

**Response to
The Consultation Document of
The Committee on Review of Post-service Outside Work
for Directorate Civil Servants**

Specific issues raised in Chapter 6

“Issue 1: Should protecting the public interest and protecting an individual’s right continue to be recognised as the two underlying principles of the control regime?”

1 It is a social fact that society has much different expectations of those working in the public sector than those in the private sector. People are inclined to view administrative decisions with imagination as such decisions impact on them either generally or specifically and it can be practically difficult for them to hold public officials accountable after those decisions.

2 The external political environment surrounding directorate civil servants to take up post-service outside work is not positive since it is filled with institutions and actors more powerful than those individual civil servants. It appears that the concept of public interest here is contrasted with individual interests of directorate civil servants.

3 Are the interests of directorate civil servants not part of the public interest? Indeed, what exactly constitutes public interest? How many members of the public must benefit from the control regime before it can be said to be in the public interest?

4 Society is composed of individuals and public interest must have regard to the interests of its members including directorate civil servants. Advancing the majority interests of the public at the expense of the minority interests of directorate civil servants risks the tyranny of the majority. Protection of the minority interests of directorate civil servants

should also be seen as part of the public interest.

5 The consideration that ignores the individual's right to work under para 5.10 of the Consultation Document is irrelevant, as it does not take the relevant considerations under para 5.11 of the Consultation Document into account.

6 **Issue 1** is framed as if protecting the public interest and protecting an individual's right to work are two opposing principles and not one entailing the other. As people generally want to read things in simple terms and act politically on simple matters, it is submitted that both principles should continue to be recognised as underlying principles of the control regime.

“Issue 2: Is the current policy objective appropriate? What is the view on including the following specific references in the policy objective-

- (a) avoidance of suspicion or perception of ‘deferred reward’ for past favour done during government service?***
- (b) gainful use of limited human resources and attractiveness of the civil service as a career?”***

7 To prevent oppression and affirm the dignity of every individual of society, human rights must be protected by the rule of law to promote social progress. Everyone should have the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

8 The internal political environment surrounding directorate civil servants to take up post-service outside work is not positive either, since it is also filled with institutions and actors more powerful than those individual civil servants. The current policy objective articulated is said to strike an appropriate balance *“between avoiding conflict of interest, or causing negative public perception embarrassing the Government and*

undermining the image of the civil service on the one hand; and not unduly restricting the right to pursue employment on the other hand." (para 5.12 of the Consultation Document).

9 The inclusion of the irrelevant considerations of "*causing negative public perception embarrassing the Government and undermining the image of the civil service*" is a general interference that impedes and diminishes in a significant way the rights of individual directorate civil servants to take up post-service outside work across the board.

10 As to the relevant consideration regarding conflict of interest, directorate civil servants who are professionals, for examples, lawyers in legal services departments including the Intellectual Property Department should have the right to continue to contribute their services to society by taking up post-service outside work, as departmental and professional conflicts of interest rules are already in place. There is no need to impose indiscriminatory control.

11 The suggested specific reference concerning "*avoidance of suspicion or perception of 'deferred reward' for past favour done during government service*" should have no place in the policy objective, as it is premised on the imagination that the Administration is not a rule-based but people-based institution. (See implicitly para 5.18 of the Consultation Document). On the other hand, the considerations listed under para 5.19 of the Consultation Document are relevant.

12 Further, not all directorate civil servants within the Administration have control over public resources. The authority, responsibility and accountability to exercise such control fall on politically appointed principal officials and those who aid them. Certain minimal control on that front might be necessary.

13 The other suggested specific reference regarding "*gainful use of limited human resources and attractiveness of the civil service as a career*" is a very relevant one. Directorate civil servants have acquired, through

many years of service, very good professional or general knowledge and leadership skills and judgment. They are part of the human capital of the HKSAR.

14 It is only right that directorate civil servants be allowed to re-engage in the private sector by taking up post-service work as soon as they cease active service. Such can enhance the human capital of the HKSAR as the skill sets (including legal expertise on intellectual property matters in the creative economy and leading edge corporate governance like strategic intellectual capital management) can be transferred, advancing the overall public interest.

15 The considerations stated in para 5.24 are therefore relevant. On the other hand, the considerations listed in para 5.25 that do not take into account the long term wider public interest are irrelevant.

“Issue 3: Is the current length of periods of restriction for post-service outside work appropriate? What is the view on -

- (a) a lifetime ban on any paid employment or paid employment with commercial organisations for retired civil servants in receipt of monthly pension payments?***
- (b) the length of ‘periods of restriction’ for former directorate civil servants engaged in specified fields of work while in government service?***
- (c) the length of ‘periods of restrictions’ for post-service outside work in the same field as that pursued by a former directorate civil servant before leaving government service? ”***

16 If the underlying principles are properly understood and the policy objectives are rationalized on a legitimate basis, the legal, reasonable and equitable conclusion to be drawn is that the current periods of restrictions are not appropriate, not to mention that the current length is unnecessarily long.

17 The minimal but legitimate comparable practice in other economies and the relevant considerations stated in para 5.32 of the Consultation Document are telling and should be the right way forward. On the other hand, the considerations under para 5.31 are misconceived. A proactive Administration should cease and desist from accommodating unwarranted demands and should have the courage to change by re-strategizing and lifting all periods of restriction.

18 Similarly, the suggestion and the supporting consideration (under para 5.33 of the Consultation Document) to impose “*lifetime ban on paid employment for retired civil servants in receipt of monthly pension payments*” is an unthinkable one as financial circumstances vary. The relevant considerations against the suggestion, as listed in para 5.34 are valid. They are also legal, reasonable and equitable.

19 The suggestion and the supporting considerations (under para 5.38 of the Consultation Document) on “*the length of ‘periods of restriction’ for former directorate civil servants engaged in specified fields of work while in government service*” is an arbitrary one. Against the suggestion, the relevant considerations have been rightly listed in para 5.39 of the Consultation Document.

20 The suggestion and the supporting consideration under para 5.41 of the Consultation Document) on “*the length of ‘periods of restriction’ for post-service outside work in the same field as that pursued by a former directorate civil servant before leaving government service*” is not a practical one especially for former directorate civil servants who are professionals (as noted in para 5.42 of the Consultation Document) since they are key workers in any society.

21 Directorate civil servants are part of the valuable human capital of the HKSAR. To allow them to continue to create value in the HKSAR will advance public interest.

“Issue 4: Should the past contacts/dealings of a former directorate civil servant with the prospective employer’s parent and/or other related companies during his last few years of government service be disclosed and assessed for the purpose of conflict of interest, irrespective of whether the former directorate civil servant, in his applied-for post-service work, will be involved in the business of these entities?”

22 Disclosure of relevant information should be on a need basis. The suggested exhaustive disclosure and the supporting considerations as stated in para 5.45 of the Consultation Document, can become a hidden alternative procedural and substantive barrier. For the better reasons stated in para 5.46 of the Consultation Document, the broadening of disclosure is not necessary.

“Issue 5: Is the current imposition of work restrictions on approved taken-up outside work appropriate? Can the imposition of work restrictions address and mitigate public concern over potential or perceived conflict of interest?”

23 While the job to impose standard restrictions may be easier for the approving authority, the standard work restrictions may be overly restrictive, as every case has its special circumstances and merits specific treatment. Why do we not give unconditional support if the circumstances warrant, as noted in para 5.52 of the Consultation Document?

24 The imposition of work restrictions does not by itself address and mitigate public concern over potential or perceived conflict of interest. It might even create the perception that civil servants would not avoid conflict of interest unless they are coerced to do so. Why do we not consider an honour system relying on the ethics of directorate civil servants? If the Administration takes pride of its effective and efficient civil service, does it have any confidence in the integrity of its directorate civil servants? Further, there is the invisible external check and people would not be slow

to act as whistle blowers if something was really wrong.

“Issue 6: Should there be any change to the composition of and/or institutional support for the Advisory Committee on Post-service Employment of Civil Servants?”

25 Irrespective of its size, the personnel of the Advisory Committee on Post-service Employment of Civil Servants should be appropriately appointed. They should appreciate their role in monitoring the implementation of an adopted policy with impartial and efficient institutional support.

26 There is however no place to include in the Advisory Committee *“individuals with a good grasp of public sentiments”* as indicated in para 5.57 of the Consultation Document, since the process of the Advisory Committee should be rule-based and not popularity-based.

27 The Advisory Committee and those supporting it should be committed to producing high quality decisions. They should aim to manage the process that invests any decision made with a high degree of legitimacy and accuracy.

28 Further, they should also have the power or discretion to make recommendations with a view to liberalising the traditional principles, rules and processes in a society that should be dynamic, liberal and fair.

“Issue 7: Should there be any change to the pension suspension arrangement for post-service employment in specified subvented organisations by retired civil servants?”

29 For the information and good reasons stated from paras 59-62 of the Consultation Document, the non-mandatory pension suspension arrangement for post-service employment in specified subvented

organisations by retired civil servants should cease as of right, addressing the disparity treatment between specified and unspecified subvented organisations at the same time.

“Issue 8: Are the sanctions provided under the current control regime adequate?”

30 Directorate civil servants work hard and smart to be promoted and look forward to their pension on successful retirement after complying with the regulations and codes of conduct in addition to completion of many years of committed and dedicated civil service.

31 Sanction involving suspension or curtailment of pension for services rendered in the past (unlike gratuity paid on completion of service contracts) is unreasonable and unjust, and should be removed, following the fair practice elsewhere (see para 5.67 of the Consultation Document).

32 Further, the Administration should follow the Australian and Canadian models in acting proactively to manage the perception of conflict of interest as described in para 5.68 of the Consultation Document.

“Issue 9: Is the current public disclosure arrangement appropriate? What is the view on -

- (a) disclosing the post-service outside work taken up by former junior directorate civil servants as well?***
- (b) disclosing the advice of Advisory Committee on Post-service Employment of Civil Servants on each of the post-service appointments taken up by former directorate civil servants?”***

33 The present disclosure arrangements are appropriate. There is no need to disclose the post-service outside work taken up by former junior directorate civil servants for the better reasons stated in para 5.76 of the

Consultation Document. There is also no need to disclose the advice of Advisory Committee on Post-service Employment of Civil Servants on each of the post-service appointments taken up by former directorate civil servants for the better reasons stated in para 5.80 than those in para 5.79 of the Consultation Document.

The unspecified fundamental issue

34 While it is important for the Administration to engage the public, the public's "*grave concern*" on this score can amount to tyranny of the majority. The Administration should not give undue stress to its relationship with the sector of the public that has "*grave concern*". It should pay due respect to the basic rights of directorate civil servants. The majority should not dictate authoritative solutions at the expense of the minority. Together, we can build a better HKSAR based on integrity, dignity and mutual respect.

35 The freedom of directorate civil servants to take up post-service outside work is of grave financial concerns to the specifically affected individuals, while the intermediate financial positions of members of the public are unaffected. The current consultation is an essential step in the rational decision-making process in balancing these concerns. The Administration should not accommodate any illegal, unreasonable and inequitable demands by imposing further unnecessary restrictions. It is politically incorrect to blindly go along with the majority at the expense of the basic rights of the minority in order to get along. Undue accommodation can be destructive. It undermines and hurts HKSAR's institutions and deeper interests. The incident that led to this review and its current developments enable us all to understand the concerns, to engage in the decision-making process and to review comparable practices elsewhere in order to come up with a rational policy decision. It should become a good case study on social learning.

36 As to resolving the current "*grave concern*", the Administration

should turn fear into confidence by addressing these concerns in a constructive and respectful discussion. It is within the Administration's power to not to compromise further. Rather, it should meet illegal and unreasonable demands with persistence. It should take a proactive step and inquire if the current control regime that restricts the use of valuable human capital would create a niche on HKSAR's competitiveness and institutional developments. It should re-strategize by following dynamic and liberal models elsewhere before the downward spiral gets worse.

37 At times, an administration's responsibility to lead and pursue may dictate a course of action contrary to the opinion of those who have "grave concern". An administration should stick to objective facts, and in particular, uphold the rule of law in good faith. It should not accommodate subjective perception. It should assume a more answerable, responsive, accountable and proactive role, and act legally, reasonably, equitably and timely.



Peter Kam-fai Cheung
Deputy Director of Intellectual Property
Intellectual Property Department

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