



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

Dear Ron,

I would like to thank you for taking time out of your busy schedule to meet with Chamber members regarding the consultation document on Review of Post-Service Outside Work for Directorate Civil Servants.

The Hong Kong General Chamber of Commerce is pleased to contribute its views based on what we have collected from our members for your consideration.

Aside from protecting public interest and the individual's rights, we need to take full account of the balance of advantage to the community and the economy as a whole. It is right to have safeguards against the danger that power and influence might be abused, but it is open to question whether post-retirement rules should be premised on an assumption that senior Government officials who have occupied positions of power and trust with high levels of integrity perhaps for decades, will, on retirement, abandon those habits of integrity.

Officials should have the right and opportunity on reaching retirement age either not to work at all, or to work in charitable capacities, or to work on a paid basis. In an ideal world, it would be left to the prevailing ethics of discretion and integrity for former senior civil servants to ensure that post-retirement employment is not won on the basis of nepotism, nor that it gives unfair advantage to a private sector employer. However, we have to recognise that this is a sensitive transition, and that the community clearly needs assurance that lapses will not occur.

Someone who has spent several years at the heart of policymaking on a specific topic should reasonably expect some restrictions on future employment. However, as the society and the business community consider these issues, we need to examine them not only from the perspective of preventing corruption or unwarranted influence – which is vitally important – but also from the point of view of the longer term interest of the community. If we were simply to prohibit anyone retired from government from taking up a new career, we would not only be violating the basic right to work, but also be depriving ourselves of talented, qualified people who have often contributed substantially to the community for many decades. We need to consider optimal use of our talents, as well as our reputation for honesty and integrity.

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A further issue arises over who should be covered as being "in position of authority"? Apart from senior directorate officers, certainly ministers, undersecretaries and political assistants should also be covered. However, the current consultation exercise has stayed silent on this issue.

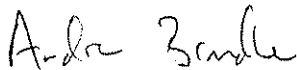
There is now a public mindset of exerting maximum control on civil servants through an elaborate rule based approach. This approach is not in keeping with the minimalist regulatory philosophy that has served Hong Kong so well for so long. In particular, the notion of restricting individual rights in the interest of protecting the image of the civil service and perception of the public is entirely alien to other jurisdictions. Any person abusing his or her current or former status should be prosecuted under different provisions in current legislations which deal with conflict of interest or corruption and be taken to court.

In the post-service outside work control regime for former directorate civil servants, a key consideration is whether the prospective outside work to be undertaken by a former directorate civil servant will give rise to real, potential or perceived conflict of interest with his previous official duties. The most problematic clause under the present rules is whether the applicant's taking up of the proposed work would give rise to "public suspicion" of conflict of interest or other impropriety. The concept of public perception/suspicion is difficult to define and it also depends on whom you talk to. This provision should be removed and replaced by provisions which can be more clearly defined and can be tested more objectively in order to provide clearer guidance to both the retiring civil servant and the prospective employer on what is allowed or not allowed.

Other jurisdictions have, with some success, dealt with the problem of former officials capitalising on their previous public sector employment. For example, the US system, equally applicable to political appointees and civil servants, does not require an application by the individual to the government for taking up post-service employment. The onus is on the government to act if and when inappropriate behaviour occurs. The Review Committee should make references to the American and Australian systems as it attempts to find potential solutions for dealing with egregious behaviour on the part of political appointees and civil servants, both pensionable and non-pensionable. We should be mindful that overly strict regulations could demoralise high flying civil servants. Stringent restrictions on post-service work might affect the willingness of civil servants to join the service or be promoted, so as to avoid being covered under the control regime when they retire.

Segments of our Hong Kong community appear to have lost some of their trust in the integrity of both government and the private sector, and as a result are seeking rule changes that leave no room for trust. For the sake of our own future, to ensure that we are not prevented from taking advantage of the skills and experience of some of our most talented people, we need to take a cautious approach to restricting the working rights of retired officials. We should not let a single instance of inappropriate judgement overthrow a system which has served us well. We should be more objective and look at things from a wider perspective.

Yours sincerely,



Andrew Brandler
Chairman