above (or equivalent) civil servant, irrespective of whether or not he would be involved in the business of these entities. In her view, this might equate to denying directorate civil servants the right to take up post-service

outside work and was too stringent and unfair.

24. Mr ARCULLI responded that to safeguard public interest, the directorate civil servant applying for permission to take up post-service outside work should be made to shoulder greater responsibility for his application. Hence the Review Committee proposed under Recommendation 8 that an applicant should be required to provide any other information which he considered relevant to the assessment of his application. Moreover, the applicant was only required to disclose "material" past contacts/dealings and not insignificant details, and a DPS D4 or above (or equivalent) civil servant should normally have served in two to three different postings during his last six years of government service. The Deputy Chairman, however, maintained that civil servants at DPS D1 to D3 (or equivalent) should not be subject to the above proposed disclosure requirement because some DPS D1 civil servants might only be consultants in clinics, and it was most unlikely that they would be involved in transfer of interests. Mr ARCULLI and SCS responded that the main consideration was whether the contacts/dealings in question were indirectly related to the prospective employer by virtue of its parent or related companies.

25. Mr IP Wai-ming stressed the need for public participation in the processing of directorate civil servants' applications for post-service outside work, so that objections could be raised where necessary. Mr ARCULLI responded that under Recommendations 21 and 22, the scope of public register would be expanded to provide case records containing the Advisory Committee's advice on every post-service outside work approved and taken up by directorate civil servants.. This would facilitate public monitoring. Recommendation 11 on expansion of the Advisory Committee's membership would also enhance its representativeness and indirectly widen public participation. He emphasized that notwithstanding approval of an application, the public could still bring to the attention of the Administration or the Advisory Committee any new information for objecting to the taking up of post-service work by the directorate civil servant concerned. If the grounds put forward were sound, the approval could be suspended or withdrawn where necessary.

Independence of Secretariat

26. Mr WONG Kwok-hing indicated support for Recommendation 14 that the secretariat of the Advisory Committee be made independent of the Civil Service Bureau to assure the public of its impartiality and fairness, and enquired about the contemplated details.

27. Mr ARCULLI responded that presently the Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service was an independent secretariat. If the Advisory Committee's workload justified a secretariat of its own, its proposed independent secretariat would be similar to the Joint Secretariat. If not, the Administration could consider tasking the Joint

Secretariat to serve the Advisory Committee as well.

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28. In summing up, the Chairman requested the Administration to report to the Panel the Government's final views on the recommendations of the Report. The Panel agreed that concerns about the control arrangements applicable to politically appointed officials would be referred to the Panel on Constitutional Affairs for follow-up discussion.

II Any other business

29. There being no other business, the meeting ended at 10:10 am.

Council Business Division 1
Legislative Council Secretariat
30 November 2009