

Public officers continuing to implement agreements for provision of services to commercial organizations which they entered into before taking office

1. **MR LAM CHEUK-TING** (in Cantonese): *President, Mr LEUNG Chun-ying was elected Chief Executive ("CE") in March 2012. Before he was elected, Mr LEUNG resigned from the office of the Asia Pacific Director of DTZ in November 2011 and entered into an agreement in December of the same year with UGL Limited ("UGL"), which was then planning to acquire DTZ. The agreement stipulated that within two years upon completion of the acquisition, apart from not poaching any people from or competing with DTZ, Mr LEUNG would, in promoting the business of the UGL Group and the DTZ Group, provide assistance from time to time, which included acting as referee and adviser, in accordance with the reasonable requests made by UGL. Mr LEUNG received under the agreement a remuneration of £4 million in total in the first two years after his taking the office of CE, but he had all along failed to declare his interests relating to the agreement to the Clerk to the Executive Council ("ExCo"). Upon revelation of the aforesaid agreement by the media in October 2014, some members of the public queried that such practice of CE involved a conflict of interests and his failure to declare the interests constituted a misconduct in public office. In response to such queries, the Government pointed out that (i) the agreement had been entered into before Mr LEUNG took office; (ii) the agreement contained a clause providing for the avoidance of conflict of interests, i.e. he would provide the aforesaid assistance to UGL only under the situation that such assistance would not create any conflict of interests; (iii) UGL had not requested him to provide any services; and (iv) he had never provided any services to UGL ("the four conditions"). In this connection, will the Government inform this Council:*

- (1) *whether, under the existing requirements, politically appointed officials, ExCo Members and civil servants may follow CE's practice, i.e. they may continue to implement agreements for provision of services to commercial organizations that were entered into before their taking office and are still in force thereafter ("agreements entered into before taking office"), and they may receive remuneration in accordance with such agreements without making any declaration or obtaining any approval, so long as the aforesaid four conditions are met; if they may not, of the reasons for that;*

- (2) *whether it has studied if those types of persons mentioned in (1) will not contravene the Prevention of Bribery Ordinance and the relevant declaration requirements, and nor will they be liable for the offence of misconduct in public office, for accepting advantages, so long as they meet the aforesaid four conditions and have received such advantages in accordance with the agreements that were entered into before their taking office; if it has studied and the outcome is that this will be the case, how the Government will plug the loophole to maintain the corruption-free system in Hong Kong; and*
- (3) *how the Government will handle the situation in which a person of the types mentioned in (1) is found to have failed to make declaration of an agreement that he entered into before taking office and has failed to fully implement that agreement; whether it will order such person to cancel the agreement concerned and return or refrain from receiving the relevant remuneration and, when the situation warrants, institute disciplinary proceedings or criminal investigation in respect of cases of conflict of interests, so as to allay public concern; if it will not, of the reasons for that?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, with regard to Member's question, after consulting the relevant offices and bureaux, I am providing a consolidated reply as follows:

Public officers, including politically appointed officials ("PAOs"), Members of the Executive Council ("ExCo") and civil servants, are governed by their respective systems for declaration of interests.

The current declaration system for PAOs requires PAOs of all ranks to declare their investment, shareholding, direct or indirect interest in any company; their directorships, proprietorships or partnerships in any company; and, if any, the specific details concerning their participation in any private company's affairs. They are also required to declare any investment and interest held by themselves or in the name of their spouses, children or other persons, agents or companies, but are actually acquired on their account or in which they have a beneficial interest. According to the requirements of the Code for Officials under the Political Appointment System ("the Code"), investments and interests declared by PAOs of all ranks in the prescribed form are made available on the websites of

the respective offices/bureaux for public inspection. Such declarations will be updated annually.

Moreover, the Code also requires that PAOs shall report to the Chief Executive any private interests that might influence, or appear to influence, their judgment in the performance of their duties. PAOs shall refrain from handling cases with actual or potential conflict of interest as well.

For the ExCo, it has put in place a rigorous and well-established system for declaration of interests for all ExCo Members. This is to ensure that unbiased and impartial advice is offered by ExCo Members to the Chief Executive. The declaration system mainly comprises two parts. The first part is regular declarations. On first appointment and annually thereafter, each ExCo Member should declare their personal interests, and the declaration includes (a) remunerated directorships; (b) remunerated employments, offices, trades, profession, and so on; (c) if the interests in the above two items include provision to clients of personal services which arise out of or relate in any manner to Members' position as ExCo Members, the clients' names should be declared; (d) land and property owned by Members in or outside Hong Kong; (e) names of companies or bodies in which Members have, either themselves or with or on behalf of their spouses or children, a beneficial interest in shareholdings; and (f) membership of boards, committees or other organizations. In addition, ExCo Members should declare to the Chief Executive on a confidential basis and in greater detail their financial interests, including shareholdings (irrespective of the amount) in companies as well as futures and options contracts, held by themselves or jointly with their spouses, children or other close relatives. The second part of the declaration system is declarations in respect of individual items discussed by the ExCo. It is the personal responsibility of every ExCo Member to examine whether he/she has an interest in any item discussed by the ExCo and declare it before the ExCo discussion. In line with the principle of confidentiality of the ExCo, the Government does not disclose the content of ExCo discussions or the related declarations of interests.

All serving civil servants are subject to the Government Regulations, Rules, Circulars and Departmental Instructions that govern their conduct. The Government has established mechanisms to handle declaration of interests by civil servants and related disciplinary matters. Any person who has been appointed as a civil servant is required to observe the related requirements. If there is evidence that a civil servant has misconducted himself, appropriate

action, including administrative or disciplinary action, will be taken against him in accordance with the established procedures.

Furthermore, PAOs, ExCo Members and civil servants are all required to abide by the relevant requirements. The Independent Commission Against Corruption will enforce the law impartially and strictly, and handle all reports and cases against public officers suspected of committing an illegal act in accordance with the established procedures.

MR LAM CHEUK-TING (in Cantonese): *President, Secretary Raymond TAM has provided a very long "reply" to the Legislative Council, but he has not touched upon the core of the main question. The core of the main question comprises four points, and LEUNG Chun-ying has explained that: (i) the agreement had been entered into before he took office; (ii) the agreement contained a clause to avoid conflict of interests; (iii) the company had not requested any services from LEUNG Chun-ying; and (iv) LEUNG Chun-ying had never provided any services to the company. With an explanation like this, LEUNG Chun-ying claims that no declaration was necessary and considers that no conflict of interests existed.*

Can other public officers also invoke these four conditions? I mean, can they receive millions or tens of millions of dollars while holding office under an agreement with a private organization entered into before they took office? Does this involve conflict of interests? Why doesn't the Government respond to this? The Government has all along been unable to answer this question. Chief Secretary for Administration Carrie LAM was not able to answer this question last time during the motion debate concerning UGL, and Secretary Raymond TAM still fails to account for this now. It is because, if the response ...

PRESIDENT (in Cantonese): Mr LAM, what is your supplementary question?

MR LAM CHEUK-TING (in Cantonese): *I only have a simple supplementary question. President, I am about to finish raising my question. As the saying goes, if the upper beam is not straight, the lower ones will go aslant. Tolerating such a practice will in effect ruin the corruption-free culture in Hong Kong. Therefore, I want to ask the Secretary why he is unable to answer my main question? Why is he unable to respond directly to these four conditions? Does*

the Government allow serving public officers to execute agreements with private companies entered into before they took office under these four conditions?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the key point in my main reply concerns the existing declaration systems for three types of public officers and arrangements for avoidance of conflict of interests, and so on, while the core of Mr LAM Cheuk-ting's question is about so-called resignation agreements.

First of all, regarding civil servants, most civil servants, me included, have never worked in the private sector, so the issue of resignation agreements does not exist in our case. With respect to politically appointed officials ("PAOs") and Members of the Executive Council ("ExCo"), as I have pointed out just now, under the current declaration system they are required to regularly declare investments, property and shares held by them, or their membership of certain organizations, and so on. Apart from this, PAOs and ExCo Members also have to make declarations regarding individual items and subjects when they take part in corresponding discussions or tasks. Officers in charge will then decide if the official concerned has to avoid suspicion by refraining from handling the case concerned, or leaving the case for other officials, and even withdrawing from meetings or not having access to related documents, and so on. Such measures are also mentioned in the Code for Officials under the Political Appointment System ("the Code") and the code for ExCo.

The term resignation agreement covers a relatively wider area. By "wider", I mean the issues must be dealt with having regard to actual circumstances and the two types of requirements for declaration of interests and avoidance of conflict of interests mentioned by me just now. The two types of requirements refer to regular declarations and declarations in respect of potential conflict of interests regarding individual items. Therefore, we cannot make any generalization this moment.

MR JEFFREY LAM (in Cantonese): *President, apart from PAOs and ExCo Members, many civil servants, directorate civil servants in particular, also have access to classified and sensitive information. The Secretary used to be a civil servant as well. Can he explain to us the system for declaration of interests applicable to directorate civil servants? Can the system effectively prevent conflict of interests?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): I thank Mr Jeffrey LAM for the question. I have already mentioned this briefly in the main reply just now, but I still thank Member for the question. I can specify a few more points. President, according to the existing Civil Service Code, all civil servants, including directorate civil servants, must make effort to avoid and declare any potential or existing conflict of interests. Unless permitted by superiors, civil servants should avoid handling or following up the duties concerned after making declarations. I have also briefly pointed this out when replying to Mr LAM Cheuk-ting earlier.

Moreover, to avoid conflict of interests between civil servants' personal investments and their official duties, the Civil Service Bureau maintains a system for declaration of investments by civil servants, requiring all, I mean all directorate civil servants to regularly declare their personal investments and the occupations of their spouses. Investment transactions equivalent to or exceeding HK\$200,000 must be declared within seven days of transaction, and such declarations are of a non-regular nature. In a nutshell, civil servants have to declare within seven days once they make such investments, so as to facilitate the authorities' examination of all declarations and adoption of appropriate management or preventive measures. Personal investments applicable to civil servants mentioned by me just now include investment, shareholding, direct or indirect interest in companies or organizations in or outside Hong Kong, including directorship, and any interests in real estate or property, including self-occupied property. Moreover, declarations are also required if civil servants actually have beneficial interests in investments held in the name of their spouse or other trusted agents or companies.

Finally, apart from all directorate civil servants, top civil servants, such as Permanent Secretaries, are also subject to extra declaration requirements. On first appointment and annually thereafter, they have to register, for public access, information such as real estate and property owned by them, their proprietorships, partnerships/directorships and shareholdings of 1% or more of the issued share capital in any listed, public or private company. We believe that the system for declaration of interests applicable to top civil servants is effective in addressing concerns in this respect.

PRESIDENT (in Cantonese): Mr LAM, which part of your supplementary question has not been answered?

MR JEFFREY LAM (in Cantonese): *The Secretary has talked a lot about declaration of investments by civil servants just now, yet he has not answered if the authorities have any declaration system and regulation for civil servants who take up outside work or lodge any application for taking up outside work.*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, perhaps I should put it this way. As I pointed out just now, civil servants are subject to a system for regular declaration of interests concerning their investments or interests. Moreover, civil servants will have to avoid suspicion if there is a conflict of personal interest with the issue they deal with. Under the Civil Service Code, civil servants must wholeheartedly devote themselves to serving the public. Therefore, it is our policy not to allow civil servants to take up any outside work that may affect their execution of duties. Civil servants will be given approval only under extraordinary circumstances, and in such case, they must lodge applications with their supervisors, otherwise, even outside normal working hours, government employees are not allowed to take up any outside work and receive any pay for that. There are established preventive measures in this regard. When giving consideration, Heads of Departments will focus on maintaining that the outside work will not affect the official duties of the civil servants concerned. However, in some cases, some civil servants take part in voluntary or community service outside, such as participating in voluntary work in certain organizations beyond their official duties, or taking up roles as executives in their churches. Declarations made by civil servants regarding the above circumstances are subject to approval granted at the discretion of their superiors, under the premise that their official duties will not be affected.

MR JAMES TO (in Cantonese): *Secretary has just mentioned the requirement for civil servants to serve the public wholeheartedly. Do we not need to define a higher standard if we apply this principle on the Chief Executive, Secretaries of Departments and Directors of Bureaux? The system for declaration of interests aims at examining the interests they hold and whether they will be influenced by these interests, as well as who they are genuinely devoted to. However, with regard to the incident involving LEUNG Chun-ying, President, we cannot help*

but ask how come he can actually retain office as the Chief Executive and keep on receiving interests, even long-term interests maybe, while being charged with certain tasks and duties for certain people during his term of office?

President, when even President XI Jinping announces his fight against corruption, our Chief Executive, Secretaries of Departments and Directors of Bureaux can be allowed to keep on receiving interests and possibly fulfil certain responsibilities under an agreement. They even do not have to declare this under the system in Hong Kong. Does the Secretary want to harbour them? Does the incumbent Chief Executive wish Hong Kong to have a system worse than that in the Mainland? The whole country is aspiring to prosperity, strength and the manifestation of the Chinese Dream, yet Hong Kong chooses to go backward and adopt a lower standard in which no declaration is required even under such circumstances. Will this not let Hong Kong people down, or even not let the country's development down?

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, first of all, I must point out that the word "harbour" applied by Mr James TO on me is a rather serious accusation. I suggest we should respect each other. In the new year, Members do not have to use such words in this occasion without any substantiated proof.

With regard to the incident involving the Chief Executive, the Chief Secretary for Administration did respond to relevant questions from Members in detail in the Council before, and the Office of the Chief Executive also issued numerous statement in this respect before. The Council does keep detailed records about the issue, therefore I am not going to further account for this today. Moreover, I learn that certain other committees in the Council may discuss this as well, so I believe I need not, and should not, add anything today.

However, the Chief Secretary for Administration mentioned in her reply given in this Council that Mr LEUNG would not and should not offer relevant assistance to UGL, the company concerned, after his was elected Chief Executive. As a matter of fact, after the agreement mentioned by Members just now was entered into, Mr LEUNG had never provided any services to UGL,

same as what the company had pointed out in its statement. If we see this from a wider perspective, I agree with Mr James TO that, apart from civil servants, politically appointed Secretaries of Departments and Directors of Bureaux should also serve the public wholeheartedly in their official positions. This is a requirement stipulated expressly in the beginning of the Code, which will be strictly observed by all Secretaries of Departments, Directors of Bureaux, Under Secretaries and Political Assistants.

MR JAMES TO (in Cantonese): *President, the Secretary has not answered the query about the logic behind the standard adopted at this moment, in which the Chief Executive, Secretaries of Departments and Directors of Bureaux are not required to declare any interests they continuously receive and the responsibilities they have to fulfil under an agreement.*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, there are two kinds of declarations. The first one is regular declarations mainly concerning investments, real estate, shares and directorships or membership of committees other than their official positions, and so on. This is about declarations made and published in this respect. Another kind of declaration is about the potential or possible conflict of interests between their personal interests and individual policies or issues handled by them. In this case, they have to make declarations under the mechanism. Arrangements under the mechanism regarding avoidance of conflict of interests include measures for avoidance of suspicion, such as not issuing documents to officials concerned, withdrawing from and passing the duties in question to other officers instead. The latter is adopted under the Government's mechanism. Members may well notice that previously there were many similar examples of published arrangements for avoidance of suspicion.

PRESIDENT (in Cantonese): Second question.