

EXECUTIVE SUMMARY

1. In general, there are two types of post-office restrictions: post-office restrictions on political activities and commercial activities respectively. These restrictions aim to maintain a certain standard of conduct of members of government so as to preserve public confidence in and integrity of government.

Post-Office Restrictions for Heads of Government

2. There is no written rule governing post-office activities undertaken by former heads of government in France and the United States (US). However, media comments, hostile public reactions and convention appear to have the effect of deterring unethical behaviour of former heads of government in these two countries.
3. In the United Kingdom (UK), the Ministerial Code requires former heads of government on leaving office to seek advice from the Advisory Committee on Business Appointments about any appointments they wish to take up within two years of leaving office. Former heads of government in the UK generally follow the Ministerial Code.
4. In California and Ontario, post-office restrictions for former heads of government are underpinned by statute. These restrictions include restrictions on dealings with the government and future employment taken up by former heads of government.

Post-Office Restrictions for Senior Members of Government

5. While there is no legislation governing activities undertaken by former ministers of government in France, there is a decree governing activities undertaken by former members of ministerial cabinets within five years after leaving office.
6. In the UK, post-office restrictions for former ministers are the same as those for former heads of government. Although there is no requirement that ministers must abide by the rules laid down in the Ministerial Code, they generally follow them.
7. In the US, California and Ontario, there is legislation governing post-office restrictions for former senior members of government.

Post-Office Restrictions for Senior Civil Servants

8. Except in Ontario where we have not received any information on post-office restrictions for senior civil servants, there are written rules

governing activities undertaken by former senior civil servants in all of the other four countries and places studied.

Post-Office Benefits for Senior Members of Government

9. Various post-office benefits have been provided to former senior members of government in all of the five countries and places studied. The most common one is pension. While in the UK and Ontario, factors leading to Prime Ministers/Premiers and ministers leaving office (such as resignation, retirement or dismissal) do not affect their entitlement to these post-office benefits, in the US, conviction of impeachment or removal for misconduct may affect the entitlement of Presidents and senior political appointees to post-office benefits. We have not received any information on the above arrangement in France and California, or any information indicating the existence of factors affecting senior civil servants' entitlement to post-office benefits in all of the five countries and places studied.

Mechanism Relating to Post-Office Restrictions

10. In France, the government is required to consult the Ethics Commission about the suitability of employment intended to be undertaken by members of ministerial cabinets and senior civil servants within five years of leaving government. The final decision, however, rests with the government.
11. In the UK, former heads and ministers of government, by convention, seek advice from the Advisory Committee on Business Appointments about appointments they intend to take up within two years of leaving office. However, the Advisory Committee will not take any action against any person if he does not follow its advice. Senior civil servants in the UK are required to obtain government approval before taking up any employment within two years of leaving government.
12. In the US, Ontario and California, there is no requirement for members of government to seek approval for their job plans. However, any person engaging in conduct constituting an offence of the legislation governing post-office restriction shall be subject to a fine and/or imprisonment or any other actions specified in the legislation.

PART 6 - ANALYSIS**12. A Comparison of Post-Office Restrictions for Senior Members of Government Among Hong Kong and Countries and Places Studied**

12.1 Tables 16 to 19 compare post-office restrictions for senior members of government among Hong Kong and the five countries and places studied.

Table 16 - A Comparison of Post-Office Restrictions for Former Heads of Government

Countries / Places	Post-Office Restrictions	Restriction Period
Hong Kong	~ Standing for elections to the Head of Government after serving 2 consecutive terms	~ Not applicable
France	~ Not applicable	~ Not applicable
The United Kingdom	~ Future employment	~ 3 months to 2 years
The United States	~ Standing for elections to the Head of Government after serving 2 terms	~ Not applicable
California	~ Standing for elections to the Head of Government after serving 2 terms;	~ Not applicable
	~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	~ 1 year
Ontario	~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	~ 1 year

Table 17 - A Comparison of Post-Office Restrictions for Former Ministers / Political Appointees / Elected Officials

Countries / Places	Post-Office Restrictions	Restriction Period
Hong Kong	~ Not applicable	~ Not applicable
France ¹	Members of ministerial cabinets: ~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	Members of ministerial cabinets: ~ 5 years
The United Kingdom	~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	~ 3 months to 2 years
The United States	~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	~ 1 year / lifetime
California	~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	~ 1 year
Ontario	~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	~ 1 year

Remark:

1. We have not found any legislation governing activities of former French ministers.

Table 18 - A Comparison of Post-Office Restrictions for Former Senior Civil Servants

Countries / Places	Post-Office Restrictions	Restriction Period
Hong Kong	~ Future employment	~ Officers who are pensioners: 2 to 3 years; ~ Officers who are on agreement terms: 1 year
France	~ Future employment; ~ Making contracts with the government or seeking to influence government decisions for compensation; ~ Activities specified under the law; and ~ Imposition of behavioural conditions	~ 5 years
The United Kingdom	~ Future employment; and ~ Imposition of behavioural conditions	~ 2 years
The United States	~ Future employment; and ~ Switching sides rules for 1 year or lifetime	~ 1 year to 2 years / lifetime
California	~ Future employment; and ~ Certain activities specified under the law	~ 1 year / lifetime
Ontario	We have not received any information	We have not received any information

Table 19 - Deterrence / Sanctions Against Non-Compliance with Post-Office Restrictions

Countries / Places	Heads of Government	Ministers / Political Appointees / Elected Officials	Senior Civil Servants
Hong Kong	Not applicable	Not applicable	Pension suspension
France	Hostile public reactions and media comments	Fine and imprisonment	Fine and imprisonment
The United Kingdom	Relationship between the government and the company in which the former head of government concerned intends to join will be affected	Relationship between the government and the company in which the former senior member of government concerned intends to join will be affected	We have received no information
The United States	Hostile public reactions and media comments	Fine and/or imprisonment	Fine and/or imprisonment
California	Several possible outcomes: ~ a settlement agreement; or ~ an administrative fine; or ~ other appropriate action determined by the Fair Political Practices Commission	Several possible outcomes: ~ a settlement agreement; or ~ an administrative fine; or ~ other appropriate action determined by the Fair Political Practices Commission	We have received no information
Ontario	If he remains a member of the Ontario Provincial Parliament: ~ no penalty; or ~ a reprimand; or ~ suspension of member's rights to sit and vote in the Legislative Assembly; or ~ expulsion from the Parliament If he is no longer a member of the Ontario Provincial Parliament: ~ repercussions for the company who employs him and is attempting to do business with the Ontario government	If he remains a member of the Ontario Provincial Parliament: ~ no penalty or ~ a reprimand; or ~ suspension of member's rights to sit and vote in the Legislative Assembly; or ~ expulsion from the Parliament If he is no longer a member of the Ontario Provincial Parliament: ~ repercussions for the company who employs him and is attempting to do business with the Ontario government	We have received no information

13. Sources of Authority of Post-Office Restrictions

13.1 In California and Ontario, there is legislation governing activities undertaken by former heads of government. However, there is no such legislation governing activities undertaken by former heads of government in France, the UK and the US. They are free to participate in any political or commercial activities. Nonetheless, there is always an expectation that heads of government should conduct themselves in a manner that does not detract from the positions they held before, during and after leaving public office but this would be a matter of individual judgement.

13.2 Except in France where there is no written rule governing activities undertaken by former senior members of government, the other four countries and places studied all have written rules in the forms of statute or codes which govern activities of former senior members of government.

13.3 There are explicit written rules restricting activities undertaken by senior civil servants after leaving office in the other four countries and places studied, except Ontario on which we have not received any information in this respect.

14. Enforcement of Post-Office Restrictions

14.1 In France, the UK and the US, post-office restrictions for former heads of government are not enforceable by statute but by convention and/or an advisory system. According to the Nolan Report¹ (1995), a system enforceable by convention or an advisory system may still achieve the necessary liberty of movement of individuals as well as secure public confidence and ministerial compliance, without the complication of a statute.²

14.2 The effectiveness of this system hinges on whether the subsequent appointments taken up by former members of government will be reported in public. This is because the threat of hostile public reaction and media comment can be a powerful disincentive to former members of government from engaging in activities which invite suspicion of impropriety. However, in the three countries studied, only the UK has put in place a mechanism which announces to the public the advice given by the Advisory Committee on appointments taken up by former members of government.

15. Types of Post-Office Restrictions

15.1 Post-office restrictions can roughly be classified into two types: one is to restrict all kinds of employment for a certain restriction period, whilst the other is to restrict a particular kind of employment during the restriction period. The UK has imposed the first type of post-office restrictions whilst the other four countries and places studied have imposed the latter type. It appears that the aims of these post-office restrictions are threefold:

¹ In 1994, the then UK Prime Minister, John Major, invited Lord Nolan to become the Chairman of the Committee on Standards in Public Life to examine concerns about standards of conduct of all holders of public office. In 1995, Lord Nolan published the first report of the Committee on Standards in Public Life.

² Nolan, *Standards in Public Life. First Report of the Committee on Standards in Public Life, Volume 1: Report*. May 1995.

- (a) to strike a balance between the desirability of former senior members of government being able to move into business and the need to avoid suspicion of impropriety over how they should behave, and not to discourage high-calibre prospects from joining the government, i.e. the 'public interest' principle;
- (b) to ensure that decisions made by senior members of government while in office would not be affected by their prospects of employment after leaving government, i.e. the 'conflict of interest' principle; and
- (c) to ensure that the disclosure of sensitive information (except for information protected by the legislation relating to official secrets) possessed by a former member of government may not give the company he intends to join an unfair advantage over its competitors, i.e. also the 'conflict of interest' principle.

15.2 In the US and California, a lifetime ban on 'switching sides' is imposed on former senior members of government. This post-office restriction is designed to prevent pecuniary gains by former senior members of government due to a prior relationship with their former offices (the 'revolving door' principle).

15.3 In the five countries and places studied, post-office restrictions imposed are of varying duration, ranging from one year to five years. Very often, the duration of the restriction period reflects the social, political and economic development in the countries and places concerned.

15.4 Some people view that a one-year restriction period is equivalent to a cooling-off period when a member of government may not have to change his career, while a five-year restriction period is a commitment to essentially changing careers.³ It has been recognized that, in the public interest, former members of government should be free to put their skills and general experience in good use in the private sector, provided that there is no cause for any suspicion of impropriety. Perhaps this is best summarized by the Nolan Report (1995)⁴, "*Any waiting period [restriction period] would be insufficient in a case of genuine corruption. Waiting periods are not punishments, but a means of maintaining public confidence*".

³ Transcript of the forum, "The Ramifications of the Revolving Door: The Outgoing Government Official" organized by the American Enterprise Institute on 14 February 2001.

⁴ Nolan, *Standards in Public Life. First Report of the Committee on Standards in Public Life, Volume 1: Report*. May 1995.

16. Implications for Hong Kong

16.1 To sum up:

- (a) there are post-office restrictions on commercial activities for former heads of government in the UK, California and Ontario;
- (b) there is a post-office restriction on the number of terms a head of government may serve in the US, California and Hong Kong;
- (c) there are post-office restrictions for former ministers, political appointees and elected officials in all of the five countries and places studied; and
- (d) former senior civil servants in France, the UK, the US, California and Hong Kong are subject to written post-office restrictions.

16.2 Having examined the underlying principles of post-office restrictions, and both overseas and Hong Kong's experience and practices, the Panel may wish to consider the following points:

- (a) whether post-office restrictions for the Chief Executive should be introduced as in some of the countries and places studied;
- (b) whether post-office restrictions should be underpinned by statute as in California and Ontario or laid down in the form of guidelines as in the UK or enforced by convention as in France or the US;
- (c) whether the scope of post-office restrictions should cover the number of terms a head of government may serve and his freedom to seek employment after leaving office as in some of the countries and places studied, or whether it should cover other aspects;
- (d) whether there should be an independent authority to assess if any conflict exists between the proposed activity and the prior responsibilities of the Chief Executive, and whether the authority should be advisory only as in all of the five countries and places studied; and
- (e) what sanctions are to be imposed if there are violations of post-office restrictions.