

**Written Submission
On**

**“Restriction on Activities of Former Heads of Government
and
Senior Members of Government”**

By

**Professor Kam C. Wong
Department of Government and Public Administration
Chinese University of Hong Kong**

To

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1. Introduction

- 1.1 political accountability system;
- 1.2 government administration reform;
- 1.3 public demand for more responsible government.

2. What is the “revolving door” problem?

- 2.1 Nature of problem :
 - 2.1.1 Revolving door to government service
 - 2.1.2 Ethics in government
 - conflict of interest
 - undue influence
 - unfair advantage
- 2.2 Magnitude of the problem (lack of empirical evidence):
 - 2.1.1 Prevalence?
 - 2.1.2 Distribution?
 - 2.1.3 Impact?
 - 2.1.4 Causation?

3. What social interest are being addressed by regulation post-government employment activities?

- 3.1 Principle of good governance, i.e. government ethics;
- 3.1 Public trust in government, i.e. public interest and democratic values;
- 3.2 Government operational needs, i.e. organizational efficiency;
- 3.3 Citizens’ privacy right, i.e. human rights;

VS

- 3.4 Government’s need to attract the best people; i.e. government effectiveness;
- 3.5 Private sector’s need for government know-how, i.e. public accountability and market economy;
- 3.6 Individual’s right to career, i.e. property and association rights.

4. What are the public interests and private rights being implicated by “revolving door” practices to government service? Should ex-government employees be able to enrich himself/herself with:

- 4.1 government title?
- 4.2 government training?
- 4.3 government experience?
- 4.4 government proprietary information ?
- 4.5 government confidential information?
- 4.6 government (citizens) data?
- 4.7 government know-how?
- 4.8 government access?
- 4.9 government (relation) influence?

Recommendation:

To facilitate debate and deliberation, we should adopt a checklist approach in the analysis of impact of various unethical “revolving door” practices in government service on overall social utilities. (See Table 1)

Table 1: A matrix checklist approach to the analysis of impact of various unethical “revolving door” practices in government on public trust, government operation, employee career, citizens’ privacy, overall social utilities:

	Public Trust	Government Operation	Employee Career	Citizens’ Privacy	Overall Social Utilities
Title					
Training					
Experience					
Proprietary information					
Confidential information					
Citizens’ Data					
Government know-how					
Government access					
Government influence					

5. Whether or not to regulate?

- 5.1 Ethical cultural?
- 5.2 Professional code?
- 5.3 Government guidelines?
- 5.4 Civil services regulations?
- 5.5 Civil law?
- 5.6 Criminal law?
- 5.7 Ethics commission?

Recommendations:

- (a) We should adopt a comprehensive, holistic and multiple measures approach.
- (b) We should actively promote ethics in government through education and guideline, not necessarily law and punishment.
- (c) We should make clear and in specific terms government's ethical demands on employees before, during and after leaving government service.
- (d) We should use civil, i.e. contract, injunction, compensation, instead of criminal law, i.e. retribution and punishment, to regulate unethical conduct.
- (e) We should adopt a case-by case approach to regulation unethical conduct in government and not an all-embracing uniform rule.
- (f) We should take a functional, instead of categorical, approach in regulation unethical conduct.
- (g) We should adopt a pro-active instead of reactive approach to promoting ethical conducts in and out of government.

6. Who to regulate?

- 6.1 What level of government? Heads of government vs. senior executives vs. middle managers?
- 6.2 What branch of government? Executives vs. judiciary vs. legislative?
- 6.3 What unit of government? Police vs. Universities
- 6.4 What kind of government services? Permanent staff vs. temporary staff? Administrative vs. executive vs. professional vs. consultant?

Recommendations:

- (a) No person is exempted from ethical regulations, in one form or another.
- (b) We should design regulations to the specific government post.

7. How to regulate?

- 7.1 By status?
- 7.2 By title?
- 7.3 By functions?
- 7.4 By length of service?
- 7.5 By subject matter?
- 7.6 Categorical rule vs. case by case?
- 7.7 Disclosure vs. consent?

8. Proposed regulatory scheme (See Table 2):

- 8.1 The regulatory scheme should be structured along three employment dimensions:
 - 8.1.1 Association – nature and degree of association with agency/unit (“Association”)
 - 8.1.2 Access – degree and extend of know-how/relationship/ data (“Access”);
 - 8.1.3 Involvement – directness and substantialness with matter/case/client (“Involvement”).

- 8.2 The regulation scheme should be focused on four kinds of post-employment activities:
 - 8.2.1 Communication with agency (“Communication”);
 - 8.2.2 Contest against agency/party(“Contest”);
 - 8.2.3 Lobbying for clients/causes (“Lobbying”);
 - 8.2.4 Consultation to client/causes (“Consultation”).

Table 2 : A proposed regulatory framework for post-government employment activities:¹

	Communication	Contest	Lobbying	Consultation
Association:				
- General	1-2 years	3 years	2 years	1 year
- Specific	2-5	Life	2-5	1 year

¹ The regulatory framework is suggestive one. All “proposed” restrictions subject to individual case-by-case negotiation (prior to government service) or adjustments (prior to termination of service), in rare cases ad hoc approval. All negotiation and adjustments to be informed by published ethical guideline and reported as ethical opinions.

Access:				
Know-how	Restricted	Restricted	Unrestricted	Unrestricted
Relationship	Restricted	Restricted	Restricted	Unrestricted
Confidential	Restricted	Restricted	Restricted	Restricted
Proprietary	Notice/Consent	Notice/Consent	Notice/Consent	Notice/Consent
Involvement:				
Responsible	Restricted to public access	Restricted	2 years	1 year
Substantial		Restricted	Restricted	Restricted