

LEGISLATIVE COUNCIL BRIEF

Review of Post-service Outside Work by Directorate Civil Servants

INTRODUCTION

At the meeting of the Executive Council on 28 June 2011, the Council ADVISED and the Chief Executive ("CE") ORDERED that –

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- (a) the improvement measures relating to the Control Regime on Post-service Outside Work by Directorate Civil Servants ("the Control Regime"¹) as set out in **Annex A** should be adopted;
 - (b) the improvement measures (other than those under item (c) below) should be applied to directorate civil servants who are on pensionable or new permanent terms and cease active service on or after 1 September 2011, or who are on agreement terms and enter into new or renewal agreements on or after 1 September 2011; and
 - (c) the improvement measures relating to pension suspension should be applied to all pensioners (including former directorate and non-directorate civil servants) with effect from 1 September 2011.

JUSTIFICATIONS

(I) Background

B

2. The independent Committee on Review of Post-service Outside Work for Directorate Civil Servants ("the RC") appointed by the CE reviewed the Control Regime and submitted its Report to the CE in July 2009. An Executive Summary of the RC Report is at **Annex B**². Separately, in December 2010, the Legislative Council ("the LegCo") endorsed the Report of

¹ The Control Regime reviewed by the RC and the SC came into effect on 1 January 2006. It is applicable to directorate civil servants on (i) pensionable or new permanent terms who cease active service on or after 1 January 2006; and (ii) agreement terms whose new agreements, including renewals of agreement, were entered into on or after 1 January 2006. Those who ceased active service before 1 January 2006 are covered by a less stringent set of arrangements.

² A softcopy of the RC Report is available at the homepage of the Civil Service Bureau at <http://www.dcspostservice-review.org.hk/english/index.html>.

the LegCo Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man (“the SC”). An Executive Summary of the SC Report is at **Annex C**³. Both Committees recommended various improvement modifications to the Control Regime.

(II) The Control Regime

3. The gist of the current Control Regime is described below –
- (a) its policy objective is to guard against directorate civil servants taking up any work, within a specified period of time after cessation of active duty, which may constitute real or potential conflict of interest with their former government duties or cause negative public perception embarrassing the Government and undermining the image of the Civil Service, and ensure at the same time that their right to work is not unduly restricted;
 - (b) the specified period of time takes the form of a final leave period, a minimum sanitisation period and a control period. During these periods, directorate civil servants must obtain permission from the authority (Secretary for the Civil Service (“SCS”)) before they can take up any work save for unpaid work with specified non-commercial organisations⁴;
 - (c) the final leave period refers to the period of leave directorate civil servants take after they cease active duty and before they leave the Government. Its length varies from officer to officer and may range from zero (where the departing civil servant has no untaken leave balance at the time of cessation of active duty) to around a year;
 - (d) the minimum sanitisation period is set at six or 12 months from cessation of active duty for most directorate civil servants⁵. It may overlap wholly or partly or not at all with the final leave period of individual directorate civil servants⁶;

³ A softcopy of the SC Report is available at the homepage of the LegCo at <http://www.legco.gov.hk/english/index.htm>.

⁴ The specified non-commercial organisations are (a) charitable, academic or other non-profit making organisations not primarily engaged in commercial operations; (b) non-commercial regional or international organisations; and (c) the Central Authorities of the People’s Republic of China.

⁵ Retiring civil servants at D1 to D3 and at D4 to D8 are subject to a 6-months’ and a 12-months’ minimum sanitisation period respectively. There is no prescribed minimum sanitisation period for directorate civil servants leaving the Government on non-retirement grounds (e.g. completion of agreement or resignation). For them, the authority will consider whether – and if so the length of – a sanitisation period should be imposed on their post-service outside work applications on a case-by-case basis.

⁶ Most D1 to D3 civil servants (namely those employed on pensionable terms) may accumulate a maximum leave balance of six months (which is also the length of their

- (e) applications for paid outside work of a commercial nature which will commence during the final leave and minimum sanitisation periods will normally not be approved by the authority regardless of whether or not there is any real, potential or perceived conflict of interest, unless there are special considerations⁷;
- (f) the control period is set at two or three years from the date of departure from the Government for most directorate civil servants⁸. Applications for outside work which will commence during this period will be considered on their individual merits;
- (g) the Advisory Committee on Post-service Employment of Civil Servants (“the ACPE”) appointed by the CE tenders advice to the authority on every application;
- (h) the authority may reject, or approve with conditions, an application;
- (i) information on every approved and taken-up outside appointment by civil servants at and above D4 is put on a register available for public inspection. The information is removed upon expiry of the individuals’ control period or cessation of the appointment, whichever occurs first. Information on approved and taken-up work by civil servants at and below D3 is released on a case-by-case basis having regard to the public interest consideration; and
- (j) sanctions⁹ may be imposed by the authority for breach of the Control Regime. For pensioners, the sanction of suspension of monthly pension payments may also be imposed.

prescribed minimum sanitisation period), while most D4 to D8 civil servants may accumulate a maximum leave balance of one year (which is either longer than or of the same length as their prescribed minimum sanitisation period). Civil servants have to exhaust their leave balance (known as “final leave”) or give it up before leaving the Civil Service.

⁷ Special considerations may include the following (not exhaustive) –
 (a) significant public interest associated with the applied-for work; or
 (b) personal circumstances warranting compassionate consideration.

⁸ Civil servants at D1 to D7 and at D8 are subject to a two- and three-year control period respectively. The period is halved for those leaving the Government with less than six years of continuous service and on non-retirement grounds.

⁹ One or a combination of the following sanctions may be invoked: civil action to seek an injunction or sue for damages, withdrawal of/suspension for a specified period the post-service work approval, report to the relevant professional body where professional negligence/misconduct or possible breach of the code of conduct of a profession is involved, issue a public statement of criticism, place a warning/reprimand on the register for public inspection, issue a reprimand/warning letter which may be copied to the outside employer concerned.

4. The Control Regime is based on statute and/or contract. The statutory basis rests on section 16 of the Pensions Ordinance (Cap. 89) and section 30 of the Pension Benefits Ordinance (Cap. 99) (see **Annex D**). The contractual basis rests on the Memorandum on Conditions of Service (“MOCS”) which accompanies the appointment letters to civil servants. The MOCS contains a unilateral variation clause¹⁰ which allows the Government to vary any terms of appointment and/or conditions of service.

(III) Consultation on Recommendations by the two Committees

5. The RC and the SC each made 23 recommendations. We have consulted the ACPE, the Public Service Commission (“the PSC”) ¹¹, departmental and grade management, the constituent staff unions of the central staff consultative councils, and all serving directorate civil servants on the recommendations. Their views are referred to in our consideration of the recommendations below.

6. We have obtained advice from two outside counsel ¹² on the lawfulness of the recommendations of the two Committees relating to restrictions on outside work by directorate civil servants. Noting a lack of significant litigation on work restrictions for those in former public employment, the counsel have considered the matter with reference to the applicable constitutional and statutory provisions and the applicable common law principles. Their specific advice is described in our consideration of the two Committees’ recommendations below. Their advice on the broad legal principles is summarised below –

- (a) an individual’s right to work is a fundamental right guaranteed under Article 33 of the Basic Law (“BL33”) and Article 6 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) ¹³, but it is not an absolute right and restrictions may be placed upon it; and

¹⁰ The MOCS states: “Notwithstanding anything contained in this Memorandum or in the covering letter of appointment, the Government reserves the right to alter any of the officer’s terms of appointment, and/or conditions of service set out in this Memorandum or the said covering letter should the Government at any time consider this to be necessary.”

¹¹ The PSC is a statutory body responsible for advising the CE on matters relating to appointment, promotion and discipline of civil servants.

¹² They are Professor Christopher Forsyth, Professor of Public Law and Private International Law and Director of the Centre of Public Law at Cambridge University; and Ms Monica Carss-Frisk QC, a London leading counsel on human rights and employment law.

¹³ BL33 states: “Hong Kong residents shall have freedom of choice of occupation.” Both counsel note that earlier relevant Hong Kong case law seems to suggest that BL33 prohibits the conscription of persons into a particular occupation rather than guarantees the right of employment in any particular field of occupation, so there is an argument that BL33 does not apply to the Control Regime. However, both counsel consider that in the present context, BL33 could be interpreted as having a wider reach. Specifically, one counsel considers that BL33 arguably implies a right to choose a particular occupation and not just

- (b) the lawfulness of any restriction depends on whether it is rationally connected to the pursuit of a legitimate objective (i.e. the rationality test), and whether it is no more than necessary to achieve the objective (i.e. the proportionality test). The party imposing the restrictions needs to justify compliance with the two tests.

7. We have also obtained legal advice from the Department of Justice (“DoJ”) on the legality of some of the recommendations of the two Committees with regard to Article 100 of the Basic Law (“BL100”)¹⁴ and the Personal Data (Privacy) Ordinance (“PD(P)O”) (Cap. 486).

(IV) Consideration of the Recommendations of the two Committees

8. We have carefully deliberated the recommendations of the two Committees and their rationale, the views expressed by respondents during the consultation exercises and the legal advice obtained against the following main policy considerations –

- (a) how to better protect the public interest, including public trust in the Government, good governance, and integrity and impartiality of the Civil Service;
- (b) how to enhance the vigilant implementation of the Control Regime and increase its transparency;
- (c) how to ensure the right to work by former directorate civil servants is not unduly restricted;
- (d) how to ensure limited human resources are not unduly restricted from being put to productive use for the sustained development of Hong Kong; and
- (e) how to safeguard the attractiveness of the Civil Service in terms of recruitment and retention of talents, and how to avoid negative impact on civil service morale.

9. In general, we propose to accept most of the recommendations of the

a right to choose not to work in a particular occupation, especially when read in light of Article 6 of the ICESCR which recognises “*the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts*”. Accordingly, it would be prudent to proceed on the basis that BL33 applies to the Control Regime.

¹⁴ BL100 states: “*Public servants serving in all Hong Kong government departments, including the police department, before the establishment of the Hong Kong Special Administrative Region, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.*”

two Committees as they will better protect the public interest through more thorough and meticulous consideration of post-service work applications, through improvements in the quality of the decisions made, and through enhanced transparency and public monitoring. The only recommendations we do not propose to accept are those relating to the extension of the existing control period. Our consideration is set out in paragraphs 10 to 36 below.

(a) Underlying Principles, Objectives and Assessment Criteria

Review Committee:

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.*

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.

Select Committee:

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 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.*

10. Both outside counsel advise the categorical assertion that protection of the public interest will or must take precedence or override protection of an individual's right under all circumstances would not satisfy the proportionality test as it suggests the balancing process between public and private interest will not take place. Some respondents question the appropriateness of the recommended formulations and maintain protection of the public interest should include protecting the right to work by an individual (including a former directorate civil servant).

11. We believe the two Committees had intended to signal the importance of protecting the public interest with their above recommendations. We agree with this intent. Accordingly, we propose to make clear that protection of the public interest will override or take

precedence over protection of an individual's right where there is compelling reason justifying so doing in a particular case. We also propose to articulate the particular public interest to be protected, namely public trust in the Government, good governance, and integrity and impartiality of the Civil Service.

12. Many respondents object to the inclusion of "*public suspicion of deferred reward or benefit*" or similar language on the grounds that suspicion is not evidence-based and may be ill-founded, that media speculation or politically-driven comment may drive public opinion, and that the authority may easily succumb to irrational or populist consideration. They are concerned that directorate civil servants may be deterred from exercising their discretionary power even when fully justified while in government service out of concern that a "*deferred reward*" accusation may be directed against them if and when they apply for permission to work after leaving the Government. Others are concerned that there is no way to gauge and establish public suspicion or perception. Outside counsel's advice is that the existing objective (see paragraph 3(a) above) is broad enough to cover avoiding suspicion or perception of deferred reward.

13. While appreciating the views and the worries of the respondents, we believe that the existing objective is broad enough to cover "*avoiding suspicion or perception of deferred reward*". We also consider one of the existing stated assessment criteria (namely whether the applicant's taking up of the proposed work would give rise to public suspicion of conflict of interest or other impropriety) embraces the sense of "*avoiding public suspicion of deferred reward or benefit*". We further note the avoidance of suspicion of reward in the form of future employment is articulated in the rules on the acceptance of outside appointment by former Crown servants in the United Kingdom (UK)¹⁵. On balance and in the interest of clarity, we propose to make clear that part of the policy objective of the Control Regime is to ensure directorate civil servants will not take up any post-service outside work which may give rise to reasonable apprehension of deferred reward or benefit to a fair-minded and informed observer after having considered the relevant facts. We also propose to include this as one of the assessment criteria.

14. Respondents in general support inclusion of "*making good use of limited human resources*" in the policy objective. Some, notably the PSC, are strongly in favour of expanding the policy objective to include "*maintaining the attractiveness of the Civil Service*", as they are concerned that very onerous restrictions on post-service work by directorate civil servants would

¹⁵ The relevant extract is set out below:

"The aim of the rules is to maintain public trust in the Crown services and in the people who work in them, and in particular:

- a. to avoid any suspicion that the advice and decisions of a serving officer might be influenced by the hope or expectation of future employment with a particular firm or organisation; or*
- b. ..."*

significantly undermine the attractiveness of the Civil Service for talented individuals and engender retention problems. They also consider “*making good use of limited human resources*” should be part of the policy objective. We accept these views, and propose to include these elements in the policy objective of the Control Regime.

(b) Periods of Restrictions

Review Committee:

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 a minority view from the Honourable Albert Ho who 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).*

Select Committee:

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.*

15. Both outside counsel advise the reverse of the recommendations above would be most vulnerable to legal challenge. They consider the minority view of a member of the RC is unlikely to meet the proportionality test. Respondents support the recommendations that a lifetime total ban should not be imposed. Some maintain that adequate compensation should be provided if directorate civil servants are banned from post-service outside work for life. We agree with the above recommendations and propose to accept them.

Review Committee:

Recommendation 4 – *No change should be made to the minimum sanitisation period.*

Select Committee:

Recommendation 3 – *The existing sanitisation 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 sanitisation period for the taking up of post-service work by directorate civil servants leaving the Government on grounds other than retirement.*

16. Some respondents consider the length of the existing prescribed minimum sanitisation period excessive. They also object to setting any

prescribed minimum sanitisation period for directorate civil servants leaving the Government on non-retirement grounds. Some consider it unreasonable and disproportionate to impose a uniform minimum sanitisation period on directorate civil servants leaving the Government on grounds other than retirement as their circumstances of departure vary.

17. We believe the existing prescribed minimum sanitisation period for retiring civil servants is achieving its objective, which is to forestall real or potential conflict of interest and/or negative public perception by instituting a break between an officer's government duties and outside work. It has worked well since its introduction in 2006. Accordingly, we propose to accept the two Committees' recommendations on this aspect.

18. We have reviewed, as recommended by the SC, the existing arrangement of not prescribing a minimum sanitisation period for directorate civil servants who leave the Government on grounds other than retirement. We understand the SC was concerned that the existing arrangement might induce directorate civil servants to resign in order to avoid the more stringent post-service control imposed on retirees. However, there is no evidence to substantiate such concern. Furthermore, unlike retirees who have usually served in the Government for a long period of time (which has a bearing on exposure to sensitive work or information), the length of service of those leaving the Government on grounds other than retirement varies greatly. Their financial position may also be less stable since they will not receive pension benefits immediately upon leaving service. We note that one outside counsel advises that subjecting directorate civil servants leaving the Government on grounds other than retirement to the same prescribed minimum sanitisation period as their peers who retire from the Government would be disproportionate interference with the right to work for which no cogent evidence has been advanced, while the other counsel does not find a uniform restriction for all directorate civil servants at the same rank irrespective of the route by which they left the service objectionable. On balance, we do not propose to subject directorate civil servants leaving on non-retirement grounds to a prescribed minimum sanitisation period. We wish to point out that without this restriction, the public interest is still protected adequately as the authority has the power to impose an appropriate sanitisation period, where justified, on individual applications from directorate civil servants leaving the Government on non-retirement grounds.

Review Committee:

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 for D1 to D3 civil servants should remain unchanged at two years, and that for D4 to D7 civil servants should be lengthened by one year to three years, and that for D8 civil servants be lengthened by two years to five years (with the Honourable Audrey Eu and the Honourable Albert Ho registering the view that the control period should be three years for D1 to D3 civil servants and five years for D4 to D8 civil servants).*

Select Committee:

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;*
- (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.*

19. Some respondents consider the length of the control period should be the minimum necessary to achieve the policy objective and should only be applied to those directorate civil servants whose work renders them most at risk to conflict of interest. They are against a uniform approach for other directorate civil servants. Some agree that the length of the control period should not be determined by post-service outside work in the same field as an officer's past government duties, since this may effectively prohibit a professional officer (e.g. accountant, doctor, estate surveyor, lawyer, etc.) from taking up any paid work during the control period since his skills and experience are in the particular field. Some prefer setting the length of the control period according to the fields of work while in the Government (instead of according to the rank of directorate civil servants as is the case now) so that those engaged in fields regarded as not or less sensitive may be subject to a shorter control period than presently stipulated.

20. Practically, demarcating fields of work in an increasingly complex and inter-related environment of governance, devising objective criteria to assess which fields of work should be subject to what length of control period, and determining what field of work a former directorate civil servant was in when working for the Government are fraught with difficulties. Accordingly, we propose to accept the above recommendations on this aspect.

21. Both Committees had referred to the practices in some overseas jurisdictions¹⁶ when they came up with the recommendations to lengthen the

¹⁶ According to the RC report, the restrictions in the regimes of the seven overseas jurisdictions studied were as follows –

- (a) **Australia** – no restriction period unless mutually agreed between a public servant and his agency; and no sanitisation period of a general nature.
- (b) **Canada** – a one-year limitation period during which certain types of post-service employment were prohibited; and no sanitisation period of a general nature.
- (c) **France** – a three-year period of restriction (reduced from five years in 2007 having regard to the practices in other countries) during which prior permission was required

control periods, which they maintained would mitigate public concern over conflict of interest and suspicion or perception of deferred reward, and would not deprive or unreasonably fetter the right to work since all applications would be considered on their own merits. Some respondents, including the ACPE, note that directorate civil servants are already subject to very stringent control. They are unable to see the need for and rationale behind the recommendations to lengthen the control periods. Some, notably the PSC, also object to these recommendations as they would deter quality people from joining the Civil Service and dampen the aspiration of junior directorate civil servants for further career progression to the detriment of good governance and the public interest. Some also question the legality of the recommendations against BL100. Some note the two cases¹⁷ which had caused public concern in recent years happened during the existing control period applicable to the concerned ex-civil servants.

22. One outside counsel advises the court will give broad deference to the Administration's judgment on where a fair balance lies between protecting the public interest and limiting a directorate civil servant's right to take up post-service outside work, although the counsel qualifies at the same time that deference to the Administration is strongest when the decision concerns the allocation of resources which is not the present case. The other outside counsel considers the court is unlikely to accord much deference to the Administration since a fundamental human right is at stake and since the restrictions on post-service outside work by directorate civil servants are similar in nature to restraint of trade in the private sector where the court is expert. Both counsel agree the burden is on the Administration to provide cogent and well-articulated justifications for the restrictions imposed, and that

before post-service outside work might be taken up; and no sanitisation period of a general nature.

- (d) **New Zealand** – no restriction period unless specified in individual employment contracts; where specified, a one-year restriction period was the norm for the most senior civil servants; and no sanitisation period of a general nature.
- (e) **UK** – a two-year restriction period for all senior civil servants during which prior permission was required before post-service business appointments might be taken up; additionally, the most senior civil servants (namely Permanent Secretaries and Second Permanent Secretaries and their equivalents) were subject to an additional three-month sanitisation period which might be waived where the outside work was entirely unconnected with previous government work and where no question of impropriety would arise.
- (f) **Singapore** – a five-year restriction period for certain categories of retired civil servants on pension payments; and apparently no sanitisation period of a general nature.
- (g) **US** – a one-year, two-year or lifetime ban on certain former civil servants for very specific and narrowly defined activities; and no prohibition or prior approval for post-service employment with private or public entities.

¹⁷ One case is concerned with a retired D4 civil servant (Ms Elaine CHUNG) engaging in activities beyond the remit of her post-service outside employment as approved by the authority in 2004. The other case is related to the authority's approval of a retired D8 civil servant (Mr LEUNG Chin-man) to take up post-service work with New World China Land Limited in 2008.

the quality of the justifications will be crucial to a successful defence. Both consider no cogent justification and specific evidence of the need for the recommendations to lengthen the control period for D4 to D8 civil servants had been advanced by the two Committees, other than a generalised notion of “public concern”. Because of this, one counsel is not confident that the recommended doubling of the control period for D4 to D7 civil servants would survive legal scrutiny, while the other counsel considers that the recommended extensions of the control period would be vulnerable to legal challenge if they were implemented.

23. We believe the two Committees had thought that since the control period restriction entailed no more than a process of applying for approval to undertake outside work (i.e. the “consent proviso”) instead of an absolute work prohibition, and since an application would be considered on its own merits, there should be no legal difficulty with their recommendations to lengthen the control period. We agree the consent proviso is a relevant factor when assessing the reasonableness of the control period restriction. However, as advised by counsel, the Administration still has to come up with cogent and specific justifications for any lengthening of the existing control period restriction it considers appropriate. Like the two Committees, we can only come up with the generalised notion of “public concern” as a possible justification, bearing in mind that the current control period restriction imposed on directorate civil servants is already among the longest in the regimes of the jurisdictions studied. We have grave concern on whether the Administration could withstand a legal challenge on the recommendations to extend the control period should it decide to adopt them.

24. Legal consideration aside, we do not think the recommendations would resolve the “public concern” issue once and for all, as there may still be cases in which a former directorate civil servant whose work after the prescribed control period (whatever duration it may be) is viewed with suspicion or as a form of “deferred reward” by some parts of the community. We are also concerned that adoption of the recommendations would impact negatively on the attractiveness of the Civil Service as a career for quality individuals.

25. For the considerations set out above, we do not propose to accept the recommendations to lengthen the existing control periods for the more senior directorate civil servants.

(c) Information to be Provided by Applicants

Review Committee:

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.

Select Committee:

Recommendation 8 – The Government should consider revising the application procedure to clearly reflect that before submitting an application to Civil Service Bureau (“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 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 require an applicant to provide any other information pertaining to his prospective employer and proposed employment during his government service.

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.

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.

26. Some respondents consider language such as “*any previous dealings that were connected with his prospective employer and other companies within the same group as the prospective employer*” (see recommendation 19(d) of the SC) to be too broad and vague, and very difficult for an applicant to comply with. Some have raised practical difficulties with some of the recommendations (e.g. Recommendation 14 of the SC).

27. We see the merit of requiring applicants to provide material and relevant information to the best of their knowledge, including their own assessment of their applications against the assessment criteria; but not to the extent of subjecting them to undue hardship and allowing them access to government papers (as they will have already ceased active service). Accordingly, we propose to accept the thrust of the above recommendations and refine them to take into account practical considerations.

(d) Assessment by the Administration

Review Committee:

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.*

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 the ACPE again if an applicant seeks a review of the decision.*

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.*

Select Committee:

Recommendation 4 – *In processing applications from directorate civil servants at 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 application from D4 to D8 officers, the Government should consider taking their last six years of active government service as the assessment period.*

Recommendation 7 – CSB should provide clear guidelines to officials concerned and the 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.

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

- (a) devising a set of standardised 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.

Recommendation 16 – The assessing parties should thoroughly and proactively vet the information provided by the applicants, ...

28. We propose to accept the gist of the above recommendations, which will help to improve the operation of the Control Regime. Noting that some respondents support setting a performance pledge on the processing time of applications and notifying applicants of the review/appeal channel, we propose to lay down a practicable performance pledge.

(e) Role, Composition, Mode of Operation of the ACPE

Review Committee:

Recommendation 10 – The ACPE should retain its advisory role (with the Honourable Audrey Eu registering the view 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 – Its membership should be expanded to nine (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, former or serving members of the Executive Council, the Legislative Council and the District Councils.

Recommendation 12 – The 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 – The 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 the ACPE should be independent of CSB. 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.

Select Committee:

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

Recommendation 22 – The 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 the ACPE, including giving consideration to the following measures: expanding the composition of the ACPE, making it a practice for SCS to attend the meetings of the ACPE in keeping with the importance the Government attaches to the ACPE, reviewing the relevant guidelines on declaration of interests on a regular basis, and enhancing the transparency of the ACPE, such as having the annual report on its work laid on the Table of LegCo.

29. The ACPE currently comprises a chairman and four members. Its terms of reference are to (a) advise the Government on the principles and the criteria to be adopted in formulating policy and arrangements to control post-service employment; (b) consider and advise on all applications to take up post-service employment from directorate civil servants; and (c) consider and advise on other applications which may be referred by SCS. We have reviewed the advisory role and functions of the ACPE and considered they remain valid. We further note that the ACPE has been holding meetings to discuss applications as necessary. For example, it has held 14 meetings since January 2009 to consider 32 applications.

30. Some respondents question the merit of specifying the categories of candidates for appointment to the ACPE; some do not support the secretariat of the ACPE should be independent of the CSB; and some have reservation on the ACPE inviting outside experts to assist in the consideration of individual applications on a need basis.

31. We agree that the importance, transparency and independence of the ACPE should be enhanced through, for example, expanding its membership, tabling its annual report in LegCo, and supporting its work by a secretariat separate from the CSB. Accordingly, we propose to accept the gist of the above recommendations on these aspects, save for SCS attending the ACPE meetings as this could be misinterpreted as the authority exerting pressure on the ACPE and consequentially compromising its independence. We propose to place the secretariat function of the ACPE under the Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service ("JSSCS"), which is independent from the CSB.

(f) Enforcement, Disclosure and Public Monitoring

Review Committee:

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 (e.g. if one of the restrictions imposed is that the applicant is prohibited from involving himself in the bidding of government projects), 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.*

Recommendation 21 – *The public disclosure arrangement should be extended to cover junior directorate civil servants at D1 to D3 (or equivalent) as well.*

Recommendation 22 – *The ACPE's advice on every approved and taken up post-service outside work should be disclosed on the public register.*

Recommendation 23 – *More information should be included in the ACPE's annual report, including but not limited to the categorisation of employers of approved and taken up post-service outside work, the cases on the public register on which the ACPE's advice and the final decision of the authority differs, and the guidelines on the mode of operation of the ACPE.*

Select Committee:

Recommendation 16 – *...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.*

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.*

32. Respondents generally accept the above recommendations concerning imposition and enforcement of work restrictions. Some respondents consider the existing disclosure arrangement adequate and should not be expanded. Some also object to putting information on approved and taken-up post-service outside work on the Government website. DoJ advises that those recommendations relating to disclosure of information will not breach the PD(P)O, provided the information to be disclosed is

rationality connected with and is no more than necessary to pursue the policy objective of the Control Regime, and provided an applicant is advised clearly that certain information collected from him will be disclosed to certain classes of persons for specified purposes.

33. We propose to accept the recommendations above in the interest of improved enforcement, greater transparency and public monitoring, which will enhance the creditability of the Control Regime.

(g) Others

Review Committee:

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.*

Recommendation 19 – *The Administration should conduct an “exit interview” with every departing directorate civil servant, and devise guidelines on the matters to be covered.*

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 organisations should be discontinued (with the Honourable Audrey Eu and the Honourable Albert Ho registering the view that notwithstanding the anomalies under the existing arrangement, 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 organisations).*

Select Committee:

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”.*

34. Respondents unanimously support the discontinuation of the pension suspension arrangement for pensioners in employment with the gazetted organisations. Many consider the discontinuation should also apply to pensioners employed by the Government. They are of the view that pension is deferred pay earned through their past services and should not be affected by the jobs they take up after retirement.

35. We agree generally with the majority views of the RC regarding the anomalies of the existing arrangements relating to pension suspension. We accept there are no reasonable and objective criteria to explain why the 16

subvented organisations¹⁸ – out of hundreds of subvented entities – have been determined to be “public service” and gazetted for the purpose of pension suspension under the pension legislations¹⁹. On the broader question of how the discretionary power to suspend pension benefits should be exercised, we accept that pension is deferred pay earned through past services rendered to the Government; and it is not equitable or logical that the continued payment of monthly pensions to pensioners should be determined by the identity of their employers after they have retired from the Civil Service. We note that the pension suspension arrangement cannot be applied to civil servants employed on Civil Service Provident Fund Scheme terms. For these reasons, we propose to accept the recommendation to discontinue the existing pension suspension policy for pensioners (including former directorate and non-directorate civil servants) employed by the 16 gazetted subvented organisations as well as pensioners who retired upon reaching the applicable normal or prescribed retirement ages under the relevant pension legislation and are re-employed by the Government. For the former group, we will implement the recommendation by de-gazetting the 16 subvented organisations. We will continue to apply the pension suspension arrangement to pensioners who retired before reaching the applicable normal or prescribed retirement ages under the law and are re-employed by the Government in order not to inadvertently induce serving pensionable civil servants to opt for early retirement.

36. We agree it is vitally important to instil and entrench the values of honesty, integrity and avoidance of conflict of interest in all serving civil servants and to impress upon them that such values should continue to be upheld after their departure from the Government. Towards this end, we propose to accept the above recommendations on this aspect.

¹⁸ The 16 gazetted subvented organisations are: Hospital Authority, City University of Hong Kong, Hong Kong Baptist University, Hong Kong Polytechnic University, Lingnan University, Chinese University of Hong Kong, Hong Kong University of Science and Technology, University of Hong Kong, Vocational Training Council, Hong Kong Housing Authority, Hong Kong Monetary Authority, Hong Kong Institute of Education, Legislative Council Commission, Equal Opportunities Commission, Office of the Privacy Commissioner for Personal Data, and Office of The Ombudsman.

¹⁹ The two pension legislations are Pensions Ordinance (Cap.89) and Pension Benefits Ordinance (Cap.99). Section 11 of the Pensions Ordinance states “*If a person to whom a pension has been granted under this Ordinance is re-appointed to the public service, or appointed to service in a subvented organisation which is for the purposes of this section determined to be public service by the Chief Executive by notice in the Gazette, payment of the pension may, with the person’s consent, be suspended during the period of his service in the public service or the organisation, as the case may be.*” Section 26(1) of the Pension Benefits Ordinance states “*If an officer who is eligible for a pension or to whom a pension has been granted is re-appointed to the public service, or appointed to service in any subvented organisation which is determined to be public service by the Chief Executive by notice in the Gazette, the payment of the pension may be suspended during the period of his service after his re-appointment or appointment, as the case may be.*”

(V) Effective Date

37. To allow time for preparation, we propose to apply the improvement measures (other than those relating to pension suspension) to directorate civil servants on pensionable or new permanent terms and will cease active service on or after 1 September 2011, or those on agreement terms and will enter into new or renewal agreements on or after 1 September 2011. We do not propose to apply these measures to former directorate civil servants who have already left the Government, or those on final leave, or those employed on agreement terms entered into prior to 1 September 2011, as retrospective application could be challenged on the grounds of denial of legitimate expectations or acting unreasonably.

38. We also propose 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.

IMPLICATIONS OF THE PROPOSAL

39. The proposal is in conformity with those provisions of the Basic Law carrying no human rights implications. The proposal has no economic, productivity, environmental or sustainability implications. It may have some negative impact on the attractiveness of the Civil Service as a career and on the morale and commitment of directorate civil servants. Some additional staffing resources may be required for placing the secretariat function of the ACPE under the JSSCS as proposed in paragraph 31 above. If necessary, we will seek the additional resources required in accordance with the established mechanism.

PUBLIC CONSULTATION

40. The RC had conducted a two-month public consultation in mid-February 2009 and taken into account the views gathered when drawing up its recommendations. We conducted a two-month consultation in July 2009 with relevant stakeholders on the RC recommendations. We also conducted another one-month consultation in mid-December 2010 with relevant stakeholders on the SC recommendations.

PUBLICITY

41. We will brief the LegCo Panel on Public Service. The ACPE, the PSC, all bureaux and departments, the staff sides of the Central Staff Consultative Councils and all serving directorate civil servants will be notified of the improvement measures. Media briefings will be held and a spokesman will be available to answer media enquiries.

ENQUIRIES

42. Any enquiries on this brief may be addressed to Miss Vivian Ko, Administrative Assistant to Secretary for the Civil Service at 2810 2358.

Civil Service Bureau
22 July 2011

Improvement Measures Relating to the Control Regime on Post-Service Outside Work by Directorate Civil Servants

Existing Measures	Improvement Measures
(I) Underlying principles	
<p>1. Protection of the public interest and protection of an individual's right are the two underlying principles of the control regime on post-service outside work by directorate civil servants.</p>	<p>1. Protection of the public interest (namely public trust in the Government, good governance, and integrity and impartiality of the Civil Service) and protection of an individual's right will be the underlying principles of the control regime. Protection of the public interest will only take precedence over protection of an individual's right, where there is compelling reason justifying so doing in a particular case.</p>
(II) Policy objective	
<p>1. The policy objective of the control regime is to ensure that directorate civil servants on final leave or who have left the Government will not take up any work outside the Government which may constitute real or potential conflict of interest with their former government duties or cause negative public perception embarrassing the Government and undermining the image of the Civil Service, without at the same time unduly restricting the said individuals' right to pursue employment or other work after ceasing government service.</p>	<p>1. The policy objective will be to -</p> <ul style="list-style-type: none"> (a) ensure that directorate civil servants on final leave or who have left the Government will not take up any work which may - <ul style="list-style-type: none"> (i) constitute real or potential conflict of interest with their former government duties, or (ii) cause well-founded negative public perception embarrassing the Government and undermining the image of the Civil Service, or give rise to reasonable apprehension of deferred reward or benefit to a fair-minded and informed observer after having

	<p>considered the relevant facts;</p> <p>(b) ensure at the same time that the said individuals' right to pursue employment or other work after ceasing government service will not be unduly restricted; and</p> <p>(c) ensure that the attractiveness of the Civil Service as a career will not be adversely affected and that limited human resources will be put to good use.</p> <p>2. The above policy objective will be stated upfront on the application form to draw the attention of applicants.</p>
<p>(III) Final leave period (leave taken between cessation of active duty and formal departure from the Civil Service)</p>	
<p>1. All directorate civil servants must apply for prior permission if they wish to take up outside work (other than work for which the authority has already given blanket prior permission) during their final leave.</p> <p>2. Applications for work of a commercial nature or with commercial entities during the final leave period will not normally be approved unless there are special considerations, and provided the work would not give rise to conflict of interest or negative public perception.</p>	<p>1-2. Same as Section (III) items 1-2 under Existing Measures.</p>
<p>(IV) Minimum sanitisation period (counting from cessation of active duty)</p>	
<p>1. All directorate civil servants must apply for prior permission if they wish to take up outside work (other than work for which</p>	<p>1-4. Same as Section (IV) items 1-4 under Existing Measures.</p>

<p>the authority has already given blanket prior permission) during the prescribed minimum sanitisation period applicable to them.</p> <p>2. The minimum sanitisation period for directorate civil servants retired or retiring on pensionable or new permanent terms –</p> <p>D4 or above (or equivalent) – 12 months;</p> <p>Others – 6 months.</p> <p>3. There is no prescribed minimum sanitisation period for directorate civil servants leaving the Civil Service on grounds other than retirement (e.g. agreement civil servants and resignees). Each case will be considered on its own merits.</p> <p>4. For outside work of a commercial nature, the minimum sanitisation 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>(V) Control period (counting from formal departure from the Civil Service)</p>	
<p>1. The control period for directorate civil servants who left the Government on retirement ground is –</p> <p>D8 or equivalent – 3 years;</p> <p>Others – 2 years.</p> <p>2. The control period for directorate civil servants who left the Service on grounds</p>	<p>1. Same as Section (V) items 1-3 under Existing Measures.</p>

<p>other than retirement after six or more years of continuous service is –</p> <p>D8 or equivalent – 3 years;</p> <p>Others – 2 years.</p> <p>3. The control period for directorate civil servants who left the Service on grounds other than retirement after less than six years of continuous service is –</p> <p>D8 or equivalent – 1.5 years;</p> <p>Others – 1 year.</p>	
<p>(VI) Assessment criteria</p>	
<p>1. The key factors of consideration are as set out in the policy objective under Section (II) of Existing Measures.</p> <p>2. The specific considerations of an application include –</p> <p>(a) whether the applicant was involved in the formulation of any policy or decisions, the effects of which directly or specifically benefited or could directly or specifically benefit his own business or his prospective employer;</p> <p>(b) whether the applicant or his 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>(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 will be as set out in the policy objective under Section (II) of Proposed Improvement Measures.</p> <p>2. The specific considerations will include –</p> <p>(a) - (e) same as Section (VI) items 2(a)-(e) under Existing Measures;</p> <p>(f) whether a fair-minded and informed observer, having considered the relevant facts, would conclude that there is a reasonable apprehension of deferred reward or benefit; and</p> <p>(g) whether any aspects of the proposed work would cause well-founded negative public perception embarrassing the Government and undermining the image of the Civil Service.</p> <p>3. The above assessment criteria will be stated upfront on the application form to enable an</p>

<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>applicant to know clearly the factors that will be taken into account in the assessment process.</p> <p>4. The Administration will advise bureaux/departments of the good practices for assessing applications, including how assessment should be made, against the specific considerations listed above.</p> <p>5. All applications from D4 to D8 (or equivalent) civil servants will be assessed with reference to the applicants' last six years of active service, while those from D1 to D3 (or equivalent) will be assessed with reference to the applicants' last three years of service.</p>
<p>(VII) Information provided by applicants</p>	
<p>1. An applicant is required to provide the following information in the application form –</p> <p>(a) the parent company and subsidiaries of the prospective employer;</p> <p>(b) confirm if he will be involved in the business of the parent company and subsidiaries of the prospective employer;</p>	<p>1. An applicant will be required to provide the following information in the application form –</p> <p>(a) irrespective of whether or not he will be involved in the business of the parent, subsidiaries, associates or jointly controlled entities¹ of the prospective employer, his material past contractual, legal, official and other contacts/dealings (if any) with these entities, to the best of his knowledge, during his last</p>

¹ Reference may be made to the Hong Kong Accounting Standard issued by the Hong Kong Institute of Certified Public Accountants for the definitions of subsidiaries, associates and jointly controlled entities. According to the present definitions, a subsidiary is an entity, including an unincorporated entity such as a partnership, which is controlled by another entity (known as the parent). An associate is an entity, including an unincorporated entity such as a partnership, over which the investor has significant influence and which is neither a subsidiary nor an interest in a joint venture. A jointly controlled entity is a joint venture which involves the establishment of a corporation, partnership or other entity in which each venturer has an interest. The entity operates in the same way as other entities, except that a contractual arrangement between the venturers establishes joint control over the economic activity of the entity.

<p>(c) provide relevant information on the basis of his duties during the last three years of government service. If the applicant will not be involved in the business of the parent company and subsidiaries of the prospective employer, his information will only be confined to the prospective employer.</p>	<p>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 at D4 or above (or equivalent);</p> <p>(b) any other information (including his own view on whether or not there is any conflict of interest) which he considers relevant to the assessment of his application;</p> <p>(c) his evaluation of his application against the assessment criteria in a frank and honest manner; and</p> <p>(d) details on how he has acquired the work under application, including the name (if applicable) of the introducer and their relationship.</p> <p>2. Bureaux/departments will as far as practicable render assistance to an applicant in providing information relating to his past government service.</p>
<p>(VIII) Advisory Committee on Post-service Employment (the “ACPE”)</p>	
<p>1. The ACPE advises the decision authority on every post-service outside work application received from directorate civil servants.</p> <p>2. Appointment of the Chairman and members of the ACPE is the prerogative of the Chief Executive (CE).</p> <p>3. All appointments are on <i>ad personam</i> basis.</p> <p>4. To maintain public confidence in the integrity of the ACPE as well as the impartiality of its</p>	<p>1-5. Same as Section (VIII) items 1-5 under Existing Measures.</p> <p>6. The ACPE will issue annual reports on its work to the CE. The annual reports will be tabled in the Legislative Council (LegCo), distributed to the LegCo library and uploaded to the government website.</p> <p>7. Without prejudice to the CE’s prerogative, the membership of the ACPE will be expanded and will include suitable persons from the academia, Civil Service groups, former directorate civil servants, persons from</p>

<p>advice, all members of the ACPE (including the Chairman) are required to disclose their general pecuniary and other interests on appointment and annually thereafter, in addition to reporting conflicts of interests as and when they arise.</p> <p>5. The guidelines for declaration of conflict of interest are reviewed regularly.</p> <p>6. The ACPE issues annual reports on its work to the CE. The annual reports are distributed to the Legislative Council (LegCo) Panel on Public Service and the LegCo library and uploaded to the Civil Service Bureau (CSB) website.</p> <p>7. The ACPE comprises a Chairman and four Members.</p> <p>8. The ACPE mainly conducts its business through circulation of paper. Meetings are convened when necessary to discuss applications.</p> <p>9. The secretariat support of the ACPE is provided by CSB.</p>	<p>professional fields and/or the business sector, former or serving members of the Executive Council, the LegCo and the District Councils.</p> <p>8. The ACPE will be invited to draw up guidelines on its mode of operation and make them known to the public and applicants.</p> <p>9. The ACPE will convene meetings to discuss applications on a need basis.</p> <p>10. The ACPE will invite outside experts to give advice on questions that members have in the course of considering applications. It will put in place suitable arrangements to ensure the fair and impartial selection of outside experts, the safeguarding of applicants' personal data and other sensitive information, and the protection of confidentiality of applications and discussions. Where an outside expert has given advice on an application, the ACPE will state so in its advice to the decision authority.</p> <p>11. The secretariat support of the ACPE will be provided by the Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service.</p>
<p>(IX) Processing time</p>	
<p>1. Applicants are advised to submit their application at least one month before the commencement date of the proposed work.</p>	<p>1. The Administration will lay down two performance pledges: one for processing applications for employment with non-commercial entities and another for processing applications for employment with commercial</p>

	organisations.
(X) Enforcement	
<p>1. Standard work restrictions are imposed on all approved cases of outside work. An applicant whose work applications has been approved shall not –</p> <p>(a) be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises;</p> <p>(b) undertake, or represent any person in, any work including any litigation or lobbying activities that are connected in any way with –</p> <p>(i) the formulation of any policy or decision;</p> <p>(ii) sensitive information;</p> <p>(iii) contractual or legal dealings;</p> <p>(iv) assignments or projects; and/or</p> <p>(v) enforcement or regulatory duties, in which he had been involved or to which he had access during his last three years of government service; or</p> <p>(c) engage in any activities which would cause embarrassment to the Government or bring disgrace to the Civil Service.</p> <p>2. Further specific restrictions on scope of work may be imposed on a case-by-case basis.</p> <p>3. Applicants are required to notify their prospective employers of the terms of approval.</p>	<p>1. The current arrangement of imposing standard work restrictions and, where necessary, additional application-specific work restrictions (i.e. Section (X) items 1 and 2 under Existing Measures) will continue.</p> <p>2. The decision authority will directly inform the prospective employer of the work restrictions imposed on the applicant concerned and of the requirement for the applicant to notify and to seek prior approval from the decision authority if there is any material change to the work.</p> <p>3. If the enforcement of work restrictions imposed on an applicant may involve certain bureaux/departments, the decision authority will also inform them of the imposed work restrictions, as appropriate.</p> <p>4. An applicant who has taken up the applied-for and approved post-service outside work will, as part of the approval conditions, provide the decision authority with a copy of the signed employment agreement or appointment letter within 30 days of signature or issue. He will also seek the prior approval of the decision authority for any material changes made later and inform the decision authority of cessation of work.</p>

<p>4. Applicants have to notify CSB of any material change to their approved outside work, including cessation of work.</p>	
<p>(XI) Coverage of public register</p>	
<p>1. The gist of all approved and taken-up outside work by directorate civil servants at D4 or above (or equivalent) is kept on a register, until the expiry of the concerned individuals' control period or after they have notified CSB of the cessation of the outside work, whichever happens earlier. The register is available for public inspection on request. The advice of the ACPE on each post-service outside work application is not included on the public register.</p> <p>2. Information on approved and taken-up outside work by directorate civil servants at D3 or below (or equivalent) may be disclosed on a case-by-case basis where there is public concern.</p>	<p>1. Same as for Section (XI) item 1 under Existing Measures, except the advice of the ACPE will also be included in the register and the register will also be put on the Government website.</p> <p>2. The above arrangement will also be applied to directorate civil servants at D1 to D3 (or equivalent).</p>
<p>(XII) Review/appeal channels</p>	
<p>1. There is no established review/appeal channel for the applicant.</p> <p>2. If an applicant is aggrieved by the decision of the Administration on his application, he may seek a review from the decision maker by providing additional information and/or justification, or make a representation direct to the CE under section 20 of the Public Service (Administration) Order.</p>	<p>1. The following review/appeal channel will be established –</p> <p>(a) an applicant aggrieved by the decision to ask the decision authority for a review of the decision;</p> <p>(b) the decision authority to seek the advice from the ACPE before making a decision on the review;</p> <p>(c) the decision authority may, where appropriate, invite fresh assessments from the relevant parties within the Administration before seeking</p>

	<p>the advice of the ACPE; and</p> <p>(d) an applicant still aggrieved by the decision of the authority upon review may appeal to the CE whose decision will be final.</p>
(XIII) Provision of guidelines	
<ol style="list-style-type: none"> 1. The guidelines governing the taking up of post-service outside work are set out in the CSB Circular No. 10/2005 and the Civil Service Regulation 397. 2. All bureaux/departments are provided with these guidelines. 3. All directorate civil servants are provided with copies before leaving the Civil Service. 4. Members of the ACPE are provided with copies on first appointment. 	<ol style="list-style-type: none"> 1. The Administration will issue revised guidelines prior to the implementation of the improvement measures on 1 September 2011. 2. Section (XIII) items 2-4 under Existing Measures will continue to apply.
(XIV) Integrity of the Civil Service	
<ol style="list-style-type: none"> 1. The Administration has issued detailed circulars/guidelines to remind all civil servants of the importance of avoiding a conflict between their official duties and private interest, including any conflict of interest that may arise between a civil servant's loyalty to the Government and that to any person or organisation he intends to work for after leaving the Civil Service. In addition, the Administration and the Independent Commission Against Corruption work closely to promote integrity in the Civil Service through prevention, education and sanction. 2. In the Civil Servants' Guide to 	<ol style="list-style-type: none"> 1. The Administration will continue to promote integrity in the Civil Service through training courses, seminars, workshops, etc. 2. The good conduct expected of civil servants in the context of post-service outside work will be specified in a CSB Circular.

<p>Good Practices, it is stated that retired civil servants should act with good sense and propriety in pursuing post-service employment or business and avoid engaging themselves in activities which could be construed as being in conflict with their previous duties in the Government, or might bring the Civil Service into disrepute, or expose them or the Government to public controversy.</p>	
<p>(XV) Exit interview</p>	
<p>1. There is no standing practice for the management to conduct exit interview with every departing directorate civil servant.</p>	<p>1. Heads of Department/Grade will conduct exit interview with every departing directorate civil servant. At the exit interview, the departing directorate civil servant will be reminded of the need to observe the Control Regime and the importance of avoiding conflict of interest in the pursuit of post-service outside work and of providing sufficient and accurate information to the decision authority when applying for permission to take up post-service work.</p>
<p>(XVI) Pension Suspension</p>	
<p>1. Pension suspension is applied to all pensioners (including former directorate and non-directorate civil servants) during their re-employment by the Government or employment with the 16 gazetted subvented organisations, except those doing unpaid work, or paid part-time work, or paid work for a short duration and those taking up appointments as politically appointed officials. Part-time work is defined as no more than 24 hours per week, and this limit serves as an</p>	<p>1. The 16 gazetted subvented organisations will be de-gazetted; and the existing pension suspension policy will be discontinued for pensioners employed by subvented organisations.</p> <p>2. The existing pension suspension policy will be discontinued for pensioners upon reaching the normal or prescribed retirement ages specified in the pension legislations and are re-employed by the Government.</p>

<p>overall ceiling if two or more part-time employments are carried out concurrently. Short-term work is defined as a full-time job for no more than three months.</p>	<p>3. The existing pension suspension policy will continue to apply to pensioners who retire and are re-employed by the Government before reaching their normal or prescribed retirement ages specified in the pension legislations.</p>
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EXECUTIVE SUMMARY

INTRODUCTION

In response to public concern over post-service outside work of directorate civil servants, the Chief Executive appointed on 30 September 2008 an 11-member strong independent Committee on Review of Post-service Outside Work for Directorate Civil Servants (hereafter referred to as ‘the Review Committee’) to review the existing policy and arrangements and to submit its findings and recommendations to the Chief Executive in mid-2009. The membership and terms of reference of the Review Committee are set out in Chapter 1.

2. The Review Committee divided its work into three phases and held a total of 24 meetings. It examined the current policy and arrangements governing post-service outside work for directorate civil servants (hereafter referred to as ‘the Control Regime’) in detail. An overview of the Control Regime is provided in Chapter 2. It also studied the practices in seven overseas jurisdictions (namely Australia, Canada, France, New Zealand, Singapore, the United Kingdom and the United States of America). A summary of the arrangements in these countries are set out in Chapter 3.

3. The Review Committee issued a consultation document and launched a two-month public consultation in mid-February 2009. It received views expressed by different sectors of the community through various briefings/forums and written submissions. All the 77 written submissions received (except those which the respondents had asked for non-disclosure) have been uploaded onto the Review Committee’s website (www.dcspostservice-review.org.hk), hardcopies of which are available upon request. The Review Committee would like to thank all the individuals and organisations for participating in the various briefings and forums, and for their valuable views. A summary of the public response is set out in Chapter 4.

FINDINGS AND RECOMMENDATIONS

4. The Review Committee examined in detail the Control Regime and deliberated on the response made by the public and stakeholders. It also made reference to the overseas practices. It made a total of 23 recommendations, covering the following different aspects of the Control Regime –

- (a) underlying principles (Recommendation 1);
- (b) policy objective (Recommendation 2);
- (c) design and operation (Recommendations 3 to 20); and
- (d) public monitoring (Recommendations 21 to 23).

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.

5. The Review Committee believes that both the protection of the public interest and protection of an individual's right, the two current underlying principles of the Control Regime, are important. On the one hand, the Government has the duty to uphold the public interest. On the other hand, an individual's right, in particular the right to work and freedom of choice of occupation, is a fundamental right enshrined in the Basic Law and an international covenant and a labour convention applicable to Hong Kong. This right, however, should not be taken as absolute.

6. Civil servants are employed by the Government to serve the public. Thus for the protection of the public interest, the imposition of reasonable restrictions on a civil servant's right to work after he leaves the civil service is justified. The Review Committee recommends that

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.

7. The Review Committee is keenly aware of public concern over the possibility of a directorate civil servant making use of his public office to benefit specific entities/individuals while in government service in return for, or in the hope of, post-service employment, namely the so-called 'deferred reward'. While actual 'deferred reward' should be tackled by the existing law (such as the Prevention of Bribery Ordinance), perception or mere suspicion of 'deferred reward' is a different matter altogether.

8. The Review Committee notes that the current policy objective has not made specific reference to 'avoiding suspicion or perception of deferred reward', and that Canada and the United Kingdom (UK) have specifically referred to such concerns in the policy objective of their control regimes of post-service employment for senior civil servants. The Review Committee recommends that the policy objective should be expanded to include such reference. This would underline the importance of taking these factors into account by both –

- (a) directorate civil servants when they submit applications for post-service outside work; and
- (b) the internal and external assessment parties when such applications are examined.

It would also mitigate, although not eliminate, public concern on this issue.

9. Furthermore, the Review Committee considers that experience and expertise of former directorate civil servants should be usefully harnessed to the overall benefit of the Hong Kong community. It also notes that the benefits of former civil servants' taking up post-service outside work are explicitly recognised in the post-service employment control regimes for civil servants in Australia and New Zealand. It considers that the policy objective should be expanded to include an explicit reference to putting limited human resources to good use.

10. Separately, the Review Committee considers that while it is important for the Government to be able to recruit and retain quality individuals in the civil service for the good governance of Hong Kong, there are other factors besides the stringency of the Control Regime which may affect the attractiveness of the civil service as a career. As it is difficult to ascertain the relative importance of all the relevant factors, the Review Committee therefore considers that 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.

11. Public views were received on two forms of lifetime ban on paid post-service employment. One form was a lifetime total ban on any

paid employment, in particular for retired directorate civil servants in receipt of monthly pension payments. The other form was a lifetime specific ban targeting particular types of paid employment.

12. The Review Committee does not recommend imposing a lifetime total ban based on the following considerations –

- (a) it violates an individual's right to work and freedom of choice of occupation as enshrined in the Basic Law and an international covenant and a labour convention applicable to Hong Kong;
- (b) retirement benefits are earned by a directorate civil servant for his past service to the Government. They are not a form of compensation for deprivation of his right to engage in paid work for life after leaving the Government;
- (c) it is in the best interest of the community for limited human resources to be put to good use; and
- (d) no overseas jurisdiction studied imposes a lifetime total ban on its former senior civil servants.

13. There were views supporting a lifetime specific ban targeting particular types of paid employment, e.g. post-service work in the same field as that undertaken by a former directorate civil servant while in government service. Given the difficulty in delineating the exact scope of such a draconian measure (see paragraphs 16 to 19 below), the Review Committee (except the Honourable Albert Ho) does not recommend imposing a lifetime specific ban on paid post-service employment. The Honourable Albert Ho recognises the difficulty but considers that 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 sanitisation period.

14. The minimum sanitisation period (namely 6 or 12 months depending on the rank of directorate civil servants) is a specified period

of restriction counting from the date of cessation of active duty of a directorate civil servant. During this period, permission will normally not be given to a directorate civil servant to take up post-service outside work with a commercial organisation. The Review Committee notes that among the seven overseas jurisdictions studied, only the UK has a similar blanket prohibition of post-service outside work, which covers a period of three months and is only applicable to very senior civil servants. The current length of the minimum sanitisation period in the Hong Kong's Control Regime is the longest compared with all the overseas control regimes studied. The decision authority may also lengthen or shorten the minimum sanitisation period in respect of an application for post-service outside work if needed.

15. The Review Committee considers that further lengthening of the minimum sanitisation period across-the-board may contravene one of the underlying principles of the Control Regime, namely protection of an individual's right to work. In addition, it would be unreasonable to prohibit former directorate civil servants who have resigned from the Government or who have completed termed contracts from taking up outside work for a protracted period of time after they have left government service.

<p><u>Recommendation 5</u> – The length of the control period should not be determined by specified fields of work during government service.</p>
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16. There were views that directorate civil servants working in certain fields of work during government service, such as property-related or land-related matters, were more prone to conflict of interest and suspicion or perception of 'deferred reward' in their post-service outside work. Hence, a longer prohibition (but not lifetime ban) or control period (see paragraph 20 below) should be imposed on such directorate civil servants.

17. The Review Committee does not recommend imposing control by specified fields of government work having regard to the following considerations –

- (a) it is difficult to devise a set of objective criteria for the selection of specified fields of government work;

- (b) it may not be fair or reasonable to subject former directorate civil servants who have worked in a specified field while in government service to more stringent post-service outside work control, irrespective of the actual extent of their involvement in the specified field;
- (c) it may engender difficulties in posting civil servants to serve in the specified fields of work; and
- (d) it is not in line with overseas practices.

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.

18. There were views that the risk of conflict of interest between former government duties and post-service outside work would be greater if a former directorate civil servant took up post-service employment in the same field as his past government duties. This was because such a civil servant was more likely to have had past dealings with the prospective employer or its competitors, and/or access to industry-specific information, during his past government service. Hence, there were calls for imposing a longer control period for post-service outside work in the same field as a directorate civil servant’s past government duties.

19. The Review Committee does not recommend imposing a longer control period for post-service outside work in the same field as past government duties having regard to the following considerations –

- (a) it will have the greatest negative impact on directorate civil servants in professional grades (such as doctors and engineers) and those working in dedicated single fields of work for their entire civil service career (such as education officers and police officers) since by qualification and experience, they are likely to wish to take up post-service employment in their respective professions or fields;
- (b) it will also adversely affect generalist directorate civil servants. These civil servants will be prohibited from

taking up post-service outside work in more than one field if they have worked in several bureaux/departments during their last few years of government service;

- (c) it is not straight-forward to delineate what constitutes ‘work in the same field’;
- (d) the work restrictions currently imposed on all approved post-service outside work applications (see paragraphs 36 to 37 below) should be able to mitigate the concern over conflict of interest arising from contacts and/or information obtained during past government service; and
- (e) no such restriction exists in any of the overseas jurisdictions studied.

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 (DPS) D1 to D3 (or equivalent) civil servants (i.e. no change to the length of the existing period);
- (b) three years for DPS D4 to D7 (or equivalent) civil servants (i.e. lengthening the existing period by one year); and
- (c) five years for DPS 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 DPS D1 to D3 (or equivalent) civil servants (i.e. lengthening the existing period by one year); and
- (b) five years for DPS D4 to D8 (or equivalent) civil servants (i.e. lengthening the existing period by three years for DPS D4 to D7 (or equivalent) civil servants and by two years for DPS D8 (or equivalent) civil servants).

20. The control period is a specified period of restriction counting from a directorate civil servant’s formal departure from the Government (i.e. on exhaustion of his final leave if any). Under the Control Regime, directorate civil servants are divided into two groups, each of which is

subject to different lengths of control period, namely: two years for Directorate Pay Scale (DPS) D1 to D7 (or equivalent) civil servants who occupy a wide range of posts from chiefs in some professional grades to heads of departments; and three years for DPS D8 (or equivalent) civil servants who are the most senior civil servants and mostly serve as permanent secretaries.

21. The Review Committee considers the requirement for a former directorate civil servant to seek prior permission before taking up post-service outside work during the specified control period and the ability of the decision authority to impose additional work restrictions as necessary when approving an application are two practical and effective tools in the Control Regime. These tools would not cause an individual's right to work to be restricted unreasonably.

22. While Members of the Review Committee have different preferences on the appropriate length of the control period, they believe it is in the best public interest for them to reconcile their different preferences, if possible. With this objective in mind, the Review Committee (except the Honourable Audrey Eu and the Honourable Albert Ho) considers that the control period for directorate civil servants at DPS D1 to D3 (or equivalent) should remain unchanged at two years, as the public is relatively less concerned about the post-service outside work of this group of directorate civil servants given their limited discretionary powers and involvement in policy formulation. It further considers that the control period for the more senior directorate civil servants should be lengthened to a different extent having regard to their level of responsibilities, access to confidential information and influence over policy formulation. Specifically, it considers the control period should be lengthened from two to three years for DPS D4 to D7 (or equivalent) civil servants and from three to five years for DPS D8 (or equivalent) civil servants.

23. The Honourable Audrey Eu and the Honourable Albert Ho consider that to better mitigate public concern, the control period for all directorate civil servants should be lengthened. Specifically, they recommend that the control period should be lengthened from two to three years for DPS D1 to D3 (or equivalent) civil servants, and that for

DPS D4 to D8 (or equivalent) civil servants should be lengthened and standardised at five years (i.e. lengthened from two to five years for DPS D4 to D7 (or equivalent) civil servants, and from three to five years for DPS 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 DPS D1 to D3 (or equivalent), and during his last six years of government service if he is a DPS 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.

24. Currently, an application for post-service outside work is first assessed internally by the relevant parties in the Administration. In making their assessment, these parties will refer to files and records in the concerned bureau(x)/department(s) as well as the information provided by the applicant in his application form.

25. At present, an applicant is required to provide information, in the application form, on his past contractual, legal, official and other contacts/dealings (if any) with the prospective employer as well as its parent or any of its subsidiary companies in his last three years of government service. However, if the applicant will not be involved in

the business of the prospective employer's parent company or any of its subsidiary companies, he is *not* required to provide such information with those entities.

26. The Review Committee believes that the public concern over any impropriety of approved and taken-up post-service outside work could be alleviated if public trust in the assessment process is enhanced. It further believes that the additional information proposed under Recommendation 8 will help provide the assessment parties with the necessary information to properly assess an application.

Recommendation 9 – All applications from DPS D4 to D8 (or equivalent) directorate civil servants should be assessed with reference to the applicants' last six years of active government service.

27. The Review Committee notes that the internal assessment parties may assess an application from a directorate civil servant at DPS D4 to D8 (or equivalent) with reference to his last three or six years of active government service. The Review Committee believes that a uniform period should be set, and that this period should be the last six years of active service.

(c) External Assessment Process

28. Under the Control Regime, an application is put to the Advisory Committee on Post-service Employment of Civil Servants (hereafter referred to as 'the Advisory Committee') for advice before the decision authority (namely the Secretary for the Civil Service) makes the final decision. The Advisory Committee is an independent advisory body appointed by the Chief Executive.

Recommendation 10 – The Advisory Committee 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.

29. The Review Committee (except the Honourable Audrey Eu) considers that post-service outside work control is an integral part of the contractual relation between the Administration as an employer and a directorate civil servant as an employee. The Administration has a duty to determine and enforce this contractual obligation. The Administration should also be held accountable for any challenge, legal or otherwise, against any aspect of the Control Regime and any decision taken by the decision authority. As such, the Advisory Committee should retain its advisory role. 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 the Advisory Committee 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.

30. The Advisory Committee is currently chaired by a serving High Court judge and has five other members coming from different sectors of the community. Its membership size is relatively small compared to similar independent advisory bodies set up in France and the UK.

31. The Review Committee considers that expanding the size of the Advisory Committee and drawing in more members with different backgrounds and expertise would enable the Advisory Committee to offer a broader spectrum of advice and in turn enhance its credibility.

Recommendation 12 – The Advisory Committee 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.

32. The Review Committee notes some respondents proposed that representatives from professional fields relevant to an application should be invited to assess the concerned application on an *ad hoc* basis. It has reservation about such a proposal as it may result in a lack of consistency in assessing applications. It considers that the Advisory Committee should be given the power to invite relevant outside experts to offer views if necessary.

Recommendation 13 – The Advisory Committee 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.

33. Currently, the Advisory Committee processes post-service outside work applications mainly through circulation of discussion papers. The Review Committee notes that more than half of the applications processed in 2006 to 2008 were straight-forward and involved work in non-commercial organisations or subvented educational bodies, and that they might not necessitate discussion through meetings.

34. The Review Committee considers that meetings would facilitate exchange of views and help bring out questions not apparent on papers. Recognising that the Advisory Committee should continue to decide for itself whether or not to meet to discuss a particular application, the Review Committee recommends that the Advisory Committee should draw up guidelines on its mode of operation covering, among other things, the holding of meetings, and should make public such guidelines.

Recommendation 14 – The secretariat of the Advisory Committee 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.

35. The secretariat of the Advisory Committee is currently part of the Civil Service Bureau (CSB). This arrangement may inadvertently undermine the perceived independence of the Advisory Committee. The

Review Committee considers that a secretariat independent of the CSB would help the Advisory Committee better fulfil its independent advisory role. It would also enhance the impartial standing of the Advisory Committee.

(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.

36. At present, the decision authority imposes standard work restrictions on all approved post-service outside work applications and, where necessary, additional application-specific work restrictions on a case-by-case basis. The work restrictions remain in force until the expiry of the relevant control period or cessation of the concerned directorate civil servant's outside work, whichever occurs earlier.

37. The Review Committee notes that the scope of standard work restrictions is quite wide. For example, a directorate civil servant is prohibited from being involved in bidding for any government projects, etc. and from representing his prospective employer or client in any work that is in any way connected with his duties during his last three years of

past government service. It considers that the imposition of work restrictions could help mitigate public concern over perceived or potential conflict of interest and should continue. The measures proposed under Recommendation 15 will help enhance the compliance of work restrictions imposed.

(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 the Advisory Committee again if an applicant seeks a review of the decision.

38. At present, if a former directorate civil servant is aggrieved by the decision of the decision authority on his application for post-service outside work, he can (a) seek a review of the decision by the decision authority by providing additional information and/or justification; and/or (b) make a representation direct to the Chief Executive under section 20 of the Public Service (Administration) Order; and/or (c) make an appeal to the Chief Executive under Article 48(13) of the Basic Law. The Review Committee considers it worthwhile to remind directorate civil servants of such channels.

39. The Review Committee considers that the decision authority should seek the Advisory Committee's advice again on review cases and take into account such advice rendered before making a 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.

40. Some respondents suggested that the decision authority should process an application expeditiously and should put in place a performance pledge on the processing time since a protracted assessment

process might result in a loss of employment opportunity. The Review Committee agrees that it is reasonable to request the Administration to put in place such performance pledge.

(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.

41. The Review Committee notes that it would be difficult to provide explicit and detailed rules governing all kinds of possible conflict of interest situations. A more effective way to avoid or reduce conflict of interest in post-service outside work is enhancing the integrity of the civil service. It notes that the Administration has put in place integrity enhancement initiatives and that avoidance of conflict of interest during government service features prominently in these efforts. It considers equal emphasis should be placed on avoidance of conflict of interest relating to 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.

42. Currently, departing directorate civil servants are given a set of relevant civil service regulations and circulars on the post-service outside work control requirements. The Review Committee considers it a good management practice for the Administration to conduct a face-to-face ‘exit interview’ with a departing directorate civil servant and to remind him of the importance of avoiding conflict of interest in his pursuit of post-service outside work; and of providing sufficient and accurate information to the decision authority when submitting an application for post-service outside work.

(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 organisations should be discontinued (with the Honourable Audrey Eu and the Honourable Albert Ho registering a different view). These two members recognise 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 organisations.

43. Currently, the monthly pension payments of a retired civil servant (directorate or non-directorate) in receipt of pension will be suspended if he takes up full-time paid post-service outside work in the 16 specified subvented organisations. Some respondents supported the continuation of the existing arrangement in order to avoid ‘double pay’ from the public purse. Others considered the existing arrangement could not be justified on equity grounds since it would not be applied to former directorate civil servants employed on agreement terms (who received a lump sum gratuity on completion of an agreement) or on Civil Service Provident Fund terms (who were vested with the Government’s voluntary contribution upon leaving government service). Moreover, pension payments were earned by civil servants employed on pensionable terms for their services rendered during past government service, and should not be taken away on the basis of the identity of their post-service outside work employers.

44. The Review Committee notes that no overseas jurisdictions studied have a similar arrangement in place.

45. The current arrangement has also put the 16 specified subvented organisations in an unfair and disadvantageous position, when compared with other subvented organisations or commercial entities, in terms of attracting retired civil servants on pensionable terms to join them as these individuals may be reluctant to have their monthly pension payments suspended. The Review Committee notes that in general these subvented organisations have well-established recruitment procedures.

It considers that from the public perception angle, retired civil servants joining subvented organisations may be less prone to concern over conflict of interest compared with working for commercial entities.

46. The Review Committee also notes a number of anomalies with the current arrangement –

- (a) there are no obvious objective criteria for selecting a certain subvented organisation for pension suspension purpose;
- (b) a retired civil servant taking up full-time paid work in a separate legal entity set up by any of the 16 specified subvented organisations is not subject to pension suspension; and
- (c) there is a disparity in treatment between retired civil servants on pensionable terms and those on Civil Service Provident Fund terms. While both types of civil servants are appointed on permanent terms and are provided with retirement benefits, retirement benefits of the latter will not be subject to any curtailment or suspension if they take up full-time paid post-service employment in one of the 16 specified subvented organisations.

47. The Review Committee (except for the Honourable Audrey Eu and the Honourable Albert Ho) recommends that the Administration should discontinue the pension suspension arrangement for paid and full-time work in the 16 specified subvented organisations. The Honourable Audrey Eu and the Honourable Albert Ho recognise the anomalies mentioned above, 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 organisations.

IV. Public Monitoring

48. Public scrutiny is an effective tool to guard against any impropriety in post-service outside work. The Review Committee considers that disclosure of information to the public would facilitate

public monitoring and help build public confidence in the Control Regime.

(a) Coverage of Public Register

Recommendation 21 – The public disclosure arrangement should be extended to cover junior directorate civil servants at DPS D1 to D3 (or equivalent) as well.

49. The public register mechanism was introduced in January 2006. A case record on each post-service outside work approved and taken up by a directorate civil servant at DPS D4 or above (or equivalent) is put on the register for public inspection upon request. The Review Committee believes that the public should have an oversight on all approved post-service outside work taken up by all directorate civil servants. An extension of the public register arrangement to junior directorate civil servants should not give rise to concern over infringement of personal data privacy, as former directorate civil servants at DPS D4 or above (or equivalent) have already been subject to the public disclosure arrangement since 2006.

(b) Advisory Committee's Advice

Recommendation 22 – The Advisory Committee's advice on every approved and taken up post-service outside work should be disclosed on the public register.

50. At present, the case record provides some basic information on the post-service outside work approved and taken up (such as the applicant's last civil service post title and major duties of the approved outside work) but does not contain the Advisory Committee's advice on the application. The Review Committee considers that disclosure of such advice on the public register would allow the public and the concerned directorate civil servants to know whether or not the decision authority has accepted the Advisory Committee's advice in full, and would enhance the transparency of the decision-making process.

(c) Advisory Committee's Annual Report

Recommendation 23 – More information should be included in the Advisory Committee's annual report, including but not limited to the categorisation of employers of approved and taken up post-service outside work, the cases on the public register on which the Advisory Committee's advice and the final decision of the authority differs, and the guidelines on the mode of operation of the Advisory Committee.

51. The publication of the Advisory Committee's annual report to the Chief Executive has always been an important component in the overall transparency of the Control Regime. The annual report is sent to the Public Service Panel of the Legislative Council and put on CSB's website. It provides, among others, statistics on the applications processed by the Advisory Committee during the year under reference. The public and directorate civil servants would have a better understanding of the Advisory Committee's work if more information is included in its annual report.

POLITICALLY APPOINTED OFFICIALS

52. In the course of studying the Control Regime, the Review Committee noted that the control arrangements for post-service employment of politically appointed officials were different from those for directorate civil servants. Some Members (Mr Haider Barma, the Honourable Paul Chan, the Honourable Audrey Eu and the Honourable Albert Ho) were concerned that the control arrangements for the former were not as rigorous as those for the latter, and were of the view that it was important for the Administration to consider whether parity or consistency between the two groups of public officers should be introduced. The Review Committee decided not to bring up the matter in its consultation document as it was outside its terms of reference. During the public consultation, it received various views on post-office employment control of politically appointed officials. It feels duty-bound to draw the Chief Executive's attention to the views expressed.

53. The Review Committee has not examined the rationale behind the post-office employment control regime of politically appointed officials because the matter is outside its terms of reference. It is therefore not in a position to provide a considered view on the matter. In view of the importance of the matter and given the public concern, the Review Committee urges the Chief Executive to carry out a separate review.

Executive Summary

Introduction

On 1 August 2008, New World China Land Limited ("NWCL") announced the appointment of Mr LEUNG Chin-man as an Executive Director and Deputy Managing Director of the company with effect from that date. The announcement aroused public controversy as Mr LEUNG 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 was involved in the disposal of the Private Sector Participation Scheme flats in the Hunghom Peninsula development which were sold to the developer 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 the Secretary for the Civil Service ("SCS") giving approval for Mr LEUNG to take up the appointment.

2. Immediately upon commencement of the Fourth Legislative Council ("LegCo") in October 2008, Members took up the matter. On 10 December 2008, LegCo passed a resolution to appoint a select committee to inquire into the post-service work of Mr LEUNG and related matters ("the Resolution"). The Resolution also authorized the Select Committee, in the performance of its duties, to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the attendance of witnesses to give evidence and the production of papers, books, records or documents by witnesses.

3. The terms of reference, membership, areas of study and work plan, practice and procedure of the Select Committee to Inquire into

Matters Relating to the Post-service Work of Mr LEUNG Chin-man ("the Select Committee") are set out in detail in Chapter 1. The Select Committee held nine meetings from 18 December 2008 to 10 March 2009 to undertake preparatory work for the inquiry. A total of 23 public hearings were held between 17 March and 17 November 2009 during which evidence was taken from 24 witnesses attending the hearings. The Select Committee also held 81 meetings to discuss the evidence obtained and deliberate on the report of the Select Committee, and matters relating to the inquiry.

Conclusions of the Select Committee

4. The Select Committee has conducted a thorough inquiry into the post-service employment of Mr LEUNG Chin-man with NWCL and his participation in the Hunghom Peninsula case, the details of which are set out in Chapters 4, 5, 7 and 8. Based on its observations, the Select Committee has come to the following conclusions:

- (1) Mr LEUNG Chin-man was deeply and directly involved in the disposal of the Hunghom Peninsula flats, and assumed a steering and co-ordinating role in the matter.
- (2) The Hunghom Peninsula development was developed by a company owned by a subsidiary of the parent company of NWCL. The business interests of the subsidiaries are inseparable from those of the parent company. There is plainly conflict of interest for Mr LEUNG to take up employment with NWCL. Mr LEUNG's taking up the employment with NWCL was therefore inappropriate.
- (3) In his application to the Civil Service Bureau ("CSB") for approval to take up the employment with NWCL,

Mr LEUNG did not give all information relevant to his application in a frank and honest manner, and thus failed to observe the good practices expected of civil servants when taking up post-service work as set out in the "Civil Servants' Guide to Good Practices". Mr LEUNG's conduct was unbecoming of a former senior official, and was liable to bring the civil service into disrepute.

- (4) A great majority of the officials involved in processing Mr LEUNG's application had adopted a blinkered view in considering the application. They had not fully considered the six assessment criteria set out in CSB Circular No. 10/2005. Their understanding of the assessment criteria differed among themselves. The practices they adopted in processing the application varied, the way they handled the process was careless and perfunctory, and they placed too much dependence on the honour system.

Recommendations of the Select Committee

5. The Select Committee's recommendations on improvements to the control regime governing post-service work of directorate civil servants ("the Control Regime") are highlighted below. A detailed account of the recommendations is set out in Chapter 9.

(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;
- (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 – 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 LegCo.

Pensions Ordinance (Cap. 89)

Section 16

Pension or allowance may be suspended on certain post-retirement employment

(1) The Chief Executive may direct that any pension or allowance granted to a person shall be suspended as from such date as the Chief Executive shall specify if such person has, within 2 years after his retirement and without the prior permission in writing of the Chief Executive-

- (a) entered business on his own account;
- (b) become a partner in a partnership;
- (c) become a director of a company; or
- (d) become an employee,

if the principal part of such business or the business of such partnership or company or of his employment is, in the opinion of the Chief Executive, carried on in Hong Kong, and such direction shall be forthwith notified in writing by the Secretary to the person concerned. (Amended 10 of 2005 s. 194)

(2) The Chief Executive may specify a period of more than 2 years for the purposes of subsection (1) where he thinks fit, and such specification shall be forthwith notified in writing by the Secretary to the person concerned. (Amended 10 of 2005 s. 194)

(3) A person who is aggrieved by any direction under subsection (1) or any specification under subsection (2) may, within 30 days of the notification to him of the direction or specification or such longer period as the Chief Executive may in any particular case permit, petition the Chief Executive against the direction or specification and the Chief Executive may confirm, vary or reverse the direction or specification as he thinks fit.

(4) Where a person whose pension or allowance has been suspended under subsection (1) ceases to be engaged in any of the capacities specified in that subsection, the Chief Executive may, if he is satisfied that the person has so ceased to be engaged, direct that the pension or allowance shall be restored to him with retrospective effect as from the date of cesser of the engagement or any later date as the Chief Executive shall specify, and the pension or allowance shall be restored accordingly.

Pension Benefits Ordinance (Cap. 99)

Section 30

Pension may be suspended on certain post-retirement employment

(1) The Chief Executive may direct that any pension granted to a person shall be suspended as from such date as the Chief Executive shall specify if such person has, within 2 years after his retirement and without the prior permission in writing of the Chief Executive-

- (a) entered business on his own account;
- (b) become a partner in a partnership;
- (c) become a director of a company; or
- (d) become an employee,

if the principal part of such business or the business of such partnership or company or of his employment is, in the opinion of the Chief Executive, carried on in Hong Kong, and such direction shall be forthwith notified in writing by the Secretary for the Civil Service to the person concerned.

(2) The Chief Executive may specify a period of more than 2 years for the purposes of subsection (1) where he thinks fit, and such specification shall be forthwith notified in writing by the Secretary for the Civil Service to the person concerned.

(3) A person who is aggrieved by any direction under subsection (1) or any specification under subsection (2) may, within 30 days of the notification to him of the direction or specification or such longer period as the Chief Executive may in any particular case permit, petition the Chief Executive against the direction or specification and the Chief Executive may confirm, vary or reverse the direction or specification as he thinks fit.

(4) Where a person whose pension has been suspended under subsection (1) ceases to be engaged in any of the capacities specified in that subsection, the Chief Executive may, if he is satisfied that the person has so ceased to be engaged, direct that the pension shall be restored to him with retrospective effect as from the date of cesser of the engagement or any later date as the Chief Executive shall specify, and the pension shall be restored accordingly.