

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

**List of further information provided by Miss Denise YUE Chung-yee
(in response to the letter from the Clerk to
the Select Committee dated 29 May 2009)**

Q1. *At the hearing of the Select Committee held on 15 April 2009, you gave evidence that when considering applications for post-service work from former directorate civil servants, you would accord priority to the protection of public interest. According to Civil Service Bureau (“CSB”) Circular No. 10/2005 (SC(2) Paper No. C8), the policy objective of the current control regime on post-service work of directorate civil servants (“the control regime”) is to ensure that they 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. Please clarify/advise:*

- (a) *whether the control regime accords priority to the protection of public interest over the directorate civil servants’ right to pursue employment and freedom of choice of occupation after ceasing government service; and***
- (b) *how you would consider the weighting of the protection of public interest and protection of any individual’s right to work and freedom of choice of occupation when there is a conflict between the two or it is possible that such conflict exists.***

A1(a) Protection of the public interest and protection of a directorate civil servant’s right to pursue post-service employment and freedom of choice of occupation are both important and the two are not necessarily conflicting with each other. As the decision authority for post-service outside work applications from directorate civil servants, I consider protection of the public interest should take precedence over protection of

a directorate civil servant's right in the event of a conflict between the two. However, this does not mean that a directorate civil servant's right can, or should, be disregarded or set aside altogether for the protection of the public interest. If and when I make a decision which has the effect of restricting a former directorate civil servant from taking up in whole, or in part, the applied-for employment, my decision must go no further than what is reasonably necessary to protect the public interest.

- A1(b) No two post-service outside work applications are the same. As the decision authority, I have to consider the circumstances of every application and weigh up all the relevant factors, including whether or not there is a conflict between protection of the public interest and protection of an individual's right to work and freedom of choice of occupation, before making my decision. As such, I do not have, and do not think it is possible to lay down, a formula or prescription for the weighing of protection of the public interest and protection of an individual's right to work and freedom of choice of occupation when there is a conflict or a possible conflict between the two. I also think it is difficult to illustrate in the abstract how the two considerations would be weighed up should there be a conflict or a possible conflict.

Without prejudice to the above, I can only say, in very simplified terms, that if I consider a post-service work application would give rise to real conflict of interest, I would not approve the application. If I consider an application would give rise to potential conflict of interest (which may lead to negative public perception) or negative public perception or embarrassment to the Government even if there is no potential conflict of interest, I would consider whether the imposition of special work restrictions, in addition to the standard ones, could substantially reduce the potential conflict of interest and/or mitigate the negative public perception and/or embarrassment to the Government. If so, I would likely approve the application with additional special work restrictions; and if not, I would likely reject the application.

- Q2. *The draft employment contract on Mr LEUNG Chin-man's appointment as Executive Director and Deputy Managing Director with New World China Land Limited ("NWCL") has included specific duties on Mr LEUNG's appointment ("the specific duties") which are similar to the major duties on***

the appointment as provided in the application form submitted by Mr LEUNG to CSB. However, the specific duties have been excluded from the employment contract signed by Mr LEUNG with NWCL on 1 August 2008 (SC(2) Paper Nos. R1(C) and R2(C) attached respectively). Moreover, the employment contract contained a "Transfers" clause ("the transfer clause") stating that NWCL has the right to transfer and/or second Mr LEUNG to work part time or full time for any subsidiary or associated company of the company or any subsidiary or associated company of the company's holding company. As revealed in your witness statement (SC(2) Paper No. W3(C)), in considering Mr LEUNG's application, you have noted that NWCL is involved in property development in the Mainland, that Mr LEUNG's major duties would be performed in the Mainland and he would be physically based in a major city in the Mainland, and that he would not be involved in any way in the business of NWCL's parent company or any of its subsidiaries. Please advise:

- (a) whether the approval granted by CSB for Mr LEUNG to take up post-service work with NWCL was in part based on the above considerations which were derived from the information provided in the application form submitted by Mr LEUNG;*
- (b) whether the employment contract which includes the transfer clause and which does not specify the duties of Mr LEUNG's appointment would constitute a breach of the terms of the approval granted to Mr LEUNG for taking up of the appointment with NWCL, and if yes, whether this would render the approval invalid;*
- (c) whether the transfer clause is in conflict with one of the work restrictions imposed on the approval of Mr LEUNG's appointment for confining his appointment to NWCL; and*
- (d) whether the signing of the employment contract by Mr LEUNG without notifying CSB of the transfer clause and the absence of specification of the duties of Mr LEUNG in the employment contract already constitutes a breach of the terms on which approval was granted to Mr LEUNG for taking up the appointment with NWCL, and if yes, whether this would render the approval invalid.*

In preparing the answers to Q2, advice from the Department of Justice has been sought.

A2(a) Under the current control regime, a post-service work application from a directorate civil servant is assessed and decided on the basis of the information provided by the applicant in the specified application form. Section (E) of Part II of the specified application form is extracted below:

“(i) *I* have read CSB Circular No. 10/2005 and the Notes on Use of Personal Data above.*

(ii) *I confirm that the information provided in this application is full and accurate. I understand that if I wilfully give any false information or withhold any material information in this application form, the approving authority may suspend or withdraw the approval granted for my application and where necessary, invoke appropriate sanction including legal action.”*

*The word ‘I’ in the extract above refers to the applicant.

The approval granted to Mr LEUNG to take up post-service appointment with NWCL was in part based on the information provided by him in the specified application form, including NWCL was a company involved in property development in the Mainland, Mr LEUNG’s major duties would be performed in the Mainland, Mr LEUNG would be physically based in a major city in the Mainland, and Mr LEUNG would not be involved in any way in the business of NWCL’s parent company or any of its subsidiaries. The approval granted was conditional upon a set of standard work restrictions and the imposition of four additional specific work restrictions.

A2(b)&(c) According to CSB’s approval letter to Mr LEUNG dated 9 July 2008 (SC Paper No. C3(C)), Mr LEUNG should notify CSB of any material change to the approved application and apply for separate or fresh approval as necessary. A change in his major duties of work would constitute a material change, in which case, Mr LEUNG would need to

notify CSB and apply for separate or fresh approval. However, under the existing arrangement, there is no requirement for the duties of the applicant's appointment to be specified in the employment contract between the applicant and the prospective employer. Nor is there any requirement under the existing arrangement for the draft employment contract to be enclosed with the application for approval. In the circumstances, it is considered that the absence of the specification of duties of Mr LEUNG's appointment in his employment contract with NWCL should not constitute a breach of the terms of approval granted to Mr LEUNG for taking up of the appointment with NWCL.

It is also considered that the mere inclusion of the transfer clause in Mr LEUNG's employment contract in itself would not constitute a breach of the terms of the approval granted to Mr LEUNG for taking up the appointment with NWCL. So long as NWCL does not exercise its right of transfer or Mr LEUNG has not complied with the required transfer, there would be no breach by Mr LEUNG of the terms of the approval granted to him for taking up the appointment with NWCL. Whether any failure on the part of Mr LEUNG to comply with NWCL's requirement to transfer would give rise to a breach of the terms of the employment contract with NWCL would be a separate matter for Mr LEUNG to consider and resolve.

A2(d) Under the existing arrangement, there is no requirement that the terms of approval of a post-service outside work application as stipulated by the decision authority are to be included in the applicant's employment contract with the prospective employer. The applicant is not required to notify CSB of the actual terms of his employment contract either. It is considered that it would be the applicant's own duty to ensure that he would not breach the approval conditions imposed by the decision authority. As such, the signing of the employment contract by Mr LEUNG without notifying CSB of the transfer clause and the absence of specification of his duties in the employment contract would not constitute a breach of the terms on which the approval was granted to Mr LEUNG for taking up the appointment with NWCL.

Q3. *In Chapter 8 of the Civil Servants' Guide to Good Practices ("the Guide") issued in 2005, it is stated that "Retired civil servants should act with good*

sense and propriety in pursuing post-service employment or business and avoid engaging themselves in activities which could be construed as being in conflict with their previous duties in the Government, or might bring the civil service into disrepute, or expose them or the Government to public controversy” (“the considerations”). Please advise:

- (a) the status of the Guide, how and when the Guide is issued to civil servants including Mr LEUNG Chin-man, and what binding effects it has on civil servants regarding the taking up of post-service work;*
- (b) whether retired civil servants are required to comply with the Guide, in particular those set out in Chapter 8 before taking up any post-service work, and whether they have the duty to conduct an assessment on the considerations before submitting a post-service work application; and*
- (c) whether any form of sanction would be invoked if there is a breach of, or failure to observe, the provisions of the Guide.*

A3(a)&(c) The Guide is a handy reference on the core values and good practices that all civil servants are expected to share and uphold. In Chapter 8 of the Guide, it draws civil servants' attention to the good practices of "outside work and post-service employment", which echo the relevant civil service regulations, rules and guidelines on these subject areas.

The 2005 version of the Guide is an update of the first version issued in 1999. Hard copies of the Guide were distributed in April 2005 to bureaux and departments for their circulation/further distribution to their staff. A softcopy is also available on CSB's homepage (www.csb.gov.hk).

The Guide is not intended to have and does not have any binding effect on serving or former (including retired) civil servants. No sanction would be invoked if there is a breach of, or failure to observe, the provisions of the Guide.

A3(b) Serving directorate civil servants on final leave and former (including retired) directorate civil servants are required to comply with the

post-service outside work arrangements stipulated in CSB Circular No. 10/2005. Sanctions would be invoked if there is a breach of, or failure to observe, the requirements. Non-directorate serving and former (including retired) civil servants are required to comply with those civil service circulars and regulations on post-service employment that are applicable to them; and sanctions would be invoked if there is a breach of, or failure to observe, the requirements.

There is no civil service circular or regulation stating that former (including retired) civil servants have the duty to conduct an assessment on whether the employment they intend to take up comply with the Guide, and in particular the considerations set out in Chapter 8 therein, before submitting post-service work applications.

Q4. Paragraph 7 of CSB Circular No. 10/2005 (SC(2) Paper No. C8) states that the relevant Head of Department, Head of Grade, Permanent Secretary, and the Secretary for the Civil Service as the approving authority would assess an application for the taking up of post-service work by directorate civil servants according to six specific assessment criteria. Please clarify whether an applicant has a duty to consider the six specific assessment criteria before submitting an application to take up post-service work. If yes, please advise the relevant civil service regulation(s), circular(s), and other documents setting out the duty of an applicant in this respect.

A4 There is no civil service circular or regulation imposing a duty on a directorate civil servant to consider the six specific assessment criteria set out in paragraph 7 of CSB Circular No.10/2005 before submitting an application to take up post-service work.