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17 April 2009

The Honourable Ronald Arculli, GBS, JP  
Chairman, Committee on Review of Post-service  
Outside Work for Directorate Civil Servants  
10/F, West Wing  
Central Government Offices  
11 Ice House Street  
Hong Kong

*Dear Ron,*

**Public Consultation on Review of Post-service Outside  
Work for Directorate Civil Servants**

Thank you for your letter of 20 February 2009.


The Commission has studied the consultation document and formulated a Response, as attached. In the deliberation process, two Members of the Commission have declared their respective interests, one as a Member of the Advisory Committee on Post-service Employment of Civil Servants and the other as a Member of your Review Committee. The declarations in question have been properly put on the official record of the Commission.

The Commission's views, as detailed in the Response, are confined to its interest in safeguarding the integrity of the civil service and the attractiveness of civil service jobs. Briefly the Commission supports striking a balance between the two underlying principles behind the existing control regime, viz. protection of the public interest vis-à-vis protection of an individual's right to work. It holds the view that some sensible measures in regulating senior officers' post-retirement employment are necessary, but it cautions against any excessively stringent control regime, which would be at the expense of the optimum

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use of valuable human resources in Hong Kong. The Commission suggests that to address public suspicion or perception of any element of 'deferred reward' for past favour, the former directorate civil servant, in submitting his application for post-service employment, may be required under the current process to make a self- assessment that no real or perceived conflict of interest is involved to the best of his knowledge dating back to a reasonable period.

I hope you will find the Commission's response useful in firming up the recommendations of the Review Committee on this very important subject.

*Yours sincerely,*  


(Nicholas W.F. NG)

c.c. Secretary for the Civil Service

**Response of the Public Service Commission  
to the Consultation Document on  
“Post-service Outside Work for Directorate Civil Servants”**

The Commission supports measures to enhance the public's confidence in the post-service outside work control regime for directorate civil servants. The Commission, however, considers that the lack of thoroughness in handling one isolated case [i.e. the case of Mr LEUNG Chin-man (LEUNG)] as admitted by the Administration should not lead to any conclusion for an excessively stringent control regime. The Commission's views, confining to its interest in safeguarding the integrity of the civil service and the attractiveness of civil service jobs, are set out in the ensuing paragraphs.

**Policy objective of current control regime and underlying principles**

2. The Commission endorses striking a balance between the two underlying principles behind the existing control regime, viz. protection of the public interest vis-à-vis protection of an individual's right to work. There is strong expectation from the public that retired civil servants should, in undertaking post-retirement employment, avoid any real or potential conflict of interest that could be associated with their former government duties, or cause negative public perception which would adversely affect good governance and the integrity and impartiality of the civil service. It should therefore be accepted that some sensible measures in regulating senior officers' post-retirement employment are necessary. The Commission embraces this interest in safeguarding the integrity of the civil service and in upholding a standard of conduct across the service that is commensurate with the expectation of the public. However, the Commission is of the view that the existing control regime, based on the fine balance between the protection of the public interest and the individual's right to work, has so far worked generally well. There is no need to shift the existing equilibrium to either end of the two principles. Changing this balance to an excessively stringent control regime will deter the flow of skills, experience and information between the civil service and other sectors and would be at the expense of the optimum use of valuable human resources. It will also lead to a further dilution of the attractiveness of civil service jobs.

## Impact on the attractiveness of civil service jobs

3. The ability to attract and retain quality people in the civil service is vital to the good governance of Hong Kong. As mentioned in paragraph 5.22 of the consultation document, the institution and implementation of a reasonable, fair and even-handed post-service outside work control regime for former directorate civil servants may be one of the many factors affecting the attractiveness of the civil service as a career. The Commission has observed in its joint study with the Civil Service Bureau in 2008 the possible dilution of the inherent attractiveness of civil service jobs as a result of the changes in the appointment terms and fringe benefits over the years, as well as the recent developments on the social, constitutional and political fronts. An excessively stringent control regime over post-service employment of directorate civil servants could work further against the objective of recruiting and retaining quality staff in the civil service.

4. Civil servants appointed on or after 1 June 2000 under the New Terms<sup>Note</sup> are only eligible for retirement benefits under the Civil Service Provident Fund (CSPF) Scheme. As opposed to those appointed before 1 June 2000 who are eligible for monthly pension benefits on retirement, these officers on New Terms are only entitled to the accrued benefits in lump sum payment and may still need to seek paid employment after a career with the civil service. Any excessive restrictions on post-service employment at the directorate level might render a civil service career less appealing. Moreover, with the New Terms, there is less attraction to commit oneself to a life long career in the civil service, as the accrued benefits are portable and the Government's voluntary contributions would be payable immediately after completion of a continuous service of ten years. Any excessive restrictions on post-retirement employment could expedite this exit process and even deter people's aspirations for advancement to directorate positions.

5. Some members of the public may take the view that civil servants are privileged to serve the community and their employment is more secure than others. Hence any further control measures to be imposed on their post-service employment at the directorate level should not have a bearing on the attractiveness of civil service jobs. The Commission, however, considers that realistically an individual's right to deliberate his

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<sup>Note</sup> Officers on New Terms are those who joined the civil service on or after 1 June 2000 who are not eligible for pensions and medical and dental benefits after retirement.

career prospects, whilst still being competitive as compared to employees in other sectors, and his exercising of a choice of his future employment, should be respected. The Review Committee should be mindful that a switch of the equilibrium to the extreme end of protecting public interest by imposing further control measures could result in a drain of talents in their mid-careers in good times. This will have a detrimental impact on succession to the top levels of the civil service in the long run. This clearly is not in the public interest.

### **Other considerations**

6. The Commission considers that before finalising its recommendations, the Review Committee should also take into account the following considerations –

- (a) The public's concern that a directorate civil servant may use his official position to benefit a particular entity or individual in return for lucrative post-service employment (i.e. a form of "deferred reward") is also valid in the case of political appointees. There is expectation that any change of the existing control regime for directorate civil servants should also be applicable to political appointees from an equity point of view.
- (b) Directorate officers on agreement terms or appointed under the New Terms do not have monthly pension benefits. If their right to seek post-service employment is overly restrictive, they may question the justifications for such restrictions.

### **Conclusion**

7. The public concerns as expressed in LEUNG's case that have prompted the current review centred on whether there was 'deferred reward' for past favour. But as pointed out in paragraph 5.16 of the consultation document, 'deferred reward', if substantiated, would constitute a form of corruption and the parties involved would be liable to criminal prosecution under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). If it is considered that public suspicion or perception in this regard must be addressed in this review exercise, the Commission takes the view that the former directorate civil servant, in submitting his application for

post-service employment, be required under the current process to assess that no real or perceived conflict of interest is involved to the best of his knowledge dating back to a reasonable period. With such a self-assessment mechanism, any further tightening of the existing control regime may not then be warranted.

Public Service Commission  
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