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5 February 2009

Mr. Ronald Arculli,

Chair,
Committee on Civil Service Post-service Review,
10/F1 West Wing,
Central Government offices,
11 Ice House St.,
Hong Kong.

Dear Mr Arculli,

We read with interest the report in the *South China Morning Post* that consultants appointed by your committee had found that post-retirement rules in Hong Kong are more detailed and specific than those in overseas countries (*South China Morning Post*, February 2, 2009). The issue, of course, is not whether the rules are more detailed or specific than in other countries but rather whether they are appropriate for the situation in which Hong Kong finds itself. In France, for example, public servants are prohibited for taking employment for five years after leaving office, a regulation that probably precludes the need for more detailed regulations. In Britain, conflict of interest situations regarding post-public employment are addressed by a mixture of formal regulations, informal pressure and ancillary documents, such as the revised Civil Service Code, which provide guidance on appropriate behaviour. The rules may not be detailed and specific because there are satisfactory alternative ways of dealing with the problem

Historically, in Hong Kong, we have had a tendency to follow very explicit rules, notably on what is or is not an advantage, which has created an ethical culture within the civil service that "that which is not expressly prohibited is permitted." In solving ethical problems, the approach has often been to look for regulatory solutions that provide black and white answers. Unfortunately, in conflict of interest cases this is likely to be difficult, if not futile, in three respects. First, conflict of interest cases are often in the mind of the beholder and cases against individuals alleged to have committed breaches of the rules cannot easily be proved. In two recent cases in Hong Kong, which are discussed in the attached article*, the individuals alleged to have committed the ethical transgressions were not formally in breach of the rules; rather, it was felt that their behaviour might be seen to be in contravention of accepted norms. Second, and related to this, it is very difficult to legislate for the wide variety of circumstances in which former civil servants might find themselves in post public employment. The British government in its revised code does provide examples of possible ethical violations but its officials concede that it is very often the informal word that prevents civil servants from taking up positions or entering into commercial relationships that might bring the civil service into disrepute. Third,

there is a widespread belief that greater regulation increases public trust. The academic evidence from a number of countries suggests that this is not so. Although the public does have a taste for tighter regulation in every country that has been studied, governments cannot satisfy the extent of their demands because to do so would violate other norms or laws. If, hypothetically, the government decided to ban retired civil servants from taking up any form of employment after retirement, it would be in violation of the Basic Law (which guarantees the right to work) and would also deprive the community of the very useful skills of many civil servants.

What is to be done? It may be that your committee will find areas in which the rules can be tightened. In this case, we would respectfully suggest that it might be valuable to consider the differences between the measures proposed in the motion debate in the Legislative Council in March 2005 and the rather weaker subsequent revised rules produced by the Civil Service Bureau in November 2005. (References to those documents are contained in the attached article) We feel, however, that the regulations are not the crux of the problem. We suggest that other aspects of the system are in greater need of reform:

- The Committee deciding on whether civil servants should be permitted to take up post-retirement employment, the Advisory Committee on Post-service Employment of Civil Servants, is presently composed largely of business people. This is inappropriate because the issues before the Committee relate to whether the civil servant's proposed future employment is likely to conflict with his or her previous role. The most qualified people to decide on that are likely to be other high profile retired civil servants, judges and perhaps retired politicians. Business people should only be included if they have long-records of public service.

The Committee should be given a much higher profile than it currently has. The situation at present is that the Civil Service Bureau, which might have its own conflict of interest issues in relation to the person seeking post public employment, does most of the work which is then apparently rubber-stamped by the Committee. The Committee needs to act autonomously and, to some degree independently of, the Civil Service Bureau. It needs to do so because one of the important missing elements in the existing set-up is that there is limited public confidence in the process. An independent, autonomous Committee would help to improve that situation.

- One of the ways in which the Committee could improve its image is by increasing the transparency of its decisions. At present, it is possible to access Committee decisions above the D4 level by applying to the Civil Service Bureau for access to the register (We have done so). Unfortunately, the information is insufficient to determine much beyond the fact that the application has been approved. What is needed is that every decision of the Committee regarding post public employment should be made available in the Committee's annual report. This should include information on the name and position of the individual applying to take up post-service employment, the length of the sanitization

period and also on the restrictions, if any, that have been placed on approval of the application.

- The problem with the regulation of conflicts of interest is that they depend on the ethical judgments of individuals in situations where there may be no clear rules. The best that can be done under these circumstances is to raise integrity levels in the civil service so that individual situations consciously avoid situations in which there may be any hint of a conflict of interest. For that reason, many governments have recently become much more concerned about how public service values are transmitted to their employees. In Hong Kong, we have made a start in this area with programmes in integrity management launched by the Civil Service Bureau and the ICAC. These are important programmes but they need appropriate follow through and support and very careful attention as to how the message is put across, particularly in the disciplined services where the tendency is to follow orders rather than to think through the ethical implications of actions.

There are opportunities in other areas as well. The new Civil Service Code could usefully provide examples of appropriate behaviour in conflict of interest situations and there is perhaps also room for expanded briefings to civil servants approaching retirement on ethical problems that may arise with post-service employment.

We hope these comments are useful.

Yours sincerely,



Ian Scott
Visiting Professor



Joan Y.H. Leung
Associate professor

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