

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

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

July 2009

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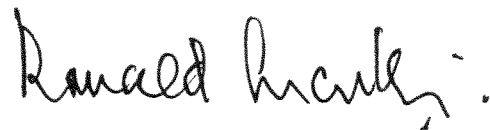
## FOREWORD

In recent years, there have been several occasions when work undertaken by former directorate civil servants after they leave government service was the subject of interest of the public and the media. This is understandable as it involves the protection of the public interest and the protection of an individual's right to work. Last year, the public expressed grave concern over the approval given to Mr Leung Chin-man, a retired directorate civil servant, to work for a particular private developer. In response, the Chief Executive appointed an independent Committee on Review of Post-service Outside Work for Directorate Civil Servants (hereafter referred to as 'the Review Committee') in September 2008 to review the existing policy and arrangements.

Public interest embodies, among other things, good governance, public trust as well as integrity and impartiality of civil servants. At the same time, another crucial facet of public interest is an individual's right to work which, although enshrined in our laws, should not be taken as absolute. Indeed, the Review Committee shares the view of most respondents to our public consultation that protection of the public interest takes precedence over protection of an individual's right to work. This necessarily gives rise to the question whether the existing policy and arrangements strikes an appropriate balance.

In addition to several public forums and briefings, the Review Committee held a total of 24 meetings to examine not just the existing policy and arrangements but also to discuss frankly and extensively views expressed by different sectors of the community as well as views of Members themselves. This contributed much to the deliberations of the Review Committee in arriving at the 23 recommendations covering different aspects of the control regime which is part of this Report to be submitted to the Chief Executive. There are several recommendations where the Review Committee was not unanimous but it was not due to the lack of effort. Nonetheless I am comfortable that this will not detract from the main thrust of our recommendations which we believe will in some instances improve the control regime and in others mitigate suspicion or perception of impropriety.

In conclusion, on behalf of the Review Committee I would like to thank everyone who has given us their valuable views as well as to those members of the Civil Service Bureau who have assisted us in our work. On a personal note, I would like to thank each and every Member of the Review Committee for their valuable contribution and time, including many Saturday mornings and the occasional evenings, without which we would not have been able to complete our task within a few months.

A handwritten signature in black ink, appearing to read "Ronald Arculli". The signature is written in a cursive style with a small flourish at the end.

**Ronald Arculli**  
Chairman, Committee on Review of  
Post-service Outside Work for  
Directorate Civil Servants

# EXECUTIVE SUMMARY

## INTRODUCTION

In response to public concern over post-service outside work of directorate civil servants, the Chief Executive appointed on 30 September 2008 an 11-member strong independent Committee on Review of Post-service Outside Work for Directorate Civil Servants (hereafter referred to as ‘the Review Committee’) to review the existing policy and arrangements and to submit its findings and recommendations to the Chief Executive in mid-2009. The membership and terms of reference of the Review Committee are set out in Chapter 1.

2. The Review Committee divided its work into three phases and held a total of 24 meetings. It examined the current policy and arrangements governing post-service outside work for directorate civil servants (hereafter referred to as ‘the Control Regime’) in detail. An overview of the Control Regime is provided in Chapter 2. It also studied the practices in seven overseas jurisdictions (namely Australia, Canada, France, New Zealand, Singapore, the United Kingdom and the United States of America). A summary of the arrangements in these countries are set out in Chapter 3.

3. The Review Committee issued a consultation document and launched a two-month public consultation in mid-February 2009. It received views expressed by different sectors of the community through various briefings/forums and written submissions. All the 77 written submissions received (except those which the respondents had asked for non-disclosure) have been uploaded onto the Review Committee’s website ([www.dcspostservice-review.org.hk](http://www.dcspostservice-review.org.hk)), hardcopies of which are available upon request. The Review Committee would like to thank all the individuals and organisations for participating in the various briefings and forums, and for their valuable views. A summary of the public response is set out in Chapter 4.

## FINDINGS AND RECOMMENDATIONS

4. The Review Committee examined in detail the Control Regime and deliberated on the response made by the public and stakeholders. It also made reference to the overseas practices. It made a total of 23 recommendations, covering the following different aspects of the Control Regime –

- (a) underlying principles (Recommendation 1);
- (b) policy objective (Recommendation 2);
- (c) design and operation (Recommendations 3 to 20); and
- (d) public monitoring (Recommendations 21 to 23).

### I. Underlying Principles

**Recommendation 1** – Protection of the public interest and protection of an individual’s right should continue to be the two principles underlying the Control Regime, with protection of the public interest taking precedence over protection of an individual’s right.

5. The Review Committee believes that both the protection of the public interest and protection of an individual’s right, the two current underlying principles of the Control Regime, are important. On the one hand, the Government has the duty to uphold the public interest. On the other hand, an individual’s right, in particular the right to work and freedom of choice of occupation, is a fundamental right enshrined in the Basic Law and an international covenant and a labour convention applicable to Hong Kong. This right, however, should not be taken as absolute.

6. Civil servants are employed by the Government to serve the public. Thus for the protection of the public interest, the imposition of reasonable restrictions on a civil servant’s right to work after he leaves the civil service is justified. The Review Committee recommends that

protection of the public interest and protection of an individual's right should continue to be the two principles underlying the Control Regime, with protection of the public interest taking precedence over protection of an individual's right.

## II. Policy Objective

**Recommendation 2** –The policy objective should be expanded to make specific references to –

- (a) avoiding suspicion or perception of ‘deferred reward’; and
- (b) making good use of limited human resources.

There is no need to make a specific reference in the policy objective to maintaining the attractiveness of the civil service as a career.

7. The Review Committee is keenly aware of public concern over the possibility of a directorate civil servant making use of his public office to benefit specific entities/individuals while in government service in return for, or in the hope of, post-service employment, namely the so-called ‘deferred reward’. While actual ‘deferred reward’ should be tackled by the existing law (such as the Prevention of Bribery Ordinance), perception or mere suspicion of ‘deferred reward’ is a different matter altogether.

8. The Review Committee notes that the current policy objective has not made specific reference to ‘avoiding suspicion or perception of deferred reward’, and that Canada and the United Kingdom (UK) have specifically referred to such concerns in the policy objective of their control regimes of post-service employment for senior civil servants. The Review Committee recommends that the policy objective should be expanded to include such reference. This would underline the importance of taking these factors into account by both –

- (a) directorate civil servants when they submit applications for post-service outside work; and
- (b) the internal and external assessment parties when such applications are examined.



It would also mitigate, although not eliminate, public concern on this issue.

9. Furthermore, the Review Committee considers that experience and expertise of former directorate civil servants should be usefully harnessed to the overall benefit of the Hong Kong community. It also notes that the benefits of former civil servants' taking up post-service outside work are explicitly recognised in the post-service employment control regimes for civil servants in Australia and New Zealand. It considers that the policy objective should be expanded to include an explicit reference to putting limited human resources to good use.

10. Separately, the Review Committee considers that while it is important for the Government to be able to recruit and retain quality individuals in the civil service for the good governance of Hong Kong, there are other factors besides the stringency of the Control Regime which may affect the attractiveness of the civil service as a career. As it is difficult to ascertain the relative importance of all the relevant factors, the Review Committee therefore considers that there is no need to make a specific reference in the policy objective to maintaining the attractiveness of the civil service as a career.

### **III. Design and Operation**

#### **(a) Periods of Restriction**

**Recommendation 3** – A *lifetime total ban* on paid post-service outside work should not be imposed. A *lifetime specific ban* on particular types of post-service employment should also not be imposed (with the Honourable Albert Ho registering a different view). The Honourable Albert Ho considers that the possibility of a lifetime 'employer-specific' ban on a former directorate civil servant who has had dealings in land, property or award of franchise matters when in government service should be further explored.

11. Public views were received on two forms of lifetime ban on paid post-service employment. One form was a lifetime total ban on any

paid employment, in particular for retired directorate civil servants in receipt of monthly pension payments. The other form was a lifetime specific ban targeting particular types of paid employment.

12. The Review Committee does not recommend imposing a lifetime total ban based on the following considerations –

- (a) it violates an individual's right to work and freedom of choice of occupation as enshrined in the Basic Law and an international covenant and a labour convention applicable to Hong Kong;
- (b) retirement benefits are earned by a directorate civil servant for his past service to the Government. They are not a form of compensation for deprivation of his right to engage in paid work for life after leaving the Government;
- (c) it is in the best interest of the community for limited human resources to be put to good use; and
- (d) no overseas jurisdiction studied imposes a lifetime total ban on its former senior civil servants.

13. There were views supporting a lifetime specific ban targeting particular types of paid employment, e.g. post-service work in the same field as that undertaken by a former directorate civil servant while in government service. Given the difficulty in delineating the exact scope of such a draconian measure (see paragraphs 16 to 19 below), the Review Committee (except the Honourable Albert Ho) does not recommend imposing a lifetime specific ban on paid post-service employment. The Honourable Albert Ho recognises the difficulty but considers that a lifetime 'employer-specific' ban on a former directorate civil servant who has had dealings in land, property or award of franchise matters when in government service should be further explored.

<p><b>Recommendation 4</b> – No change should be made to the minimum sanitisation period.</p>
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14. The minimum sanitisation period (namely 6 or 12 months depending on the rank of directorate civil servants) is a specified period

of restriction counting from the date of cessation of active duty of a directorate civil servant. During this period, permission will normally not be given to a directorate civil servant to take up post-service outside work with a commercial organisation. The Review Committee notes that among the seven overseas jurisdictions studied, only the UK has a similar blanket prohibition of post-service outside work, which covers a period of three months and is only applicable to very senior civil servants. The current length of the minimum sanitisation period in the Hong Kong's Control Regime is the longest compared with all the overseas control regimes studied. The decision authority may also lengthen or shorten the minimum sanitisation period in respect of an application for post-service outside work if needed.

15. The Review Committee considers that further lengthening of the minimum sanitisation period across-the-board may contravene one of the underlying principles of the Control Regime, namely protection of an individual's right to work. In addition, it would be unreasonable to prohibit former directorate civil servants who have resigned from the Government or who have completed termed contracts from taking up outside work for a protracted period of time after they have left government service.

**Recommendation 5** – The length of the control period should not be determined by specified fields of work during government service.

16. There were views that directorate civil servants working in certain fields of work during government service, such as property-related or land-related matters, were more prone to conflict of interest and suspicion or perception of 'deferred reward' in their post-service outside work. Hence, a longer prohibition (but not lifetime ban) or control period (see paragraph 20 below) should be imposed on such directorate civil servants.

17. The Review Committee does not recommend imposing control by specified fields of government work having regard to the following considerations –

- (a) it is difficult to devise a set of objective criteria for the selection of specified fields of government work;

- (b) it may not be fair or reasonable to subject former directorate civil servants who have worked in a specified field while in government service to more stringent post-service outside work control, irrespective of the actual extent of their involvement in the specified field;
- (c) it may engender difficulties in posting civil servants to serve in the specified fields of work; and
- (d) it is not in line with overseas practices.

**Recommendation 6** – The length of the control period should not be determined by post-service outside work in the same field as a directorate civil servant’s past government duties.

18. There were views that the risk of conflict of interest between former government duties and post-service outside work would be greater if a former directorate civil servant took up post-service employment in the same field as his past government duties. This was because such a civil servant was more likely to have had past dealings with the prospective employer or its competitors, and/or access to industry-specific information, during his past government service. Hence, there were calls for imposing a longer control period for post-service outside work in the same field as a directorate civil servant’s past government duties.

19. The Review Committee does not recommend imposing a longer control period for post-service outside work in the same field as past government duties having regard to the following considerations –

- (a) it will have the greatest negative impact on directorate civil servants in professional grades (such as doctors and engineers) and those working in dedicated single fields of work for their entire civil service career (such as education officers and police officers) since by qualification and experience, they are likely to wish to take up post-service employment in their respective professions or fields;
- (b) it will also adversely affect generalist directorate civil servants. These civil servants will be prohibited from

taking up post-service outside work in more than one field if they have worked in several bureaux/departments during their last few years of government service;

- (c) it is not straight-forward to delineate what constitutes ‘work in the same field’;
- (d) the work restrictions currently imposed on all approved post-service outside work applications (see paragraphs 36 to 37 below) should be able to mitigate the concern over conflict of interest arising from contacts and/or information obtained during past government service; and
- (e) no such restriction exists in any of the overseas jurisdictions studied.

**Recommendation 7** – The length of the control period should be as follows (with the Honourable Audrey Eu and the Honourable Albert Ho registering a different view) –

- (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).

The Honourable Audrey Eu and the Honourable Albert Ho recommend that the length of the control period should be –

- (a) three years for DPS D1 to D3 (or equivalent) civil servants (i.e. lengthening the existing period by one year); and
- (b) five years for DPS D4 to D8 (or equivalent) civil servants (i.e. lengthening the existing period by three years for DPS D4 to D7 (or equivalent) civil servants and by two years for DPS D8 (or equivalent) civil servants).

20. The control period is a specified period of restriction counting from a directorate civil servant’s formal departure from the Government (i.e. on exhaustion of his final leave if any). Under the Control Regime, directorate civil servants are divided into two groups, each of which is

subject to different lengths of control period, namely: two years for Directorate Pay Scale (DPS) D1 to D7 (or equivalent) civil servants who occupy a wide range of posts from chiefs in some professional grades to heads of departments; and three years for DPS D8 (or equivalent) civil servants who are the most senior civil servants and mostly serve as permanent secretaries.

21. The Review Committee considers the requirement for a former directorate civil servant to seek prior permission before taking up post-service outside work during the specified control period and the ability of the decision authority to impose additional work restrictions as necessary when approving an application are two practical and effective tools in the Control Regime. These tools would not cause an individual's right to work to be restricted unreasonably.

22. While Members of the Review Committee have different preferences on the appropriate length of the control period, they believe it is in the best public interest for them to reconcile their different preferences, if possible. With this objective in mind, the Review Committee (except the Honourable Audrey Eu and the Honourable Albert Ho) considers that the control period for directorate civil servants at DPS D1 to D3 (or equivalent) should remain unchanged at two years, as the public is relatively less concerned about the post-service outside work of this group of directorate civil servants given their limited discretionary powers and involvement in policy formulation. It further considers that the control period for the more senior directorate civil servants should be lengthened to a different extent having regard to their level of responsibilities, access to confidential information and influence over policy formulation. Specifically, it considers the control period should be lengthened from two to three years for DPS D4 to D7 (or equivalent) civil servants and from three to five years for DPS D8 (or equivalent) civil servants.

23. The Honourable Audrey Eu and the Honourable Albert Ho consider that to better mitigate public concern, the control period for all directorate civil servants should be lengthened. Specifically, they recommend that the control period should be lengthened from two to three years for DPS D1 to D3 (or equivalent) civil servants, and that for

DPS D4 to D8 (or equivalent) civil servants should be lengthened and standardised at five years (i.e. lengthened from two to five years for DPS D4 to D7 (or equivalent) civil servants, and from three to five years for DPS D8 (or equivalent) civil servants).

**(b) Internal Assessment Process**

**Recommendation 8** – The provision of information by an applicant in the application form should be improved as follows –

- (a) irrespective of whether or not an applicant will be involved in the business of the parent or related companies of the prospective employer, he should be required to disclose his material past contractual, legal, official and other contacts/dealings (if any) with these entities during his last three years of government service if he is at DPS D1 to D3 (or equivalent), and during his last six years of government service if he is a DPS D4 or above (or equivalent) civil servant;
- (b) an applicant should be required to provide any other information which he considers relevant to the assessment of his application; and
- (c) the policy objective and the assessment criteria should be stated upfront on the application form so as to remind an applicant of the factors that would be taken into account in the assessment process. This should help him to decide what other relevant information to provide as required under (b) above.

24. Currently, an application for post-service outside work is first assessed internally by the relevant parties in the Administration. In making their assessment, these parties will refer to files and records in the concerned bureau(x)/department(s) as well as the information provided by the applicant in his application form.

25. At present, an applicant is required to provide information, in the application form, on his past contractual, legal, official and other contacts/dealings (if any) with the prospective employer as well as its parent or any of its subsidiary companies in his last three years of government service. However, if the applicant will not be involved in

the business of the prospective employer's parent company or any of its subsidiary companies, he is *not* required to provide such information with those entities.

26. The Review Committee believes that the public concern over any impropriety of approved and taken-up post-service outside work could be alleviated if public trust in the assessment process is enhanced. It further believes that the additional information proposed under Recommendation 8 will help provide the assessment parties with the necessary information to properly assess an application.

**Recommendation 9** – All applications from DPS D4 to D8 (or equivalent) directorate civil servants should be assessed with reference to the applicants' last six years of active government service.

27. The Review Committee notes that the internal assessment parties may assess an application from a directorate civil servant at DPS D4 to D8 (or equivalent) with reference to his last three or six years of active government service. The Review Committee believes that a uniform period should be set, and that this period should be the last six years of active service.

### **(c) External Assessment Process**

28. Under the Control Regime, an application is put to the Advisory Committee on Post-service Employment of Civil Servants (hereafter referred to as 'the Advisory Committee') for advice before the decision authority (namely the Secretary for the Civil Service) makes the final decision. The Advisory Committee is an independent advisory body appointed by the Chief Executive.

**Recommendation 10** – The Advisory Committee should retain its advisory role (with the Honourable Audrey Eu registering a different view). The Honourable Audrey Eu considers that the Control Regime, including the power to approve or reject post-service outside work applications, should be placed in a body independent of the Administration.



29. The Review Committee (except the Honourable Audrey Eu) considers that post-service outside work control is an integral part of the contractual relation between the Administration as an employer and a directorate civil servant as an employee. The Administration has a duty to determine and enforce this contractual obligation. The Administration should also be held accountable for any challenge, legal or otherwise, against any aspect of the Control Regime and any decision taken by the decision authority. As such, the Advisory Committee should retain its advisory role. The Honourable Audrey Eu considers that the Control Regime, including the power to approve or reject post-service outside work applications, should be placed in a body independent of the Administration.

**Recommendation 11** – The membership of the Advisory Committee should be expanded to nine members (including the chairman) with a broadened composition. Possible categories of candidates for appointment on an *ad personam* basis include (but not restricted to) academics, representatives from civil service groups, former directorate civil servants, personalities from professional fields and/or the business sector, as well as former or serving members of the Executive Council, the Legislative Council and the District Councils.

30. The Advisory Committee is currently chaired by a serving High Court judge and has five other members coming from different sectors of the community. Its membership size is relatively small compared to similar independent advisory bodies set up in France and the UK.

31. The Review Committee considers that expanding the size of the Advisory Committee and drawing in more members with different backgrounds and expertise would enable the Advisory Committee to offer a broader spectrum of advice and in turn enhance its credibility.

**Recommendation 12** – The Advisory Committee should be given the power to invite outside expert(s) in the field(s) relevant to a post-service outside work application to give advice if necessary.

32. The Review Committee notes some respondents proposed that representatives from professional fields relevant to an application should be invited to assess the concerned application on an *ad hoc* basis. It has reservation about such a proposal as it may result in a lack of consistency in assessing applications. It considers that the Advisory Committee should be given the power to invite relevant outside experts to offer views if necessary.

**Recommendation 13** – The Advisory Committee should draw up guidelines on its mode of operation, which should provide for the holding of meetings when appropriate or upon request by its chairman or any of its members. In addition, these guidelines should be made known to the public and applicants.

33. Currently, the Advisory Committee processes post-service outside work applications mainly through circulation of discussion papers. The Review Committee notes that more than half of the applications processed in 2006 to 2008 were straight-forward and involved work in non-commercial organisations or subvented educational bodies, and that they might not necessitate discussion through meetings.

34. The Review Committee considers that meetings would facilitate exchange of views and help bring out questions not apparent on papers. Recognising that the Advisory Committee should continue to decide for itself whether or not to meet to discuss a particular application, the Review Committee recommends that the Advisory Committee should draw up guidelines on its mode of operation covering, among other things, the holding of meetings, and should make public such guidelines.

**Recommendation 14** – The secretariat of the Advisory Committee should be independent of the Civil Service Bureau. Depending on workload, it may be a dedicated secretariat, or it may be an existing independent secretariat for advisory bodies on civil service-related matters with an expanded ambit.

35. The secretariat of the Advisory Committee is currently part of the Civil Service Bureau (CSB). This arrangement may inadvertently undermine the perceived independence of the Advisory Committee. The

Review Committee considers that a secretariat independent of the CSB would help the Advisory Committee better fulfil its independent advisory role. It would also enhance the impartial standing of the Advisory Committee.

**(d) Enforcement of Work Restrictions Imposed**

**Recommendation 15** – The imposition and enforcement of work restrictions should be strengthened as follows –

- (a) the current arrangement of imposing standard work restrictions and, where necessary, additional application-specific work restrictions should continue;
- (b) the decision authority should directly inform the prospective employer of the work restrictions imposed on an applicant and of the requirement for the latter to notify and to seek prior approval from the decision authority if there is any material change to the work;
- (c) if the enforcement of work restrictions imposed on an applicant may involve certain bureaux/departments, the decision authority should also inform them of the imposed work restrictions; and
- (d) an applicant who has taken up an approved post-service outside work should be required, as part of the approval conditions, to provide the decision authority with a copy of the signed employment agreement or appointment letter within 30 days of signature or issue as well as any material changes made later.

36. At present, the decision authority imposes standard work restrictions on all approved post-service outside work applications and, where necessary, additional application-specific work restrictions on a case-by-case basis. The work restrictions remain in force until the expiry of the relevant control period or cessation of the concerned directorate civil servant's outside work, whichever occurs earlier.

37. The Review Committee notes that the scope of standard work restrictions is quite wide. For example, a directorate civil servant is prohibited from being involved in bidding for any government projects, etc. and from representing his prospective employer or client in any work that is in any way connected with his duties during his last three years of

past government service. It considers that the imposition of work restrictions could help mitigate public concern over perceived or potential conflict of interest and should continue. The measures proposed under Recommendation 15 will help enhance the compliance of work restrictions imposed.

**(e) Review/Appeal Channels**

**Recommendation 16** – The decision authority should set out the review and appeal channels when notifying an applicant of the decision on his application. The decision authority should, as a standard practice, seek the advice of the Advisory Committee again if an applicant seeks a review of the decision.

38. At present, if a former directorate civil servant is aggrieved by the decision of the decision authority on his application for post-service outside work, he can (a) seek a review of the decision by the decision authority by providing additional information and/or justification; and/or (b) make a representation direct to the Chief Executive under section 20 of the Public Service (Administration) Order; and/or (c) make an appeal to the Chief Executive under Article 48(13) of the Basic Law. The Review Committee considers it worthwhile to remind directorate civil servants of such channels.

39. The Review Committee considers that the decision authority should seek the Advisory Committee's advice again on review cases and take into account such advice rendered before making a decision.

**(f) Performance Pledge on Processing Time**

**Recommendation 17** – The Administration should make a practicable performance pledge on the processing time, having regard to the recommended enhancement to the internal and external assessment processes.

40. Some respondents suggested that the decision authority should process an application expeditiously and should put in place a performance pledge on the processing time since a protracted assessment

process might result in a loss of employment opportunity. The Review Committee agrees that it is reasonable to request the Administration to put in place such performance pledge.

**(g) Integrity of the Civil Service**

**Recommendation 18** – The integrity enhancement initiatives should give greater emphasis on the importance of avoiding possible conflicts of interest by directorate civil servants, in particular the public concern over perception or suspicion of ‘deferred reward’, both during active government service and in the pursuit of post-service outside work.

41. The Review Committee notes that it would be difficult to provide explicit and detailed rules governing all kinds of possible conflict of interest situations. A more effective way to avoid or reduce conflict of interest in post-service outside work is enhancing the integrity of the civil service. It notes that the Administration has put in place integrity enhancement initiatives and that avoidance of conflict of interest during government service features prominently in these efforts. It considers equal emphasis should be placed on avoidance of conflict of interest relating to post-service outside work.

**(h) ‘Exit Interview’**

**Recommendation 19** – The Administration should conduct an ‘exit interview’ with every departing directorate civil servant, and devise guidelines on the matters to be covered.

42. Currently, departing directorate civil servants are given a set of relevant civil service regulations and circulars on the post-service outside work control requirements. The Review Committee considers it a good management practice for the Administration to conduct a face-to-face ‘exit interview’ with a departing directorate civil servant and to remind him of the importance of avoiding conflict of interest in his pursuit of post-service outside work; and of providing sufficient and accurate information to the decision authority when submitting an application for post-service outside work.

### **(i) Pension Suspension Arrangement**

**Recommendation 20** – The suspension of monthly pension payments to retired pensionable civil servants (directorate and non-directorate) working on a full-time and paid basis in the 16 specified subvented organisations should be discontinued (with the Honourable Audrey Eu and the Honourable Albert Ho registering a different view). These two members recognise the anomalies under the existing arrangement but consider that such recommendation should not be made in the absence of a general review on the employment of former civil servants in all other quasi-government agencies or publicly funded organisations.

43. Currently, the monthly pension payments of a retired civil servant (directorate or non-directorate) in receipt of pension will be suspended if he takes up full-time paid post-service outside work in the 16 specified subvented organisations. Some respondents supported the continuation of the existing arrangement in order to avoid ‘double pay’ from the public purse. Others considered the existing arrangement could not be justified on equity grounds since it would not be applied to former directorate civil servants employed on agreement terms (who received a lump sum gratuity on completion of an agreement) or on Civil Service Provident Fund terms (who were vested with the Government’s voluntary contribution upon leaving government service). Moreover, pension payments were earned by civil servants employed on pensionable terms for their services rendered during past government service, and should not be taken away on the basis of the identity of their post-service outside work employers.

44. The Review Committee notes that no overseas jurisdictions studied have a similar arrangement in place.

45. The current arrangement has also put the 16 specified subvented organisations in an unfair and disadvantageous position, when compared with other subvented organisations or commercial entities, in terms of attracting retired civil servants on pensionable terms to join them as these individuals may be reluctant to have their monthly pension payments suspended. The Review Committee notes that in general these subvented organisations have well-established recruitment procedures.

It considers that from the public perception angle, retired civil servants joining subvented organisations may be less prone to concern over conflict of interest compared with working for commercial entities.

46. The Review Committee also notes a number of anomalies with the current arrangement –

- (a) there are no obvious objective criteria for selecting a certain subvented organisation for pension suspension purpose;
- (b) a retired civil servant taking up full-time paid work in a separate legal entity set up by any of the 16 specified subvented organisations is not subject to pension suspension; and
- (c) there is a disparity in treatment between retired civil servants on pensionable terms and those on Civil Service Provident Fund terms. While both types of civil servants are appointed on permanent terms and are provided with retirement benefits, retirement benefits of the latter will not be subject to any curtailment or suspension if they take up full-time paid post-service employment in one of the 16 specified subvented organisations.

47. The Review Committee (except for the Honourable Audrey Eu and the Honourable Albert Ho) recommends that the Administration should discontinue the pension suspension arrangement for paid and full-time work in the 16 specified subvented organisations. The Honourable Audrey Eu and the Honourable Albert Ho recognise the anomalies mentioned above, but consider that such recommendation should not be made in the absence of a general review on the employment of former civil servants in all other quasi-government agencies or publicly funded organisations.

#### **IV. Public Monitoring**

48. Public scrutiny is an effective tool to guard against any impropriety in post-service outside work. The Review Committee considers that disclosure of information to the public would facilitate

public monitoring and help build public confidence in the Control Regime.

**(a) Coverage of Public Register**

**Recommendation 21** – The public disclosure arrangement should be extended to cover junior directorate civil servants at DPS D1 to D3 (or equivalent) as well.

49. The public register mechanism was introduced in January 2006. A case record on each post-service outside work approved and taken up by a directorate civil servant at DPS D4 or above (or equivalent) is put on the register for public inspection upon request. The Review Committee believes that the public should have an oversight on all approved post-service outside work taken up by all directorate civil servants. An extension of the public register arrangement to junior directorate civil servants should not give rise to concern over infringement of personal data privacy, as former directorate civil servants at DPS D4 or above (or equivalent) have already been subject to the public disclosure arrangement since 2006.

**(b) Advisory Committee's Advice**

**Recommendation 22** – The Advisory Committee's advice on every approved and taken up post-service outside work should be disclosed on the public register.

50. At present, the case record provides some basic information on the post-service outside work approved and taken up (such as the applicant's last civil service post title and major duties of the approved outside work) but does not contain the Advisory Committee's advice on the application. The Review Committee considers that disclosure of such advice on the public register would allow the public and the concerned directorate civil servants to know whether or not the decision authority has accepted the Advisory Committee's advice in full, and would enhance the transparency of the decision-making process.



### **(c) Advisory Committee's Annual Report**

**Recommendation 23** – More information should be included in the Advisory Committee's annual report, including but not limited to the categorisation of employers of approved and taken up post-service outside work, the cases on the public register on which the Advisory Committee's advice and the final decision of the authority differs, and the guidelines on the mode of operation of the Advisory Committee.

51. The publication of the Advisory Committee's annual report to the Chief Executive has always been an important component in the overall transparency of the Control Regime. The annual report is sent to the Public Service Panel of the Legislative Council and put on CSB's website. It provides, among others, statistics on the applications processed by the Advisory Committee during the year under reference. The public and directorate civil servants would have a better understanding of the Advisory Committee's work if more information is included in its annual report.

## **POLITICALLY APPOINTED OFFICIALS**

52. In the course of studying the Control Regime, the Review Committee noted that the control arrangements for post-service employment of politically appointed officials were different from those for directorate civil servants. Some Members (Mr Haider Barma, the Honourable Paul Chan, the Honourable Audrey Eu and the Honourable Albert Ho) were concerned that the control arrangements for the former were not as rigorous as those for the latter, and were of the view that it was important for the Administration to consider whether parity or consistency between the two groups of public officers should be introduced. The Review Committee decided not to bring up the matter in its consultation document as it was outside its terms of reference. During the public consultation, it received various views on post-office employment control of politically appointed officials. It feels duty-bound to draw the Chief Executive's attention to the views expressed.

53. The Review Committee has not examined the rationale behind the post-office employment control regime of politically appointed officials because the matter is outside its terms of reference. It is therefore not in a position to provide a considered view on the matter. In view of the importance of the matter and given the public concern, the Review Committee urges the Chief Executive to carry out a separate review.

# CHAPTER 1: Introduction

## Overview

- 1.01 This chapter sets out the background of the review; the membership and terms of reference of the Committee on Review of Post-service Outside Work for Directorate Civil Servants; and its main thrusts of work.

## Background

- 1.02 Post-service outside work by directorate civil servants covers paid or unpaid, full-time or part-time appointment, employment or any other work, the principal part of which is undertaken in Hong Kong. It includes entering into business on one's own account, becoming a partner in a partnership, becoming an executive or non-executive director of a company, becoming an employee, etc<sup>1</sup>. Over the past few years, there were on average 60 to 70 post-service outside work applications per year from directorate civil servants; and less than a handful have caused public concern.
- 1.03 In August 2008, the public expressed grave concern over the approval given by the Secretary for the Civil Service to Mr Leung Chin-man<sup>2</sup>, a retired directorate civil servant, to take up post-service employment with New World China Land Limited,

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<sup>1</sup> Re-employment with the Government of the Hong Kong Special Administrative Region or appointment to a government advisory board/committee is not regarded as outside work.

<sup>2</sup> Mr Leung Chin-man served as Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing from July 2002 to January 2006 and as Director of Buildings from August 1999 to June 2002. He ceased active duty on 10 January 2006 and retired from the civil service on 10 January 2007.

which is involved in real estate and property developments in the Mainland of China and whose parent company is New World Development Company Limited. The public's concern centres around the propriety of the approval given to Mr Leung's post-service employment in the light of his previous official dealings with a company jointly owned by New World Development Company Limited and another developer.

- 1.04 In response to the public concern over Mr C M Leung's case, the Chief Executive (CE) appointed on 30 September 2008 an independent Committee on Review of Post-service Outside Work for Directorate Civil Servants (hereafter referred to as 'the Review Committee') to review the existing policy and arrangements. The Review Committee was tasked to submit its findings and recommendations to the CE in mid-2009.

## **Membership and Terms of Reference**

- 1.05 The membership of the Review Committee is as follows (in alphabetical order) –

**Chairman :** The Honourable Ronald Arculli

**Members :** Mr Haider Barma

The Honourable Chan Mo-po Paul

Professor Chan Yuk-shee

Professor Chen Hung-yee Albert

Mr Chen Nan-lok Philip

The Honourable Eu Yuet-mee Audrey

The Honourable Ho Chun-yan Albert

The Honourable Leung Kwan-yuen Andrew

The Honourable Tam Yiu-chung

Secretary for the Civil Service  
(The Honourable Yue Chung-yea Denise)

- 1.06 The terms of reference of the Review Committee are –
- (a) to review the existing policy and arrangements governing post-service outside work for directorate civil servants;
  - (b) in the course of conducting the review in (a) above, to invite and consider submissions and representations; and
  - (c) to submit findings and recommendations to the CE in mid-2009.

### **Work of the Review Committee**

- 1.07 During the period from October 2008 to June 2009, the Review Committee held a total of 24 meetings. The Review Committee's work was divided into three phases –
- (a) *Phase 1 -- from October 2008 to mid-February 2009:* The Review Committee examined various aspects of the current policy and arrangements governing post-service outside work for directorate civil servants (hereafter referred to as 'the Control Regime'<sup>3</sup>) in detail, including its underlying principles; policy objective; application, vetting and decision-making processes; and public disclosure requirements; etc. It also studied, through a consultancy commissioned in late 2008, the control arrangements for post-service employment of former senior civil servants in seven overseas jurisdictions, namely Australia, Canada, France, New Zealand, Singapore, the United Kingdom and the United States of America. The findings of the

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<sup>3</sup> The Control Regime refers to the control arrangements adopted since 1 January 2006 and applicable to most directorate civil servants, namely those on pensionable terms or new permanent terms who cease active service on or after 1 January 2006; and those on agreement terms whose last agreements, including renewals of agreement, are entered into on or after 1 January 2006.

consultancy study were included in the public consultation document released in February 2009 (see paragraph 1.07(b)). The full consultancy report was uploaded onto the Review Committee's website. A summary of the findings is recapitulated in Chapter 3 of this report.

- (b) *Phase 2 -- from mid-February to mid-April 2009:* The Review Committee issued a **consultation document** and conducted a two-month public consultation to gather and gauge the views of the public and stakeholders. Summaries of the views gathered in the public consultation are set out in Chapter 4.
- (c) *Phase 3 -- from mid-April to end June 2009:* The Review Committee deliberated on the views gathered and produced this report on findings and recommendations to the CE.

1.08 The Review Committee also set up a dedicated website ([www.dcspostservice-review.org.hk](http://www.dcspostservice-review.org.hk)) in October 2008 to keep the public posted of its work and to receive written submissions from members of the public and stakeholders. All written submissions received (except those which the respondents have asked for non-disclosure) have been uploaded onto the website, hardcopies of which are available upon request. (Please send in your request to fax number 2147 5241, or call telephone number 2810 2579.)

## CHAPTER 2: Control Regime

### Overview

2.01 This chapter provides an overview of the Control Regime. It covers the underlying principles, policy objective, basis of control, and key features of the Control Regime. The latter may be summed up as the ‘**3-Ps**’, namely ‘**P**eriods of restriction’; ‘**P**rocess’; and ‘**P**ublic disclosure’.

### Underlying Principles

2.02 The Control Regime is underpinned by two broad principles, namely –

- (a) protection of the public interest; and
- (b) protection of an individual’s right.

#### **I. Protection of Public Interest**

2.03 The Government has a duty to protect the public interest. There are many facets of public interest. The Control Regime is designed to take into consideration the following facets of the public interest –

- (a) public trust;
- (b) good governance; and
- (c) integrity and impartiality of the civil service.

2.04 **Public trust** in any government is the foundation of any civilised society. Therefore to earn and keep the public trust, the Government of the Hong Kong Special Administrative Region must ensure that it exercises its powers of governance properly

and fairly.

- 2.05 To achieve **good governance**, the Government must uphold the rule of law. Its decision-making and implementation processes must be as transparent as possible within the legal framework. It must always guard against abuse and corruption.
- 2.06 The civil service is the backbone of the Government. It supports the Government of the day to deliver its visions and missions. It is therefore essential to maintain **the integrity and impartiality of the civil service**. Civil servants must perform their functions in a professional, honest and unbiased manner. They must not misuse their official position. In discharging their responsibilities, they must not be improperly influenced by private interests, pecuniary or otherwise.
- 2.07 Therefore, much of the **public trust** in the Government rests upon whether there is good governance; and whether the civil service is impartial and of high integrity.
- 2.08 A key consideration of the Control Regime is whether the prospective outside work that a former directorate civil servant applies to take up will give rise to **real, potential or perceived conflict of interest** with his previous official duties. The existence of conflict of interest will undermine the integrity and impartiality of the civil service, adversely affect good governance, and erode public trust in the Government.

## **II. Protection of Individual's Right**

- 2.09 There are different facets of an individual's right. In the context of the Control Regime, the principle of protection of an individual's right is mainly manifested through the protection of the following rights –
- (a) the right to work and freedom of choice of occupation;
  - (b) the right against unlawful discrimination; and
  - (c) the right against unlawful infringement of personal data



privacy.

- 2.10 An individual's **right to work and freedom of choice of occupation** is a fundamental right enshrined in the **Basic Law** and an international covenant and a labour convention applicable to Hong Kong (Articles 33 and 39 of the Basic Law).
- 2.11 The **International Covenant on Economic, Social and Cultural Rights** (Article 6(1)) and the **Employment Policy Convention, 1964** (Article 1(2)(c)) state that a government should take appropriate steps to safeguard an individual's right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, irrespective of who he is.
- 2.12 An individual's **right against unlawful discrimination** is provided for under the **Basic Law**, which stipulates that all Hong Kong residents shall be equal before the law (Article 25). The **Hong Kong Bill of Rights Ordinance** (Articles 1(1) and 22, Part II of Chapter 383 of the Laws of Hong Kong) provides that the rights recognised therein shall be enjoyed without distinction of any kind.
- 2.13 An **individual's personal data privacy** is protected by the **Personal Data (Privacy) Ordinance** (Chapter 486 of the Laws of Hong Kong). Under the Ordinance, personal data including an individual's employment details could only be disclosed under certain circumstances.
- 2.14 Extracts of the relevant articles in the Basic Law, the quoted international covenant and labour convention, as well as the two quoted Ordinances are set out in **Annex A**.
- 2.15 Notwithstanding the protection of an individual's right to work and freedom of choice of occupation under the Basic Law and the quoted international covenant and labour convention applicable to Hong Kong, **such right should not be taken as absolute**.

2.16 The employment of civil servants by the Government is not simply a question of contractual relationship between employee and employer. The Government employs civil servants to serve the public. Given the distinctive nature of the civil service, some **reasonable restrictions** of a civil servant's right to work after he leaves the civil service may need to be imposed for the protection of public interest.<sup>4</sup>

## Policy Objective

2.17 The policy objective of the Control Regime is formulated with regard to the broad principles of protection of the public interest and protection of an individual's right (as discussed in paragraphs 2.02 to 2.16). The aim is to –

- (a) ensure that directorate civil servants on final leave<sup>5</sup> or who have left the service will not take up any work outside the Government which may constitute a real or potential conflict of interest with their former government duties or cause negative public perception embarrassing the Government and undermining the image of the civil service; and
- (b) ensure at the same time that the said individuals' right to pursue employment or other work after ceasing government service is not unduly restricted.

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<sup>4</sup> Fredman and Morris described the position in the United Kingdom in their book entitled 'The State as Employer, Labour Law in the Public Service' (Mansell, 1989) as "*There is a 'public' dimension to the way in which the civil service and the rest of the public services are administered, which means that the State owes duties to the general public as well as to its workforce. It is necessary to find a balance between these interests.*" (page 66)

<sup>5</sup> Directorate civil servants may have accumulated some earned but untaken leave by the time they cease active government duty. In such circumstance, they will proceed on leave – usually known as 'final leave' – before formally leaving the Government. During the final leave period, a directorate civil servant will have no access to his former office or official information. Indeed, his post and previous government duties will have been taken up by another civil servant.

2.18 The first part of the policy objective embodies the principle of protection of the public interest, whilst the second part embodies the principle of protection of an individual's right to work and freedom of choice of occupation. The current formulation highlights the need to strike an appropriate balance between the two underlying principles.

## **Basis of Control**

2.19 The post-service outside work control for directorate civil servants appointed on pensionable terms is based on both statute and contract, while that for directorate civil servants appointed on non-pensionable terms (including those on Mandatory Provident Fund and on Civil Service Provident Fund) is based on contract.

### **I. Statutory basis**

2.20 The statutory basis is provided for in the relevant provisions of the two pension-related ordinances, namely the Pensions Ordinance and the Pension Benefits Ordinance (Chapters 89 and 99 of the Laws of Hong Kong respectively). The relevant part of section 30 of the Pension Benefits Ordinance (governing the New Pension Scheme<sup>6</sup>) states that –

*‘(1) The Chief Executive may direct that any pension granted to a person shall be suspended as from such date as the Chief Executive shall specify if such person has, within two years after his retirement and without the prior permission in writing of the Chief Executive<sup>7</sup> (footnote added) –*

- (a) entered business on his own account;*
- (b) become a partner in a partnership;*

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<sup>6</sup> The New Pension Scheme (NPS) is for civil servants appointed on pensionable terms from 1 July 1987 to 31 May 2000, and those civil servants on the Old Pension Scheme but have opted to switch to the NPS.

<sup>7</sup> The Chief Executive has delegated this statutory power to the Secretary for the Civil Service.

- (c) *become a director of a company; or*
- (d) *become an employee,*

*if the principal part of such business or the business of such partnership or company or of his employment is, in the opinion of the Chief Executive, carried on in Hong Kong, and such direction shall be forthwith notified in writing by the Secretary for the Civil Service to the person concerned.*

*(2) The Chief Executive may specify a period of more than two years for the purposes of subsection (1) where he thinks fit, and such specification shall be forthwith notified in writing by the Secretary for the Civil Service to the person concerned.'*

- 2.21 Section 16 of the Pensions Ordinance lays down similar provisions in respect of the Old Pension Scheme<sup>8</sup>.

## **II. Contractual basis**

- 2.22 The contractual basis for control over post-service outside work for directorate civil servants appointed on pensionable as well as non-pensionable terms takes the form of civil service regulations and circulars promulgated from time to time (including those relating to the taking up of post-service outside work) which form part of the employment contract between the Government and civil servants. For directorate civil servants appointed on non-pensionable terms, it also takes the form of the terms and conditions of service as set out in a Memorandum on Conditions of Service accompanying their letters of appointment. By implication, those contractual obligations relating to the taking up of post-service outside work continue to survive after the concerned civil servants have left the government service.

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<sup>8</sup> The Old Pension Scheme is for civil servants appointed on pensionable terms before 1 July 1987.

### **III. Other controls**

2.23 Apart from the two pension-related Ordinances and the contractual instruments which provide for the bases of control, a serving or former directorate civil servant is bound by, among other things, the requirements under the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) and the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). The Official Secrets Ordinance prohibits, among other things, unauthorised obtaining and disclosure of official information protected under the Ordinance. Under the Prevention of Bribery Ordinance, a civil servant is prohibited from, among other things, soliciting or accepting any advantage as an inducement to or reward for certain acts.

### **Key Features - The ‘3-Ps’**

2.24 The key features of the Control Regime may be summed up as the ‘**3-Ps**’, namely:

- (a) ‘**Periods of restriction**’ which denote the specified durations during which a directorate civil servant is subject to post-service outside work control;
- (b) ‘**Process**’ which includes the application procedure, internal and external assessment, decision-making by the authority, conditions of approval (if granted), and sanctions for non-compliance; and
- (c) ‘**Public disclosure**’ of information on approved and taken-up post-service outside work.

#### **I. Periods of restriction**

2.25 In general, the specified periods of restriction for post-service outside work for a directorate civil servant are longer if he is

more senior and has longer years of service<sup>9</sup>. This is premised on the consideration that a more senior civil servant would usually have greater involvement in the formulation of government policies and access to confidential information. In addition, the level of control varies according to the different specified periods of restriction. In general, the closer the period of restriction is to the time of cessation of active duty, the greater the control. This is premised on the consideration that knowledge of, and perceived influence in, government policies/operations diminishes with the passage of time.

**(a) Final leave period**

2.26 It is common for directorate civil servants to have accumulated some earned but untaken leave by the time they cease active duty either because they have reached their normal retirement age or because they are to leave the government service on other grounds. In such circumstances, they will proceed on leave – usually known as ‘final leave’ – before formally leaving the Government. During the final leave period, a directorate civil servant will have no access to his former office or official information. Indeed, his post and previous government duties will have been taken up by another civil servant.

2.27 Because of the proximity to previous active duty, the concern over conflict of interest arising from post-service outside work by a directorate civil servant is usually the greatest during the final leave period. Because a directorate civil servant on final leave remains on full pay, the concern over an individual’s right to work is the least. Because a directorate civil servant on final leave retains his status as a civil servant, the concern over dual identity needs to be addressed if he applies to work for another entity.

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<sup>9</sup> For the purpose of periods of restriction, directorate civil servants are divided into three groups: (i) those at DPS D8 (or equivalent) (mostly permanent secretaries of bureaux); (ii) those at DPS D4 to D7 (or equivalent) (mostly heads of departments and ‘senior’ deputy secretaries of bureaux); and (iii) junior directorate civil servants at DPS D1 to D3 (or equivalent) (mostly ‘junior’ deputy secretaries of bureaux, deputy and assistant heads of departments, and chiefs of some professional grades).

2.28 For the above reasons, the decision authority (namely the Secretary for the Civil Service) will not, as a rule, approve any application to take up post-service outside work with a non-specified organisation (see paragraphs 2.29 and 2.30) from a directorate civil servant during his final leave. The decision authority will only give positive consideration to such an application if there are very exceptional considerations and if there is no concern over conflict of interest and dual identity.

2.29 The decision authority will consider an application to take up part-time and paid or notionally remunerated work with a specified non-commercial organisation from a directorate civil servant on final leave on its own merits. In doing so, the decision authority will have regard to whether or not there would be any concern over conflict of interest and dual identity. The specified non-commercial organisations are listed below –

- (a) charitable, academic or other non-profit making organisations not primarily engaged in commercial operations;
- (b) non-commercial regional or international organisations; and
- (c) the Central Authorities of the People’s Republic of China.

2.30 The decision authority has given blanket permission to directorate civil servants on final leave to take up **unpaid** work in the above specified non-commercial organisations. Directorate civil servants who do so are required to notify the decision authority beforehand.

**(b) Minimum sanitisation period**

2.31 The sanitisation period counts from the date of cessation of active duty (i.e. on commencement of final leave, if any) of a directorate civil servant, during which his knowledge of the Government’s operation and policies may still be fresh and relevant. The specification of a **minimum** sanitisation period is to forestall real or potential conflict of interest or negative public perception, by

providing for a break between the time when a former directorate civil servant ceases active duty and the time when he commences any approved post-service outside work.

2.32 The current prescribed minimum sanitisation period is six months or one year (depending on rank<sup>10</sup>) for directorate civil servants leaving the Government on retirement ground. No minimum sanitisation period is prescribed for directorate civil servants leaving the Government on grounds other than retirement (e.g. on completion of agreement or resignation). For these civil servants, the decision authority will consider the need for, and length of, sanitisation period on a case-by-case basis<sup>11</sup>.

2.33 Because of concern over conflict of interest, the decision authority will normally not approve an application to take up post-service work with a commercial organisation from a directorate civil servant who is still subject to the minimum sanitisation period. The decision authority may, where justified and on a case-by-case basis, shorten the minimum sanitisation period to allow for paid work in specified non-commercial organisations (listed in paragraph 2.29). For all other outside work, the minimum sanitisation period may only be shortened where there are special considerations, and subject to there being no conflict of interest and the work being unlikely to cause negative public perception. The decision authority may specify a longer sanitisation period in respect of an application if so required to forestall conflict of interest or negative perception.

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<sup>10</sup> The minimum sanitisation period is one year for directorate civil servants at DPS D4 or above (or equivalent) (mostly permanent secretaries of bureaux, heads of departments and 'senior' deputy secretaries of bureaux) and six months for those at DPS D1 to D3 (or equivalent) (mostly 'junior' deputy secretaries of bureaux, deputy and assistant heads of departments, and chiefs of some professional grades).

<sup>11</sup> Generally, the sanitisation period, if imposed, would not exceed that applicable to directorate civil servants of the same rank leaving the Government on retirement ground.



**(c) Control period**

2.34 The control period for post-service outside work counts from a directorate civil servant's formal departure from the Government (i.e. on exhaustion of final leave if any). During the control period, a former directorate civil servant may take up post-service outside work with prior permission from the decision authority (other than that covered by the blanket permission explained in paragraph 2.30). The current specified control period is two or three years (depending on rank<sup>12</sup> or length of service<sup>13</sup>) for former directorate civil servants.

**II. Process**

**(a) Prior approval**

2.35 Former directorate civil servants who wish to take up post-service outside work (other than that covered by the blanket permission explained in paragraph 2.30) are required to apply for prior permission from the decision authority. Every application is assessed internally within the Administration and externally by the Advisory Committee on Post-service Employment of Civil Servants. The decision authority is to decide on each application, reject or approve it, and impose conditions as necessary on approved applications on a case-by-case basis. Failure by a former directorate civil servant to obtain prior permission before taking up post-service outside work during the specified periods of restriction or failure to comply with the authority's decision constitutes a breach of the Control Regime for which sanction(s) (see paragraph 2.50) will be imposed on the concerned former civil servant.

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<sup>12</sup> The current control period is three years for directorate civil servants at DPS D8 (or equivalent) and two years for those at DPS D1 to D7 (or equivalent).

<sup>13</sup> The length of the control period is halved for a directorate civil servant leaving the Government on grounds other than retirement with less than six years of continuous government service.

(i) Application Requirement

2.36 A former directorate civil servant has to apply for prior permission for each and every post-service outside work (other than that covered by the blanket permission described in paragraph 2.30) he wishes to take up during the periods of restriction applicable to him. Where the post-service work involves duties outside Hong Kong, a former directorate civil servant still has to apply for prior permission if he is to be based in Hong Kong, or if he is to work outside Hong Kong but his prospective employer has business connections with Hong Kong.

2.37 An applicant is required to complete and submit a prescribed application form. He is required to provide in the application form his own particulars and his former government duties covering three or six years (depending on rank<sup>14</sup>) before his cessation of active duty. He is required to provide details of the prospective outside work (including position, major duties and responsibilities, etc.) and the prospective employer (including name, major clientele, parent company and subsidiaries, etc.). He is also required to advise whether he had any contractual, non-contractual or official contacts with the prospective employer, etc. during his last few years of active service in the Government. Where his prospective employment will involve dealings with or businesses of the prospective employer's parent or any of its subsidiaries, he is required to advise whether he had any contractual, non-contractual or official contacts with the parent or any of the subsidiaries during his last few years of active service in the Government.

(ii) Internal Assessment

2.38 Depending on the grade or department to which the applicant belonged when he is/was a directorate civil servant and the nature of his prospective outside work, an application is assessed internally within the Administration by the relevant Permanent

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<sup>14</sup> Applicants at DPS D4 and above (or equivalent) are required to provide their last six years of service history, while those at DPS D1 to D3 (or equivalent) are required to provide their last three years of service history.

Secretary (or Permanent Secretaries), the Head of Grade, the Head of Department (or Heads of Department). In general, no politically appointed official (other than the Secretary for the Civil Service who is responsible for the management of the civil service) is involved in the assessment of applications for post-service outside work from former directorate civil servants. This is to safeguard the political neutrality of the civil service.

(iii) External Assessment

2.39 Every application, after going through the internal assessment procedure, is put to the Advisory Committee on Post-service Employment of Civil Servants (hereafter referred to as ‘the Advisory Committee’) for advice.

2.40 The Advisory Committee is appointed by the Chief Executive to advise on all applications for post-service outside work from directorate civil servants. It is currently chaired by a serving High Court judge, and its five<sup>15</sup> members come from different sectors of the community, including one who is a serving member of the Public Service Commission<sup>16</sup>. (Please refer to **Annex B** for the terms of reference and current membership of the Advisory Committee.)

2.41 The Advisory Committee is guided by a set of declaration of interest rules. When a member (including the chairman) considers there is a potential conflict of interest in respect of an application, he has to make full disclosure of his interest. If deemed necessary, he has to return the discussion paper on that application and refrain from giving comments on it.

(iv) Assessment Criteria

2.42 Every application is assessed having regard to the following

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<sup>15</sup> The Advisory Committee used to have four members (excluding the chairman). One additional member was appointed to the Advisory Committee on 9 June 2009.

<sup>16</sup> The Public Service Commission is a statutory body responsible for advising the Chief Executive on matters relating to appointment, promotion and discipline of civil servants.

criteria –

- (a) whether the applicant, while in the civil service, had been involved in the formulation of any policy or decision, the effects of which directly or specifically benefited or could directly or specifically benefit his own business or prospective employer;
- (b) whether the applicant or his prospective employer might gain an unfair advantage over its competitors because of the applicant's access to sensitive information while in the civil service;
- (c) whether the applicant, while in the civil service, had been involved in any contractual or legal dealings to which his prospective employer was a party;
- (d) whether the proposed work would have any connection with the assignments/projects and/or regulatory/enforcement duties in which the applicant had been involved while in the civil service;
- (e) whether the applicant's taking up of the proposed work would give rise to public suspicion of conflict of interest or other impropriety; and
- (f) whether any aspects of the proposed work would cause embarrassment to the Government or bring disgrace to the civil service.

2.43 The above assessment will be made against the duties in which the applicant was involved during his last three years of active government service. The service history may be traced back to the last six years of active service if the applicant was at DPS D4 (or equivalent) or above level (mostly permanent secretaries and 'senior' deputy secretaries of bureaux, and heads of departments), or if the work handled was of particular sensitivity.

(v) Decision Authority

2.44 The authority to decide on all applications for post-service outside work from former directorate civil servants is the

Secretary for the Civil Service. The decision authority may reject, or approve, if necessary with specific conditions, an application, after taking into account the internal assessment and the advice tendered by the Advisory Committee.

**(b) Work restrictions**

2.45 To better address or mitigate public concern about conflict of interest and embarrassment to the Government, the decision authority has imposed the following standard work restrictions on all approved applications –

*‘The applicant should not -*

*(a) be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises;*

*(b) undertake, or represent any person in, any work including any litigation or lobbying activities that are connected in any way with –*

*(i) the formulation of any policy or decision;*

*(ii) sensitive information;*

*(iii) contractual or legal dealings;*

*(iv) assignments or projects; and/or*

*(v) enforcement or regulatory duties,*

*in which he had been involved or to which he had access during his last three years of service; or*

*(c) engage in any activities which would cause embarrassment to the Government or bring disgrace to the civil service.’*

2.46 In addition to the above standard work restrictions, the decision authority may, as necessary, impose further specific work restrictions for approved post-service work applications on a case-by-case basis.

2.47 An additional restriction that has been imposed, where appropriate, on approved applications of post-service outside work from retired civil servants on pensionable terms is the suspension of payment of their monthly pension<sup>17</sup> upon their taking up paid and full-time work in any of the 16 gazetted subvented organisations listed in **Annex C**.

**(c) Appeal mechanism**

2.48 If a former directorate civil servant is aggrieved by the decision of the decision authority on his application for post-service outside work, he can request the decision authority to review the decision. The decision authority will do so having regard to the justifications and any supplementary information provided by the applicant; and will decide on the appeal.

2.49 The applicant may also make a representation to the Chief Executive under section 20 of the Public Service (Administration) Order<sup>18</sup> and/or an appeal to the Chief Executive under Article 48(13) of the Basic Law<sup>19</sup>.

**(d) Sanctions**

2.50 Failure to obtain prior permission from the decision authority before taking up post-service outside work during the specified periods of restriction or failure to comply with the conditions

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<sup>17</sup> Part-time paid work with conditioned hours of no more than 24 hours per week or full-time paid work for a period of no more than three months for these 16 subvented organisations is not subject to pension suspension.

<sup>18</sup> Section 20 of Public Service (Administration) Order provides that (1) every officer who has any representations of a public or private nature to make to the Government of the Hong Kong Special Administrative Region should address them to the Chief Executive. The Chief Executive shall consider and act upon each representation as public expediency and justice to the individual may require; and (2) the Chief Executive may appoint a review board to advise him on such representations addressed to him relating to appointment, dismissal and discipline of public servants as he thinks fit.

<sup>19</sup> Article 48(13) of the Basic Law provides that the Chief Executive shall exercise the function of handling appeals and complaints.

imposed by the decision authority on an approved application constitutes a breach of the Control Regime. The decision authority may invoke either one or a combination of the following forms of sanction against a former directorate civil servant for such breach –

- (a) suspension of monthly pension payments under the pension legislation if the concerned former directorate civil servant was appointed on pensionable terms and is in receipt of pension payment (see paragraphs 2.20 to 2.21);
- (b) initiating civil action to seek an injunction or sue for damages;
- (c) withdrawal of approval;
- (d) suspension of approval for a specified period;
- (e) reporting of an incident to the relevant professional body where it concerns professional negligence or misconduct or may involve a possible breach of the code of conduct of the relevant profession;
- (f) issue of a public statement of criticism;
- (g) placing a warning or reprimand on a register for public inspection;
- (h) issue of a reprimand letter which may be copied to the outside employer; and/or
- (i) issue of a warning letter which may be copied to the outside employer.

2.51 The sanction at paragraph 2.50(a) is only applicable to former directorate civil servants appointed on pensionable terms.

2.52 Under the Official Secrets Ordinance, the maximum punishment for committing an offence of disclosing specified information without lawful authority is a fine of \$500,000 and a two-year imprisonment if convicted on indictment and a fine at level 5 and six-month imprisonment if convicted summarily.

2.53 Under the Prevention of Bribery Ordinance, an offence committed by a civil servant for soliciting or accepting any advantage as an inducement to or reward for certain acts will attract a maximum punishment of ten-year imprisonment and a fine of \$500,000 if convicted on indictment or three-year imprisonment and a fine of \$100,000 if convicted summarily. In addition, a civil servant who has been granted or is eligible for pension benefits and is convicted of the offences under the Prevention of Bribery Ordinance may have his pension benefits cancelled, suspended or reduced under the two-pension related Ordinances<sup>20</sup>.

### **III. Public disclosure**

#### **(a) Public register**

2.54 Before taking up approved outside work, a former directorate civil servant is required to advise the decision authority of the commencement date of the work. He is also required to notify the prospective employer of the conditions of approval imposed by the decision authority, including any sanitisation period and work restrictions.

2.55 A case record on each post-service outside work approved and taken up by a former directorate civil servant at DPS D4 (or equivalent) or above is placed on a register for public inspection upon request. The case record is kept on the register until the expiry of the periods of restriction applicable to the said former directorate civil servant, or after he has ceased the outside work, whichever occurs first.

2.56 A case record contains information on the name of the concerned former directorate civil servant, his last civil service post title, date of cessation of active government service, conditions imposed by the decision authority on the approved outside work, commencement date and a brief description of the approved work,

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<sup>20</sup> Section 15 of the Pensions Ordinance and section 29 of the Pension Benefits Ordinance.



and where applicable, identity of the outside employer and the applicant's position in the outside organisation. A sample case record on the public register is at **Annex D**.

2.57 For approved post-service outside work taken up by former directorate civil servants below DPS D4 (or equivalent), the relevant information is not put on the public register, but may be disclosed on a case-by-case basis where there is public concern. The same applies to unpaid work covered by the blanket permission (described in paragraph 2.30) and taken up by former directorate civil servants.

2.58 Any member of the public is free to access the public register. Members of the public or the media may also approach the decision authority if they have any queries; and the decision authority will take appropriate action where there is public concern.

**(b) Annual updating**

2.59 A former directorate civil servant is required to notify the decision authority of any material change to his approved and taken up post-service outside work (including cessation of work) during the periods of restriction applicable to him, and where necessary, seek a fresh approval on the material change of work. The decision authority also obtains updates, on an annual basis, from former directorate civil servants who have taken up approved post-service outside work until the expiry of the periods of restriction applicable to them, or until they have ceased their outside work, whichever occurs first. Relevant case records on the public register are revised based on the updated information.

**(c) Publication of information on applications**

2.60 The Advisory Committee (see paragraph 2.39) submits an annual report on its work to the Chief Executive. The report provides information on applications processed on an aggregated basis. It is submitted to the Public Service Panel of the Legislative Council for information and is uploaded to the website of Civil Service Bureau.

## CHAPTER 3: Overseas Practices

### Overview

- 3.01 This chapter summarises the control arrangements for the post-service employment of former senior civil servants in seven selected overseas jurisdictions (namely Australia, Canada, France, New Zealand, Singapore, the United Kingdom and the United States of America)<sup>21</sup>, based on the findings of a consultancy study conducted from mid-November 2008 to January 2009. For ease of reference, the findings are presented using the same sub-headings as those for the Control Regime in Chapter 2<sup>22</sup>.
- 3.02 A consultant was commissioned to carry out a fact-finding study in late 2008 on the control arrangements for the post-service employment of former senior civil servants in the seven above mentioned overseas jurisdictions. The full consultancy report is available on the Review Committee's website ([www.dcspostservice-review.org.hk](http://www.dcspostservice-review.org.hk)). The following paragraphs highlight the main features of the control arrangements in these jurisdictions.

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<sup>21</sup> These seven countries were among the top twenty jurisdictions on the Transparency International Corruption Perceptions Index and/or the 'Freedom from Corruption' List compiled by the Heritage Foundation as part of the Index of Economic Freedom for 2007 and 2008. They are also developed economies from different parts of the world.

<sup>22</sup> The findings stated in this report do not cover 'underlying principles' of the seven overseas jurisdictions studied as they are not articulated clearly according to the consultancy findings.

## I. Policy Objective

3.03 The approach of the Australian Government to post-service employment of former civil servants *‘is not to restrict the flow of skills, experience and information between the Australian Public Service (APS) and other sectors but to manage conflicts of interest when APS employees, including those about to take up appointments with the private sector, deal with outside organisations and individuals’*<sup>23</sup>. Australia considers that the taking up of post-service employment by former civil servants in the private sector can bring about benefits to both the public and private sectors of Australia.

## II. Basis of Control

3.04 The Australian control regime is based on **mutual agreement** reached between the civil servants and the government agencies they work for on a **voluntary** basis. While the Government may impose restrictions, their compliance by former civil servants concerned relies on goodwill. The Australian official guideline on post-service employment states that it is *‘not currently possible under Australian law to impose post separation employment restrictions on all or certain classes of APS employees and to ensure that those restrictions are enforceable’*<sup>23</sup>.

3.05 The APS Values and Code of Conduct requires employees to disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment; and not to make improper use of inside information or the employee’s duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.

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<sup>23</sup> Circular No. 2007/3 ‘Post Separation Employment: Policy Guidelines’ issued by the Australian Public Service Commission.

3.06 In addition, former civil servants are subject to statutory control on communication or disclosure of information received while working in government service.

### **III. Key Features**

#### **(a) Periods of restriction**

3.07 The control arrangement applies to all civil servants. Certain groups within the civil service are seen as more concerned by post-service employment issues, namely those belonging to the Senior Executive Service; those in sensitive positions (e.g. contracting and procurement); those in the defence area of work; and those with knowledge of information system infrastructure requirement and practices.

3.08 Since control is implemented through mutual agreement reached between the Government and individual civil servants, there is no one single standard period of restriction for former senior civil servants. Government agencies may put in place broad policy guidelines which include, for example, the length of time a person should wait after leaving the APS before he could work in business areas that have direct contact with his former agency, or 'gardening leave' which requires an employee to stay away from the government offices for a specific period of time while still on government pay.

3.09 From July 2008 onwards, former civil servants belonging to the Senior Executive Service are restricted from working as **professional lobbyists** (defined as any person, company or organisation that represents, or whose employees represent, the interests of a third party) within **one year** from leaving the government service on any matters on which they have had official dealings in their last year of government service. Government agencies will need to ensure that the systems they put in place to manage contacts with lobbyists include a requirement for staff to seek assurances from the lobbyists who

approach them that they are not subject to any of these post employment restrictions. A lobbyist who gives false or misleading information in response to this request could be in breach of the Lobbying Code of Conduct. Agencies could reinforce this system by *‘seeking assurances from staff on separation that they will adhere to the restrictions, but such assurances would rely primarily on goodwill and may not be legally binding’*<sup>24</sup>.

**(b) Process**

**(i) Prior approval**

3.10 As restrictions with binding effect have to be mutually agreed, there is no application or prior approval procedure for post-service employment by former senior civil servants. Individual government agencies may put in place specific policies and procedures requiring civil servants to inform their agency heads as soon as they are offered post-service employment where a conflict of interest could arise.

**(ii) Work restrictions**

3.11 Specific post-service work restrictions may be agreed voluntarily by a civil servant with his government agency before departure from the government service. Some examples of such mutually agreed restrictions include not taking up employment in a specific domain of activity within six to 24 months after leaving government service, and declaration about previous access and limitations on future use of information.

**(iii) Other forms of control**

3.12 To address conflict of interest, the Australian Government may impose restrictions on companies bidding for and being awarded with government contracts. Under the APS Values and Code of Conduct, a government agency may include provisions in its

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<sup>24</sup> Circular No. 2008/4 ‘Requirements relating to the Lobbying Code of Conduct and Post Separation Contact with Government’ issued by the Australian Public Service Commission.

tender invitations precluding the solicitation, enticement or engagement of former civil servants during the tender process. A government agency may also approach and caution companies which may gain an unfair advantage by hiring former civil servants on the importance to avoid any conflict of interest situation in business dealing with the Government.

(iv) Sanctions

3.13 As restrictions imposed by the Government on post-service employment may not be enforced by law, their compliance by former civil servants relies solely on goodwill (see paragraph 3.04). Sanction for non-compliance may only take the form of moral censure, which is rarely exercised.

3.14 Under the Crimes Act, it is an offence for a person who has left the APS to publish or communicate without authority any fact or document which he became aware of or obtained while employed by the Australian Government. An offence may attract a two-year maximum prison term. Also, the Criminal Code (abuse of public office) makes it an offence for a person who has left the APS to use official information obtained while employed to obtain dishonestly a benefit for himself or another person or to cause detriment to another. An offence may attract a five-year maximum prison term.

(c) **Public disclosure**

3.15 Information on post-service employment taken up by former senior civil servants and on the specific arrangements (if any) agreed between the individuals concerned and their government agencies is not disclosed to the public on grounds of privacy and confidentiality. Individual cases may come to the public knowledge through parliamentary scrutiny or press coverage.

## **I. Policy Objective**

- 3.16 The aim of the Canadian control regime is to ensure that public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office and to minimise the possibilities of –
- (a) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public office;
  - (b) obtaining preferential treatment or privileged access to the Government after leaving public office;
  - (c) taking personal advantage of information obtained in the course of official duties before it becomes generally available to the public; and
  - (d) using public office to unfair advantage in obtaining opportunities for outside employment.

## **II. Basis of Control**

- 3.17 Canadian public servants are bound by their employment contracts to comply with the post-service employment arrangements. The Values and Ethics Code for Public Service forms part of the conditions of employment in the Public Service of Canada. The Code sets out, amongst others, measures concerning conflict of interest issues and rules of conduct concerning post-service employment.
- 3.18 In addition, former public servants are subject to statutory control on communication or disclosure of information received while working as public servants.

### III. Key Features

#### (a) Periods of restriction

3.19 The post-service employment arrangements apply to public servants in the Executive Group (EX) positions, EX minus 1 and EX minus 2 positions and their equivalents. These positions include public servants in the three levels down the hierarchical level of a Deputy Head of a department or agency, who is a political appointee. In addition, a Deputy Head may, after consultation with the Secretariat of the Treasury Board of Canada (which serves as the general manager and employer of the public servants), designate other positions as being subject to post-service employment arrangements where the official duties involved raise post-employment concerns, or exclude positions where the official duties do not raise such concerns.

3.20 Former public servants subject to the post-service employment control measures shall not, within **one year** after leaving office (known in the Canadian context as the ‘limitation period’) –

- (a) accept appointment to a board of directors of, or employment with, entities with which they personally, or through their subordinates, have had significant official dealings during the period of one year immediately prior to the termination of their service;
- (b) make representations for, or on behalf of, persons to any department or organisation with which they personally, or through their subordinates, have had significant official dealings during the period of one year immediately prior to the termination of their service; or
- (c) give advice to their clients using information that is not available to the public concerning the programmes or policies of the departments or organisations with which they were employed or with which they have had a direct and substantial relationship.



3.21 Upon application from a public servant or former public servant, the Deputy Head concerned may waive or reduce the one-year limitation period. In making such a decision, the Deputy Head should take into account various factors, including the general employment prospect of the applicant; the significance to the Government of information possessed by the applicant during his government service; the authority and influence possessed by the applicant; the degree to which the prospective employer may gain an unfair commercial or private advantage by employing the applicant; and the circumstances under which the termination of the applicant's service occurred, etc.

**(b) Process**

(i) Prior approval

3.22 There is no application or prior approval procedure for post-service employment by former senior public servants, other than that related to a waiver or reduction of the one-year limitation period (see paragraph 3.21).

(ii) Work restrictions

3.23 Other than the work restrictions set out in paragraph 3.20, there are no specific restrictions on post-service work.

(iii) Other forms of control

3.24 Bidders of contracts to supply work and services for the Canadian Government are required to declare any involvement of former public servants in EX positions. Under the Code of Conduct for Procurement, vendors are not permitted to hire directly, or through a third party, former public servants during their one-year limitation period where this would constitute a violation of post-employment measures under the Values and Ethics Code for Public Service.

(iv) Sanctions

3.25 The Values and Ethics Code for Public Services does not provide for any sanctions on non-compliance with the post-service employment measures by former public servants.

3.26 Former public servants are subject to the provisions of the Canadian Security of Information Act on unauthorised disclosure of official information. Any violation is liable to a fourteen-year maximum prison term.

(c) **Public disclosure**

3.27 Information on post-service employment taken up by former senior public servants is not disclosed to the public.

<b>France</b>
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**I. Policy Objective**

3.28 The aim of the French post-service employment arrangement is to –

- (a) protect both the integrity of senior civil servants and the political neutrality of the public service; and
- (b) mitigate public concerns over possible impropriety in post-service appointment.

**II. Basis of Control**

3.29 The control is provided for in the French Penal Code ('Code Pénal' in French) decreed in 1993 and subsequently amended in 2007. The legislation decreed in 1993 is concerned mostly with prevention of corruption and transparency of economic activities and public procedures. The 2007 amendment re-defines what constitute taking interests illegally.

- 3.30 Former civil servants are also subject to the control of the Penal Code concerning unauthorised disclosure of secret information and information which is prejudicial to national defence.

### **III. Key Features**

#### **(a) Periods of restriction**

- 3.31 All civil servants are subject to post-service employment control. Since 2007 onwards, the period of restriction has been shortened to within **three years** after leaving the government service (formerly five years), having regard to the practice in other countries. Within three years of leaving the government service, a former senior civil servant is not allowed to take up employment with a particular enterprise which he has regulated or monitored or with which he has negotiated or signed contracts on behalf of the public authorities during the three years before leaving government service (the concerned company). This prohibition also covers companies in the same group to encompass the parent and subsidiary company of the concerned company and other companies, subject to a minimum stake of 30%, i.e. parent or other companies holding a minimum 30% stake of the concerned company, or a company with a minimum 30% stake held by the concerned company.

#### **(b) Process**

##### **(i) Prior approval**

- 3.32 Former civil servants are required to submit applications for outside work during the period of restriction. The applications will be referred to an external body, the Ethics Commission ('La commission de déontologie' in French), for advice. The Ethics Commission has 14 members (including chairman), comprising a magistrate of the Auditors Court (i.e. the national audit office, 'Cour des comptes' in French), a Judiciary magistrate, qualified persons who are familiar with the work of the state/territorial public service and public health service, persons who are familiar with the field of research, and the Director General of

Administration and Public Service ('Le directeur général de l'administration et de la fonction publique' in French).

(ii) Work restrictions

3.33 A former senior civil servant, when taking a job in the private sector within three years of leaving the government service, must not try to reach his former colleagues for seeking information that may not be available to the public.

(iii) Sanctions

3.34 It is an offence under the French Penal Code if a former civil servant, within three years of leaving the government service, takes up a job in a company that he has regulated or monitored in the last three years of his government service. A two-year prison term and a fine of €30,000 may be imposed. Disciplinary sanctions also exist, but are difficult to enforce, especially when the senior civil servant concerned has retired.

3.35 Unauthorised disclosure of secret information under the French Penal Code is punishable by a one-year prison term and a fine of € 15,000. Separately, disclosure of information which is prejudicial to national defence under the Penal Code is punishable by a seven-year prison term and a fine of € 100,000.

(c) **Public disclosure**

3.36 The Ethics Commission publishes an annual report on its work and on the opinions it has offered on selected applications but not on the identity of the concerned former civil servants. The report is available to the public. Information on post-service employment taken up by former senior civil servants is not disclosed to the public.

## **I. Policy Objective**

3.37 New Zealand aims to balance the perceived merits and demerits of post-service employment of its former senior civil servants. It recognises the considerable advantages that ex-civil servants could bring to their new employers, including knowledge of research results and administrative processes. It also accepts that the interests of former senior civil servants must be properly balanced with the wider public interest. It does not favour constraint on post-service employment unless there is conflict of interest or breach of confidentiality.

## **II. Basis of Control**

3.38 New Zealand courts have overwhelmingly ruled against employers wanting to apply restraint of trade provisions. The post-service control regime for senior civil servants is therefore largely built on the basis of mutual agreement and trust. The control for post-service employment is set forth in the employment contracts of the most senior civil servants, namely the Chief Executive Officers (see paragraph 3.40).

3.39 Former civil servants are subject to statutory control concerning communication of official information.

## **III. Key Features**

### **(a) Periods of restriction**

3.40 The most senior civil servants, namely heads of government departments and Crown entities (known as Chief Executive Officers or ‘CEOs’) are subject to control. In the employment contracts of some CEOs, there is a period of restriction of typically one year. During this period of restriction, a former CEO has to seek consent from the State Services Commissioner

(SSC) who is responsible for the appointment and management of senior civil servants. The agreement of SSC will not be unreasonably withheld.

**(b) Process**

**(i) Prior approval**

3.41 CEOs will have to obtain the prior agreement of SSC before taking up post-service employment during the period of restriction if such a period is stipulated in their employment contracts.

3.42 SSC will counsel an outgoing senior civil servant and suggest what he may or may not want to consider in terms of future plans.

**(ii) Work restrictions**

3.43 CEOs are prohibited during and after the term of their employment contracts to –

(a) disclose to any person any official information that has come to their knowledge in the course of the performance of the employment contracts with the Government; and

(b) use or attempt to use any such official information for their own personal benefit, or for the benefit of any other person or organisation, or in any manner whatsoever, other than in accordance with their duties and responsibilities and consistent with the obligation of honesty expected of a person holding a position of CEO.

**(iii) Sanctions**

3.44 As the control regime is largely built on the basis of mutual agreement and trust (see paragraph 3.38), sanction on former civil servants for non-compliance can only take the form of moral censure which is rarely exercised.

3.45 Under the Crimes Act 1961, a person, including a former civil servant, is liable to a three-year maximum prison term for

unauthorised disclosure of official information in the knowledge that such communication is likely to prejudice the security and defence of New Zealand.

**(c) Public disclosure**

3.46 New Zealand does not disclose to the public post-service employment taken up by former senior civil servants.

<b>Singapore</b>
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3.47 Information on Singapore's post-service employment control for senior civil servants is graded confidential and not accessible to the consultant. The limited description provided below is based on information available from different sources in the public domain.

**I. Policy Objective**

3.48 No information can be found in the public domain.

**II. Basis of Control**

3.49 The post-service outside work control applicable to pensioners is provided for under the Pensions Act.

3.50 Civil servants have to comply with the code of conduct as stipulated in the Instruction Manual, which forms part of their employment contracts with the Government.

3.51 In addition, all civil servants are subject to the Official Secrets Act on disclosure of official information.

### **III. Key Features**

#### **(a) Periods of restriction**

3.52 In Singapore, only certain categories of civil servants are on pension payments. The post-service outside work control arrangements only apply to these civil servants. Within **five years** from retirement, former civil servants in certain categories have to obtain permission from the President of Singapore before –

- (a) becoming directors of any company, the principal part of whose business is in any way directly concerned with Singapore or Malaysia;
- (b) becoming staff employed in Singapore or in Malaysia by any such company; or
- (c) engaging in any occupation for gain in Singapore or in Malaysia.

#### **(b) Process**

##### **(i) Prior approval**

3.53 No information can be found in the public domain on the application, assessment and decision-making procedures.

##### **(ii) Work restrictions**

3.54 No information can be found in the public domain.

##### **(iii) Sanctions**

3.55 Under the Pensions Act, failure to obtain prior permission from the President before taking up post-service employment within five years from retirement may result in cessation of the pension payment. Pension payment may be restored, with retrospective effect if the President sees fit, after the cessation of the unauthorised post-service employment.



3.56 Unauthorised disclosure of official information is an offence under the Official Secrets Act and is liable to a maximum fine of SINS\$2,000, or a two-year maximum prison term, or both.

**(c) Public disclosure**

3.57 No information can be found in the public domain.

<b>United Kingdom (UK)</b>
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**I. Policy Objective**

3.58 The aim of the UK control regime is to maintain public trust in the Crown services and in the people who work in them, and in particular –

- (a) to avoid any suspicion that the advice and decisions of a serving officer might be influenced by the hope or expectation of future employment with a particular firm or organisation; or
- (b) to avoid the risk that a particular firm might gain an improper advantage over its competitors by employing someone who, in the course of his official duties, has had access to technical or other information which those competitors might legitimately regard as their own trade secrets or to information relating to proposed developments in government policy which may affect that firm or its competitors.

**II. Basis of Control**

3.59 The control on post-service employment is included in the employment terms and conditions of all civil servants. The Civil Service Management Code, which contains the Rules on the Acceptance of Outside Appointments by Crown Servants (commonly known as ‘the Business Appointment Rules’), and the

Civil Service Code form part of the employment contract between a civil servant and the Crown.

- 3.60 In addition, all civil servants are subject to the Official Secrets Act concerning unauthorised disclosure of official information.

### **III. Key Features**

#### **(a) Periods of restriction**

- 3.61 The control regime applies to all civil servants. Specific control arrangements applicable to individual civil servants will depend on their rank and whether they have had previous official dealings with their prospective employers, etc.

- 3.62 Within **two years** of leaving Crown employment (excluding the final leave period), civil servants must obtain prior approval before taking up any form of full, part-time or fee-paid employment –

- (a) in the United Kingdom; or
- (b) overseas in a public or private company or in the service of a foreign government or its agencies.

- 3.63 All Permanent Secretaries, including Second Permanent Secretaries, and their direct equivalents are subject to an automatic minimum waiting period of **three months** between leaving Crown employment and taking up an outside appointment, unless they have been appointed from outside the civil service on a limited period contract. The Advisory Committee on Business Appointments (see paragraphs 3.66 and 3.67) has the discretion to recommend waiving the minimum waiting period if, in its view, the appointment is entirely unconnected with the applicant's previous official work and no questions of impropriety arise.

**(b) Process**

**(i) Prior approval**

3.64 Former civil servants are required to submit applications for outside work during the period of restriction. In considering an application for post-service employment, departments are advised to consider, in particular, whether the applicant, when in government service, has –

- (a) dealt with the receipt of tenders from the prospective employer;
- (b) dealt with the award of contracts to the prospective employer;
- (c) dealt with the administration or monitoring of contracts with the prospective employer;
- (d) given professional or technical advice about such contracts whether before or after they were awarded; or
- (e) been involved in dealings of an official but non-contractual nature with the prospective employer.

3.65 If the applicant has had some degree of contact with the prospective employer while in government service, the concerned department has to take the following into account –

- (a) the extent of contact made in the course of official duties;
- (b) the significance of the contact;
- (c) the nature of the proposed employment; and
- (d) the connection between the new job and the applicant's previous official duties.

The concerned department will take into account contacts in the course of official duty which have taken place at any time in the two years immediately before resignation or retirement, or earlier where the association was of a continued or repeated nature.

3.66 Applications from the most senior civil servants (e.g. Permanent Secretaries) are put to the Advisory Committee on Business Appointments for advice. The advice is taken into account by the decision authority (which is the Prime Minister). Applications from other civil servants are not referred to the Advisory Committee for advice unless the decision authority (which is the Minister in charge of the department where the applicant previously worked in) and the Head of the Home Civil Service consider necessary.

3.67 The Advisory Committee on Business Appointments is appointed by the Prime Minister to give independent advice on post-service outside work applications from civil servants at the most senior levels. It is chaired by a member of the House of Lords and consists of five other members<sup>25</sup>, including members of the House of Lords, former senior civil servants and a leading light in the business sector. It is supported by a small secretariat in the Cabinet Office.

(ii) Work restrictions

3.68 Applications for post-service outside work will be approved either –

- (a) unconditionally; or
- (b) subject to conditions which may apply for up to two years from the final day in Crown employment, or where different, the final day in post, as appropriate.

3.69 Conditions for approval may include –

- (a) a waiting period before taking up the appointment;
- (b) an absolute or qualified ban on the involvement of the applicant in dealings between the prospective employer and the Government;

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<sup>25</sup> At the time of the consultancy study, the Advisory Committee on Business Appointments consisted of six members (including the chairman). The membership size was subsequently expanded to seven members (including the chairman).

- (c) a ban on the involvement by the applicant in dealings between the prospective employer and a named competitor (or competitors) of that employer; and/or
- (d) in the case of consultancies, a requirement to seek official approval before accepting commissions of a particular nature or from named employers.

(iii) Sanctions

3.70 Sanctions for non-compliance with the post-service employment measures are covered by employment contract law. Civil servants in breach of employment contracts may be sued by the Government or the Government may apply to the court for an injunction order to prevent or stop the outside employment.

3.71 The Official Secrets Act 1989 makes it unlawful to disclose information relating to defence, security and intelligence, international relations, intelligence gained from other departments or international organisations, intelligence useful to criminals, or the interception of communications. The law is binding on serving and former civil servants and any other persons who possess official information. The penalties for violation of the Act are a two-year maximum prison term or an unlimited fine, or both, if the offence is tried on indictment; and a maximum six-month imprisonment term or a maximum fine of £2,000, or both, if the offence is tried summarily.

(c) **Public disclosure**

3.72 The advice of the Advisory Committee on Business Appointments given on each approved application by former senior civil servants is published online and in its annual report if the employment is taken up. Statistics on applications considered are also available in its annual report. Applications approved and taken up by other former civil servants (i.e. those that were not submitted to the Advisory Committee for consideration) are not disclosed.

<b>United States of America (USA)</b>
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## **I. Policy Objective**

- 3.73 The key concern for post-service employment of former civil servants of the Federal Government of the USA is conflict of interest. Statutory controls are put in place to address conflict of interest and to prohibit certain acts by former civil servants which involve, or may appear to involve, the unfair use of information and contacts obtained during government employment.
- 3.74 Another important objective is to prevent professional lobbying activities by ex-civil servants who may have insider information through their previous work within the Government.

## **II. Basis of Control**

- 3.75 The restrictions on post-service employment for former employees of the Executive Branch of the Federal Government are set out in law, namely section 207 of Title 18 of the United States Code, which is a criminal statute. This section prohibits a former employee from providing certain services to or engaging in certain activities under certain circumstances on behalf of persons or entities other than the United States, whether or not done for compensation.
- 3.76 In addition, any person, including a former civil servant, is subject to control under the United States Code concerning disclosure of classified information.

### III. Key Features

#### (a) Periods of restriction

3.77 The post-service employment control arrangements apply to all employees of the Executive Branch. Senior employees and very senior employees are subject to more restrictions.

3.78 None of the provisions in section 207 of Title 18 of the United States Code bar any individual, regardless of rank or position, from accepting employment with any private or public employer after government service.

3.79 The post-service employment restrictions provided under section 207 only prohibit former employees of the Executive Branch from engaging in **certain activities** on behalf of persons or entities other than the United States for **one or two years or for life** after leaving office.

#### (i) One-year ban on certain activities

3.80 Within one year of leaving the government service, no **former employee** of the Executive Branch may knowingly represent, aid or advise on the basis of covered information<sup>26</sup>, on behalf of someone other than the United States, on an ongoing treaty or trade negotiation under the Omnibus Trade and Competitiveness Act of 1988 in which, during his last year of government service, he participated personally and substantially as an employee.

3.81 Within one year of leaving the government service, a former **senior employee** of the Executive Branch is also barred from communicating to or appearing before the agency in which he

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<sup>26</sup> Covered information means agency records which were accessible to a former employee, which he knows or should have known are designated as exempt from disclosure under the Freedom of Information Act and which concerns a negotiation in which he has participated personally and substantially during his last year of government service.

served during his last year of government service, with the intent to influence, on behalf of another person other than the United States, on a matter on which he seeks official action. This provision does not prohibit behind-the-scenes assistance rendered by a former senior employee.

3.82 Within one year of leaving the government service, a former **senior employee** and a former **very senior employee** of the Executive Branch are also barred from representing a foreign entity before an agency of the United States or aiding, or advising a foreign entity with the intent to influence certain government officials, even without direct representations to officials concerned on the behalf of a foreign entity. A foreign entity refers to the government of a foreign country or a foreign political party.

(ii) Two-year ban on certain activities

3.83 Within two years of leaving the government service, no **former employee** of the Executive Branch may communicate with or appear before any court or federal agency with the intent to influence on behalf of someone other than the United States on a particular matter involving specific parties that he knows or reasonably should know was actually pending under his official responsibility during his last year of government service and in which the United States is a party or has a direct and substantial interest.

3.84 Within two years of leaving the government service, a **very senior employee** of the Executive Branch is also barred from communicating to or appearing before any official appointed to an Executive Schedule position or any employee of the agency in which he has served during his last year of government service, with the intent to influence on behalf of another person other than the United States in connection with any matter on which he seeks official action. This restriction is similar to the ‘one-year ban’ applicable to a former senior employee mentioned in paragraph 3.81 but the length of the period of restriction is longer.



(iii) Life-long ban on certain activities

3.85 A **former employee** of the Executive Branch is prohibited permanently from communicating with or appearing before any court or federal agency with the intent to influence on behalf of someone other than the United States on a particular matter involving specific parties in which he participated personally and substantially while with the Government and in which the United States is a party or has a direct and substantial interest. ‘Particular matter’ includes any investigation, application, request for a ruling or determination, rule-making, contract, controversy, claim, charge, accusation, arrest or judicial or other proceeding. The particular matter has to involve specific parties, e.g. parties involved in a contract. General rule-makings do not usually involve specific parties. This provision does not prohibit behind-the-scenes assistance rendered by a former employee in connection with the representation of another person, or self-representation.

(b) **Process**

(i) Prior approval

3.86 Prior approval for taking up post-service employment is not required.

3.87 Before an employee leaves the government service, he has to give a notice of leave to his supervisor/manager. The agency will arrange pre-termination counselling and provide him with information on post-employment regulations and restrictions.

(ii) Work Restrictions

3.88 Apart from the restrictions with a specific timeframe (as set out in section 207 of Title 18 of the United States Code and explained in paragraphs 3.80 to 3.85), there are no other work restrictions applicable to former employees of the Executive Branch on taking up of post-service employment.

(iii) Sanctions

3.89 A person convicted of an offence under section 207 of Title 18 of the United States Code shall be liable to a one-year maximum prison term, or a maximum fine of to US\$50,000, or both. If the conduct is done wilfully, the maximum penalty will be imprisonment of five years, or a fine of US\$50,000, or both.

3.90 The Attorney General may bring a civil action against any person who engages in conduct constituting an offence under section 207 of Title 18 of the United States Code and such person shall be subject to a civil penalty of up to US\$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The Attorney General may also petition for an order prohibiting that person from engaging in such conduct. The imposition of such a civil penalty or the filing of a petition for prohibition order does not preclude any other criminal or civil statutory, common law or administrative remedy.

3.91 Under the United States Code, unauthorised disclosure of classified information is liable to a fine, or imprisonment for not more than ten years, or both.

(c) **Public disclosure**

3.92 Information on post-service employment taken up by former employees, including senior and very senior employees, is not disclosed to the public.

## **CHAPTER 4: Public Response to Consultation Document**

### **Overview**

4.01 This chapter describes the public consultation carried out by the Review Committee and summarises the response received from the public and stakeholders on the Control Regime.

### **Public Consultation**

4.02 The Review Committee issued a consultation document and commenced a two-month public consultation on 20 February 2009 to gather and gauge the views from the public and stakeholders.

4.03 The Review Committee identified nine salient issues in the consultation document to facilitate public discussion. These issues, distilled from the Review Committee's discussions, included the underlying principles, policy objective, and design and operation of the Control Regime. Views on other issues were also welcome.

4.04 The Review Committee proactively reached out to different sectors of the community through briefings and forums, including –

- (a) two briefings to the Public Service Panel of the Legislative Council;
- (b) a briefing to the Chairmen and Vice-chairmen of 18 District Councils;
- (c) three public forums separately held on the Hong Kong Island, in Kowloon and the New Territories; and

- (d) a consultative session with civil service groups and individual civil servants.
- 4.05 The Review Committee also set up a dedicated website to keep the public posted of its work and to receive written submissions from members of the public and stakeholders.
- 4.06 Together with submissions received before and after the launch of the public consultation and some late submissions received after the close of the consultation period on 20 April 2009, the Review Committee received a total of 77 submissions from members of the Legislative Council and District Councils, political parties, academics, think tanks, professional bodies, business groups, civil service groups, individual civil servants and members of the public. A list of the written submissions received is at **Annex E**. All written submissions, except those which the respondents had asked for non-disclosure have been uploaded onto the Review Committee's website, hardcopies of which are available upon request. Please see paragraph 1.08 for details.
- 4.07 The Review Committee would like to thank all the individuals and organisations for participating in the various briefings and forums, and for their valuable views.

## **Response on the Nine Salient Issues**

- 4.08 Paragraphs 4.09 to 4.70 summarise the views collected at various briefings/forums as well as those expressed in the written submissions on each of the nine salient issues set out in the consultation document. (The wording of the issues used in the consultation document is quoted in italics.) Whilst the Review Committee has used every effort to accurately summarise the response received, such summaries are not a full or exact reproduction of the original submissions and the wording used may differ from that in the original submissions. Also, the order in which the views are presented does not reflect their relative

importance or how widely they are shared.

## **I. Underlying Principles**

4.09 The Control Regime is currently underpinned by two principles, namely protecting the public interest and protecting an individual's right. In the context of post-service outside work, an individual's right generally refers to the right to work and freedom of choice of occupation after leaving government service<sup>27</sup>. Please refer to paragraphs 2.03 to 2.16 for details.

*Issue 1: Should protecting the public interest and protecting an individual's right continue to be recognised as the two underlying principles of the control regime?*

4.10 The majority of respondents who commented on this issue expressed the following views –

- (a) both the principles of protecting the public interest and protecting an individual's right were important and should continue to underpin the Control Regime; and
- (b) protection of the public interest should take precedence over protection of an individual's right. Some opined that former directorate civil servants, given their seniority when in government service, should have a duty to protect the public interest. Some respondents considered that it was reasonable to restrict former directorate civil servants' right to pursue post-service outside work as they were well remunerated during their service with the Government and enjoyed generous retirement benefits.

4.11 A few respondents pointed out that the public interest and an individual's right should not be viewed as two distinct and opposing sets of consideration. They considered that upholding an individual's right to work, a basic human right, was a facet of

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<sup>27</sup> Other relevant individual's rights include but are not limited to the right against unlawful discrimination and the right against unlawful infringement of personal data privacy.

protection of the public interest. They further pointed out that human resources could be put to good use by upholding former directorate civil servants' right to pursue post-service outside work, and hence benefiting the wider public interest.

## **II. Policy Objective**

### **(a) Appropriateness of Policy Objective**

4.12 The current policy objective is to –

- (a) ensure that directorate civil servants on final leave (see footnote 5 on page 8) or who have left the service will not take up any work outside the Government which may constitute a real or potential conflict of interest with their former government duties or cause negative public perception embarrassing the Government and undermining the image of the civil service; and
- (b) ensure at the same time that the said individuals' right to pursue employment or other work after ceasing government service is not unduly restricted.

4.13 The current policy objective has thus embodied the two underlying principles of protecting the public interest and protecting an individual's right to work. It has also highlighted the need to strike an appropriate balance between the two principles.

### *Issue 2: Is the current policy objective appropriate?*

4.14 A few respondents commented on the policy objective. Their views included –

- (a) the considerations of 'negative public perception', 'embarrassing the Government' and 'undermining the image of the civil service' were vague. It was doubtful how they could be put into operation objectively; and
- (b) safeguards against the use of confidential information

obtained <sup>28</sup> and personal connections built during government service in pursuit of post-service outside work should be stated explicitly in the policy objective.

**(b) ‘Deferred Reward’**

4.15 The Review Committee notes there is public concern over the possibility of a directorate civil servant using his official position to benefit a particular entity or individual in return for, or in the hope of, post-service employment, namely a form of ‘deferred reward’.

4.16 ‘Deferred reward’, if substantiated, would constitute a form of corruption; and the parties involved would be liable to criminal prosecution under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). The Review Committee notes that public concern may sometimes arise out of no more than suspicion or perception that a post-service appointment might be a reward for past favour.

*Issue 2A: What is the view on including in the policy objective a specific reference to avoidance of suspicion or perception of ‘deferred reward’ for past favour done during government service?*

4.17 There were views in support of the inclusion of a specific reference to avoidance of suspicion or perception of ‘deferred reward’ in the policy objective on the grounds that –

- (a) inclusion of such a reference would help address or mitigate public concern over suspicion or perception of ‘deferred reward’; and

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<sup>28</sup> Regarding the use of confidential information, a serving or former directorate civil servant is already bound by, among others, the requirements under the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong). This Ordinance prohibits, among others, unauthorised obtaining and disclosure of official information protected under the Ordinance. Under it, the maximum punishment for committing an offence of disclosing specified information without lawful authority is a fine of \$500,000 and two-year imprisonment if convicted on indictment and a fine at level 5 and six-month imprisonment if convicted summarily.

- (b) avoidance of suspicion or perception of ‘deferred reward’ also featured in the policy objective of some overseas control regimes, such as those of Canada and the United Kingdom.

4.18 On the other hand, there were respondents opposing the inclusion of such a reference based on the following considerations –

- (a) given the elaborate processes and procedures within the Government and the built-in systems of checks and balances, there was little room for a directorate civil servant to make decisions single-handedly. It was therefore doubtful whether ‘deferred reward’ really existed;
- (b) the perception element should not be brought into the regime as assessment of whether there was a conflict of interest should be based on facts, and not mere speculation and perception; and
- (c) ‘deferred reward’, if it existed, should be tackled by the relevant law, instead of under the Control Regime.

4.19 A few respondents proposed other means of tackling ‘deferred reward’, such as –

- (a) requiring an applicant for a civil service post or a serving civil servant to declare his intention of joining the private sector before offering him employment in the civil service or promotion to a higher rank in the civil service;
- (b) enhancing the checks and balances in the government decision-making mechanism to reduce room for manipulation by an individual directorate civil servant; and
- (c) conducting an integrity check on every civil servant before deciding his promotion to the directorate ranks.

**(c) Use of Limited Human Resources and Attractiveness of the Civil Service**

4.20 The Review Committee notes that some overseas jurisdictions, such as Australia and New Zealand, have taken into account the



consideration of putting the expertise and experience of former civil servants into good use in designing their post-service outside work control. Also, post-service outside work control may be one of the factors affecting the attractiveness of the civil service as a career.

*Issue 2B: What is the view on including in the policy objective specific reference to gainful use of limited human resources and attractiveness of the civil service as a career?*

4.21 The majority of respondents who commented on this issue agreed that it was important to put limited human resources to good use on the following grounds –

- (a) former directorate civil servants, in particular those from professional grades such as doctors and engineers, had accumulated valuable experience and expertise. They could continue to contribute to society through taking up post-service outside work;
- (b) people generally lived much longer nowadays. Many retired directorate civil servants were still capable of and preferred to engage in full-time work; and
- (c) the interchange of talent between the public and private sectors should be encouraged.

4.22 Some of these respondents specifically indicated agreement to the inclusion of a reference to gainful use of limited human resources in the policy objective.

4.23 A few respondents held opposing views on the grounds that –

- (a) the gainful use of limited human resources should carry less weight compared with other considerations such as avoidance of conflict of interest. The inclusion of such a reference might make the assessment process more complicated; and
- (b) the advancement opportunities of the younger generation

might be limited if retirees were permitted to take up post-service work.

- 4.24 A few respondents commented on the issue of attractiveness of the civil service as a career. Views raised included –
- (a) the ability to attract quality people to join and remain in the civil service was instrumental to promoting good governance and should be taken into account in designing the Control Regime;
  - (b) specific reference to maintaining the attractiveness of the civil service as a career should be included in the policy objective; and
  - (c) maintaining the attractiveness of the civil service should carry less weight compared with other considerations, such as avoidance of conflict of interest.

### **III. Design and Operation of the Control Regime**

- 4.25 The key features of the Control Regime may be summed up as the ‘**3-Ps**’, namely:
- (a) ‘**Periods of restriction**’ which denote the specified durations during which a directorate civil servant is subject to post-service outside work control;
  - (b) ‘**Process**’ which includes the application procedure, internal and external assessment, decision-making by the authority, conditions of approval (if granted), and sanctions for non-compliance; and
  - (c) ‘**Public disclosure**’ of information on approved and taken-up post-service outside work. This part will be examined separately under public monitoring in part IV of this chapter.

#### **(a) Periods of Restriction**

- 4.26 Currently, the control over post-service outside work for directorate civil servants is time-specific, as opposed to an

indefinite or life-long control. The specified periods of restriction during which the post-service outside work of a directorate civil servant is subject to control are namely: the final leave period, the minimum sanitisation period and the control period.

- 4.27 In brief, directorate civil servants are not allowed, under normal circumstances, to take up post-service outside work during the final leave period as they remain on full pay and retain their status as civil servants<sup>29</sup>.
- 4.28 The minimum sanitisation period is a specified period counting from the date of cessation of active duty of a directorate civil servant during which his knowledge of the Government's operation and policies may still be fresh and relevant. During the minimum sanitisation period, a directorate civil servant is normally not allowed to take up post-service work with a commercial organisation<sup>30</sup>.
- 4.29 The control period is a specified period of time counting from a directorate civil servant's formal departure from the Government (i.e. on exhaustion of final leave if any). During the control period, a former directorate civil servant must seek prior approval from the decision authority before taking up any post-service outside work, except for unpaid work with specified

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<sup>29</sup> Blanket permission has been given for directorate civil servants on final leave to take up unpaid work with three groups of specified non-commercial organisations, namely (a) charitable, academic or other non-profit making organisations not primarily engaged in commercial operations; (b) non-commercial regional or international organisations; and (c) the Central Authorities of the People's Republic of China. Also, the decision authority may give positive consideration to applications to take up part-time and paid or notionally paid work with such organisations during the final leave period if there are very exceptional considerations and if there is no concern over conflict of interest and dual identity.

<sup>30</sup> The decision authority may, where justified and on a case-by-case basis, shorten the minimum sanitisation period to allow for paid work in specified non-commercial organisations. For all other outside work, the minimum sanitisation period may only be shortened where there are special considerations, and subject to there being no conflict of interest and the work being unlikely to cause negative public perception. The minimum sanitisation period may also be extended for an application for post-service outside work on a case-by-case basis.

non-commercial organisations which is already covered under the blanket permission (see footnote 29 on page 57).

4.30 In general, the specified periods of restriction for post-service outside work for a directorate civil servant are longer if he is more senior and has longer years of government service. The reason for leaving the Government service is also a relevant consideration. The length of final leave period depends on the number of days of untaken leave and will vary among individual directorate civil servants. The lengths of the minimum sanitisation period and control period currently applicable to directorate civil servants are tabulated below –

Aspects of Control	Directorate Civil Servants (DPS or equivalent)								
	Reasons for leaving the Government								
	Retirement			Completion/termination of agreement			Other reasons (e.g. resignation)		
	D1-D3	D4-D7	D8	D1-D3	D4-D7	D8	D1-D3	D4-D7	D8
Minimum Sanitisation Period	6 months	1 year	1 year	Determined on a case-by-case basis			Determined on a case-by-case basis		
Control Period (a) ≥six years' continuous government service	2 years	2 years	3 years	2 years	2 years	3 years	2 years	2 years	3 years
(b) <six years' continuous government service				1 year	1 year	1.5 years	1 year	1 year	1.5 years

*Issue 3A: Is the current length of periods of restriction for post-service outside work appropriate?*

4.31 Views expressed on the current length of periods of restriction were mixed. Some respondents considered the current periods of restriction appropriate and objected to lengthening them. They put forward the following views –

- (a) the periods of restriction in Hong Kong were already long compared with those imposed in overseas jurisdictions;
- (b) any control period imposed should be rational and should be no more than the minimum necessary to achieve the legitimate objective;
- (c) lengthening the periods of restriction would further depart from the normal practice in the job market;

- (d) it was unnecessarily harsh and unfair to lengthen the periods of restriction across-the-board without considering individual circumstances; and
- (e) the less than a handful cases which gave rise to public concern recently arose within the existing control period.

4.32 On the other hand, there were respondents who considered the current length inadequate. They believed that lengthening the periods of restriction could help mitigate conflict of interest including ‘deferred reward’ in post-service outside work. Suggestions raised included –

- (a) doubling the length of the minimum sanitisation period, or extending it to one to two years;
- (b) lengthening the control period to three to five years;
- (c) the minimum sanitisation period should commence upon exhaustion of final leave; and
- (d) the period of restriction should be up to a ‘specific age’ as determined by an independent committee to be set up.

4.33 A few respondents proposed that instead of applying the periods of restriction across-the-board on all types of post-service outside work, the periods of restriction should be confined to specific post-service activities, e.g. lobbying serving government officials.

*Issue 3B: What is the view on a lifetime ban on any paid employment or paid employment with commercial organisations for retired civil servants in receipt of monthly pension payments?*

4.34 There were views supporting as well as opposing the imposition of a lifetime ban on paid employment for retired civil servants in receipt of monthly pension payments. Views in support of a lifetime ban included –

- (a) a lifetime ban on paid employment would alleviate public concerns over conflict of interest arising from post-service outside work; and

- (b) retired directorate civil servants should have no financial need to take up paid outside work as they received monthly pension payments until death.

4.35 Views opposing a lifetime ban included –

- (a) it would contravene the Basic Law and relevant international conventions which provided for an individual's right to work. It would also be at variance with making good use of limited human resources;
- (b) pension was an integral part of the remuneration package of eligible civil servants for their past government service rendered. It was not and should not be viewed as a compensation for deprivation of a civil servant's right to work after retirement;
- (c) some civil servants might still have heavy financial commitments after retirement<sup>31</sup>. They might have to take up paid employment after leaving government service; and
- (d) if former directorate civil servants were prohibited from taking up post-service outside work permanently or for a period of time, they should be compensated through fully paid 'gardening leave' during the restricted period.

4.36 Separately, some respondents proposed that for those retired directorate civil servants in receipt of monthly pension payments, these payments should be suspended or deducted upon their taking up paid post-service outside work. Some suggested that retired directorate civil servants should take up charity or teaching work only if they wished to continue to contribute to society.

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<sup>31</sup> The normal retirement age for civilian grades civil servants is 60 and that for disciplined services grades civil servants is 55 or 57 (depending on rank).

*Issue 3C: What is the view on the length of periods of restriction for former directorate civil servants engaged in specified fields of work while in government service?*

4.37 Mixed views were received on this issue. Some proposed imposing a ban for a certain period of time or permanently for taking up post-service outside work for directorate civil servants who had engaged in specified fields of government duties. The ‘specified fields of work’ mentioned included –

- (a) Property-related or land-related matters;
- (b) tendering exercises; and
- (c) grant of franchises.

4.38 Some suggested that if a former directorate civil servant had dealings with a particular organisation related to the above specified fields of work during government service, he should be prohibited, on a permanent basis, from taking up post-service appointment with the concerned organisation and its related entities.

4.39 Respondents who opposed more stringent control on directorate civil servants who had engaged in specified fields of work during past government service argued that –

- (a) it would be difficult to decide objectively the types of work which were more prone to conflict of interest; and
- (b) any selection of specified fields of work would be arbitrary and might be subject to legal challenge.

*Issue 3D: What is the view on the length of periods of restriction for post-service outside work in the same field as that pursued by a former directorate civil servant before leaving government service?*

4.40 There were views objecting to any lengthening of periods of restriction for post-service outside work in the same field as that pursued by former directorate civil servants during government service because –

- (a) former directorate civil servants should be allowed to contribute their expertise and experience in the most relevant fields;
- (b) such a move would essentially deprive professional directorate civil servants of the right to pursue post-service outside work as they would likely wish to continue to work in their respective professions, and hence might be subject to legal challenge; and
- (c) the expertise of professional directorate civil servants should be harnessed for service to the society.

4.41 Some respondents considered that taking up post-service outside work in the same field or in entities with which the concerned directorate civil servants had had past dealings during government service should be prohibited or subject to a longer period of restriction (lengthened by two to four years) in order to avoid ‘deferred reward’ and possible conflicts of interest.

**(b) Process – Assessment over Past Dealings with ‘Prospective Employer’ and Related Companies**

4.42 A former directorate civil servant is required under the Control Regime to disclose in his application for post-service outside work his past contractual, legal, official and other contacts/dealings (if any) with the prospective employer during his last three years of government service.

4.43 If the applicant, in his applied-for post-service work, will be involved in the business of the prospective employer’s parent company or any of its subsidiary companies, he is also required to disclose such past contacts/dealings with these entities during his last three years of government service. Otherwise, he is not required to disclose past contacts/dealings with the related companies of the prospective employer.



*Issue 4: Should the past contacts/dealings of a former directorate civil servant with the prospective employer's parent and/or other related companies during his last few years of government service be disclosed and assessed for the purpose of conflict of interest, irrespective of whether the former directorate civil servant, in his applied-for post-service work, will be involved in the business of these entities?*

4.44 The majority of respondents who commented on this issue supported the suggestion of requiring applicants to disclose past contacts/dealings with prospective employers' parent and related companies during their past government service *irrespective* of their future work involvement on the grounds that –

- (a) it could help address or mitigate concerns over 'deferred reward'; and
- (b) the requirement to disclose material dealings should not cause much difficulty to an applicant.

4.45 A few respondents objected to the suggestion on the grounds that –

- (a) the arrangement would impose an undue burden on an applicant. Applicants might not be able to recall all their past contacts/dealings with prospective employers and their related companies. Any unintentional omission might raise doubts on the integrity of the concerned applicant; and
- (b) the effectiveness of the arrangement was doubtful, and yet this would incur huge administrative cost to the Administration which would need to verify the information provided.

**(c) Process – Work Restrictions**

4.46 The decision authority will impose the following standard work restrictions on all approved applications for post-service outside work –

*'The applicant should not –*

- (a) *be personally involved, directly or indirectly, in the bidding*

*for any government land, property, projects, contracts or franchises;*

- (b) undertake, or represent any person in, any work including any litigation or lobbying activities that are connected in any way with –
  - (i) the formulation of any policy or decision;*
  - (ii) sensitive information;*
  - (iii) contractual or legal dealings;*
  - (iv) assignments or projects; and/or*
  - (v) enforcement or regulatory duties,**in which he had been involved or to which he had access during his last three years of service; or**
- (c) engage in any activities which would cause embarrassment to the Government or bring disgrace to the civil service.'*

4.47 Additional application-specific restrictions may also be imposed by the decision authority on a case-by-case basis to further mitigate potential or perceived conflict of interest.

*Issue 5: Is the current imposition of work restrictions on approved taken-up outside work appropriate? Can the imposition of work restrictions address and mitigate public concern over potential or perceived conflict of interest?*

4.48 Among the respondents who considered the arrangement of imposing work restrictions appropriate, there were different views on its effectiveness –

- (a) some considered the current work restrictions comprehensive and were able to mitigate public concern over potential or perceived conflict of interest;*
- (b) some pointed out that the current work restrictions were not able to address all areas of concern, e.g. use of confidential information and personal connections gained while in government service in pursuit of post-service outside work; and*
- (c) some considered the standard work restrictions too*

encompassing and restrictive. More targeted and case-specific work restrictions were preferred.

4.49 Some respondents considered the current imposition of work restrictions inappropriate. There was a suggestion that former directorate civil servants engaged in post-service outside work should be required, during the first three to five years of employment, to make a statutory declaration annually that their post-service work did not involve any conflict of interest with their past government duties.

**(d) Process – Advisory Committee on Post-service Employment of Civil Servants**

4.50 Applications for post-service outside work will first go through an internal assessment process within the Administration. They will then be put to an external and independent Advisory Committee on Post-service Employment of Civil Servants (hereafter referred to as ‘the Advisory Committee’) appointed by the Chief Executive for advice before the decision authority makes the final decision on the applications.

4.51 The Advisory Committee is currently chaired by a serving High Court judge, and its five other members come from different sectors of the community, including one who is a serving member of the Public Service Commission (see footnotes 15 and 16 on page 17). (The terms of reference and current membership of the Advisory Committee are set out in **Annex B**). The Advisory Committee is supported by a secretariat which is part of the Civil Service Bureau (CSB).

*Issue 6: Should there be any change to the composition of and/or institutional support for the Advisory Committee on Post-service Employment of Civil Servants?*

4.52 The majority of respondents who commented on the composition of the Advisory Committee considered that more individuals from different backgrounds should be appointed to the Advisory

Committee so that it could consider applications from more angles, thus adding credibility to its advice. Suggested categories of personalities for appointment to the Advisory Committee included –

- (a) academics;
- (b) representatives from the civil service or retired civil servants;
- (c) representatives from professional fields relevant to the applications being considered;
- (d) serving and former members of the Executive Council, Legislative Council and District Councils; and
- (e) local personalities familiar with government operations and issues, etc.

4.53 On the other hand, some respondents expressly objected to the appointment of certain categories of personalities to the Advisory Committee. For example, some objected to appointing politicians so as to avoid politicising the work of the Advisory Committee. Some objected to appointing individuals from the real-estate and banking sectors and individuals associated with conglomerates to avoid possible conflicts of interest.

4.54 Separately, there were views that the Advisory Committee should not be chaired by a serving judge (or a member of the Judiciary). Some noted that the Advisory Committee currently considered most applications by circulation and suggested that it should hold meetings to evaluate more controversial applications. There was also a view that the Advisory Committee should be overhauled to become the decision authority.

4.55 On the institutional support for the Advisory Committee, respondents who commented on the issue considered that the secretariat for the Advisory Committee –

- (a) should be independent of the CSB so as to provide separate assessment and enhance public confidence in the work of the

Advisory Committee; and

(b) should be strengthened to provide more comprehensive assessment and to process applications more speedily.

(e) **Process – Suspension of Pension for Paid Employment with Specified Subvented Organisations**

4.56 Under the Pension Benefits Ordinance (Chapter 99 of the Laws of Hong Kong), the Chief Executive has the discretionary power<sup>32</sup> to suspend monthly pension payments of a civil servant – directorate or non-directorate – retired on pensionable terms if the civil servant concerned takes up full-time paid post-service outside work in specified subvented organisations. Under the Pensions Ordinance (Chapter 89 of the Laws of Hong Kong), there is a similar provision, except that the consent of the person involved to the pension suspension is required.

4.57 This discretionary power has been exercised by the relevant authority. Currently, there are 16 subvented organisations specified for pension suspension purpose (see **Annex C**), covering the eight tertiary education institutions, the Housing Authority, the Hospital Authority, the Monetary Authority, Office of The Ombudsman, Equal Opportunities Commission, etc. The application of the pension suspension arrangement is applicable to relevant retired civil servants for as long as they remain employed by these 16 organisations on a full-time and paid basis, in other words, not only during but also beyond the applicable periods of restriction.

4.58 The pension suspension arrangement is not applicable if a retired civil servant (directorate or non-directorate) in receipt of pension payments takes up post-service employment in other subvented organisations or in the private sector.

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<sup>32</sup> The Chief Executive has delegated the statutory power to designate any subvented organisation for the purpose of pension suspension to the Secretary for the Civil Service.

*Issue 7: Should there be any change to the pension suspension arrangement for post-service employment in specified subvented organisations by retired civil servants?*

4.59 The views expressed by the respondents on this issue were divergent. Respondents who advocated relaxation of the pension suspension arrangement held the following views –

- (a) monthly pension payments were ‘deferred remuneration’ for past government service rendered by a retired civil servant. The payments should not be suspended for taking up post-service outside work, whether in a commercial entity or in a subvented organisation;
- (b) the pension suspension arrangement discouraged former civil servants from taking up post-service outside work in the specified subvented organisations, which should be less prone to conflicts of interest compared to employment in the private sector; and
- (c) the pension suspension arrangement was unfair to pensioners as compared with retired civil servants on Civil Service Provident Fund<sup>33</sup> (CSPF) terms who were not subject to any curtailment of retirement benefits if they joined any of the specified subvented organisations.

4.60 On the other hand, there were respondents supporting the continuation or expansion of the pension suspension arrangement on the grounds that the arrangement could avoid ‘double pay’ from the public purse and could ensure good use of public money. Some of them further proposed that –

- (a) the list of subvented organisations for pension suspension purpose should be updated to include all subvented organisations or quasi-government bodies;

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<sup>33</sup> The Government has ceased appointing new recruits to the civil service on pensionable terms since 1 June 2000. Instead, civil servants on permanent terms will be eligible for retirement benefits under the Civil Service Provident Fund Scheme, which is set up and operated under the Mandatory Provident Fund Schemes Ordinance.

- (b) the pension suspension arrangement should be extended to retired civil servants who had taken up office as politically appointed officials;
- (c) the monthly pension payments should not be suspended if the salary received from employment with a subvented organisation was no more than 25% of the monthly pension payments; and
- (d) leadership positions in subvented organisations should not be filled by former government officials, thus rendering the issue of pension suspension irrelevant<sup>34</sup>.

**(f) Process – Sanctions**

4.61 Failure to obtain prior permission from the decision authority before taking up post-service outside work during the specified periods of restriction or failure to comply with the conditions imposed by the decision authority on an approved application constitutes a breach of the Control Regime. The decision authority may invoke either one or a combination of the following forms of sanction against a former civil servant for such breach –

- (a) suspension of monthly pension payments under the pension legislation if the concerned former civil servant was appointed on pensionable terms and is in receipt of pension payment;
- (b) initiating civil action to seek an injunction or sue for damages;
- (c) withdrawal of approval;
- (d) suspension of approval for a specified period;
- (e) reporting of an incident to the relevant professional body where it concerns professional negligence or misconduct or

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<sup>34</sup> It should be noted that the pension suspension arrangement is applicable to all retired civil servants in receipt of pension payments who have taken up full-time paid work in the 16 specified subvented organisations. As such, these retired civil servants may occupy below-leadership positions in these organisations.

may involve a possible breach of the code of conduct of the relevant profession;

- (f) issue of a public statement of criticism;
- (g) placing a warning or reprimand on a register for public inspection;
- (h) issue of a reprimand letter which may be copied to the outside employer; and/or
- (i) issue of a warning letter which may be copied to the outside employer.

*Issue 8: Are the sanctions provided under the current control regime adequate?*

4.62 The majority of respondents who commented on this issue considered the current sanctions adequate.

4.63 A few respondents made the following suggestions to enhance the sanction mechanism –

- (a) non-compliance of the Control Regime should be made a criminal offence through legislation; and
- (b) the authority should come up with an effective sanction akin to pension suspension (see paragraph 4.61(a)) for directorate civil servants appointed on CSPF terms as in time all directorate civil servants would be appointed on CSPF terms and not entitled to pension payments (see footnote 33 on page 68).

4.64 Separately, a few respondents queried the basis for suspending the monthly pension payments if a retired directorate civil servant breached the Control Regime. Their argument was that pension was ‘deferred remuneration’ for past government service rendered by a civil servant, and should not be suspended or curtailed after his satisfactory completion of government service.



#### IV. Public Monitoring

4.65 Information on approved post-service outside work taken up by directorate civil servants is made available to the public through the following means –

- (a) a case record containing basic information on each of the approved and taken-up post-service outside work of directorate civil servants at DPS D4 to D8 (or equivalent) is placed on a register for public inspection upon request<sup>35</sup>. A sample case record is at **Annex D**;
- (b) approved post-service outside work taken up by directorate civil servants at DPS D1 to D3 (or equivalent) may be disclosed on a case-by-case basis where there is public concern; and
- (c) the Advisory Committee provides in its annual report to the Chief Executive various statistics on the applications processed. The annual report is also sent to the Public Service Panel of the Legislative Council and is uploaded onto CSB's website for public information.

*Issue 9A: Is the current public disclosure arrangement appropriate? What is the view on disclosing the post-service outside work taken up by former junior directorate civil servants as well?*

4.66 The views expressed on the extension of the public disclosure arrangement to cover post-service work of junior directorate civil servants at DPS D1 to D3 (or equivalent) were divergent. Respondents in support of the extension considered that it would help –

- (a) enhance transparency; and
- (b) facilitate public monitoring of the propriety of post-service outside work taken up by junior directorate civil servants.

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<sup>35</sup> The relevant case record is kept on the register until the expiry of the periods of restriction applicable to the concerned former directorate civil servant or until cessation of the concerned outside work, whichever occurs first.

4.67 Respondents who opposed the extension held the following views –

- (a) the public was not too concerned about post-service outside work taken up by junior directorate civil servants;
- (b) the current public disclosure arrangement was already more elaborate than that adopted in overseas jurisdictions. For example, post-service employment cases made public in the United Kingdom normally related to the most senior civil servants (e.g. Permanent Secretaries); and
- (c) extension of the public disclosure arrangement would not help improve the assessment process.

*Issue 9B: What is the view on disclosing the advice of Advisory Committee on Post-service Employment of Civil Servants on each of the post-service appointments taken up by former directorate civil servants?*

4.68 Respondents supporting the disclosure considered that such disclosure would –

- (a) enhance the transparency of the system;
- (b) alleviate public concerns over post-service outside work of directorate civil servants; and
- (c) enhance public trust in the Control Regime and legitimacy of the decisions.

4.69 Respondents who objected to the inclusion of the Advisory Committee's advice in the public register considered that the current disclosure arrangement was already adequate and the scope of disclosure was much wider than that in other jurisdictions. Hence, there was no need to further broaden the scope of disclosure.

4.70 A few respondents suggested that the public register should be available online for easier access by the public. Some suggested that the annual report of the Advisory Committee should be

improved by including more information.

## **Other Views**

4.71 The following paragraphs set out views received on some other issues raised by respondents. It is not meant to be an exhaustive account of views received on all other issues. The original written submissions received (except those which the respondents had asked for non-disclosure) are available on the Review Committee's website, hardcopies of which are available upon request (see paragraph 1.08 for details).

### **I. Integrity of the Civil Service**

4.72 Some respondents commented on upholding and enhancing the integrity of the civil service. Views raised included –

- (a) it would be difficult to draw up explicit and detailed rules governing conflict of interest situations given their diversity. As such, enhancement of ethical standard and integrity within the civil service would be a more effective means for directorate civil servants to avoid conflict of interests between their former government duties and any post-service outside work under consideration;
- (b) directorate civil servants had the responsibility to set an example of high integrity and to safeguard the public interest; and
- (c) a civil servant's ethical standard should be taken into account before promotion to the directorate rank.

### **II. Assessment Criteria and Process**

4.73 Many respondents expressed views on the assessment criteria and process. Some respondents considered that the current assessment criteria were not clear enough. Some of them commented on the roles of the applicants and the assessment

parties as follows –

- (a) directorate civil servants should exercise due care in seeking post-service outside work;
- (b) a directorate civil servant should provide relevant information in his application for post-service outside work to enable the assessment parties to make comprehensive assessments;
- (c) the Control Regime had worked well by and large as demonstrated by the fact that less than a handful of post-service outside work applications from former directorate civil servants, out of an average of 60 applications each year, had caused public concern. In addition, the controversy arising from Mr Leung Chin-man's application to take up employment with New World China Land Limited was mainly due to weaknesses in the vetting and approval process; and
- (d) the effectiveness of the Control Regime depended very much on the scrutiny and due diligence exercised by the assessment parties.

4.74 Some respondents proposed enhancement to the assessment process. Specific proposals included –

- (a) *exit interview*: the Administration should review with a departing directorate civil servant the duties he had undertaken during government service and discuss the specific conditions to be imposed on his future post-service outside work;
- (b) *application form*: the application form should be reviewed and improved to ensure collection of sufficient information for assessment purpose;
- (c) *guidelines*: clearer guidelines for assessing post-service outside work applications should be provided to the assessment parties;
- (d) *processing time*: there should be a performance pledge on

the processing time of post-service outside work applications. Where necessary, procedures should be streamlined to shorten the processing time. A protracted assessment process might result in a loss of employment opportunity; and

- (e) *appeal*: an appeal mechanism for reviewing decisions on post-service outside work applications should be put in place.

### **III. Control Methodology**

4.75 Some respondents offered views on the control methodology. Views expressed included –

- (a) *nature of control scheme*: the Control Regime was merely a generalised scheme and was not effective in achieving its intended purpose. A more targeted approach tailored to particular circumstances of individual civil servants, e.g. their past government duties, should be adopted;
- (b) *type of control*: the regime should model on the USA's approach by shifting the control from taking up of post-service outside employment to specific post-service activities;
- (c) *scope of control*: junior directorate civil servants should be subject to more lenient control as they were less involved in policy formulation; and
- (d) *obligation on employers*: reference could be made to the Australian and Canadian models whereby some form of obligation was placed on entities employing former senior civil servants. Also, organisations which had employed former directorate civil servants should, on their own initiative, report to the Government the relevant employment details. This could be done initially on a voluntary basis and subsequently through legislation.

#### **IV. Post-office Work Control for Politically Appointed Officials, Senior Employees in Quasi-governmental Organisations and Politicians**

- 4.76 While the subject of the public consultation was about post-service outside work control for directorate civil servants, some views were received on the post-office work control of politically appointed officials. Some respondents also considered it necessary to impose post-service work control on senior employees of quasi-governmental organisations as well as on members of the Executive and Legislative Councils.
- 4.77 The public views received on the post-office work control of politically appointed officials, etc. and the Review Committee's observation are set out in Chapter 6 of this report.

## CHAPTER 5: Findings and Recommendations

### Overview

- 5.01 This chapter sets out the Review Committee’s findings and recommendations, following its detailed examination of the Control Regime, the response made by the public and stakeholders, and the control arrangements adopted in the seven overseas jurisdictions studied. The Review Committee makes a total of 23 recommendations, covering different aspects of the Control Regime, namely –
- (a) underlying principles;
  - (b) policy objective;
  - (c) design and operation; and
  - (d) public monitoring.
- 5.02 The Review Committee recommends that the existing two principles of protecting the public interest and protecting an individual’s right should continue to underpin the Control Regime, with the protection of the public interest taking precedence over protection of an individual’s right.
- 5.03 The Review Committee recommends that the policy objective of the Control Regime should be expanded to include specific references to avoidance of suspicion or perception of ‘deferred reward’ and to making good use of limited human resources.
- 5.04 The Review Committee recommends that the design and operation of the Control Regime should be strengthened through a package of specific measures, including imposing a longer control period, improving the internal assessment process by the Administration and the external assessment process by the Advisory Committee on Post-service Employment of Civil Servants, strengthening the enforcement of work restrictions

imposed, promulgating the review/appeal channels, and putting in place a performance pledge on the processing time of applications. It further recommends enhancing the integrity of the civil service, conducting an ‘exit interview’ for every departing directorate civil servant, and discontinuing the pension suspension arrangement for taking up full-time paid employment in the 16 specified subvented organisations by retired civil servants on pensionable terms.

- 5.05 The Review Committee recommends greater transparency in the Control Regime, including disclosure to the public of every post-service outside work application from a directorate civil servant which has been approved by the decision authority and taken up by the applicant, the terms of approval by the decision authority, and the advice of the Advisory Committee on Post-service Employment of Civil Servants. It also recommends including more information in the Advisory Committee’s annual report.

## **Underlying Principles**

- 5.06 The Review Committee notes that most of the respondents who commented on the underlying principles agreed that protecting the public interest and protecting an individual’s right should continue to underpin the Control Regime, with the protection of the public interest taking precedence over protection of an individual’s right. (Please refer to paragraphs 2.03 to 2.16 on the different facets of the public interest and an individual’s right.)
- 5.07 The Review Committee notes that the considerations of protecting the public interest and respecting former senior civil servants’ right to work are embodied in the control regimes of the overseas jurisdictions studied. Some of these jurisdictions explicitly acknowledge that post-service employment of former civil servants can bring about benefits to non-government sectors and the community at large.



- 5.08 The Review Committee believes that both the principles of protecting the public interest and protecting an individual's right are important. On the one hand, the Government has the duty to uphold the public interest. On the other hand, an individual's right, in particular the right to work and freedom of choice of occupation, is a fundamental right enshrined in the Basic Law and an international covenant and a labour convention applicable to Hong Kong (namely the International Covenant on Economic, Social and Cultural Rights and the Employment Policy Convention 1964).
- 5.09 The Review Committee further notes that it is in the public interest for the Government to uphold protection of human rights. Viewed from this perspective, a facet of protection of the public interest is the protection of an individual's right to work. However, for the purpose of the Control Regime, the Review Committee considers that it would enhance understanding and clarity for protection of an individual's right to work to be presented as a consideration separate from that of protection of the public interest.
- 5.10 The Review Committee considers there is no disagreement over the importance of upholding the public interest. Since civil servants are employed by the Government to serve the public, the imposition of reasonable restrictions on a civil servant's right to work after he leaves the civil service is justified for the protection of the public interest.
- 5.11 In the light of the above findings and considerations, the Review Committee ***recommends*** that protection of the public interest and protection of an individual's right should continue to be the two principles underlying the Control Regime, with the protection of the public interest taking precedence over protection of an individual's right.

## Policy Objective

- 5.12 The Review Committee is keenly aware of public concerns over the possibility of a directorate civil servant making use of his public office to benefit specific entities/individuals while in government service in return for, or in the hope of, post-service employment, namely the so-called ‘deferred reward’. It considers that actual ‘deferred reward’ should be tackled by the existing law, such as the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). However, perception, or mere suspicion, of ‘deferred reward’ is a different matter altogether.
- 5.13 The Review Committee notes that there were views expressed against the inclusion of a perception element in the Control Regime on the grounds that assessment of conflicts of interest should be based on facts, not mere speculation or presumption. On the other hand, there were also views supporting the inclusion of a specific reference in the policy objective to avoidance of suspicion or perception of ‘deferred reward’ for past favours done during government service.
- 5.14 The Review Committee notes that the policy objective of the Control Regime states that ‘a real or potential conflict of interest’ between a former directorate civil servant’s past government duties and his post-service employment should be avoided. It also notes that the policy objective also refers to avoiding causing ‘negative public perception embarrassing the Government and undermining the image of the civil service’. It considers that the current formulation may not be broad enough to cover ‘deferred reward’, which may involve a directorate civil servant not discharging his official duties impartially in the hope or expectation of post-service employment with a particular firm or organisation.
- 5.15 The Review Committee further notes that the policy objective of the post-service employment control regimes in Canada and the United Kingdom specifically refers to the avoidance of public

suspicion that the advice and decisions of a serving civil servant might be influenced by the hope or expectation of post-service employment with a particular firm or organisation. (Please refer to paragraphs 3.16 and 3.58 for details.)

- 5.16 Taking into account the above considerations, the Review Committee considers that the current policy objective should be expanded to include an explicit reference to the avoidance of concern over suspicion or perception of ‘deferred reward’. This would underline the importance to directorate civil servants to take these factors into account when they consider what post-service outside work they intend to take up and, likewise remind internal and external assessment parties to consider the same when they examine individual applications. It would also mitigate, although not eliminate, public concern on this issue.
- 5.17 Separately, the currently formulated policy objective makes no reference to making gainful use of limited human resources. The majority of respondents who commented on this issue were in favour of its inclusion in the policy objective. By way of background, there were about 1 200 serving directorate civil servants as at end-March 2009 whilst an average of about 100 (or 8%) directorate civil servants left the civil service (mostly upon reaching retirement age) each year in the last few years.
- 5.18 The Review Committee considers the experience and expertise of former directorate civil servants should be usefully harnessed to the overall benefit of Hong Kong community. It also notes that the benefits of former civil servants’ taking up post-service outside work are explicitly recognised in the post-service employment control regimes in Australia and New Zealand. (Please refer to paragraphs 3.03 and 3.37 for details). It considers that the current policy objective should be expanded to include an explicit reference to putting limited human resources to good use.
- 5.19 The currently formulated policy objective also makes no reference to maintaining the attractiveness of the civil service as a career. Response received on this issue were relatively few and

mixed. While some considered that the ability to attract talent to join and remain in the civil service was important in promoting good governance, others doubted the relative importance of this aspect as compared with other considerations such as a conflict of interest between past government duties and prospective outside work.

5.20 The Review Committee considers it important for the Government to be able to recruit and retain quality individuals in the civil service for the good governance of Hong Kong. There are a number of factors affecting the attractiveness of the civil service as a career, and the stringency of post-service outside work control could be one of the factors. Nonetheless, it is difficult to ascertain the relative importance of post-service outside work control in the overall attractiveness of the civil service as a career, as compared to other factors such as remuneration, benefits and promotion prospect, etc. The Review Committee therefore considers there is no need to make a reference in the policy objective to maintaining the attractiveness of the civil service as a career.

5.21 To sum up, the Review Committee ***recommends*** that the policy objective should be expanded to make specific references to –

- (a) avoiding suspicion or perception of ‘deferred reward’; and
- (b) making good use of limited human resources.

There is no need to make a specific reference in the policy objective to maintaining the attractiveness of the civil service as a career.

5.22 The Review Committee believes the existing policy objective may be expanded as follows (the expanded parts are marked in italics) –

‘The policy objective is to –

- (a) ensure that directorate civil servants on final leave or who have left the Government will not take up any work which may –

- (i) constitute a real or potential conflict of interest with their former government duties; or
  - (ii) cause negative public perception embarrassing the Government and undermining the image of the civil service; *or*
  - (iii) *give rise to reasonable suspicion that their advice and decisions made during government duties might be influenced by the hope or expectation of obtaining post-service outside work with a particular firm or organisation; and*
- (b) ensure at the same time that the said individuals' right to pursue employment or other work after ceasing government service is not unduly restricted *and that limited human resources may be put to good use.*'

## **Design and Operation**

### **I. Specific Improvement Measures**

5.23 The Review Committee proposes the following specific measures to improve the design and operation of the Control Regime –

- (a) imposing a longer control period;
- (b) improving the internal assessment process;
- (c) improving the external assessment process;
- (d) strengthening the enforcement of work restrictions imposed;
- (e) promulgating the review/appeal channels; and
- (f) putting in place a performance pledge on the processing time of applications.

(a) **Periods of Restriction**

5.24 The Review Committee notes that periods of restriction is a key feature of the Control Regime. Compared to the seven overseas jurisdictions studied, the existing length of periods of restriction in the Hong Kong's Control Regime is already among the longest –

- (a) **Hong Kong** – a six-month or one-year minimum sanitisation period and a two- or three-year control period depending on the rank of departing directorate civil servants. The control period may run concurrently or sequentially with the minimum sanitisation period depending on the final leave position of individual civil servants. (Please refer to the table under paragraph 4.30 for details.)
- (b) **Australia** – no prescribed periods of restriction (other than for professional lobbying work). Any restriction has to be mutually agreed between the Government and a departing senior civil servant.
- (c) **Canada** – a one-year period of restriction during which certain types of post-service employment are prohibited. The one-year period of restriction may be waived or reduced upon application and where justified.
- (d) **France** – a three-year period of restriction (reduced from five years in 2007 having regard to the practices in other countries) during which prior permission from the decision authority is required before post-service outside work may be taken up. There is no sanitisation period.
- (e) **New Zealand** – no period of restriction unless specified in individual employment contracts. For those contracts with such specification, a one-year period of restriction is the norm for the most senior civil servants.
- (f) **Singapore** – a five-year period of restriction for certain categories of retired civil servants on pension payments<sup>36</sup>.

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<sup>36</sup> It is observed that there are cases where former very senior civil servants (e.g. permanent secretaries) have joined the private sector or taken up board appointments after a short break from retirement.

According to public information, it appears that there is no sanitisation period.

- (g) **United Kingdom (UK)** – a two-year period of restriction for all senior civil servants during which prior permission from the decision authority is required before post-service outside work may be taken up. The most senior civil servants (namely Permanent Secretaries and Second Permanent Secretaries and their equivalents) are subject to an additional three-month waiting period (similar to Hong Kong’s six-month or one-year minimum sanitisation period).
- (h) **United States of America (USA)** – a one-year, two-year or lifetime ban on certain former civil servants for taking up very specific and narrowly defined activities and matters. Post-service employment with any private or public entities is not prohibited and does not require prior approval.

5.25 The Review Committee notes there were public views advocating an extension of the periods of restriction to address the concern over conflicts of interest and perception or suspicion of ‘deferred reward’. Some views argued for a lifetime ban, some proposed lengthening the minimum sanitisation period and/or control period, and some suggested imposing more stringent control over former directorate civil servants working in specified fields during government duties or greater control over outside work in the same field as in past government service.

(i) Lifetime ban on paid employment

5.26 Public views were received on two forms of lifetime ban on paid post-service employment. One form was a **lifetime total ban** on any paid post-service employment, in particular for retired directorate civil servants in receipt of monthly pension payments. The other form was a **lifetime specific ban** targeting particular types of paid employment.

5.27 The Review Committee ***does not recommend*** the imposition of a **lifetime total ban** on retired directorate civil servants based on the following considerations –

- (a) the right to work and freedom of choice of occupation is a human right enshrined in the Basic Law and an international covenant and a labour convention applicable to Hong Kong. While such right should not be taken as absolute, ignoring it altogether will likely be subject to legal challenge on the grounds that the ban is not proportionate to the objective (namely protecting the public interest) it aims to achieve;
- (b) retirement benefits, be it pensions under the relevant legislation<sup>37</sup> or payments under the Civil Service Provident Fund (CSPF) Scheme, are earned by a directorate civil servant for his past service to the Government. They are not a form of compensation for deprivation of his right to engage in paid work for life after retirement or departure from the civil service;
- (c) it is in the best interest of the community for limited human resources to be put to good use; and
- (d) no overseas jurisdiction studied imposes a lifetime total ban on their former senior civil servants.

5.28 Regarding a *lifetime specific ban* targeting particular types of paid employment, the Review Committee notes that under the USA's control regime, there is a lifetime ban on specific and narrowly-defined activities, namely that a former employee of the Executive Branch is prohibited permanently from communicating with or appearing before any court or federal agency with the intent to influence on behalf of someone other than the United States on a particular matter involving specific parties<sup>38</sup> in which he participated personally and substantially while with the Government and in which the United States is a party or has a direct and substantial interest. Behind-the-scene assistance on these specific activities is nonetheless allowed. Post-service

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<sup>37</sup> The two pension-related ordinances are the Pensions Ordinance and the Pension Benefits Ordinance (Chapters 89 and 99 of the Laws of Hong Kong respectively).

<sup>38</sup> A particular matter includes any investigation, application, request for a ruling or determination, rule-making, contract, controversy, claim, charge, accusation, arrest or judicial or other proceeding. The particular matter has to involve specific parties, e.g. parties involved in a contract. General rule-makings do not usually involve specific parties.



employment with any private or public entities is not prohibited and does not require prior approval. (Please refer to paragraph 3.85 for details.)

5.29 There were views arguing for a lifetime specific ban. Some suggested a lifetime specific ban on post-service work in the same field as that pursued by a former directorate civil servant while in government service; others suggested a lifetime specific ban in specified fields during government service. One respondent proposed an ‘employer-specific’ lifetime ban. Under this proposal, a directorate civil servant who had engaged in duties related to land, property or award of franchise matters in his last two posts before leaving the Government would be banned for life from joining any company, including its associated companies, with which he had past dealings while in government service.

5.30 The Review Committee (except the Honourable Albert Ho) ***does not recommend*** the imposition of a lifetime specific ban on paid post-service employment given the difficulty in delineating the exact scope of such a draconian measure. (Please refer to paragraphs 5.36 to 5.40.) ***A Review Committee Member*** (namely the Honourable Albert Ho) recognises the difficulty but considers that a lifetime specific ban on paid employment involving specific employers referred to in paragraph 5.29 should be further explored.

(ii) Minimum sanitisation period

5.31 Under the Control Regime, the decision authority will normally not approve any application to take up post-service work with a commercial organisation from a directorate civil servant during the applicable minimum sanitisation period. (Please refer to paragraphs 2.31 to 2.33 for details.) This is to forestall real or potential conflicts of interest or negative public perception by providing for a break between the time when a former directorate civil servant ceases active government duty and the time when he commences any post-service outside work.

- 5.32 Some respondents proposed that the minimum sanitisation period, currently fixed at six months and one year depending on the rank of departing directorate civil servants, should be lengthened to one and two years respectively. Some other respondents pointed out that an across-the-board prohibition of paid work for an unreasonable duration without regard to individual circumstances of directorate civil servants was unnecessary and might be subject to legal challenge.
- 5.33 Among the seven overseas jurisdictions studied, the Review Committee notes that only the UK has a similar blanket prohibition of post-service outside work (i.e. the waiting period), which covers a period of three months and is only applicable to very senior civil servants.
- 5.34 The Review Committee notes that the current length of the minimum sanitisation period in the Hong Kong Control Regime is the longest compared with all the overseas control regimes studied. It further notes that the decision authority may lengthen or shorten the minimum sanitisation period in respect of an application for post-service outside work if needed.
- 5.35 In the light of the above findings, the Review Committee considers that further lengthening the minimum sanitisation period across-the-board may contravene one of the underlying principles of the Control Regime, namely the protection of an individual's right to work. In addition, it would be unreasonable to prohibit former directorate civil servants who have resigned from the Government or who have completed termed contracts from taking up outside work for a protracted period of time after they have left the government service. The Review Committee therefore ***does not recommend*** any change to the current minimum sanitisation period.
- (iii) Control by specified fields of government work
- 5.36 Some respondents proposed a longer prohibition (but not lifetime ban) or control period for post-service outside work in specified fields of work during government service. They suggested that

such specified fields of work should include property or land-related matters as these fields were more prone to conflicts of interest and suspicion or perception of ‘deferred reward’.

5.37 The Review Committee considers that specified fields of government work are not easy to define and that control by specified fields of work will be complicated and difficult to administer. It ***does not recommend*** imposing control by specified fields of work having regard to the following considerations –

- (a) *selection of fields of work*: it is difficult to devise a set of objective criteria to determine which fields of government work are prone to suspicion or perception of conflicts of interest. Any selection would likely be arbitrary and subject to legal challenge;
- (b) *fairness and reasonableness*: it may not be fair or reasonable to subject former directorate civil servants who have worked in a specified field while in the government service, regardless of their involvement, to more stringent post-service outside work control. Take the property sector as an example, it cuts across many different areas of government work such as land, planning, public transport, environment, housing, surveying, architecture, building safety, fire safety and legal, just to name a few. In addition, the involvement of directorate civil servants from different disciplines in a property-related item of work will likely differ in extent; and the involvement may take the form of decision-making or advice-formulation on an individual or a collective (e.g. through serving on a committee<sup>39</sup>) basis;
- (c) *management of the civil service*: the suggestion will have implications on the management of the civil service as it may engender difficulties in posting civil servants to serve in the selected fields of government work should additional post-service outside work restrictions be introduced; and

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<sup>39</sup> A committee may comprise directorate civil servants from different disciplines and different bureaux/departments. Decisions of a committee are made collectively by its members.

(d) *overseas practices*: it is not in line with the practices adopted by the overseas jurisdictions studied.

(iv) Control over post-service work in the same government field

5.38 Some respondents considered that the risk of a conflict of interest would be greater if a directorate civil servant took up post-service employment in the same field as in his past government duties. This was because such an officer was more likely to have had past dealings with the prospective employer or its competitors, and/or access to industry-specific information, during his past government service. They therefore suggested imposing a longer control period for post-service outside work in the same field as a directorate civil servant's past government duties. Some respondents, however, objected strongly to this suggestion as it would substantially limit the scope of post-service work for professional directorate civil servants and, therefore, would be unfair.

5.39 The Review Committee notes that about 600 serving directorate civil servants (or half of the existing directorate establishment) belong to professional grades (e.g. Accountant, Architect, Doctor, Engineer, Solicitor, Town Planner, etc), most of which require membership of the relevant professional institutions or equivalent. Half of the remaining serving directorate civil servants (around 300) belong to grades in the disciplined forces (e.g. Police, Immigration, etc.) or civilian streams (e.g. Labour, Education, etc.). Most of these directorate civil servants would have worked in one department before reaching the directorate rank and would remain with the same department until their retirement or departure from the civil service. The rest of the directorate civil servants (around 300) belong to the Administrative Service or the Executive Officer grade and are posted to work in different departments and bureaux on a regular basis.

5.40 The Review Committee ***does not recommend*** imposing a longer control period for post-service outside work in the same field as in past government duties having regard to the following considerations –

- (a) *impact on directorate civil servants of professional grades:* the suggestion will have the greatest negative impact on directorate civil servants of professional grades and those working in dedicated single fields of work for their entire civil service career, since by qualification and experience, they are likely to wish to take up post-service employment in their respective professions or fields. An unduly long period of restriction may cause them to become out of touch with the latest developments in their professions and render it difficult to rejoin their own fields;
- (b) *impact on generalist directorate civil servants:* the suggestion may also be unduly restrictive for generalist directorate civil servants. These civil servants are posted to different fields of work on a regular basis. As their last three or six years of government service will be taken into account when assessing their post-service outside work applications (see paragraphs 5.56 to 5.57), generalist directorate civil servants who have worked in several bureaux/departments during this period of time will be prohibited from taking up post-service outside work in more than one field;
- (c) *definition of ‘same field’:* it is not straight-forward to delineate what constitutes ‘work in the same field’. For example, it is arguable whether an application to take up post-service employment as the internal security chief of a bank by a former directorate civil servant of the Police Force should be regarded as work in the same field;
- (d) *coverage of work restrictions:* the existing standard work restrictions imposed on all approved post-service outside work applications (see paragraph 2.45) should be able to mitigate the concern over conflicts of interest arising from contacts/information obtained during past government service. The standard work restrictions prohibit, among

other things, a former directorate civil servant, in his approved outside work, from undertaking, or representing any person in, any work including any litigation or lobbying activities that are connected in any way with (i) the formulation of any policy or decision, (ii) sensitive information, (iii) contractual or legal dealings, (iv) assignments or projects, and/or (v) enforcement or regulatory duties, in which he had been involved or to which he had access during his last three years of government service; and

(e) *overseas practices*: no such restriction exists in any of the overseas jurisdictions studied.

(v) Control period

5.41 The Review Committee considers the requirement for a former directorate civil servant to seek prior permission before taking up post-service outside work during the specified control period and the ability of the decision authority to impose additional work restrictions as necessary when approving an application for post-service outside work are two practical and effective tools in the Control Regime. These tools would not cause an individual's right to work to be restricted unreasonably. Furthermore, their effectiveness could be further enhanced with the recommended improvements to the internal and external assessment processes. (Please refer to paragraphs 5.48 to 5.82.)

5.42 Under the Control Regime, directorate civil servants are divided into two groups, each of which is subject to different lengths of control period, namely: two years for DPS D1 to D7<sup>40</sup> (or equivalent) civil servants who occupy a wide range of posts from chiefs in some professional grades to heads of departments; and three years for DPS D8 (or equivalent) civil servants who are the most senior civil servants and mostly serve as permanent

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<sup>40</sup> While directorate civil servants at DPS D1 to D7 (or equivalent) are all subject to a control period of two years, the prescribed minimum sanitisation period for them is different. The minimum sanitisation period is six months for the more junior directorate civil servants at DPS D1 to D3 (or equivalent) and one year for directorate civil servants at DPS D4 to D7 (or equivalent).

secretaries.

- 5.43 Some respondents advocated for a longer control period to mitigate the public concern over conflicts of interest and suspicion or perception of ‘deferred reward’. Some considered the current length appropriate and did not agree to an extension across the board.
- 5.44 Members of the Review Committee have different preferences on the appropriate length of the control period for directorate civil servants. Some Members prefer to maintain the status quo on the grounds that it is adequate and reasonable, and that the length of the control period has nothing to do with the couple of cases which have given rise to public concern over the last few years. Furthermore, the current length of the control period compares well with the periods of restriction adopted in overseas jurisdictions. Some Members prefer a substantial lengthening of the control period on the grounds that it would help mitigate the public concern over conflicts of interest and suspicion or perception of ‘deferred reward’.
- 5.45 Irrespective of their different preferences, all Members of the Review Committee agree that unlike the minimum sanitisation period during which a former directorate civil servant is normally prohibited from joining a commercial entity, the imposition of a longer control period would not deprive directorate civil servants’ right to pursue post-service outside work. Their right to work and choice of employment will not be fettered unreasonably, and each post-service application will be considered on its own merits and having regard to the objective of the Control Regime and the assessment criteria. (Please refer to paragraph 2.42 for details.)
- 5.46 Members of the Review Committee believe it is in the best public interest for them to reconcile their different preferences, if possible. With this objective in mind, the Review Committee (except the Honourable Audrey Eu and the Honourable Albert Ho) **recommends** the following –
- (a) dividing directorate civil servants into three groups for the

purpose of determining the length of the control period, namely those at DPS D1 to D3 (or equivalent); those at DPS D4 to D7 (or equivalent); and those at DPS D8;

- (b) keeping the control period for directorate civil servants at DPS D1 to D3 (or equivalent) unchanged at two years. These civil servants mostly serve as ‘junior’ deputy secretaries and principal assistant secretaries of bureaux, deputy and assistant directors of departments, and chiefs in some professional grades. As at end-March 2009, there were about 1 100 posts ranked at DPS D1 to D3 (or equivalent) and about half were found in professional grades. The public is relatively less concerned about the post-service outside work of this group of directorate civil servants since their discretionary powers and involvement in policy formulation are limited;
- (c) lengthening the control period for directorate civil servants at DPS D4 to D7 (or equivalent) by one year to three years, having regard to their level of responsibilities, access to confidential information and influence over policy formulation. These civil servants mostly serve as heads of departments and ‘senior’ deputy secretaries of bureaux; and some of them may stand in as permanent secretaries when the latter are on leave or out of Hong Kong. As at end-March 2009, there were some 100 posts ranked at DPS D4 to D7 (or equivalent); and
- (d) lengthening the control period for the most senior directorate civil servants at DPS D8 (or equivalent) by two years to five years. As at end-March 2009, there were less than 20 posts at this rank.

5.47 *Two Review Committee Members* (namely the Honourable Audrey Eu and the Honourable Albert Ho) hold different views and consider the control period should be further lengthened to better mitigate public concern. They **recommend** –

- (a) dividing directorate civil servants into two groups for the



purpose of determining the control period, namely those at DPS D1 to D3 (or equivalent) should form one group and those at DPS D4 to D8 (or equivalent) should form another group;

- (b) lengthening the control period for directorate civil servants at DPS D1 to D3 (or equivalent) by one year to three years; and
- (c) lengthening the control period for directorate civil servants at DPS D4 to D8 (or equivalent) to a uniform five years. This would mean lengthening the control period for directorate civil servants at DPS D4 to D7 (or equivalent) from the current two years by three years; and lengthening the control period for directorate civil servants at DPS D8 (or equivalent) from the current three years by two years.

**(b) Internal Assessment Process**

5.48 The Review Committee believes that the public concern over any impropriety of an approved and taken-up post-service outside work could be alleviated if public trust in the assessment process is enhanced.

5.49 Depending on the civil service grade or bureau/department to which an applicant belonged when he was a directorate civil servant and the nature of his prospective outside work, an application is first assessed internally within the Administration by the relevant permanent secretary (or permanent secretaries) of a bureau(x), the relevant head of grade, and/or head(s) of departments. The relevant parties will base their assessments on the six criteria set out below –

- (a) whether the applicant, while in the civil service, had been involved in the formulation of any policy or decision, the effects of which directly or specifically benefited or could directly or specifically benefit his own business or prospective employer;
- (b) whether the applicant or his prospective employer might

gain an unfair advantage over its competitors because of the applicant's access to sensitive information while in the civil service;

- (c) whether the applicant, while in the civil service, had been involved in any contractual or legal dealings to which his prospective employer was a party;
- (d) whether the proposed work would have any connection with the assignments/projects and/or regulatory/enforcement duties in which the applicant had been involved while in the civil service;
- (e) whether the applicant's taking up of the proposed work would give rise to public suspicion of conflict of interest or other impropriety; and
- (f) whether any aspects of the proposed work would cause embarrassment to the Government or bring disgrace to the civil service.

5.50 In making their assessment, the relevant internal assessment parties have to have regard to the past government duties carried out by the applicant. Apart from referring to files and records in the concerned bureau(x)/department(s) for such information, the relevant internal assessment parties will also refer to the information provided by the applicant in his application form.

5.51 At present, an applicant is required to provide in the application form, among other things, his former government duties covering three or six years (depending on rank<sup>41</sup>) before his cessation of active duty as well as the details of the prospective outside work (including position and major duties, etc.) and the prospective employer (including name, major clientele, parent company and subsidiaries, etc.).

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<sup>41</sup> Applicants at DPS D4 and above (or equivalent) are required to provide their last six years of service history, while those at DPS D1 to D3 (or equivalent) are required to provide their last three years of service history.

- 5.52 An applicant is also required to answer a number of questions in the application form on his past contractual, legal, official and other contacts/dealings (if any) with the prospective employer in his last three years of government service. If the applicant will be involved in the business of the prospective employer's parent company or any of its subsidiary companies, he is required to provide information on his past contractual, legal, official and other contacts/dealings (if any) with these entities in his last three years of government service as well. If the application for post-service outside work does not involve the business of the parent and related companies of the prospective employer, an applicant is *not* required to provide his past government dealings with these related companies.
- 5.53 The Review Committee considers the information provision requirement in paragraph 5.52 inadequate as it fails to provide the assessment parties with the necessary information for them to properly assess whether the application meets with the objective of Control Regime and the assessment criteria and whether any additional work restrictions should be imposed. It further notes that the recent controversy over an approved post-service work application might have been avoided if the applicant had been required to provide his past dealings with his prospective employer's parent company even if his post-service work did not involve the business of the parent company.
- 5.54 The Review Committee notes that there were concerns over whether requiring an applicant to provide information on his past dealings/contacts with his prospective employer and its parent and related companies would impose an undue burden on the applicant. It considers that the requirement should be manageable if an applicant is required to provide past dealings/contacts of a material nature.
- 5.55 In order to allow the assessment parties to have sufficient information to conduct a comprehensive assessment of possible conflicts of interest and, in particular, the perception or suspicion of 'deferred reward', the Review Committee ***recommends*** the following improvements to the provision of information by an

applicant in the application form –

- (a) *scope of past dealings covered:* irrespective of whether or not the applicant will be involved in the business of the parent or related companies of the prospective employer, he should be required to disclose his material past contractual, legal, official and other contacts/dealings (if any) with these entities during his last three years of government service if he is a directorate civil servant at DPS D1 to D3 (or equivalent), and during his last six years of government service if he is a DPS D4 or above (or equivalent) civil servant;
- (b) *a ‘catch-all’ provision:* an applicant should be required to provide any other information which he considers relevant to the assessment of his application; and
- (c) *statement on the policy objective and assessment criteria:* The policy objective and the assessment criteria should be stated upfront on the application form so as to remind an applicant of the factors that would be taken into account in the assessment process. This should help him to decide what information to provide, particularly under (b) above.

5.56 The Review Committee notes that the internal assessment parties assess an application from a directorate civil servant at DPS D1 to D3 (or equivalent) with reference to his last three years of active service, and that they have the discretion to extend this period to the last six years of active service. It further notes that the relevant internal assessment parties may assess an application from a directorate civil servant at DPS D4 to D8 (or equivalent) with reference to either his last three or six years of active government service.

5.57 The Review Committee considers it appropriate to continue with the existing arrangement for directorate civil servants at DPS D1 to D3 (or equivalent). However, it considers the current arrangement with regard to applications from DPS D4 to D8 (or equivalent) directorate civil servants unsatisfactory as it lacks uniformity and certainty. It recommends that all applications

from this group of former directorate civil servants should be assessed with reference to the applicants' last six years of active service.

(c) **External Assessment Process**

5.58 Public confidence in the assessment process hinges not only on the internal assessment process, but also on the external assessment process. The credibility of the Advisory Committee on Post-service Employment of Civil Servants (hereafter referred to as 'the Advisory Committee'), the independent external body responsible for tendering advice on individual post-service outside work applications, contributes significantly to the public trust in the Control Regime. The terms of reference and current membership of the Advisory Committee are at **Annex B**.

(i) Role of the Advisory Committee

5.59 The Review Committee (except the Honourable Audrey Eu) considers that post-service outside work control is an integral part of the contractual relation between the Administration as an employer and a directorate civil servant as an employee. The Administration has a duty to determine and enforce this contractual obligation, having regard to its role to protect the public interest. The Administration should also be held accountable for any challenge, legal or otherwise, against any aspect of the Control Regime and any decision taken by the decision authority. Having regard to this, the Review Committee (except the Honourable Audrey Eu) ***recommends*** that the Advisory Committee should retain its advisory role. ***One Review Committee Member*** (namely the Honourable Audrey Eu) considers that the Control Regime, including the power to approve or reject post-service outside work applications, should be placed in a body independent of the Administration.

(ii) Composition of the Advisory Committee

5.60 The Advisory Committee is appointed by the Chief Executive.

It is currently chaired by a serving High Court judge, and its five other members come from different sectors of the community, including one who is a serving member of the Public Service Commission. (Please see footnotes 15 and 16 on page 17.) Its membership size is relatively small compared to the 14-member (including chairman) strong French Ethics Commission and the seven-member (including chairman) strong UK Advisory Committee on Business Appointments, two similar independent bodies set up in France and the UK respectively for advising on post-service employment applications from former senior civil servants.

- 5.61 The Review Committee notes that the French Ethics Commission comprises magistrates, persons who are familiar with the public service and the field of research, and a senior civil servant. The UK Advisory Committee on Business Appointments comprises serving members of the House of Lords, former senior civil servants, and a leading business person.
- 5.62 The Review Committee notes that the majority of respondents who commented on the Advisory Committee called for a broadening of its composition to enable it to consider applications from a broader perspective.
- 5.63 The Review Committee considers that members with different backgrounds and expertise, including but not limited to individuals with a good grasp of public sentiment, a good understanding of public interest as well as an individual's rights, and/or knowledge of the workings of the civil service and the business sector would enable the Advisory Committee to offer a broader spectrum of advice and in turn enhance its credibility.
- 5.64 The Review Committee therefore ***recommends*** the membership of the Advisory Committee should be expanded to nine members (including the chairman) with a broadened composition. Possible categories of candidates for appointment on an *ad personam* basis include (but not restricted to) academics, representatives from civil service groups, former directorate civil servants, personalities from professional fields and/or the

business sector, as well as former or serving members of the Executive Council, the Legislative Council and the District Councils.

5.65 The Review Committee notes some respondents proposed that representatives from professional fields relevant to an application should be invited to assess the concerned application on an *ad hoc* basis. It has reservation about such a proposal as it may result in a lack of consistency in assessing applications. It ***recommends*** that the Advisory Committee should be given the power to invite outside expert(s) in the field(s) relevant to a post-service outside work application to give advice if necessary.

5.66 The Review Committee acknowledges that having a serving or retired judge as chairman may help underline the impartiality of the Advisory Committee. Nonetheless, some respondents expressed doubts on the suitability of a serving judge, who has to discharge a heavy judicial workload, to chair the Advisory Committee.

5.67 The Review Committee notes that the Chief Justice spoke about appointment of judges to outside offices in his speech at the Ceremonial Opening of the Legal Year 2009. It is understood that the Judiciary's approach in recent years has been to request the Administration to look for other suitable candidates if there is no statutory requirement for such outside offices to be held by a serving judge. In view of the Chief Justice's remarks and having regard to the public concern expressed above, the Review Committee considers that it is not essential for the Advisory Committee to be chaired by a serving judge.

(iii) Mode of operation of the Advisory Committee

5.68 Some respondents noted that the Advisory Committee processed post-service outside work applications mainly through circulation of discussion papers. There were views that it should convene meetings to discuss each and every application.

5.69 The Review Committee notes that the Advisory Committee has only held a few meetings over the years. It also notes that more than half of the post-service outside work applications from directorate civil servants processed in 2006 to 2008 involved straight-forward applications for work in non-commercial organisations or subvented educational bodies, and might not necessitate discussion through meetings.

5.70 The Review Committee considers that meetings would facilitate exchange of views and help bring out questions not apparent on paper. Recognising that the Advisory Committee should continue to decide for itself whether or not to meet to discuss a particular application, the Review Committee ***recommends*** that the Advisory Committee should draw up guidelines on its mode of operation, which should provide for the holding of meetings when appropriate or upon request by its chairman or any of its members. In addition, the guidelines should be made known to the public and applicants.

(iv) Institutional support for the Advisory Committee

5.71 The secretariat of the Advisory Committee is currently part of the Civil Service Bureau (CSB). There were views that this institutional arrangement might inadvertently undermine the perceived independence of the Advisory Committee.

5.72 The Review Committee considers that a secretariat independent of the CSB would help the Advisory Committee better fulfil its independent advisory role. It would also enhance the impartial standing of the Advisory Committee.

5.73 Having regard to the projected workload of the Advisory Committee (averaging about 60 to 70 applications per year over the last few years), the Review Committee ***recommends*** that the Advisory Committee should be supported by an independent (i.e. separate from the CSB) and dedicated secretariat, or by sharing the service of an existing independent secretariat for advisory bodies on civil service-related matters.



**(d) Enforcement of Work Restrictions Imposed**

- 5.74 At present, the decision authority imposes standard work restrictions on all approved post-service outside work applications and, where necessary, additional application-specific work restrictions on a case-by-case basis. The Review Committee notes that the scope of standard work restrictions is quite wide. It includes prohibition of the concerned directorate civil servant from being involved in the bidding of any government projects, etc.; from undertaking or representing his prospective employer or client in any work that is in any way connected with his duties during his last three years of past government service; and from engaging in any activities that may cause negative public perception. (Please refer to paragraph 2.45.) The standard and, where applicable, additional application-specific, work restrictions remain in force until the expiry of the relevant periods of restriction or cessation of the concerned directorate civil servant's outside work, whichever occurs earlier.
- 5.75 A former directorate civil servant has to abide by the standard and any additional work restrictions imposed. Any non-compliance will constitute a breach of the Control Regime and may subject the concerned former directorate civil servant to sanctions described in paragraph 2.50. Separately, if there is any material change to the scope of his approved post-service outside work during the relevant periods of restriction, he is required to notify the decision authority and may be required to apply for separate approval as necessary. He is also required to update the decision authority annually on the status of his outside work.
- 5.76 The Review Committee considers that the current arrangement of imposing work restrictions on approved applications could help mitigate public concern over perceived or potential conflicts of interest and that this arrangement should continue.

(i) Direct notification to prospective employer

5.77 A former directorate civil servant, whose application for taking up post-service outside work has been approved, is required by the decision authority to notify his prospective employer of the terms of approval including any sanitisation or work restrictions imposed. The decision authority, however, will not contact the prospective employer direct.

5.78 The Review Committee considers it important for the decision authority to communicate direct with the prospective employer on the work restrictions imposed as this may impact on the duties which the employer could assign to the concerned former directorate civil servant.

5.79 Furthermore, the prospective employer should be aware of the requirement for the concerned directorate civil servant to notify and seek prior permission from the decision authority if there is any material change to the approved post-service outside work. The Review Committee believes that keeping the prospective employer informed of the restrictions, requirements and sanctions would enhance compliance.

(ii) Notification to relevant bureaux and departments

5.80 Work restrictions imposed often restrain the concerned directorate civil servant's involvement in dealings with certain government bureaux/departments to avoid potential or perceived conflicts of interest. For example, one of the standard work restrictions prohibits a former directorate civil servant from being involved in the bidding of any government projects, etc. The Review Committee therefore considers that if the enforcement of work restrictions imposed on an applicant may involve certain bureaux/departments, the decision authority should also inform them of the imposed work restrictions.

(iii) Records of written employment agreement

5.81 The Review Committee considers that the decision authority should require a former directorate civil servant who has taken up the approved post-service outside appointment to provide, as part of the approval conditions, a copy of the signed written agreement or appointment letter within 30 days of signature or issue as well as any changes made later to the decision authority. This will allow the decision authority to ascertain whether the scope of work finally agreed between the concerned former directorate civil servant and his prospective employer complies with the imposed work restrictions.

5.82 In brief, the Review Committee ***recommends*** the following in relation to the imposition and enforcement of work restrictions –

- (a) the current arrangement of imposing standard work restrictions, and where necessary, additional application-specific work restrictions, should continue;
- (b) the decision authority should directly inform the prospective employer of the work restrictions imposed on an applicant and of the requirement for the latter to notify and seek prior approval from the decision authority if there is any material change to the work;
- (c) if the enforcement of work restrictions imposed on an applicant may involve certain bureaux/departments, the decision authority should also inform them of the imposed work restrictions; and
- (d) an applicant who has taken up approved post-service outside work should be required, as part of the approval conditions, to provide the decision authority with a copy of the signed employment agreement or appointment letter within 30 days of signature or issue as well as any changes made later.

(e) **Review/Appeal Channels**

5.83 At present, if a former directorate civil servant is aggrieved by the decision of the decision authority on his application for

post-service outside work, he can –

- (a) seek a review of the decision by the decision authority by providing additional information and/or justification; and/or
- (b) make a representation direct to the Chief Executive under section 20 of the Public Service (Administration) Order<sup>42</sup>; and/or
- (c) make an appeal to the Chief Executive under Article 48(13) of the Basic Law<sup>43</sup>.

5.84 The Review Committee ***recommends*** that the review and appeal channels should be set out in the relevant circular on the Control Regime. Also, when informing an applicant of the decision on his application, the decision authority should state in the notification letter the avenues available for seeking a review of or appeal against the authority's decision.

5.85 To further enhance the review/appeal process, the Review Committee ***recommends*** that as a standard practice, the decision authority should seek the advice of the Advisory Committee again if an applicant seeks a review of the decision. This will allow the authority to review the decision with the benefit of outside advice and thus enhance the credibility of the final decision of the authority.

5.86 Also, the Chief Executive, in dealing with a representation or an appeal made to him by an applicant aggrieved by the decision authority's decision, may consider seeking the advice of the Advisory Committee before deciding on the case.

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<sup>42</sup> Section 20 of Public Service (Administration) Order provides that (1) every officer who has any representations of a public or private nature to make to the Government of the Hong Kong Special Administrative Region should address them to the Chief Executive. The Chief Executive shall consider and act upon each representation as public expediency and justice to the individual may require; and (2) the Chief Executive may appoint a review board to advise him on such representations addressed to him relating to appointment, dismissal and discipline of public servants as he thinks fit.

<sup>43</sup> Article 48(13) of the Basic Law provides that the Chief Executive shall exercise the function of handling appeals and complaints.

**(f) Performance Pledge on Processing Time**

- 5.87 The Review Committee notes that currently an applicant is required to submit his application to the decision authority at least one month before commencement of the outside work. Since the complexity of post-service outside work applications differs having regard to the nature of the applied-for work and the duties undertaken by the applicants when in government service, the processing time would vary from application to application.
- 5.88 Some respondents suggested that the decision authority should process an application expeditiously and should put in place a performance pledge on the processing time since a protracted assessment process might result in a loss of employment opportunity.
- 5.89 The Review Committee agrees that the request for a performance pledge is reasonable. It therefore ***recommends*** that the Administration should come up with a practicable performance pledge on the processing time, having regard to the recommended enhancement to the internal and external assessment processes. Applicants should also be reminded that applications which contain all relevant information would assist the decision authority and the Advisory Committee in their assessment.

**(g) Sanctions**

- 5.90 The Review Committee notes that the Control Regime is backed by an elaborate set of sanctions in both monetary and non-monetary forms as follows –
- (a) suspension of monthly pension payments under the pension legislation for retired directorate civil servants on pensionable terms;
  - (b) initiating civil action to seek an injunction or sue for damages;
  - (c) withdrawal of approval;

- (d) suspension of approval for a specified period;
- (e) reporting of an incident to the relevant professional body where it concerns professional negligence or misconduct or may involve a possible breach of the code of conduct of the relevant profession;
- (f) issue of a public statement of criticism;
- (g) placing a warning or reprimand on a register for public inspection;
- (h) issue of a reprimand letter which may be copied to the outside employer; and/or
- (i) issue of a warning letter which may be copied to the outside employer.

5.91 The pension suspension referred to in paragraph 5.90(a) is only applicable to directorate civil servants retiring on pensionable terms and who have failed to seek prior approval from the decision authority before taking up post-service outside work within the applicable control period. All sanctions, except for the initiation of a civil action mentioned in paragraph 5.90(b), could be invoked by the Administration direct with immediate effect. The sanction in the form of a civil action would require the Administration to seek a remedy from the court. Depending on the particular circumstances of the case, the Administration may seek an injunction (under which the concerned former directorate civil servant is prohibited from continuing the post-service outside work or doing a particular act) and/or damages as compensation for a breach of the post-service outside work control arrangements by the concerned directorate civil servant.

5.92 While many respondents considered the current sanctions adequate, a few respondents suggested that the sanctions for directorate civil servants on CSPF terms should be strengthened. For example, there was a call for putting in place a monetary sanction akin to pension suspension to enhance the deterrent effect of the Control Regime as in time all civil servants would be

appointed on CSPF terms. (Please refer to footnote 33 on page 68.)

5.93 By way of background, the CSPF Scheme is operated under the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong) and the retirement benefits under the Scheme consist of three parts, namely –

- (a) the civil servant's own mandatory contribution set by law at 5% of his monthly income or \$1,000 whichever is the less;
- (b) the Government's mandatory contribution (hereafter referred to as 'the GMC') set by law at 5% of the civil servant's monthly income or \$1,000 whichever is the less; and
- (c) the Government's voluntary contribution (hereafter referred to as 'the GVC') set by contract.

5.94 Under the Mandatory Provident Fund Schemes Ordinance, the GMC and the accrued returns arising there from are fully and immediately vested with the CSPF civil servants. They cannot be forfeited or reduced in any circumstances. They will normally be payable to the CSPF civil servants at the age of 65. The GVC and the accrued returns (hereafter refer to as 'the GVC benefits'), on the other hand, will be paid to the CSPF civil servants in a lump sum at the time of their leaving the service, if they have met the vesting criteria as set out in the terms and conditions of the CSPF Scheme.

5.95 The Review Committee notes that there are currently only a limited number of directorate civil servants on CSPF terms. Nonetheless, it understands that the number of civil servants (directorate and non-directorate) on CSPF terms will increase over time as the Government has ceased recruiting civil servants on pensionable terms since June 2000.

5.96 Since the GMC and the accrued returns cannot be forfeited or reduced in any circumstances, the Review Committee has explored the following options relating to the GVC benefits to enhance the deterrent effect of the Control Regime –

- (a) deferring the payment of all or part of the GVC benefits until expiry of the relevant control period, subject to compliance with the Control Regime;
- (b) paying the GVC benefits by instalments over the relevant control period, subject to compliance with the Control Regime; or
- (c) recovering a specified percentage of the GVC benefits paid to a former directorate civil servant upon departure from the Government if he subsequently fails to comply with the Control Regime.

5.97 In the course of exploring the above options, the Review Committee notes that there are a number of considerations which have to be considered carefully –

- (a) any changes to the terms and conditions governing the payment/recovery of the GVC benefits could only be effected from a prospective date and through inclusion of the necessary contractual terms in new employment agreements to be entered into between directorate civil servants and the Administration. To avoid possible legal challenge, the same contractual terms may need to be incorporated in the employment agreements for both directorate and non-directorate civil servants;
- (b) not every civil servant leaving the Government will seek post-service outside work and only a couple of post-service outside work cases have aroused public concern in the past few years. It is doubtful whether the options are proportionate to the objective that the Control Regime seeks to achieve;
- (c) the GVC benefits are part of the retirement benefits earned by a directorate civil servant for his past government service. It may not be reasonable to defer the payment of GVC benefits notwithstanding the directorate civil servant's satisfactory completion of past government service; and
- (d) any sum of money specified in a contract to be paid to the innocent party in case of a breach should represent a genuine



pre-estimate of the innocent party's loss. Failing which, the sum will be viewed as a penalty and will unlikely be upheld by the court. The option of a recovery clause may thus be impracticable.

5.98 Separately, the Review Committee notes that non-monetary sanctions also play an important role in the overall sanction mechanism. Given their seniority when in government service, former directorate civil servants often enjoy some standing in the community. Their reputation could be put at stake by non-monetary sanctions such as issue of a public statement of criticism and reporting to the relevant professional bodies. Furthermore, some outside employers may hesitate to retain the concerned directorate civil servants if the latter have been openly criticised by the decision authority.

5.99 Overall, the Review Committee believes that the introduction of any sanction relating to the GVC benefits requires a careful and detailed study of the implication on, and the legal and contractual aspects of, the Civil Service Provident Fund Scheme for all civil servants. It asks the Administration to keep the matter under review.

## **II. Other Improvement Measures**

5.100 Apart from specific measures to strengthen the design and operation of the Control Regime, the Review Committee recommends the following additional improvement measures –

- (a) enhancing the integrity of the civil service;
- (b) conducting 'exit interviews' for departing directorate civil servants; and
- (c) lifting the pension suspension arrangement in respect of post-service work with specified subvented organisations.

**(a) Integrity of the Civil Service**

- 5.101 The Review Committee considers that public concern over potential conflicts of interest and suspicion or perception of ‘deferred reward’ in post-service outside work may sometimes stem from a lack of confidence in the integrity of directorate civil servants.
- 5.102 Some respondents pointed out that it would be difficult to provide explicit and detailed rules governing conflicts of interest situations given the different circumstances that might give rise to possible conflicts of interest. It would be equally difficult to prove breaches of such rules. A more effective way to avoid or reduce conflicts of interest in post-service outside work was enhancement of the ethical standard and integrity of the civil service.
- 5.103 The Review Committee notes that the Administration has issued detailed circulars/guidelines to remind all civil servants of the importance of avoiding a conflict between their official duties and private interests, including any conflict of interest that may arise between a civil servant’s loyalty to the Government and that to any person or organisation he intends to work for after leaving the service. In addition, the Administration and the Independent Commission Against Corruption work closely to promote integrity in the civil service through prevention, education and sanction. It notes that avoidance of conflicts of interest during government service features prominently in these efforts, however, less emphasis has been placed on avoidance of conflicts of interest relating to post-service outside work.
- 5.104 The Review Committee therefore ***recommends*** that the integrity enhancement initiatives should give equal emphasis on the importance of avoiding possible conflicts of interest by directorate civil servants, in particular the public concern over perception or suspicion of ‘deferred reward’, both during active government service and in the pursuit of post-service outside work.

**(b) 'Exit Interview'**

5.105 Under the current arrangement, departing directorate civil servants are given a set of relevant civil service regulations and circulars to remind them of the post-service outside work control requirements. The Review Committee considers it a good management practice for the Administration to conduct a face-to-face 'exit interview' with every departing directorate civil servant, and remind him of the importance of avoiding conflicts of interest in his pursuit of post-service outside work and of providing sufficient and accurate information to the decision authority when making an application. It notes that a similar arrangement is put in place in New Zealand and the USA. (Please refer to paragraphs 3.42 and 3.87.)

5.106 The Review Committee *recommends* that the Administration should conduct an 'exit interview' and devise guidelines on matters to be covered. The interviewer should state clearly that any advice given during the 'exit interview' is without prejudice to the decision of the authority over any application for post-service outside work in future.

**(c) Pension Suspension for Taking Up Employment with Specified Subvented Organisations**

5.107 Under the two pension-related Ordinances (i.e. the Pensions Ordinance and the Pension Benefits Ordinance), a retired civil servant's monthly pension payments may be suspended under either one of two circumstances, namely (a) when he fails to seek prior approval from the decision authority before taking up outside work within the specified period after retirement; or (b) when he undertakes full-time paid post-service outside work in any of the 16 specified subvented organisations. The first type of pension suspension serves as a sanction, and is discussed under paragraphs 5.90 to 5.99. The second type of pension suspension is not a sanction. Under it, the monthly pension payments of a retired directorate civil servant (as well as a non-directorate one) may be suspended when he takes up full-time paid work in any

one of the 16 specified subvented organisations. (Please refer to paragraphs 4.56 to 4.58 and **Annex C**). The suspension remains in force for as long as the employment with the specified organisations. In other words, it is not linked to any period of restriction on post-service outside work.

- 5.108 The Review Committee notes that the public views received were mixed on whether the pension suspension arrangement for the 16 specified subvented organisations should continue. Some respondents supported the continuation and even extension of the pension suspension arrangement to cover additional or all other subvented organisations on the grounds of avoiding ‘double pay’ from the public purse. Some other respondents noted that there were anomalies and unfairness in the current arrangement and proposed that the arrangement should be discontinued.
- 5.109 The Review Committee notes that in all the seven overseas jurisdictions studied, there is no similar arrangement of curtailing the retirement benefits of retired civil servants when they take up post-service work in subvented organisations. The Review Committee further notes that the pension suspension arrangement may discourage retired civil servants on pensionable terms from joining the 16 specified subvented organisations. At the same time, these 16 specified subvented organisations are put in an unfair and disadvantageous position, when compared with other subvented organisations or commercial entities, in terms of attracting retired civil servants on pensionable terms to join them as these individuals may be reluctant to have their monthly pension payments suspended.
- 5.110 The Review Committee also identified a number of anomalies with the current pension suspension arrangement –
- (a) there are no obvious objective criteria for selecting a certain subvented organisation for pension suspension purpose. For example, the eight tertiary education institutions are among the 16 specified subvented organisations, but not aided schools which are also funded by the Government;
  - (b) whilst a retired civil servant taking up full-time paid work in

any one of the 16 specified subvented organisations is subject to pension suspension, this arrangement does not apply if he takes up full-time paid employment in a separate legal entity set up by these 16 organisations; and

- (c) there is a disparity in treatment between retired civil servants on pensionable terms and those on CSPF terms. Whilst both types of civil servants are appointed on permanent terms and are provided with retirement benefits, at present the former will be subject to pension suspension if they take up full-time paid post-service employment in one of the 16 specified subvented organisations while such suspension will not (and cannot) be imposed on the latter.

5.111 The Review Committee also casts doubt on the argument of ‘double pay’ from the public purse. It recognises that pensions are part of the remuneration for the past service rendered by civil servants whereas the salary they receive from the specified subvented organisations is a reward for the service rendered to their new employers. It notes that in general these subvented organisations have well-established recruitment procedures. It considers that from the public perception angle, retired civil servants joining subvented organisations may be less prone to concern over conflicts of interest compared with working with commercial entities.

5.112 The Review Committee (except the Honourable Audrey Eu and the Honourable Albert Ho) accordingly ***recommends*** the Administration should discontinue suspending monthly pension payment for retired civil servants (directorate and non-directorate) in receipt of pension if they take up full time paid post-service outside work in the 16 specified subvented organisations. ***Two Review Committee Members*** (namely the Honourable Audrey Eu and the Honourable Albert Ho) recognise the anomalies mentioned in paragraph 5.110 but consider that such a recommendation should not be made in the absence of a general review on the employment of former civil servants in all other quasi-government agencies or publicly funded organisations.

## **Public Monitoring**

5.113 The Review Committee considers that disclosure of information to the public would facilitate public monitoring and help build public confidence in the Control Regime. To this end, the Review Committee ***recommends*** the following measures to facilitate public monitoring –

- (a) extending the public register to cover more junior directorate civil servants at DPS D1 to D3 (or equivalent);
- (b) disclosing the Advisory Committee's advice on each approved and taken up work on the public register; and
- (c) including more information in the Advisory Committee's annual report.

### **I. Coverage of Public Register**

5.114 The public register mechanism was introduced in January 2006. Under the current arrangement, a case record (please refer to paragraph 5.119 for details of information contained in a case record) on each post-service outside work approved and taken up by a former directorate civil servant at DPS D4 or above (or equivalent) is placed on a register for public inspection upon request. The case record is kept on the register until the expiry of the periods of restriction applicable to the said former directorate civil servant, or after he has ceased the outside work, whichever occurs first.

5.115 For approved post-service outside work taken up by more junior former directorate civil servants at DPS D1 to D3 (or equivalent), the relevant information is not put on the public register, but may be disclosed on a case-by-case basis where there is public concern.

- 5.116 There were some views suggesting the extension of the disclosure arrangement to cover directorate civil servants at DPS D1 to D3 (or equivalent) on the grounds of greater transparency.
- 5.117 The Review Committee believes that the public should have an oversight on the approved post-service outside work taken up by all former directorate civil servants. Public scrutiny is an effective tool to guard against any impropriety in post-service outside work. Also, the extension should not give rise to concern over infringement of personal data privacy, as former directorate civil servants at DPS D4 or above (or equivalent) have already been subject to the public disclosure arrangement since 2006.
- 5.118 Having considered the above, the Review Committee ***recommends*** that the public disclosure arrangement should be extended to cover directorate civil servants at DPS D1 to D3 (or equivalent).

## **II. Advisory Committee's Advice**

- 5.119 At present, the information contained in a case record includes the name of the concerned former directorate civil servant, his last civil service post title, date of cessation of active government service, conditions imposed by the decision authority on the approved outside work, commencement date and a brief description of the approved work, and where applicable, identity of the outside employer and the applicant's position in the outside organisation. A sample case record on the public register is at **Annex D**.
- 5.120 The Review Committee notes the advice tendered by the independent advisory body in the United Kingdom (namely the Advisory Committee on Business Appointments) on each post-service application taken up by a former senior civil servant is disclosed. In France, the disclosure is more limited as its independent advisory body (namely the Ethics Commission) only publishes in its annual report the advice it has tendered on a

selective basis and without revealing the identity of the applicants concerned.

- 5.121 There were some respondents who supported the disclosure of the Advisory Committee's advice on every approved and taken up post-service outside appointment in order to monitor whether the decision authority has acted on the advice of the Advisory Committee.
- 5.122 In the light of the above, the Review Committee ***recommends*** that the Advisory Committee's advice on every approved and taken up post-service outside work should be disclosed on the public register. It considers that such disclosure should not give rise to concern over infringement of personal data privacy. Yet such a move would be a step towards greater transparency of the decision-making process. The public and the concerned directorate civil servants will be able to know whether or not the decision authority has accepted the Advisory Committee's advice in full.

### **III. Advisory Committee's Annual Report**

- 5.123 The publication of the Advisory Committee's annual report on its work to the Chief Executive has always been an important component in the overall transparency of the Control Regime. The report provides, among others, statistics on the applications processed by the Advisory Committee during the year under reference. It is sent to the Public Service Panel of the Legislative Council and is put on CSB's website.
- 5.124 The Review Committee notes that a few respondents suggested including more information in the Advisory Committee's annual report.
- 5.125 The Review Committee agrees that disclosure of more information would allow the public and directorate civil servants to have a better understanding of the work of the Advisory Committee as well as the overall profile of applicants and the



applied-for post-service outside work, etc. The Review Committee therefore ***recommends*** that more information should be included in the Advisory Committee’s annual report, including but not limited to the categorisation of employers of approved and taken up post-service outside work, the cases on the public register on which the Advisory Committee’s advice and the final decision of the authority differs, and the guidelines on the mode of operation of the Advisory Committee.

## **Summary of Recommendations**

5.126 In summary, the Review Committee makes a total of 23 recommendations, which are highlighted below –

### **Underlying Principles**

Recommendation 1: Protection of the public interest and protection of an individual’s right should continue to be the two principles underlying the Control Regime, with protection of the public interest taking precedence over protection of an individual’s right (*paragraphs 5.06 to 5.11 refer*).

### **Policy Objective**

Recommendation 2: The policy objective should be expanded to make specific references to (a) avoiding suspicion or perception of ‘deferred reward’; and (b) making good use of limited human resources. There is no need to make a specific reference in the policy objective to maintaining the attractiveness of the civil service as a career (*paragraphs 5.12 to 5.22 refer*).

## Design and Operation of the Control Regime

### I. Specific Improvement Measures

#### (a) Periods of Restriction

Recommendation 3: A *lifetime total ban* on paid post-service outside work should not be imposed. A *lifetime specific ban* on particular types of post-service employment should also not be imposed (with the Honourable Albert Ho registering a different view). The Honourable Albert Ho considers that the possibility of a lifetime ‘employer-specific’ ban on a former directorate civil servant who has had dealings in land, property or award of franchise matters when in government service should be further explored (*paragraphs 5.26 to 5.30 refer*).

Recommendation 4: No change should be made to the minimum sanitisation period (*paragraphs 5.31 to 5.35 refer*).

Recommendation 5: The length of the control period should not be determined by specified fields of work during government service (*paragraphs 5.36 to 5.37 refer*).

Recommendation 6: The length of the control period should not be determined by post-service outside work in the same field as a directorate civil servant’s past government duties (*paragraphs 5.38 to 5.40 refer*).

Recommendation 7: The length of the control period should be as follows (with the Honourable Audrey Eu and the Honourable Albert Ho registering a different view) (*paragraphs 5.41 to 5.47 refer*) –

- (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).

The Honourable Audrey Eu and the Honourable Albert Ho recommend that the length of the control period should be –

- (a) three years for DPS D1 to D3 (or equivalent) civil servants (i.e. lengthening the existing period by one year); and
- (b) five years for DPS D4 to D8 (or equivalent) civil servants (i.e. lengthening the existing period by three years for DPS D4 to D7 (or equivalent) civil servants and by two years for DPS D8 (or equivalent) civil servants).

## **(b) Internal Assessment Process**

Recommendation 8: The provision of information by an applicant in the application form should be improved as follows (*paragraphs 5.48 to 5.55 refer*) –

- (a) irrespective of whether or not an applicant will be involved in the business of the parent or related companies of the prospective employer, he should be required to disclose his material past contractual, legal, official and other contacts/dealings (if any) with these entities during his last three years of government service if he is at DPS D1 to D3 (or equivalent), and during his last six years of government service if he is a DPS D4 or above (or equivalent) civil servant;

- (b) an applicant should be required to provide any other information which he considers relevant to the assessment of his application; and
- (c) the policy objective and the assessment criteria should be stated upfront on the application form so as to remind an applicant of the factors that would be taken into account in the assessment process. This should help him to decide what other relevant information to provide as required under (b) above.

Recommendation 9: All applications from DPS D4 to D8 (or equivalent) directorate civil servants should be assessed with reference to the applicants' last six years of active government service (*paragraphs 5.56 to 5.57 refer*).

### **(c) External Assessment Process**

Recommendation 10: The Advisory Committee should retain its advisory role (with the Honourable Audrey Eu registering a different view). The Honourable Audrey Eu considers that the Control Regime, including the power to approve or reject post-service outside work applications, should be placed in a body independent of the Administration (*paragraph 5.59 refers*).

Recommendation 11: The membership of the Advisory Committee should be expanded to nine members (including the chairman) with a broadened composition. Possible categories of candidates for appointment on an *ad personam* basis include (but not restricted to) academics, representatives from civil service groups, former directorate civil servants, personalities from professional fields and/or the business sector, as well as former or serving members of the Executive Council, the Legislative

Council and the District Councils (*paragraphs 5.60 to 5.64 refer*).

Recommendation 12: The Advisory Committee should be given the power to invite outside expert(s) in the field(s) relevant to a post-service outside work application to give advice if necessary (*paragraph 5.65 refers*).

Recommendation 13: The Advisory Committee should draw up guidelines on its mode of operation, which should provide for the holding of meetings when appropriate or upon request by its chairman or any of its members. In addition, these guidelines should be made known to the public and applicants (*paragraphs 5.68 to 5.70 refer*).

Recommendation 14: The secretariat of the Advisory Committee should be independent of the Civil Service Bureau. Depending on workload, it may be a dedicated secretariat, or it may be an existing independent secretariat for advisory bodies on civil service-related matters with an expanded ambit (*paragraphs 5.71 to 5.73 refer*).

#### **(d) Enforcement of Work Restrictions Imposed**

Recommendation 15: The imposition and enforcement of work restrictions should be strengthened as follows (*paragraphs 5.74 to 5.82 refer*) –

- (a) the current arrangement of imposing standard work restrictions and, where necessary, additional application-specific work restrictions should continue;
- (b) the decision authority should directly inform the prospective employer of the work restrictions imposed on an applicant and of the requirement for the latter to notify and to seek

prior approval from the decision authority if there is any material change to the work;

- (c) if the enforcement of work restrictions imposed on an applicant may involve certain bureaux/departments, the decision authority should also inform them of the imposed work restrictions; and
- (d) an applicant who has taken up an approved post-service outside work should be required, as part of the approval conditions, to provide the decision authority with a copy of the signed employment agreement or appointment letter within 30 days of signature or issue as well as any material changes made later.

#### **(e) Review/Appeal Channels**

Recommendation 16: The decision authority should set out the review and appeal channels when notifying an applicant of the decision on his application. The decision authority should, as a standard practice, seek the advice of the Advisory Committee again if an applicant seeks a review of the decision (*paragraphs 5.83 to 5.86 refer*).

#### **(f) Performance Pledge on Processing Time**

Recommendation 17: The Administration should make a practicable performance pledge on the processing time, having regard to the recommended enhancement to the internal and external assessment processes (*paragraphs 5.87 to 5.89 refer*).

## **II. Other Improvement Measures**

### **(a) Integrity of the Civil Service**

Recommendation 18: The integrity enhancement initiatives should give

greater emphasis on the importance of avoiding possible conflicts of interest by directorate civil servants, in particular the public concern over perception or suspicion of ‘deferred reward’, both during active government service and in the pursuit of post-service outside work (*paragraphs 5.101 to 5.104 refer*).

**(b) ‘Exit Interview’**

Recommendation 19: The Administration should conduct an ‘exit interview’ with every departing directorate civil servant, and devise guidelines on the matters to be covered (*paragraphs 5.105 to 5.106 refer*).

**(c) Pension Suspension for Taking up Employment with Specified Subvented Organisations**

Recommendation 20: The suspension of monthly pension payments to retired pensionable civil servants (directorate and non-directorate) working on a full-time and paid basis in the 16 specified subvented organisations should be discontinued (with the Honourable Audrey Eu and the Honourable Albert Ho registering a different view). These two members recognise the anomalies under the existing arrangement but consider that such recommendation should not be made in the absence of a general review on the employment of former civil servants in all other quasi-government agencies or publicly funded organisations (*paragraphs 5.107 to 5.112 refer*).

**Public Monitoring**

**I. Coverage of Public Register**

Recommendation 21: The public disclosure arrangement should be extended to cover junior directorate civil servants

at DPS D1 to D3 (or equivalent) as well  
(*paragraphs 5.114 to 5.118 refer*).

## **II. Advisory Committee's Advice**

Recommendation 22: The Advisory Committee's advice on every approved and taken up post-service outside work should be disclosed on the public register  
(*paragraphs 5.119 to 5.122 refer*).

## **III. Advisory Committee's Annual Report**

Recommendation 23: More information should be included in the Advisory Committee's annual report, including but not limited to the categorisation of employers of approved and taken up post-service outside work, the cases on the public register on which the Advisory Committee's advice and the final decision of the authority differs, and the guidelines on the mode of operation of the Advisory Committee (*paragraphs 5.123 to 5.125 refer*).



## CHAPTER 6: Politically Appointed Officials

### Overview

6.01 This chapter sets out the Review Committee's observation on the control governing post-office employment of politically appointed officials, a matter which is outside the terms of reference of the Review Committee.

### Background

6.02 Politically appointed officials comprise of Chief Secretary for Administration, Financial Secretary, Secretary for Justice, Directors of Bureaux, Director of the Chief Executive's Office, Under Secretaries and Political Assistants. At present, there are a total of 33 politically appointed officials.

6.03 Within one year after stepping down from office<sup>44</sup>, politically appointed officials are -

- (a) prohibited from representing any person in connection with any claim, action, demand, proceedings, transaction or negotiation against or with the Government;
- (b) prohibited from engaging in any lobbying activities on matters relating to the Government; and
- (c) required to seek the advice from the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials (hereafter referred to as 'the Advisory Committee for Politically Appointed Officials')<sup>45</sup> before commencing any employment, becoming a director or

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<sup>44</sup> The post-office employment or appointment control requirements are provided for in the 'Code for Officials Under the Political Appointment System' as well as in the letters of employment between the officials and the Government.

<sup>45</sup> The Advisory Committee for Politically Appointed Officials is appointed by the Chief Executive.

a partner in any business or profession or starting any business or profession on his own account or with others.

- 6.04 The advice of the Advisory Committee for Politically Appointed Officials on an employment or appointment that a former politically appointed official intends to take up is made known to the public in the form of a press release, which is kept on the website of the Chief Executive's Office. The advice is not binding on the former politically appointed official.
- 6.05 According to the 'Guidance Note on Post-office Employment for Politically Appointed Officials'<sup>46</sup>, the control arrangements are *'designed to ensure that within one year after stepping down from office, a former official does not take up any employment, directorship, partnership in any business or profession or start any business or profession on his own account or with others, which will or is likely to constitute a conflict of interest, adversely affect or compromise the Government's performance, cause negative public perception or enable the prospective employer or business to gain an unfair advantage over its competitors. The restrictions, however, should not unreasonably restrict a former official's right to take up an employment or appointment'*.

## **Views of Some Committee Members**

- 6.06 In the course of studying the Control Regime during its first phase of work (see paragraph 1.07(a)), the Review Committee noted that the control arrangements for post-service employment of politically appointed officials were different from those for directorate civil servants. Some Members (Mr Haider Barma, the Honourable Paul Chan, the Honourable Audrey Eu and the Honourable Albert Ho) were concerned that the control arrangements for the former were not as rigorous as those for the latter and were of the view that it was important for the Administration to consider whether parity or consistency

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<sup>46</sup> The Guidance Note is issued by the Advisory Committee for Politically Appointed Officials.

between the two groups of public officers should be introduced.

- 6.07 The Review Committee decided not to bring up the issue on post-office employment control of politically appointed officials in its consultation document as the matter is outside its terms of reference.

## **Public Views**

- 6.08 During the public consultation, the Review Committee received various views on the post-office employment control of politically appointed officials. They included –

- (a) the need to avoid conflicts of interest arising from taking up post-service outside work should not be confined to directorate civil servants;
- (b) the public was also concerned about perception or suspicion of ‘deferred reward’ in post-office work of politically appointed officials;
- (c) politically appointed officials had far more access to sensitive information and greater influence on policy formulation than directorate civil servants. The control over post-office work for them should therefore be strengthened and be no less stringent than that for directorate civil servants;
- (d) the post-service outside work control arrangements for directorate civil servants should be extended to all politically appointed officials, or at least to Directors of Bureau and above; and
- (e) it was reasonable to impose different post-service work control for directorate civil servants and politically appointed officials given the latter were not appointed on a permanent basis.

- 6.09 Some respondents also commented that members of the Executive and Legislative Councils and senior employees in quasi-government organisations should also be subject to

stringent post-service outside work control given the considerable power they wielded during active public service.

## **Observation**

- 6.10 While the post-office employment control for politically appointed officials is outside the purview of the Review Committee, it feels duty-bound to draw the Chief Executive's attention to the views expressed on this matter.
- 6.11 The Review Committee has not examined the rationale behind the post-office employment control regime of politically appointed officials because the matter is outside its terms of reference. It is therefore not in a position to provide a considered view on the matter. In view of the importance of the matter and given the public concern, the Review Committee urges the Chief Executive to carry out a separate review.

# ANNEXES

**Provisions Relevant to Protection of Individual's Right  
in Basic Law, International Covenant and  
Convention and Other Ordinances**

**Right to Work and Freedom of Choice of Occupation**

**Basic Law**

1. Article 33:  
*"Hong Kong residents shall have freedom of choice of occupation."*
2. Article 39:  
*"The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.*

*The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article."*

**International Covenant on Economic, Social and Cultural Rights**

3. Article 6(1):  
*"The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."*

**Employment Policy Convention, 1964**

4. Article 1(2)(c):  
*"There is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, color, sex, religion, political opinion, national extraction or social origin."*

## **Right Against Unlawful Discrimination**

### **Basic Law**

5. Article 25:

*“All Hong Kong residents shall be equal before the law.”*

### **Hong Kong Bill of Rights Ordinance (Chapter 383 of the Laws of Hong Kong)**

6. Article 1(1):

*“The rights recognized in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status<sup>1</sup>(footnote added).”*

7. Article 22:

*“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

## **Personal Data Privacy**

### **Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)**

8. Data Protection Principle 3 (use of personal data) in Schedule 1:

*“Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than (a) the purpose for which the data were to be used at the time of the collection of the data; or (b) a purpose directly related to the purpose referred to in paragraph (a).”*

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<sup>1</sup> The United Nations Human Rights Committee has not issued a detailed consensus comment on the meaning of ‘any other status’, preferring to decide on a case-by-case basis. Generally, a group of separate individuals may constitute a distinct group if they are linked by a common status. Retired civil servants could be regarded as sharing a common status.

**Terms of Reference and Current Membership of  
Advisory Committee on Post-service Employment of Civil Servants**

**Terms of Reference**

- (a) To advise the Government on the principles and the criteria to be adopted in formulating policy and arrangements to control post-service employment.
- (b) To consider and advise on all applications to take up post-service employment from directorate officers.
- (c) To consider and advise on other applications which may be referred by the Secretary for the Civil Service.

**Current Membership (as at 30 June 2009)**

Chairman: The Hon Mr Justice PANG Kin-kee

Members: Mr Simon IP Sik-on, JP

*(in*

*alphabetical* Mr Nicky LO Kar-chun, JP

*order)*

Mr James Edward THOMPSON, GBS

Ms Marina WONG Yu-pok, JP

Mr YEUNG Ka-sing, SBS, JP



**List of Subvented Organisations Gazetted  
for Pension Suspension Purpose**

**Organisations** (in alphabetical order)

1. City University of Hong Kong
2. Equal Opportunities Commission
3. Hong Kong Baptist University
4. Hong Kong Housing Authority
5. Hong Kong Monetary Authority
6. Hospital Authority
7. Lingnan University
8. Office of The Ombudsman
9. Office of the Privacy Commissioner for Personal Data
10. The Chinese University of Hong Kong
11. The Hong Kong Institute of Education
12. The Hong Kong Polytechnic University
13. The Hong Kong University of Science and Technology
14. The Legislative Council Commission
15. The University of Hong Kong
16. Vocational Training Council

**Sample Case Record on Public Register**

**Serial No.:** XX/2009

**(A) Information on the officer**

**Name** Mr. CHAN Tai-man

**Last government post title**

Director, XX Department

**Date of cessation of active government service**

31 January 2008

**(B) Information on the approved outside work**

**Name of employing company/organisation or own company\***

ABC Company Limited

**Position/title**

Executive Director, Business Development

**Commencement date of approved work**

1 February 2009

**Brief description of main duties**

- (a) Formulating and executing ABC Company Limited's strategies and business plans;
- (b) Exploring the market potential and establishing the distribution network for the products in the Asia-Pacific Region; and
- (c) Taking charge of the day-to-day management and operation of the Business Development Unit of ABC Company Limited.

**Sanitisation period**

12 months (up to and including 30 January 2009)

**Restrictions on scope of work (in addition to the applicable standard restrictions set out at the end of this form)**

Mr. Chan should not represent ABC Company Limited in any discussion with the Government.

I confirm that the above particulars are correct and understand that the information may be disclosed<sup>1</sup> to the public in accordance with the provisions set out in CSB Circular No. 10/2005.

Signature:	(Signed)
Name	CHAN Tai-man
Date:	20 January 2009

\* Delete as appropriate

Standard Restrictions on Scope of Work

The officer should not –

- (a) be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises;
- (b) undertake or represent any person in any work including any litigation or lobbying activities that are connected in any way with –
  - (i) the formulation of any policy or decisions;
  - (ii) sensitive information;
  - (iii) contractual or legal dealings;
  - (iv) assignments or projects; and/or
  - (v) enforcement or regulatory duties

in which he/she was involved or to which he/she had access during his/her last three years of government service; or

- (c) engage in any activities which will cause embarrassment to the Government or bring disgrace to the civil service.

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<sup>1</sup> For officers at D4 or above, this record will be placed in a register for public inspection.

**List of Written Submissions**

<b><u>No.</u></b>	<b><u>Name of the Organisations/Individuals</u></b> <sup>1</sup>
1	Professor John BACON-SHONE
2	Bauhinia Foundation Research Centre
3	CHAN Sui-jeung
4	James CHEUNG
5	Martin CHEUNG Kin-keung
6	Peter CHEUNG Kam-fai
7	Dr CHOI Yu Leuk
8	Civic Party
9	J S CORRIGALL
10	Democratic Party
11	East Kowloon District Residents' Committee
12	Federation of Hong Kong Industries
13	FONG Ping
14	Government Logistics Department Management (requested for non-disclosure)
15	Hong Kong Chinese Civil Servants' Association
16	Hong Kong Chinese Civil Servants' Association Environmental Protection Officers Branch
17	Hong Kong Dental Association
18	Hong Kong Former Senior Civil Servants Association
19	Hong Kong General Chamber of Commerce
20 - 21 <sup>2</sup>	Hong Kong Housing Department Architects Association
22	Hong Kong Police Force Management
23	Hong Kong Registered Ventilation Contractors Association Ltd
24	Hong Kong Retired Civil Servants Association
25 - 26 <sup>2</sup>	Hong Kong Senior Government Officers Association
27	The Honourable Regina IP
28	Mark JOHNSON
29	LAI Shing Kin
30	Kenneth LAM
31	Raymond LAM

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<sup>1</sup> Arranged by alphabetical order or by the numbers of strokes (for names in Chinese).

<sup>2</sup> The same respondent has made two separate submissions.

<b><u>No.</u></b>	<b><u>Name of the Organisations/Individuals<sup>1</sup></u></b>
32	LAM Wai Hay
33	Fanny LAW
34	W K LEE
35 - 36 <sup>2</sup>	LEUNG Sau Wai
37	Liberal Party
38	LO Pui-chun
39	Tony MILLER
40	Flora MOK
41 - 42 <sup>2</sup>	A L NANIK
43	Karen NG
44	Pensionable Overseas Public Servants Association
45	Planning Department Management
46	Public Service Commission
47	Dr Peter KS PUN
48 - 49 <sup>2</sup>	Professor Ian SCOTT and Dr Joan Y H LEUNG
50	Stephen SELBY
51	Superintendents' Association of the Hong Kong Police Force
52	The Chinese Manufacturers' Association of Hong Kong
53	The Hong Kong Institute of Architects
54	The Hong Kong Institution of Engineers
55	The Hong Kong Medical Association
56	Water Supplies Department Management
57	Mee Chun WONG
58	Tyler YOUNG
59	13 Professional Grades Civil Service Associations:
	(a) Architectural Services Architects' Association
	(b) Architectural Services Department Structural Engineers' Association
	(c) Association of Building Services Engineers of Housing Department
	(d) Association of Professional Engineers of Electrical & Mechanical Services Department
	(e) Buildings Department Local Building Surveyors' Association
	(f) Buildings Department Structural Engineer's Association
	(g) Hong Kong Housing Department Geotechnical Engineers' Association

<b><u>No.</u></b>	<b><u>Name of the Organisations/Individuals</u></b> <sup>1</sup>
	(h) Hong Kong Housing Department Structural Engineers' Association
	(i) Hong Kong Marine Department Local Professional Officers' Association
	(j) HKSAR Government Civil Engineers Association
	(k) Government Doctors' Association
	(l & m) 2 associations (requested for anonymity)
60 - 62	3 separate submissions from individuals/organisations (requested for anonymity and non-disclosure)
63 - 69	7 separate submissions from individuals/organisations (requested for anonymity)
70	一市民(1) <sup>3</sup>
71	一市民(2) <sup>3</sup>
72	陳玉如 <sup>3</sup>
73	梁先生 <sup>3</sup>
74	熱心公益人 <sup>3</sup>
75	謝文穎 <sup>3</sup>
76	關注事件人士 <sup>3</sup>
77	羅錦鏡 <sup>3</sup>

Total : 77 submissions

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<sup>3</sup> The Secretariat to the Review Committee is not able to identify the English names of the respondents.