

立法會

Legislative Council

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by the Administration)

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Panel on Public Service

**Minutes of special meeting held on
Monday, 1 August 2011, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Chairman)
Hon IP Wai-ming, MH (Deputy Chairman)
Dr Hon Margaret NG
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, SBS, JP
Dr Hon LEUNG Ka-lau
Hon WONG Sing-chi
Hon LEUNG Kwok-hung

Member attending : Hon Andrew LEUNG Kwan-yuen, GBS, JP

Members absent : Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Dr Hon PAN Pey-chyou

Public officers attending : **Agenda item I**

Miss Denise YUE, GBS, JP
Secretary for the Civil Service

Miss Vivian KO
Administrative Assistant to Secretary for the
Civil Service

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

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Sarah YUEN
Senior Council Secretary (1)2

Ms Emily LIU
Legislative Assistant (1)2

Action

I Review of post-service outside work for directorate civil servants

- | | |
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| (File
CSBCR/AP/5-090-005/21 | Ref. - Administration's paper on review of post-service outside work by directorate civil servants dated 22 July 2011 (Legislative Council Brief) |
| LC Paper No. CB(1)2795/10-11 | - Updated background brief on the policy on post-service employment of former directorate civil servants prepared by the Legislative Council Secretariat) |

The Secretary for the Civil Service (SCS) briefed members on the improvement measures relating to the Control Regime on Post-service Outside Work by Directorate Civil Servants (the Control Regime) as set out in Annex A to the relevant Legislative Council (LegCo) Brief. The improvement measures would be applied (other than those relating to pension suspension) to directorate civil servants on pensionable or new permanent terms who would cease active service on or after 1 September 2011, or those on agreement terms who would enter into new or renewal agreements on or after 1 September 2011. The Administration also proposed to apply the improvement measures relating to pension suspension to all pensioners (including former directorate and non-directorate civil servants) with effect from 1 September 2011. Members in general were pleased to note that the Administration had accepted most of the recommendations of the independent Committee on

Review of Post-service Outside Work for Directorate Civil Servants (RC) appointed by the Chief Executive (CE) and the LegCo Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man (SC), to improve the operation and transparency of the Control Regime.

Control period and sanitization period

2. Mr WONG Sing-chi criticized the Administration for failing to come up with effective measures, in particular those regarding the application form, to address public concern over suspicion or perception of deferred reward. He considered it regrettable that the Administration had not accepted the recommendation to extend the existing control period to three years for D1 to D3 civil servants and five years for D4 to D8 civil servants, or to impose a lifetime specific ban on particular types of post-service employment, particularly where former directorate civil servants who had had dealings in land, property or award of franchise matters when in government service were concerned. Highlighting the need to guard against deferred reward, Mr WONG sought details of public views expressed on the above recommendation during the relevant public consultation exercise, so as to ascertain whether public views had been taken on board.

3. In response, SCS made the following points –

- (a) neither RC nor SC had recommended to impose a lifetime specific ban on particular types of post-service employment. The suggested lifetime specific ban was only a minority view made by Hon Albert HO, who was a member of RC, to RC in the course of its deliberation;
- (b) the improvement measures regarding the design of the application form and enhancing the independence of the Advisory Committee on Post-service Employment of Civil Servant (ACPE) were in fact recommended by RC and SC. When working out the measures, the Administration had given due regard to public concerns about the need to uphold the integrity of the civil service and enhance public trust in the Government, and the relevant policy and legal considerations. In this connection, outside counsel's advice obtained by the Administration was that the control period should be reasonable (the lawfulness of any restriction depended on whether it was rationally connected

to the pursuit of a legitimate objective (i.e. the rationality test), and whether it was no more than necessary to achieve the relevant policy objective (i.e. the proportionality test); and

- (c) during the public consultation exercise, the Administration had received public views expressing support for imposing a lifetime specific ban on particular types of post-service employment. However, there were also views expressed by others that there might not be a need to impose such a ban in recognition that directorate civil servants who continued to work after retirement could still make contributions to Hong Kong, provided that an effective Control Regime that could properly address public concern over conflict of interest was devised.

4. Mr WONG Sing-chi considered that the Administration had ignored those public views in favour of extending the control period, including the views of the Democratic Party, which supported extending the control period to five years for D4 to D8 civil servants. He considered that the Administration attached greater importance to protecting a directorate civil servant's right to take up post-service outside work. SCS explained that in deciding not to extend the control period, the Administration had sought to strike a fair balance between protecting the public interest and limiting a directorate civil servant's right to take up post-service outside work.

5. The Chairman opined that the proposed improvement measures were appropriate. She was of the view that with the new measures introduced, the Control Regime would be quite stringent when compared to overseas practices. She added that some directorate civil servants had in fact expressed concern that the new measure of uploading the taken-up post-service outside work by all directorate civil servants onto a public register accessible via the Internet would exert great pressure on the applicants concerned.

6. Ms LI Fung-ying expressed doubt about the propriety of making reference to overseas practices in deciding on the length of control periods for directorate civil servants. She considered that the circumstances of Hong Kong were different. She noted that there were views that directorate civil servants working in certain fields of work during government service were more prone to conflict of interest. She pointed out that unlike the pre-1997 days, directorate civil servants no longer

mostly came from the United Kingdom and would leave Hong Kong after retirement. She considered that the local circumstances should be taken into account in devising the relevant improvement measures.

7. SCS responded that overseas practices also provided useful references for the Administration. After studying the experience of seven overseas jurisdictions as detailed in footnote 16 of the relevant LegCo Brief, it was noted that, in the US, only a one-year, two-year or lifetime ban was imposed on certain former civil servants for very specific and narrowly defined post-service work, and that no prohibition or prior approval for post-service employment with private or public entities in general was imposed. She reiterated that there was a need to maintain a fair balance between protecting the public interest and limiting a directorate civil servant's right to take up post-service outside work. The Chairman remarked that it might be inappropriate to draw reference from the US because its relevant mechanism imposed relatively loose control only.

8. Mr Andrew LEUNG expressed concern that the imposition of very onerous restrictions on post-service work by directorate civil servants might significantly undermine the attractiveness of the civil service in terms of recruitment and retention of talents. He considered that there was also a need to ensure that the improvement measures could withstand legal challenges. SCS responded that the Administration had obtained advice from two outside counsels on the legality of the recommendations, in particular those on extending the control period. According to the legal advice obtained, the lawfulness of any restriction depended on whether it was rationally connected to the pursuit of a legitimate objective (i.e. the rationality test), and whether it was no more than necessary to achieve the relevant objective (i.e. the proportionality test). The party imposing the restrictions needed to justify compliance with the two tests. Mr Andrew LEUNG enquired whether the Administration had sought legal advice on the suggestion of imposing a lifetime "employer-specific" ban on former directorate civil servants.

9. SCS replied that as advised by the two outside counsels, unless the Administration could come up with cogent and specific justifications for a lifetime ban, the restriction would be vulnerable to legal challenge if implemented. Both counsels had also advised that a generalized notion of "public concern" could not be considered a cogent and specific justification.

10. Mr Andrew LEUNG further asked about the sanitization period and control period applicable to directorate civil servants employed on agreement terms. SCS advised that retiring civil servants at D1 to D3 and at D4 to D8 were subject to a 6-months' and a 12-months' minimum sanitization period respectively. There was no prescribed minimum sanitization period for directorate civil servants leaving the Government on non-retirement grounds (e.g. completion of agreement or resignation). For them, the authority would consider whether a sanitization period (and if so, its length) should be imposed on their post-service outside work applications on a case-by-case basis. SCS further advised that civil servants at D1 to D7 and at D8 rank were subject to a two- and three-year control period respectively. The period was halved for those leaving the Government with less than six years of continuous service and on non-retirement grounds.

Provision of information in the application form

11. Dr Margaret NG considered it important to make clear to an applicant that he had to disclose to the best of his knowledge all previous dealings that might constitute conflict of interest, instead of just providing information as requested in the relevant application form. SCS responded that the application form would be improved to require an applicant to provide an evaluation on whether his application would constitute any real or potential conflict of interest with his former government duties against the policy objectives and the relevant assessment criteria of the Control Regime. The application form would also require the applicant to provide more detailed information, so that irrespective of whether he would be involved in the business of the parent or related companies of the prospective employer, he would 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 was at D1 to D3 (or equivalent), and during his last six years of government service if he was a D4 or above (or equivalent) civil servant.

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12. Dr Margaret NG requested the Administration to provide for the Panel's information the draft sample of the new application form. In her view, more effective measures might still be required for ensuring that important issues, such as involvement in the Hung Hom Peninsula development in Mr LEUNG Chin-man's case, would no longer be omitted. She further enquired whether applicants would be alerted to their responsibility to make full and frank disclosure as in court to ensure they could not discreetly leave out important information, and whether remedial actions could be taken if there were omissions. Ms LI

Fung-ying stressed that Mr LEUNG Chin-man's case had revealed the need to, instead of relying on an honour system, ensure that failure to provide a full account of all the relevant information in the application form for post-service outside work would have serious consequences.

13. SCS responded that apart from the improvement measures as explained above, the following safeguards would also be put in place -

- (a) existing application forms already contained reminders to applicants that they had the responsibility to make full and frank disclosure. The reminder would be retained in the new application form;
- (b) to avoid omissions, the bureaux/departments (B/Ds) in which an applicant had worked during the last three or six years of his government service would be requested to render assistance in vetting the application. Having regard to the nature of the post-service outside work being applied for, the B/Ds concerned would also be asked to give their views on the application. The Civil Service Bureau (CSB) would make its own assessment on the application in the light of the views solicited from parties concerned and against the relevant assessment criteria. Thereafter, CSB's assessment as well as the concerned B/D's views would all be passed to ACPE for consideration;
- (c) as for remedial actions, withdrawal of/suspension of the post-service work approved for a specified period could be invoked as a sanction for failure to provide adequate and accurate information. If the applicant so sanctioned did not cease his post-service work, pension suspension and other sanctions might also be invoked;
- (d) irrespective of whether or not the applicant would be involved in the business of the parent or related companies of the prospective employer, he would be required to disclose his material past contractual, legal, official and other contacts/dealings (if any) with these entities during his last three or six years of government service;
- (e) as part of the approval conditions, an applicant who had taken up the applied-for and approved post-service outside work would need to provide the decision authority with a

copy of the signed employment agreement or appointment letter within 30 days of signature or issue; and

- (f) starting from 1 September 2011, Heads of Department/Grade would be required to conduct exit interviews during which the departing directorate civil servant would be reminded of the need to observe the Control Regime, the importance of avoiding conflict of interest in the pursuit of post-service outside work, and the requirement to provide sufficient and accurate information to the decision authority when applying for permission to take up post-service work.

Sanctions for non-compliance

14. In reply to Dr Margaret NG on the sanctions that might be imposed by the authority for breach of the Control Regime, SCS elaborated that one or a combination of the following sanctions might be invoked: civil action to seek an injunction or sue for damages, withdrawal of/suspension for a specified period the post-service work approval, filing of report to the relevant professional body where professional negligence/misconduct or possible breach of the code of conduct of a profession was involved, issue of a public statement of criticism, placement of a warning/reprimand on the register for public inspection, and issue of a reprimand/warning letter which might be copied to the outside employer concerned. For pensioners, the sanction of suspension of monthly pension payments might also be imposed.

15. Mr Andrew LEUNG expressed concern that while the sanction of pension suspension had strong deterrent effect, it might become less effective when the number of civil servants appointed on pensionable terms decreased as the Pension Scheme was progressively replaced by the Civil Service Provident Fund Scheme. SCS said that other sanctions would be available for directorate civil servants not appointed on pensionable terms. These sanctions included notifying the outside employer concerned of the applicant's failure to make a full and frank disclosure and requesting the employer to terminate the applicant's employment; issuing a public statement of criticism of the failure in the form of a press release; reporting to the relevant professional body where professional negligence/misconduct or possible breach of the code of conduct of a profession was involved; or taking civil action to seek an injunction, or suing for damages.

16. Mr LEUNG Kwok-hung considered the above sanctions for failure to give full and frank disclosure under the Control Regime inadequate. He said that by comparison, a person who failed to give full and frank disclosure of relevant facts when giving evidence to the court could be charged with the criminal offence of contempt of the court. Moreover, pension suspension and claims for damages would have little deterrent effect, if the relevant prospective employer was willing to compensate the pensioner concerned for any financial loss he suffered. SCS responded that although the Control Regime was meant to be an administrative measure, if any act in contravention of Hong Kong laws, including provision of false information, was detected in the course of processing an application, CSB would report the case to the relevant enforcement agencies for follow-up investigation.

17. Mr LEUNG Kwok-hung maintained that to ensure fairness, failure to make full and frank disclosure under the Control Regime should entail criminal liabilities, as was the case when applying for public rental housing or Comprehensive Social Security Assistance. SCS responded that neither SC nor RC had made such a recommendation. She added that the provision of false information by an applicant in the application form actually could constitute fraud which would attract criminal liability.

Measures relating to the Advisory Committee on Post-service Employment of Civil Servant

18. Ms LI Fung-ying enquired about the proposed measures to enhance the transparency and independence of ACPE as set out in paragraph 31 of the relevant LegCo Brief. SCS responded that ACPE currently comprised a chairman and four members. It was proposed to expand its membership to nine (including the chairman) with a broadened composition from 1 September 2011. In addition, instead of mainly conducting its business through circulation of paper, ACPE would convene meetings to discuss post-service work applications on a need basis, particularly when considering applications involving work in the commercial sector. As regards increasing transparency, at present although the gist of information (such as the name of the employer, details on the work concerned, etc.) of all approved and taken-up outside work by directorate civil servants at D4 or above (or equivalent) was kept on a register, the register was available for public inspection on request only. The advice of ACPE on each post-service outside work application was not included on the public register. Under the new Control Regime, the advice of ACPE on applications from directorate civil servants who were on pensionable/new permanent terms and ceased active duty on or after 1

September 2011, or on agreement terms and entered into new or renewal agreements on or after 1 September 2011 would be included in the public register, and the register would be uploaded on the Government website.

19. Ms LI Fung-ying considered it important to ensure broad representation of the membership of ACPE and sought details of its future composition. SCS advised that the membership of ACPE would be expanded, and possible categories of candidates for appointment on an ad personam basis would include academics, representatives from civil service groups, former directorate civil servants, persons from professional fields and/or the business sector, former or serving members of the Executive Council, the LegCo and the District Councils.

20. Dr Margaret NG asked whether the Administration saw any need to enhance support for ACPE given that ACPE members served only on a voluntary and part-time basis. SCS advised that measures would be introduced to enhance the independence of ACPE, such as separating the secretariat of ACPE from CSB from 1 September 2011. This arrangement was to enable the secretariat to assume a more independent role in supporting the work of ACPE and it would ensure that adequate information for each application would be provided by CSB to facilitate ACPE to make an informed decision.

21. Dr Margaret NG enquired whether performance pledge for processing post-service outside work applications would be given. SCS responded in the affirmative. She advised that for applications expected to be uncontroversial (e.g. applications that involved teaching at universities, or working for non-profit making bodies taking only a nominal remuneration), the processing time required would be shorter. As for applications that involved taking up employment in the commercial sector, longer processing time would be set.

22. The Chairman requested the Administration to make improvements in response to complaints about the long time taken for processing post-service outside work applications, and said that she had heard cases that involved 18 months to process. SCS responded that as far as she was aware, no application had taken longer than one year to approve. Nevertheless, the Administration had been working out improvements to streamline the relevant procedures with a view to expediting the process. She would monitor the implementation of the relevant streamlining measures.

Political appointees and senior staff of public bodies

23. Ms LI Fung-ying considered it undesirable that while the control period for most directorate civil servants was set at two or three years from the date of departure from the Government, politically appointed officials were only subject to a one-year control period. She asked whether CE's attention had been drawn to SC's view that similarly stringent control arrangements should in parallel be applied to politically appointed officials as they would likely take up post-service outside work since their tenures were only a few years.

24. SCS responded that CSB was aware of RC and SC's suggestion to review the above matter. However, the subject was in fact under the purview of the Constitutional and Mainland Affairs Bureau (CMAB) and, during the relevant motion debate at the Council meeting on 12 January 2011, the Secretary for Constitutional and Mainland Affairs (SCMA) had expressed the view that the relevant control regime had been operating smoothly, and that the Administration did not see the need to introduce changes to it. SCS further explained that the appointment system for political appointees was different from that for civil servants although they both served the community. For example, the terms of appointment for political appointees would tie in with the term of office of the serving CE while civil servants would be employed on "permanent" terms. Their remuneration packages were also different. In particular, political appointees, unlike civil servants, could not enjoy retirement benefits under the Pension Schemes or the Civil Service Provident Fund Scheme. As such, there were different considerations when deciding on their respective control regimes.

25. The Chairman, Ms LI Fung-ying, Dr Margaret NG and Mr LEUNG Kwok-hung, however, urged the Administration to seriously address public concerns about the need to tighten up control over the post-office employment of political appointees, given that political appointees had greater access to sensitive information and wielded greater public power. They opined that it was, therefore, unfair that the control regime on post-office employment of political appointees was even more lenient than that for directorate civil servants. In response, SCS undertook to relay the members' views to CE and SCMA for consideration.

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26. The Chairman also considered it unfair to apply the existing pension suspension policy to pensioners who retired and were re-employed by the Government before reaching their normal or

prescribed retirement ages specified in the pension legislations, while the policy would not apply if the pensioner was appointed as a Principal Official. SCS responded that the rationale behind was that while the Government did not want to encourage early retirement, it was necessary to ensure that the Political Appointment System could attract the best candidates to serve the community. She however assured members that under the review policy, the pension of pensioners re-employed by the Government would no longer be suspended when they reached their normal or prescribed retirement ages. The pension suspension policy would also not apply to pensioners who retired and were re-employed by the Government after reaching their normal or prescribed retirement ages.

27. The Chairman considered the decision to discontinue the existing pension suspension policy for pensioners employed by 16 subvented organizations reasonable. In response to her enquiry on details of these 16 organizations, SCS elaborated that they included the eight University Grants Committee-funded institutions, the Hospital Authority, the Vocational Training Council, the Hong Kong Housing Authority, Hong Kong Monetary Authority (HKMA), the LegCo Commission, the Equal Opportunities Commission, the Office of the Privacy Commissioner for Personal Data and the Office of the Ombudsman.

28. In recognition of the great power and influence enjoyed by senior staff of public bodies such as HKMA and the Securities and Futures Commission (SFC), the Chairman considered it necessary to impose on them equally stringent post-service employment restrictions as those applicable to directorate civil servants. In particular, she considered the relevant control period too short, so that in certain cases the senior staff of HKMA and SFC seemed to be able to join the commercial sector without going through any control or sanitization period. She urged the Administration to plug the loophole, having regard that serious potential conflict of interest might be involved. Mr LEUNG Kwok-hung shared the Chairman's view and pointed out that the same problem also applied to the Hospital Authority where stringent post-service employment restrictions should also be imposed. SCS responded that every public body had its own control regime as decided by its board of directors or management, and these bodies were under the purview of the corresponding policy bureau.

II Any other business

Direct appointment of personal chauffeurs and personal secretaries for principal officials under the accountability system

29. The Chairman said that at the Panel meeting on 16 May 2011, members had expressed the view that the Panel should conduct follow-up discussion on "Direct appointment of personal chauffeurs and personal secretaries for principal officials under the accountability system", and that members of the Panel on Constitutional Affairs should be invited to join the discussion. SCS said that the issue involved the design of the political appointment system, which allowed the Secretaries and Directors of Bureaux to appoint their own personal chauffeurs and personal secretaries. The Chairman said that the issue had been included on the Panel's list of outstanding items for discussion and arrangements would be made for discussion of the issue in the new session.

30. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
31 October 2011