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Panel on Public Service

Meeting on 17 July 2017

**Updated background brief
on the policy on post-service outside work by
directorates civil servants**

Purpose

This paper sets out the development of the control regime on post-service outside work by directorates civil servants ("the control regime") in recent years, and gives a brief account of the major views and concerns on the matter expressed by members when the subject was discussed at previous meetings of the Panel on Public Service ("the Panel").

Background

2. The Government exercises control over the taking up of post-service outside work by civil servants in accordance with two guiding principles, namely protection of public interest and protection of an individual's right to work. The particular public interest to be protected is public trust in the Government, good governance, and integrity and impartiality of the Civil Service. Protection of public interest will only take precedence over protection of an individual's right to work where there is compelling reason justifying so doing in a particular case. Due to the seniority and influence on policy formulation and decision-making of directorates civil servants, the degree of control exercised over post-service outside work to them is more stringent.

3. Under the existing control regime, the prescribed restriction periods take the forms of a final leave period, a minimum sanitization period and a control period. During these periods, directorates civil servants must obtain permission

from the Secretary for the Civil Service ("SCS") before they can take up any work save for unpaid work with specified non-commercial organizations.¹

4. The Advisory Committee on Post-service Employment of Civil Servants ("ACPE"), formerly known as the Advisory Committee on Post-retirement Employment, was established in October 1987. It is an independent advisory committee appointed by the Chief Executive ("CE") to give advices on the principles and the criteria to be adopted in formulating policy and arrangements to control post-service employment, and on all applications for post-service outside work from directorate officers.² In the past decade, the approval given by the Administration to some retired directorate officers to take up employment with private enterprises shortly after ceasing active service or during their final leave has caused concern to Members and the public.

5. The appointment of Mr LEUNG Chin-man as an Executive Director and Deputy Managing Director of New World China Land Limited on 1 August 2008 aroused public controversy for he was the former Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing prior to his retirement from the Government on 10 January 2007, and he was involved in the disposal of the Private Sector Participation Scheme flats in the Hunghom Peninsula development which were sold to First Star Development Limited³ at a lease modification premium considered to be too low at the time by the public. The public was greatly concerned that the appointment smacked of being a reward for favours given to the developer by Mr LEUNG during his tenure, and questioned the propriety of SCS giving approval for Mr LEUNG to take up the appointment.

6. In view of the public concern over the case mentioned in the last paragraph, CE appointed the Committee on Review of Post-Service Outside Work for Directorate Civil Servants ("RC") in September 2008 to review the policy and arrangements governing post-service outside work for directorate civil servants, and RC's Report was submitted to CE on 10 July 2009.⁴ The Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man ("SC") was also formed under the Legislative Council by resolution passed on

¹ The specified non-commercial organizations are:

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

² Source: <http://www.jsscscs.gov.hk/en/acpe/acpe.htm>

³ New World China Land Limited is a subsidiary company of New World Development Company Limited, the parent company of another subsidiary company, NWS Holdings Limited, which owns 50% of the shareholding in First Star Development Limited.

⁴ Source: <http://www.dcspostservice-review.org.hk/english/about.html>

10 December 2008, and its report was tabled at the Council meeting on 8 December 2010. Based on the recommendations made by RC and SC as set out respectively in **Appendix I** and **Appendix II**, the Administration obtained further advice from ACPE, the Public Service Commission, departmental and grade management, the constituent staff unions of the central staff consultative councils, all serving directorate civil servants and outside counsel, and eventually rolled out the improvement measures relating to the control regime with effect from 1 September 2011.⁵ Directorate civil servants are now subject to either the abovementioned new control regime or the old control regime. A brief description of the key elements of the old and new control regimes is set out in **Appendix III**.

Discussion by the Panel

7. The Panel discussed the case of Mr LEUNG Chin-man as well as the work progress, consultation document, content and consultation exercise in relation to the RC report and the reviews of policy on and updated overview of post-service employment/outside work of former directorate civil servants from 2008 to 2012. The major views and concerns expressed by Panel members and the Administration's responses are summarized in the ensuing paragraphs.

Control period and sanitization period

8. Panel members were of the view that the incident of Mr LEUNG Chin-man had revealed the inadequacy of the control arrangements in preventing directorate civil servants from taking up any work outside the Government which might constitute a real or potential conflict of interest with their former government duties or cause negative public perception. Some members considered that the avoidance of suspicion or perception of "deferred reward" for past favour done by a former directorate civil servant in his official position to benefit a particular entity or individual in return for lucrative post-service employment was very important, in particular when the public expected that the principle of protection of public interest was more important than that of protection of an individual's right to pursue post-service employment. In this regard, they were disappointed that the Administration did not accept their advice to impose a lifetime 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

⁵ Arrangements under the new control regime apply to directorate civil servants on pensionable/new permanent terms who ceased active service on or after 1 September 2011, and directorate civil servants who entered into new or renewal agreements on or after 1 September 2011.

concerned. Some members, on the other hand, held a different view that imposition of onerous restrictions on post-service work of directorate civil servants might undermine the attractiveness of the civil service jobs and the ability to retain talents. They also considered it necessary for the Administration to ensure that the improvement measures of the control regime could withstand legal challenges at court.

9. The Administration responded that in formulating improvement measures for the control regime, due regard had been given to the relevant policy and legal considerations as well as the need to uphold the integrity of the civil service. According to the legal advice sought from private counsels, the control period had to be reasonable. The lawfulness of any restriction depended on whether it was rationally connected to the pursuit of a legitimate objective, and it should be no more than necessary to achieve the set policy objective. In this regard, members' suggestion on a lifetime ban would be vulnerable to legal challenges if implemented.

Taking up of unpaid work with specified non-commercial organizations

10. Noting that directorate civil servants were only required to notify the Administration of their taking up unpaid work with specified non-commercial organizations, while some non-commercial organizations might be involved in the bidding of government contracts, a member raised concern at the Panel meeting on 18 June 2012 that the assistance rendered by former civil servants to such organizations might put the latter in a more advantageous position than others in the bidding of such contracts. The Administration replied that former directorate civil servants were prohibited under the Official Secrets Ordinance (Cap. 521) from disclosing without authorization documents, information or knowledge received in confidence in the course of duties or by virtue of their official position. A civil servant who had disclosed specified information without authority was liable to criminal sanction.

11. A member further pointed out that as certain non-commercial organizations might be profit-making in nature under the Inland Revenue Ordinance (Cap. 112), the Official Secrets Ordinance could not deal with the issue of conflict of interest. The Administration clarified that a "specified non-commercial organization" should be "not primarily engaged in commercial operations". Charitable bodies registered under the Inland Revenue Ordinance would not automatically be recognized as "specified non-commercial organizations". As such, those profit-making non-commercial organizations might not qualify as specified non-commercial organizations. Besides, the factors taken into consideration in determining whether an application would give rise to conflict of interest were much wider in scope than those covered by the Official Secrets Ordinance. Upon receipt of a notification of taking up unpaid work by a

former directorate civil servant, the Civil Service Bureau ("CSB") would scrutinize the case and, if necessary, request the civil servant concerned to provide additional information or to seek approval before taking up the work. CSB might also request the applicant not to commence the outside work pending submission and approval.

Taking up of post-service outside work by directorate civil servants who left the Civil Service on non-retirement grounds

12. In response to member's enquiry on how the Administration exercised effective control over the taking up of post-service outside work by directorate civil servants who left the Civil Service on non-retirement grounds, the Administration advised that the applications would be considered with the same criteria as those applicable to retired directorate civil servants. Although there was no pre-determined minimum sanitization period, the Administration would decide on an application-specific basis whether a sanitization period should be imposed, and if so the length of it, having regard to concerns over conflict of interest and public perception. The factors for consideration on the length of the sanitization period had also been set out in the relevant circular issued by CSB.

Declaration of conflict of interests

13. Members considered it essential to make it clear to applicants for post-retirement employment that they had to disclose to the best of their knowledge all previous dealings that might constitute conflict of interests, and it was necessary to ensure that any failure to provide a full account of the relevant information in the application form would lead to serious consequences.

14. The Administration advised that the applicants had to provide an evaluation on whether the application would constitute any real or potential conflicts with his previous government duties against the policy objectives and assessment criteria of the control regime. The applicant was also required to provide detailed information disclosing his material past contractual, legal, official and other contacts/dealings with the prospective employer during last three years of government service if he was at D1 to D3, or during his last six years of service if he was a civil servant at D4 or above. Furthermore, Bureaux/Departments in which an applicant had worked during the last three or six years of his government service would be called upon to assist in vetting the applications. Withdrawal/suspension of post-service work approval for a specific period could be invoked as a sanction for failure to provide adequate and accurate information for the application. Starting from 1 September 2011, Heads of Department/Grade were required to conduct exit interviews for retiring directorate civil servants during which the departing staff would be reminded of the need to comply with the control regime, the importance of avoiding conflict of interests,

and the requirement to provide sufficient and accurate information when applying for permission to undertake post-service employment.

Sanctions for non-compliance

15. At the Panel meeting on 1 August 2011, a member expressed concern that while pension suspension might generate strong deterrent effect, it would become less effective when the existing Pension Scheme was progressively replaced by the Civil Service Provident Fund Scheme. Another member considered that failure to make full and honest disclosure under the control regime should hold the applicant liable to criminal offence.

16. According to the Administration, other forms of sanction would be available for directorate civil servants not appointed on pensionable terms such as notifying the outside employer concerned of the concerned civil servant's failure to make a full and frank disclosure in the application and requesting the employer to terminate the employment, etc. As for the making of the failure to provide full and frank disclosure in the application a criminal offence, the Administration pointed out that the provision of false information by an applicant in the application form would certainly lead to criminal liabilities.

Appeal channels

17. Noting that ACPE was responsible for considering and advising on all applications to take up post-service employment from directorate officers, members were concerned about the transparency of ACPE's recommendations and whether there were appeal channels for the applicants if their applications for post-service outside work were rejected.

18. The Administration advised that with a view to increasing the transparency of ACPE, under the new control regime, the advice of ACPE on applications from retired directorate civil servants were included in a public register, and the register was uploaded to CSB's website for public inspection. Meanwhile, SCS was responsible for making the decisions taking into account ACPE's recommendations. If the applicant whose application had been rejected, he could request a review of his application by providing CSB with new information. If the application was rejected again, the applicant might lodge an appeal with CE or seek a judicial review.

Political appointed officials and senior staff of public bodies

19. As politically appointed officials had greater access to sensitive information and wider powers, some members urged the Administration to tighten up the control over their post-office employment, in particular that the

expansion of the Political Appointment System had led to the appointment of politically appointed officials who might be closely related to various private consortia. Members also considered it necessary to exercise similar control on the senior staff of public bodies such as the Hong Kong Monetary Authority and the Securities and Futures Commission.

20. However, since that the appointment system for political appointed officials was different from that for civil servants, the Panel had referred their concerns about the control regime applicable to politically appointed officials to the Panel on Constitutional Affairs for follow-up discussion. As regards the control of senior staff of public bodies, the Administration advised that every public body had its own control regime, and these bodies were operating under the purview of corresponding policy bureau.

Relevant questions raised at Council meetings

21. A number of Council questions on post-service outside work of directorate civil servants were raised on 2 and 9 June 2010, 4 May 2011 and 18 May 2016 respectively.

Latest development

22. The Administration will provide an updated overview of the subject for members' information in the Panel meeting on 17 July 2017.

Relevant Papers

23. A list of relevant papers is in **Appendix IV** for members' reference.

Recommendations made by the Committee on Review of Post-Service Outside Work for Directorate Civil Servants

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.

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.

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.

Recommendation 4

No change should be made to the minimum sanitization period.

Recommendation 5

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

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.

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 Point 1 ("D1") to D3 (or equivalent) civil servants (i.e. no change to the length of the existing period);
- (b) three years for D4 to D7 (or equivalent) civil servants (i.e. lengthening the existing period by one year); and
- (c) five years for 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 D1 to D3 (or equivalent) civil servants (i.e. lengthening the existing period by one year); and
- (b) five years for D4 to D8 (or equivalent) civil servants (i.e. lengthening the existing period by three years for D4 to D7 (or equivalent) civil servants and by two years for 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 D1 to D3 (or equivalent), and during his last six years of government service if he is a 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 D4 to D8 (or equivalent) directorate civil servants should be assessed with reference to the applicants' last six years of active government service.

(c) *External Assessment Process*

Recommendation 10

The Advisory Committee on Post-service Employment of Civil Servants ("ACPE") 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.

Recommendation 11

The membership of ACPE 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.

Recommendation 12

ACPE 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.

Recommendation 13

ACPE 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.

Recommendation 14

The secretariat of ACPE 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.

(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.

(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 ACPE again if an applicant seeks a review of the 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.

(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.

(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.

(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 organizations should be discontinued (with the Honourable Audrey EU and the Honourable Albert HO registering a different view). These two members recognize 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 organizations.

IV. Public Monitoring

(a) Coverage of Public Register

Recommendation 21

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

(b) Advisory Committee's Advice

Recommendation 22

ACPE's advice on every approved and taken up post-service outside work should be disclosed on the public register.

(c) Advisory Committee's Annual Report

Recommendation 23

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

Recommendations made by the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man

(1) Restrictions on the taking up of post-service work

Recommendation 1 – It is inappropriate for the Government to impose a total prohibition on the taking up of post-service work by directorate civil servants in the same field of work as those in which they have engaged in their past government duties, nor is it appropriate to impose a ban on the taking up of post-service work by directorate civil servants either across-the-board or on a sectoral basis.

Recommendation 2 – The Government should put in place a system of vetting and approving post-service work applications from directorate civil servants for the protection of the public interest and an individual's right to work, but under all circumstances, protection of the public interest must be the overriding concern.

Recommendation 3 – The existing sanitization period for the taking up of post-service work by directorate civil servants leaving the Government on retirement is appropriate and does not need to be changed, while there is a need for the Government to review the sanitization period for the taking up of post-service work by directorate civil servants leaving the Government on grounds other than retirement.

Recommendation 4 – In processing applications from directorate civil servants at Directorate Pay Scale Point 1 ("D1") to D3, the assessing parties make assessments with reference to the information on the service history of their last three years of government service. This assessment period is appropriate and may remain unchanged. In respect of applications from D4 to D8 officers, the Government should consider taking their last six years of active government service as the assessment period.

Recommendation 5 – The control period for directorate civil servants leaving the Government on retirement should:

- (a) remain unchanged for D1 to D3 directorate civil servants [i.e. two years];
- (b) be extended to four years for D4 to D7 directorate civil servants; and
- (c) be extended to five years for D8 directorate civil servants.

(2) Inclusion of public suspicion of deferred reward or benefit in return as a factor for consideration in the assessment criteria

Recommendation 6 – The Government should consider revising the assessment criteria so that public suspicion of deferred reward or benefit in return would be included in the specific considerations for making assessments by the approving authority.

Recommendation 7 – The Civil Service Bureau ("CSB") should provide clear guidelines to officials concerned and the Advisory Committee on Post-service Employment of Civil Servants ("ACPE") on how assessment of public suspicion of deferred reward or benefit in return should be made to facilitate the vetting and consideration of applications.

(3) The responsibilities of applicants

Recommendation 8 – The Government should consider revising the application procedure to clearly reflect that before submitting an application to CSB, it is incumbent upon an applicant to provide the information as required in the application form (including disclosing possible conflict of interest involved in his application) and to assess and evaluate his application for post-service work against the assessment criteria set out in the relevant circulars in a frank and honest manner.

Recommendation 9 – The Government should consider specifying in the relevant CSB circulars the good conduct expected of civil servants in respect of their taking up of post-service work, as stated in the "Civil Servants' Guide to Good Practices".

Recommendation 10 – The Government should consider requiring an applicant to provide information on major assignments or projects relating to the prospective employer and other companies within the same group as the prospective employer in which he was involved during the last three years (for D1 to D3 applicants) or the last six years (for D4 to D8 applicants) of his government service for consideration by the approving authority.

Recommendation 11 – The Government should require an applicant to provide information on his previous dealings while in government service with the prospective employer and with other companies within the same group as the prospective employer.

Recommendation 12 – The Government should also require an applicant to provide any other information pertaining to his prospective employer and proposed employment during his government service.

Recommendation 13 – The Government should consider developing guidelines which would enable the applicants to have a clear understanding of the requirements under the control regime as set out in the relevant CSB circulars, including the assessment criteria and coverage, as well as the way in which the applicants should assess and evaluate their applications. The Government should also consider specifying clearly in the relevant circulars that, upon a breach of the requirements under the control regime, the approval given for an application will become invalid and the applicant will be liable to sanctions.

Recommendation 14 – Bureaux/departments should render assistance to an applicant in providing the information required for his application, and allow him to have access to information on his last three years or six years of service history in

the Government as well as major assignments or projects in which he had been involved.

(4) Standardization of the processing and vetting practices

Recommendation 15 – The Government should improve the current practices in processing and vetting applications, including giving consideration to the following measures:

- (a) devising a set of standardized practices for processing and vetting applications for adoption by bureaux/departments;
- (b) providing clear guidelines with examples of precedent cases to officials responsible for vetting and assessing applications to ensure that they fulfil their responsibilities, and to assist them in making sound judgment in assessing issues of conflict of interest, public perception and public suspicion of deferred reward or benefit in return;
- (c) reviewing and enhancing communication with civil servants to ensure that they fully understand the policy objective of the control regime and the relevant assessment criteria, and that they would consider applications from a broad perspective; and
- (d) strengthening measures so that officials responsible for vetting and assessing applications in individual bureaux/departments would have a thorough understanding of their due responsibilities, thereby ensuring that the vetting and approval work is carried out in a prudent and conscientious manner.

(5) Undesirability of relying solely on the honour system

Recommendation 16 – The assessing parties should thoroughly and proactively vet the information provided by the applicants, and CSB should step up efforts in monitoring the compliance of successful applicants with the conditions imposed on the approved work, in order to enhance the effectiveness of the honour system.

Recommendation 17 – An applicant should provide a copy of the appointment letter or employment contract to CSB within a specified period after the granting of the approval to enable verification of the terms of employment; otherwise the approval granted to him would become invalid.

Recommendation 18 – In the event of any subsequent changes to an approved application, including those which may impact on the relevant information provided by the applicant and considered by the approving authority in granting the approval, the applicant should report such changes to CSB.

(6) Improvement to the application form

Recommendation 19 – The Government should revise the application form to ensure that an applicant would provide the following information:

- (a) the channels through which the applicant has acquired the job;
- (b) relevant information including the name of the introducer of the job and his relationship with the prospective employer;
- (c) the assessment and evaluation made by the applicant on his application; and
- (d) information on major assignments and projects in which the applicant had been involved, as well as any previous dealings, that were connected with his prospective employer and other companies within the same group as the prospective employer.

(7) Extension of coverage and accessibility of the public register

Recommendation 20 – The coverage of the public register should be extended to include all approved cases of D1 to D8 directorate civil servants, and the register be made accessible to the public on the Government website.

(8) Improvement to the operation of the Advisory Committee on Post-service Employment of Civil Servants

Recommendation 21 – The Government should consider whether the existing role of ACPE should be revamped to expand its functions and enhance its independence.

Recommendation 22 – ACPE should improve its operation by measures including holding regular meetings to consider post-service work applications, and inviting officials responsible for vetting and assessing applications in CSB and in other relevant bureaux/departments to the meetings to present their views and explain their recommendations on the applications.

Recommendation 23 – The Government should enhance the importance of ACPE, including giving consideration to the following measures: expanding the composition of ACPE, making it a practice for SCS to attend the meetings of ACPE in keeping with the importance the Government attaches to ACPE, reviewing the relevant guidelines on declaration of interests on a regular basis, and enhancing the transparency of ACPE, such as having the annual report on its work laid on the table of the Legislative Council.

Key Elements of the Old and New Control Regimes Governing Post-service Employment of Directorate Civil Servants

Old control regime	New control regime
<i>1. Coverage</i>	
<p>1. Directorate civil servants who were on pensionable/new permanent terms and ceased active service from 1 January 2006 to 31 August 2011.</p> <p>2. Directorate civil servants who were on agreement terms and entered into new or renewal agreements from 1 January 2006 to 31 August 2011.</p>	<p>1. Directorate civil servants who are on pensionable/new permanent terms and cease active service on or after 1 September 2011.</p> <p>2. Directorate civil servants who are on agreement terms and enter into new or renewal agreements on or after 1 September 2011.</p>
<i>2. Sanitization period (counting from cessation of active service during which outside work is normally not permitted)</i>	
<p>1. Minimum sanitization period for directorate civil servants retired or retiring on pensionable or new permanent terms –</p> <p style="padding-left: 40px;">Directorate Pay Scale Point 4 ("D4") or above (or equivalent) – 12 months;</p> <p style="padding-left: 40px;">Others – 6 months.</p> <p>2. No minimum sanitization period is specified for directorate civil servants leaving the Civil Service on grounds other than retirement (e.g. agreement officers and resignees). Each case will be considered on its own merits.</p>	<p>Same as the old control regime.</p>

Old control regime	New control regime
<p>3. The minimum sanitization period is normally shortened or waived for notionally remunerated work and may be shortened for remunerated work taken up with the following organizations (the specified organizations) –</p> <ul style="list-style-type: none">(a) charitable, academic or other non-profit making organizations not primarily engaged in commercial operations;(b) non-commercial regional or international organizations; or(c) the Central Authorities of the People's Republic of China, <p>where the work would not give rise to conflict of interest and is unlikely to cause negative public perception.</p> <p>4. For all other outside work (in particular work of a commercial nature), the minimum sanitization period would only be shortened where there are special considerations, and provided that the work would not give rise to conflict of interest or negative public perception.</p> <p>5. Having regard to the circumstances of a particular case, a longer sanitization period may be imposed if so required to more fully forestall conflict of interest or negative public perception.</p>	

Old control regime	New control regime
3. Final leave period	
<p>1. The taking up of outside work during the final leave period is subject to the rules governing sanitization.</p> <p>2. Directorate civil servants are not permitted to take up any full-time paid work or any work of a commercial nature (including self-employment) during the final leave period, unless there are special considerations. Directorate civil servants on final leave may, upon approval, take up part-time or notionally paid work with specified non-commercial organizations, subject to there being no problem of dual identity.</p>	<p>Same as the old control regime.</p>
4. Control period (counting from formal departure from the Government during which prior permission is required for taking up outside work)	
<p>1. Directorate civil servants retired on pensionable or new permanent terms –</p> <p style="padding-left: 40px;">D8 or equivalent – 3 years;</p> <p style="padding-left: 40px;">Others – 2 years.</p> <p>2. Directorate civil servants who left the service on grounds other than retirement after six or more years of continuous service –</p> <p style="padding-left: 40px;">D8 or equivalent – 3 years;</p> <p style="padding-left: 40px;">Others – 2 years.</p>	<p>Same as the old control regime.</p>

Old control regime	New control regime
<p>3. Directorate civil servants who left the service on grounds other than retirement after less than six years of continuous service –</p> <p style="padding-left: 40px;">D8 or equivalent – 1.5 years;</p> <p style="padding-left: 40px;">Others – 1 year.</p>	
<p>5. Assessment criteria</p>	
<p>1. The key factors of consideration are as set out in the policy objective.</p> <p>2. The specific considerations of an application include –</p> <p style="padding-left: 40px;">(a) whether the applicant was involved in the formulation of any policies or decisions, the effects of which directly or specifically benefited or could directly or specifically benefit his/her own business or his/her prospective employer;</p> <p style="padding-left: 40px;">(b) whether the applicant or his/her prospective employer might gain an unfair advantage over its competitors because of the applicant’s access to sensitive information while in government service;</p> <p style="padding-left: 40px;">(c) whether the applicant was involved in any contractual or legal dealings to which the prospective employer was a party;</p>	<p>1. The key factors of consideration are as set out in the policy objective.</p> <p>2. The specific considerations of an application include –</p> <p style="padding-left: 40px;">(a) the duties and responsibilities of the applicant during his/her last six years (for a D4 to D8 (or equivalent) civil servant) or three years (for a D1 to D3 (or equivalent) civil servant) of government service. Where necessary, a longer period of service history will be considered;</p> <p style="padding-left: 40px;">(b) - (f) same as items 2(a)-(e) under the old control regime;</p>

Old control regime	New control regime
<p>(d) whether the proposed work would have any connection with the assignments and/or projects and/or regulatory/enforcement duties in which the applicant had been involved while in government service;</p> <p>(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</p> <p>(f) whether any aspects of the proposed work would cause embarrassment to the Government or bring disgrace to the Civil Service.</p> <p>3. The application will normally be assessed with reference to the applicant's last three years of active government service. Where the applicant is a D4 to D8 (or equivalent) civil servant or if the work handled is of particular sensitivity, duties prior to the three-year period may also be taken into account.</p>	<p>(g) whether a fair-minded and informed observer, having considered the relevant facts, would conclude that the applied-for work might give rise to reasonable apprehension of deferred reward or benefit; and</p> <p>(h) whether any aspects of the applied-for work would cause well-founded negative public perception embarrassing the Government and undermining the image of the Civil Service.</p>

Old control regime	New control regime
6. Standard work restrictions	
<p>1. Standard work restrictions will be imposed on all approved cases of outside work. The applicants should not –</p> <ul style="list-style-type: none"> (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 – <ul style="list-style-type: none"> (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 <p>in which they were involved or to which they had access during their last three years of government service; or</p> <ul style="list-style-type: none"> (c) engage in any activities which will cause embarrassment to the Government or bring disgrace to the Civil Service. 	<p>1. Standard work restrictions will be imposed on all approved cases of outside work. The applicants will not –</p> <ul style="list-style-type: none"> (a) directly or indirectly be involved in the bidding for any government land, property, projects, contracts or franchises; (b) directly or indirectly undertake or represent any person in any work including any litigation or lobbying activities that are connected in any way with the formulation of any policy or decisions, sensitive information, contractual or legal dealings, assignments or projects, and enforcement or regulatory duties in which they had been involved or to which they had access during their last three years of service; and (c) directly or indirectly engage in any activities which will cause embarrassment to the Government or bring disgrace to the Civil Service.

Old control regime	New control regime
7. <i>Blanket approval</i>	
<p>1. Blanket permission is given for unremunerated work with the specified organizations throughout the entire period from cessation of active service to the expiry of control period.</p>	<p>Same as the old control regime.</p>
8. <i>Transparency</i>	
<p>1. For approved outside work taken up by directorate civil servants at D4 or above (or equivalent), the basic information (limited to the name of the applicant, his/her last civil service post title, date of cessation of active service, restrictions/sanitization imposed on the approved work, commencement date of the approved work, and where applicable, identity of outside employer, the applicant's position in the outside organization and a brief description of his/her main duties in the outside organization) will be included in a register for public inspection on request. An entry will be kept until the expiry of the applicant's control period or after he/she has notified the Civil Service Bureau ("CSB") of the cessation of the outside work, whichever happens earlier.</p> <p>2. For approved outside work taken up by directorate civil servants below D4 (or equivalent), where there is public concern about the propriety of the work, the basic information may be disclosed on a case-by-case basis.</p>	<p>1. For approved outside work taken up by directorate civil servants, the basic information (limited to the name of the applicant, his/her last civil service post title, date of cessation of active service, restrictions/sanitization imposed on the approved work, commencement date of the approved work, and where applicable, identity of outside employer, the applicant's position in the outside organization and a brief description of his/her main duties in the outside organization) as well as the advice of the Advisory Committee on Post-service Employment of Civil Servants will be included in a register maintained by CSB for public inspection. The register is posted on CSB's website.</p> <p>2. Same as item 3 under the old control regime.</p>

Old control regime	New control regime
3. As regards unpaid outside work performed under the blanket permission for all directorate civil servants, the relevant information may be disclosed on a case-by-case basis where there is public concern.	

(Source: Annex A to the 28th Report on the work of the Advisory Committee on Post-service Employment of Civil Servants)

Appendix IV

Policy on post-service outside work by directorate civil servants

List of relevant papers

Meeting	Date of meeting	Paper
Panel on Public Service	—	Letter from Ms Margaret NG expressing concern about the post-retirement employment of Mr LEUNG Chin-man, the former Permanent Secretary for Housing, Planning and Lands
—	—	Press release dated 15 August 2008 on SCS submits report to Chief Executive on LEUNG Chin-man's case
—	—	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
—	—	Press release dated 15 August 2008 on statement of the Chief Executive's Office
—	—	Press release dated 15 August 2008 on statement by the Housing Branch of the Transport and Housing Bureau
—	—	Press release dated 16 August 2008 on remarks by CE after visiting Hong Kong Olympic Equestrian Venue (Sha Tin)

Meeting	Date of meeting	Paper
Panel on Public Service	27 October 2008	Administration's paper Administration's paper Updated background brief prepared by the Legislative Council Secretariat Minutes
	16 February 2009	Paper on work progress and public consultation plan from Committee on Review of Post-service Outside Work for Directorate Civil Servants Administration's paper Minutes
	16 March 2009	Consultation document published by Committee on Review of Post-Service Outside Work for Directorate Civil Servants on 20 February 2009 Minutes
Panel on Public Service	13 July 2009	Administration's paper
	19 October 2009	Administration's paper Updated background brief prepared by the Legislative Council Secretariat Minutes
Council Meeting	2 June 2010	Council question raised by Hon CHEUNG Man-kwong on the control regime for post-service outside work of directorate civil servants

Meeting	Date of meeting	Paper
	9 June 2010	<u>Council question raised by Hon LI Fung-ying on post-service outside work application from former Commissioner for Tourism</u>
	4 May 2011	<u>Council question raised by Hon WONG Sing-chi on the control regime governing the taking up of post-service outside work by directorate civil servants</u>
Panel on Public Service	1 August 2011	<u>LegCo Brief on Review of Post-service Outside Work by Directorate Civil Servant</u> <u>Updated background brief prepared by the Legislative Council Secretariat</u> <u>Minutes</u>
Panel on Public Service	18 June 2012	<u>Administration's paper</u> <u>Updated background brief prepared by the Legislative Council Secretariat</u> <u>Minutes</u>
Council Meeting	18 May 2016	<u>Council question raised by Hon Frederick FUNG on the taking up of post-service outside work by directorate civil servants</u>
Council Meeting	21 June 2016	<u>The 28th Report on the Work of the Advisory Committee on Post-service Employment of Civil Servants (1 January 2016 - 31 December 2016)</u>