

For information
on 27 October 2008

Legislative Council Panel on Public Service

**Processing of the application from
Mr Leung Chin-man to take up post-service employment with
New World China Land Limited and related issues**

Purpose

This paper briefs Members on the processing of the application from Mr Leung Chin-man to take up post-service employment with New World China Land Limited, and on the latest development on the review of existing policy and arrangements governing post-service outside work for directorate civil servants.

Processing of the application from Mr Leung Chin-man

2. A detailed account of the processing of the application from Mr Leung Chin-man to take up post-service employment with New World China Land Limited is contained in the report submitted by the Secretary for the Civil Service (SCS) to the Chief Executive on 15 August 2008. A copy of the report is at **Annex A**.

3. Upon receipt of the report, the Chief Executive noted that the Civil Service Bureau (CSB) had processed Mr Leung's application in accordance with established procedures. The Chief Executive also noted that Mr Leung was involved in the handling of the subject of the Hunghom Peninsula development before his retirement from the civil service, and that one of the subsidiaries of the New World Development Company Limited was one of the developers involved. CSB had not mentioned this fact nor analysed the public perception over Mr Leung's involvement in the said development when processing his post-service employment application. CSB had also not brought Mr Leung's involvement in the said development and the associated public perception to the attention of the Advisory Committee on Post-service Employment of Civil Servants (the "Advisory Committee") when seeking its advice on Mr Leung's post-service employment application. The Chief Executive therefore asked

SCS, on 15 August 2008, to obtain the assessment from the relevant policy bureaux afresh on Mr Leung's post-service employment application with due regard to his involvement in the Hunghom Peninsula development and to present the relevant information to the Advisory Committee for its further advice. This was to be followed by SCS' re-assessment of Mr Leung's application and presentation of a further report to the Chief Executive.

4. On 16 August 2008, New World China Land Limited announced that the employment contract between the company and Mr Leung was terminated unconditionally with immediate effect. In view of this development, the Chief Executive announced on the same day that there was no need to re-assess Mr Leung's application. He also announced that an independent committee would be set up to review the existing policy and arrangements governing post-service outside work for directorate civil servants, having regard to the need to balance directorate civil servants' right to work after leaving the Government, public expectation and prevention of conflict of interest.

Latest Development

5. On 30 September 2008, the Chief Executive announced the terms of reference and membership of the independent Committee on Review of Post-Service Outside Work for Directorate Civil Servants (the "Review Committee"). These are attached at **Annex B**.

6. The Review Committee announced its work plan after its first meeting on 8 October 2008. A dedicated website on the work of the Review Committee (www.dcspostservice-review.org.hk) has been launched on 24 October 2008 to keep the public posted of the Review Committee's work and to receive written submissions. The Review Committee will upload the agenda onto the website before each meeting.

7. The Review Committee aims to issue a public consultation document around January 2009. It intends to organise public forums and meetings to enable those interested to express their views. The public consultation will end around end March. The Review Committee will study and deliberate on the views received and submit a report on its recommendations to the Chief Executive around June 2009.

Advice Sought

8. Members are invited to note the report on the processing of Mr Leung's

application for post-service outside work and the latest development on the review of existing policy and arrangements governing post-service outside work for directorate civil servants.

Civil Service Bureau
October 2008

**Report on the processing of the application from
Mr Leung Chin-man to take up post-service outside work with
New World China Land Limited**

Introduction

This report gives an account of the processing of the application from Mr Leung Chin-man, former Administrative Officer Staff Grade A1 (D8), for permission to take up a full-time and paid appointment with New World China Land Limited as Executive Director.

Details of Mr Leung's Application

2. Mr Leung served as Director of Buildings (DB) from August 1999 to June 2002. He then served as Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing (PS(H)/D of H) from July 2002 to January 2006. He ceased active service on 10 January 2006. He retired from the civil service on 10 January 2007 on pensionable (New Pension Scheme) terms.

3. Mr Leung submitted an application on 9 May 2008 for permission to take up a full-time and paid appointment with New World China Land Limited as Executive Director.

4. As stated in Mr Leung's application, the major business activities of New World China Land Limited include: (a) operation of and investment in hotels in China; (b) development of real estate in China; (c) operation of golf courses in China; and (d) operation of holiday resorts in China. As Executive Director of New World China Land Limited, Mr Leung's major duties and responsibilities would include: (a)

develop design and construction modules for projects in different cities of China; (b) identify ways in constructing environmentally friendly and sustainable buildings in China; (c) set up a comprehensive procurement system in China; and (d) provide general support for the administration of the regional offices in China. He would be based in a major city in China. He would receive an approximate annual remuneration of \$3 million.

5. As stated in Mr Leung's application, New World China Land Limited's parent company is New World Development Company Limited. Mr Leung advised that he would not be involved in any way in the business of the parent company.

Prevailing Policy and Arrangements for Post-Service Outside Work

6. The policy on post-service outside work aims to ensure that civil servants on final leave or who have left the Government will not take up any work outside the Government which may constitute 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, without at the same time unduly restricting the said individuals' right to pursue employment or other work after ceasing government service.

7. The arrangements governing post-service outside work for directorate civil servants on pensionable or new permanent terms who cease active service on or after 1 January 2006 (covering Mr Leung), and those on agreement terms who enter into new agreement on or after 1 January 2006, are set out in the Civil Service Bureau (CSB) Circular No. 10/2005. In brief, these arrangements include:

(a) directorate civil servants who wish to take up post-service outside

work during their final leave period and/or within a specified control period (three years for civil servants ranked at D8 and two years for others) counting from their formal departure from the Government (i.e. on exhaustion of final leave if any) are required to seek prior permission from Secretary for the Civil Service (SCS);

- (b) directorate civil servants at D4 or above retiring on pensionable or new permanent terms are subject to a minimum 12-month sanitisation period counting from the date of cessation of active service, during which they are not permitted to take up any outside work other than that covered by the blanket permission¹. The minimum sanitisation period for directorate civil servants below D4 is six months;
- (c) directorate civil servants are not permitted to take up full-time remunerated work or work of a commercial nature during their final leave period, unless there are special considerations and there is no problem of dual identity; and
- (d) directorate civil servants who take up post-service outside work are subject to a set of standard work restrictions².

¹ Blanket permission is given for all directorate civil servants to take up unremunerated work with specified non-commercial organizations throughout the final leave and control periods.

² The taking up of any post-service outside work by a directorate civil servant is subject to the standard restrictions that the concerned person should not in his/her post-service outside work –

- (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;

8. Within the policy as stated in paragraph 6 above, the specific considerations to be taken into account in the vetting and consideration of an application for post-service outside work from a directorate civil servant include -

- (a) whether the applicant was involved in the formulation of any policy or decisions, the effects of which directly or specifically benefited or could directly or specifically benefit his/her own business/prospective employer;
- (b) whether the applicant/prospective employer might gain unfair advantage over competitors because of the applicant's access to sensitive information while in government service;
- (c) whether the applicant was involved in any contractual or legal dealings to which the 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 was involved while in government 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.

(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.

9. Consideration of post-service outside work applications, in accordance with prevailing policy and arrangements, is an integral part of management of the civil service for which SCS is responsible. CSB will obtain views on such applications from the relevant Permanent Secretaries, Heads of Departments and Heads of Grades and the advice of the independent Advisory Committee on Post-service Employment of Civil Servants (Advisory Committee) before submitting a recommendation on each application to SCS for decision. The Chief Executive and Principal Officials (other than SCS) appointed under the political appointment system are not involved in the process.

Vetting of Mr Leung's Application

(a) Consultation with Relevant Bureaux

10. Since Mr Leung served as PS(H)/D of H immediately before his cessation of active service and as DB before his tenure as PS(H)/D of H and in the light of the business nature of his prospective employer, CSB considered that the principal bureau to advise on Mr Leung's application was the Transport and Housing Bureau and that the Development Bureau should also be invited for views. In line with the established practice, CSB accordingly sought the views of the three relevant Permanent Secretaries on 19 May 2008. In doing so, it drew the addressees' attention to the fact that the parent company of Mr Leung's prospective employer was New World Development Company Limited.

11. The Housing Branch of the Transport and Housing Bureau advised on 10 June 2008 that Mr Leung did not have any contractual or legal dealings, or any other official contacts/dealings with the prospective employer (i.e. New World China Land

Limited) during his previous service as PS(H)/D of H. The Branch also advised that Mr Leung was not involved in the formulation of any policy or decisions, the effect of which benefited or could benefit the prospective employer. It further advised that Mr Leung was not involved in any assignments/projects or regulatory/enforcement duties which were connected in any way with his duties and responsibilities under the proposed appointment with the prospective employer. The Branch was also of the view that it was unlikely that Mr Leung's proposed appointment would give rise to any negative public perception or cause embarrassment to the Government. The Housing Branch recommended approval of the application without any restriction other than the standard ones listed in paragraph 7(d) above.

12. The Works Branch of the Development Bureau advised on 26 May 2008 that New World China Land Limited and its parent company New World Development Company Limited were not listed contractors of the Development Bureau (Works Branch). Nonetheless, New World Development Company Limited owned (around 56%) NWS Holdings Limited which in turn, through some other companies, wholly owned nine companies which were currently listed contractors of the Development Bureau (Works Branch) and had 13 outstanding public works contracts. It further noted that in the light of the business nature of Mr Leung's prospective employer in real estate development, construction and management matters, the post-service appointment applied for by Mr Leung with relativity to his former appointment as DB from August 1999 to June 2002 might have a public perception issue despite the operation of his prospective employer was outside Hong Kong³.

³ Views from the Works Branch were sought again on 17 June 2008 to see whether they had any objection to Mr Leung's application. In their reply on 24 June 2008, they advised that as Mr

13. The Planning and Lands Branch of the Development Bureau advised on 30 May 2008 that Buildings Department had no contractual dealings with New World China Land Limited or its parent company New World Development Company Limited. However, there were building plans submissions for development projects (e.g. Hunghom Peninsula project, Tsim Sha Tsui New World redevelopment project) made under the Buildings Ordinance by the subsidiary companies of New World Development Company Limited⁴.

(b) Consultation with Head of Grade

14. Since Mr Leung was a member of the Administrative Officer Grade before retirement, the Administrative Officer Grade Management (AO Grade Management) was consulted on his application. On the basis of the information provided relating to Mr Leung's post-service appointment application, the AO Grade Management advised on 25 June 2008 that there did not appear to be any apparent conflict between the prospective employment applied for and his former duties.

(c) Advice from the Advisory Committee

15. On the basis of the available information and the assessments made by the relevant bureaux and Head of Grade, CSB prepared a paper to facilitate the consideration of the Advisory Committee. The paper noted that New World

Leung had not served in the Works Branch nor its departments prior to his retirement, they were not in a position to comment on or object to the application. However, given Mr Leung's senior position when he was in the civil service and the business nature of his prospective employer, they would like to draw CSB's attention to the likelihood of public perception issue in this case.

⁴ Views from the Planning and Lands Branch of the Development Bureau were again sought on 30 May 2008 to see whether they had any specific comments on Mr Leung's application. In their reply on the same date, they had made no comment.

Development Company Limited was the parent company of New World China Land Limited, the company that Mr Leung sought permission to work in. It further noted that Mr Leung's proposed appointment with New World China Land Limited would involve overseeing the company's business in the Mainland only. It relayed the advice received from the two concerned bureaux and Head of Grade on Mr Leung's application. It also contained the views of CSB, namely that Mr Leung had left the posts of DB and PS(H)/D of H for six years and over two years respectively, that Mr Leung had no previous dealings or business connection with New World China Land Limited, and that Mr Leung's proposed appointment with New World China Land Limited involved overseeing the company's business in the Mainland only. Having regard to these considerations, CSB considered that the proposed appointment would unlikely constitute problems of conflict of interest, and that approval might be given to Mr Leung's application without further sanitisation. However, given Mr Leung's former senior position in the Government and to address the public perception issue, CSB proposed to impose the following work restrictions in addition to the standard work restrictions as set out in paragraph 7(d) above –

- (a) he should not involve himself in any business of New World China Land Limited that was connected with Hong Kong;
- (b) he should not use or disclose any classified or sensitive information acquired while he was in government service in the course of his employment with New World China Land Limited;
- (c) he should not represent New World China Land Limited in any discussion with the Government; and
- (d) for avoidance of doubt, he should confine his proposed appointment to New World China Land Limited.

16. When CSB approached the Chairman of the Advisory Committee, the Honourable Justice Pang, on Mr Leung's application, he immediately made a declaration of interest that Mr Leung was his secondary school mate. This fact was stated in the paper circulated to members of the Advisory Committee for advice. No other Members of the Advisory Committee made any declaration of interest. On the basis of the information provided in the paper, all members replied in writing and recommended that approval be given for Mr Leung to take up the proposed appointment with New World China Land Limited without further sanitization, but subject to the standard work restrictions as set out in paragraph 7(d) above and the additional work restrictions in paragraph 15(a) to (d) above.

(d) Decision of Secretary for the Civil Service

17. After obtaining the advice of the Advisory Committee, a written submission was put up to SCS on 4 July 2008, recommending her approval of Mr Leung's application to take up the full-time paid appointment with New World China Land Limited as Executive Director with effect from a current date without further sanitisation but subject to the standard work restrictions in paragraph 7(d) above and the additional work restrictions in paragraph 15(a) to (d) above.

18. The prevailing policy and the established process and criteria for vetting applications for post-service outside work by directorate civil servants had been adhered to in the vetting of Mr Leung's application. The advice from all the relevant parties had been obtained and submitted to SCS. Having considered the advice tendered and the prevailing policy, SCS, as the decision authority, approved Mr Leung's application on 8 July 2008 subject to the stated restrictions. Mr Leung

was informed of the decision on 9 July 2008.

(e) Public Register

19. As stipulated in CSB Circular No. 10/2005, in order to enhance transparency, basic information⁵ on approved post-service outside work taken up by civil servants at D4 and above (or equivalent)⁶ will be placed on a register for public inspection upon request. CSB accordingly requested Mr Leung on 9 July 2008 to complete and return the required information on his post-service appointment with New World China Land Limited for entry on the register kept in CSB for public inspection. Mr Leung submitted the return to CSB on 30 July 2008 and the information was placed on the register on the same date.

Public Reaction

20. On 1 August 2008, New World China Land Limited made a public announcement on Mr Leung being appointed as an Executive Director and Deputy Managing Director⁷ of the company with effect from that date. In response to the

⁵ The basic information includes the name of the applicant, last post title in the civil service, date of cessation of active service, sanitisation period and additional restrictions (if any) imposed on the approved work, commencement date of the approved work, identity of the outside employer, position in the outside organisation and a brief description of the applicant's main duties in the outside organisation. For approved outside work taken up by an applicant below D4 (or equivalent), the relevant information will be disclosed in response to public enquiry on a case-by-case basis. The basic information will be kept until the expiry of the concerned applicant's post-service control period or after he/she has notified CSB of the cessation of the approved outside work, whichever happens earlier.

⁶ The inclusion of basic information of approved and taken post-service outside work on a register available for public inspection applies to:

- (a) those directorate civil servants at D4 or above (or equivalent) appointed on pensionable or on new permanent terms and who cease active government service on or after 1 January 2006; and
- (b) those directorate civil servants at D4 or above (or equivalent) appointed on agreement terms and the agreements are entered into on or after 1 January 2006.

⁷ Mr Leung applied for the appointment with New World China Land Limited as Executive Director which was approved. Upon CSB's request, Mr Leung clarified on 11 August 2008 that

announcement, there was considerable public attention and discussion in the midst of which Mr Leung's involvement in the Hunghom Peninsula development⁸ was raised. This matter however had not been considered by CSB or the relevant bureaux when processing Mr Leung's application, and thus was not mentioned in the paper submitted by CSB to the Advisory Committee or the subsequent submission to SCS.

Civil Service Bureau
August 2008

Deputy Managing Director is the functional title and his duties remain totally unchanged as detailed in his application.

⁸ New World China Land Limited is a subsidiary company of New World Development Company Limited. Another subsidiary company of New World Development Company Limited is one of the developers involved in the Hunghom Peninsula development.

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

Terms of Reference

- (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 Chief Executive in mid 2009.

Membership

Chairman : The Honourable Ronald ARCULLI, GBS, JP

Members : Mr Haider BARMA, GBS, JP

The Honourable CHAN Mo-po Paul, MH, JP

Professor CHAN Yuk-shee, BBS, JP

Professor CHEN Hung-yee Albert, JP

Mr CHEN Nan-lok Philip, SBS, JP

The Honourable EU Yuet-mee Audrey, SC, JP

The Honourable HO Chun-yan Albert

The Honourable LEUNG Kwan-yuen Andrew, SBS, JP

The Honourable TAM Yiu-chung, GBS, JP

Secretary for the Civil Service

(The Honourable YUE Chung-yee Denise, GBS, JP)