

**Select Committee to Inquire into Matters relating to
the Post-service Work of Mr Leung Chin-man**

**Information provided by the Administration in response to
the Clerk to Select Committee's letter of 11 May 2009**

	Document No.
<p>1. The role and functions of the Public Service Commission, the background leading to its establishment, and its membership since its establishment.</p> <p><i>CSB's Response : The Public Service Commission ("the Commission") was established in 1950 as an independent statutory body. Its remit is stipulated in the Public Service Commission Ordinance ("PSCO") and its subsidiary regulations (Chapter 93 of the Laws of Hong Kong). Its fundamental role is to advise the Chief Executive ("CE") (and the Governor before July 1997) on civil service appointment, promotion and discipline in the civil service. Its mission is to safeguard the impartiality and integrity of the appointment and promotion systems and to ensure fairness and broad consistency in the disciplinary punishment of civil servants found guilty of misconduct.</i></p> <p><i>Under the PSCO, the Commission consists of a Chairman and not less than 2 and not more than 8 members. They are appointed by the CE (and the Governor before July 1997). Please see attached its membership since its establishment in 1950.</i></p>	<p>C54 CSB125 (E/C)</p>
<p>2. The Memoranda on Conditions of Service ("MOCS") applicable to directorate and non-directorate staff of the Government on different terms of appointment, together with responses on the following:</p>	

(a)	<p>the relevant terms in the MOCS which set out the control on the taking up of post-service work by civil servants on final leave or former civil servants;</p> <p><i>CSB's Response : The employment relationship between the Government and civil servants is based on contract. The terms of the contract are set out in the letter of appointment, the accompanying MOCS, Civil Service Regulations ("CSR") and Civil Service Bureau ("CSB") Circulars.</i></p> <p><i>For civil servants on permanent terms, the policy objective and detailed arrangements of the post-service outside work control regime are set out in CSR 397 (for directorate officers) and CSR 398 (for non-directorate officers) and relevant CSB Circulars (SC Paper Nos. C8 and C11). For directorate civil servants on agreement terms, the requirement to seek permission before taking up outside work on completion of agreement or service is also set out in their MOCS. Typical wording of such provision found in MOCS is as follows –</i></p> <p><i>"A directorate civil servant is required to seek the Government's prior permission for taking up outside work during the final leave period before his formal departure from the Government and/or within a specified control period counting from the said departure upon expiry of the final leave. 'Outside work' refers to appointments, employment or any other work undertaken outside the Government and includes entering into business on one's own account, becoming a partner in a partnership, becoming a director of a company, becoming an employee etc. The officer is subject to the arrangements governing the taking up of outside work by directorate civil servants as set out in Civil Service Regulation 397 and Civil Service Bureau Circular No. 10/2005."</i></p>	
(b)	<p>where new measures are introduced in the control regime for taking up of post-service work by civil servants on final leave or</p>	

former civil servants, whether it is necessary to make amendments to the MOCS entered into between civil servants and the Government in order to implement those new measures; and

- (c) whether civil servants' consent is required before the amendments to the MOCS in relation to the control on the taking up of post-service work by civil servants on final leave or former civil servants can take effect.

CSB's Response : The contract between the Government and civil servants contains, as one of its express terms, a right by the Government to vary any of a civil servant's terms of appointment and/or conditions of service should the Government consider that to be necessary. Generally speaking, a civil servant, when accepting the appointment offer made to him, does so in the knowledge that any of its terms can be varied by the Government without his agreement. Thus CSR and CSB Circulars are changed and updated as necessary, and become conditions of service for civil servants.

Despite this right of unilateral variation of a term of appointment and/or a condition of service, the Government has, in practice, always extensively consulted the staff sides and taken full account of their views before introducing any change to the terms and conditions of service.

It should also be noted that for conditions of service of civil servants who were serving in the Government immediately before 1 July 1997, the variation of the conditions is not without limits as Article 100 of the Basic Law provides that public servants serving in all Hong Kong government departments before the establishment of the Hong Kong Special Administrative Region may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.