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有限公司

HONG KONG FORMER SENIOR CIVIL SERVANTS ASSOCIATION LTD.

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By Fax/Mail
14th April 2009

The Secretariat
Committee on Review of Post-Service Outside Work for Directorate Civil Servants
10/F., West Wing, Central Government Offices
Ice House Street, Central
Hong Kong

Dear Sirs,

With reference to the public consultation document entitled "Review of Post Service Outside Work for Directorate Civil Servants", I write on behalf of the Hong Kong Former Senior Civil Servants Association Ltd. to submit the Association's views and comments.

We appreciate that as social expectations change and evolve, it is necessary for the Government to keep under review the policy and the basic parameters of the approval mechanism for post service employment of directorate civil servants. We therefore welcome the work of the Review Committee and give it our support for consulting the public on the document it published in February 2009.

We do not wish to comment on the issues raised in the consultative document one by one as this would be too tedious and unnecessary. We believe that the existing policy and approval mechanism is adequate and requires no major changes. What is required is a proper appreciation on both the part of the Government and the retired civil servant to strike the proper balance between the need to safeguard public interest insofar as possible conflict of interest is concerned and the individual right to employment of retired civil servants.

However, in the application of the existing policy and approval mechanism, we would like to comment on the following aspects.

(I) Right to Employment

We are surprised that the consultative document should raise the question of whether protecting the individual's right to employment should continue to be recognized as one of the underlying principles of the control regime. We believe that the right to employment of

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retired civil servants, irrespective of their level of seniority, is sacrosanct and must be respected at all times. In the enjoyment of human rights, civil servants should be regarded no differently from any other citizens in Hong Kong. This is clearly enshrined in the Basic Law of the Hong Kong SAR as well as in the U.N. Universal Declaration of Human Rights.

However, we do appreciate that in taking on employment after retirement, there is a possible conflict of interest angle that must be taken into account. This aspect is clearly laid out in the existing policy and approval mechanism, and indeed, all retiring and retired senior civil servants are fully aware of it when seeking employment after retirement. Many of our members have shared with us their personal experience in declining job offers, even before they reach the Government approval stage, because such offers might be seen to be giving the public a perception of possible conflict of interest. Thus we believe that the great majority of senior civil servants do have the common sense, integrity and propriety to strike the right balance when considering post-retirement employment, and that the existing policy and approval mechanism do provide adequate guidance.

(II) Too Many Cases of Exceptional Approval

Unfortunately, in our view, the integrity of the existing policy and approval mechanism has been compromised by too many cases of exceptional approval granted by the Government in the past 10 years or so. This has not only emboldened a few less scrupulous senior civil servants to test the resolve of Government, but also arouse public concern and indignation, including the very case that prompted the current review, that the Government might not be entirely open and fair in applying the existing policy and approval mechanism and is thus not maintaining due diligence and vigilance in safeguarding the public interest. We do not intend to quote these exceptional cases as they are no doubt clearly available for perusal on Government's record.

We believe that provided the Government exercises due vigilance and is open and fair in the operation of the approval mechanism, we do not see any justification to further tighten the current policy. If the Government continues to make exceptions without clearly explaining where the public interest lies, then no amount of tightening of the

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regime will prevent public outcry from arising!

(III) De-link Pension from Post-retirement Employment

The final point we wish to make is that in our view, civil service pension is not a fringe benefit, but is in fact a form of deferred payment of remuneration earned during employment. As such, we believe that it is wrong for the Government to consider "pension suspension" in the situations covered in Issue 7 of the consultation document. Here again, we observe that there are inconsistencies in the Government's definition of specified subvented organizations. For example, why should Secretary and Deputy Secretary of Policy Bureaux be excluded while lecturers and professors of Universities be included? These inconsistencies would only cause resentment and ill-will and tend to undermine the integrity of the Government.

We thus hope that basing on the principle of fair play, and that pension is not a benefit but is actually deferred payment earned during active service, the Government should completely remove the current arrangement to suspend pension for post-service employment in specified subvented organizations by retired civil servants.

In conclusion, we would like to stress that the existing policy and approval mechanism as represented by the "3Ps" (i.e. Periods of restriction, Process, and Public disclosure) are adequate and require little change.

As many of our members have pointed out, we are afraid that undue tightening of the existing policy and approval mechanism could be counter-productive. If the Government imposes too tight a regime on post-retirement employment, it may have implications for the quality of the civil service. Unreasonable restrictions on post-retirement employment, or penalties in the form of loss of pension, would result in:-

- a serious deterrent on potential applicants for civil service jobs, especially in the administrative and professional grades; and
- a loss of valuable human resource to the community and the economy as a whole, as many retired civil servants still have years of useful working life after retirement.

In addition, such a regime may be legally challenged for compromising the basic human rights of retired senior civil servants to seek employment.

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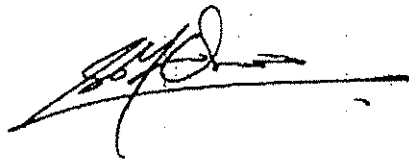
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We would like to emphasize that the key to the smooth and successful application of the existing policy and approval mechanism is for both parties to respect the spirit of the system and apply common sense and integrity in striking a balance between the requirement to safeguard the public interest insofar as possible conflict of interest is concerned and the right to employment of retired civil servants. On the one hand, the retired civil servant must exercise due propriety and care when considering post-retirement employment, which we believe are now being exercised by the great majority of retired civil servants. On the other, the Government must not make any exceptions when giving approval unless it is clearly in the public interest, and in such cases, the reasons for making the exception must be fully and openly explained, which we believe is not diligently exercised at present!

Finally, I attach a copy of a written comment put to the Association by Mr. Chan Sui-jeung, one of our members, for your reference.

Yours sincerely,



James So Yiu-cho, JP
President

JSYC/HWH/jt

Encl./

c.c. Secretary for Civil Service, Civil Service Bureau, Government Secretariat, CGO, Lower Albert Road, Hong Kong