
INFORMATION NOTE

Supplementary Information: Post-Office Restrictions on Activities of Government Officials in the People's Republic of China

1. Background

1.1 At its meeting on 21 January 2002, the Panel on Constitutional Affairs requested the Research and Library Services Division (RLSD) to provide supplementary information in respect of five issues on the research report entitled "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government". Supplementary information on four issues was subsequently supplied to the Panel on 6 February 2002 (please see IN09/01-02). This information note now provides supplementary information for the Panel's reference on the fifth issue that remains, namely, restrictions on activities of former members of government in the People's Republic of China equivalent in rank to the Chief Executive (CE).

2. Mainland Officials Equivalent in Rank to the Chief Executive

2.1 According to the information provided by the Protocol Division¹, the great differences between the political structure and the method for the formation of government of the Hong Kong Special Administrative Region and those of the Mainland have made it impossible to make a comparison of the two. The Administration has therefore been unable to supply a list of Mainland officials equivalent in rank to the CE.

2.2 In the light of the above, RLSD has chosen state civil servants in the Mainland as the subject of this research. State civil servants refer to those officers who exercise state executive authority and discharge state official duties according to the law. They include ministers, governors and even the Premier.

3. State Civil Servants

3.1 The promotion, selection, examination, award and punishment etc. of state civil servants in the Mainland are all regulated by statutory provisions. In other words, the management of personnel affairs pertaining to state civil servants is prescribed by law.

¹ The information was provided by the Protocol Division during a telephone interview.

3.2 State civil servants refer to the working staff within all levels of state executive organs except the service personnel². It is also within the scope of state civil servants to serve as members of people's governments at all levels. Their selection, appointment and removal are provided for and regulated by the relevant statutory provisions.³

4. Positions of State Civil Servants

4.1 Under the Interim Regulations on State Civil Servants, two series of positions are established for state civil servants, namely, leaders' positions and non-leaders' positions.⁴

4.2 Leaders' positions refer to those positions within all levels of executive organs performing such functions as organization, administration, decision making and commanding. The leaders' positions of state civil servants are classified into 15 levels. The corresponding relationship between positions and levels is as follows:

- (a) Premier of the State Council: level one;
- (b) Vice-Premiers of the State Council and State Councillors: levels two to three;
- (c) Ministers and Governors: levels three to four;
- (d) Vice-Ministers and Vice-Governors: levels four to five;
- (e) Directors of Departments within Ministries, Directors of Departments of Provinces (including Autonomous Regions and Municipalities directly under the Central Government), Inspection Officers: levels five to seven;
- (f) Associate Directors of Departments within Ministries, Associate Directors of Departments of Provinces (including Autonomous Regions and Municipalities directly under the Central Government), Assistant Inspection Officers: levels six to eight;
- (g) Departmental Heads, Heads of Counties, Investigation and Research Officers: levels seven to ten;
- (h) Deputy Departmental Heads, Deputy Heads of Counties, Assistant Investigation and Research Officers: levels eight to eleven;
- (i) Section Heads, Heads of Towns, Section Members at Head Level: levels nine to twelve;
- (j) Deputy Section Heads, Deputy Heads of Towns, Section Members at Deputy Head level: levels nine to thirteen;
- (k) Section Members: levels nine to fourteen; and
- (l) Office Workers: levels ten to fifteen.

² The work of the service personnel is purely of a supporting nature. They do not count as officers who exercise state executive authority and discharge state official duties. Instead, they are subject to regulation by the Labour Law.

³ 徐頌陶《中國公務員制度》商務印書館，1997年版。

⁴ See Articles 9 and 10 of the Interim Regulations on State Civil Servants.

- 4.3 The series of non-leaders' positions of state civil servants include:
- (a) Inspection Officers (Departmental Director Level);
 - (b) Assistant Inspection Officers (Associate Departmental Director Level);
 - (c) Investigation and Research Officers (Departmental Head Level);
 - (d) Assistant Investigation and Research Officers (Deputy Departmental Head Level);
 - (e) Section Members at Head Level (Section Head Level);
 - (f) Section Members at Deputy Head Level (Deputy Section Head Level);
 - (g) Section Members; and
 - (h) Office Workers.

5. Restrictions on Activities of Former State Civil Servants and Benefits Provided to Them

5.1 The Constitution provides that the Premier, Vice-Premiers of the State Council and State Councillors shall serve no more than two consecutive terms.

5.2 In the Mainland, the reasons leading to the departure of state civil servants, such as resignation, dismissal and retirement, may affect the restrictions imposed by the Government on their post-office activities as well as the benefits to be provided to them.

Resignation

Post-Resignation Restrictions

5.3 The Interim Regulations on State Civil Servants provide that state civil servants shall, upon resignation, undergo transfer formalities for official duties, and if necessary, be subject to financial auditing.

5.4 Article 73 of the Interim Regulations provides that "A state civil servant who, within two years after resignation, takes up office in an enterprise subordinate to the organ where he originally worked or in a profit-making institution, shall obtain the approval of the organ originally appointing and removing him."

Post-Resignation Benefits

5.5 State civil servants shall no longer enjoy any benefits pertaining to civil servants upon resignation. However, it shall be the responsibility of the executive organ to prepare for those civil servants whose resignation have been approved such certifying documents concerning their status, level of positions, salaries and benefits, length of service and so on, and to complete the formalities in transferring their files, so that such information can serve as reference for determining the various benefits to be granted to them when they obtain new employment.

Dismissal*Post-Dismissal Restrictions*

5.6 Financial auditing should be carried out on dismissed state civil servants responsible for or in charge of financial affairs, as and when required. The audit would include an examination of their compliance with financial regulations and discipline during the period when they were in office.

5.7 State civil servants no longer retain their status as civil servants after being dismissed. They no longer bear the responsibility of performing state executive functions. Nor do they enjoy any of the rights of state civil servants.

5.8 After being dismissed, state civil servants may take up a new career, but they cannot revert to work in any state executive organ within five years.⁵ If they intend to re-join the civil service five years after their dismissal, they are required to take part in relevant recruitment examinations or to go through transfer procedures according to the provisions on the appointment of state civil servants and transfer requirements. Only those who pass the examinations and the required standards can be re-appointed as state civil servants.

5.9 According to Article 12 of the Interim Methods of the Ministry of Civil Affairs on the Retirement, Resignation and Dismissal of Civil Servants⁶, "Civil servants at the levels of Departmental Director or below shall not be re-appointed to any ministerial organs within five years after their dismissal. Nor shall enterprises or institutions under any ministries offer appointment to them during the same period. Approval must be obtained from the relevant ministries if they are to be appointed five years after their dismissal."

⁵ See Article 12 of the Interim Provisions on the Resignation and Dismissal of State Civil Servants.

⁶ The Interim Methods of the Ministry of Civil Affairs on the Retirement, Resignation, and Dismissal of Civil Servants were promulgated by the Ministry of Civil Affairs under the Interim Regulations on State Civil Servants and the Interim Provisions on the Resignation and Dismissal of State Civil Servants.

Post-Dismisal Benefits

5.10 Dismissed state civil servants may, according to the relevant state regulations, enjoy unemployment insurance⁷. Prior to fresh employment, they are entitled to material assistance from the society, including unemployment relief and medical subsidy.

Retirement

Post-Retirement Restrictions

5.11 There is no information indicating that any post-retirement restriction has been imposed on the activities of state civil servants by the Mainland.

Post-Retirement Benefits

5.12 Benefits of retired civil servants include:

(a) Political benefits

Retired old civil servants are granted a definite level of political benefits and social status in the Mainland. It is provided in the retirement laws⁸ that “retired cadres are eligible to read documents, listen to reports and participate in business consultation activities in the same manner as serving cadres of equivalent ranks. In particular, the retirement laws expressly provide that for old cadres who participated in the revolution work before the founding of the People’s Republic of China under specific historical circumstances, their political benefits shall remain unchanged after their retirement. Upon retirement, such cadres shall be granted a Certificate of Honour for Retired Old Cadres by the people’s government of the relevant province, autonomous region, municipality directly under the Central Government, or by the Central Government, or by ministries or commissions of state organs, and they shall enjoy the same social and political benefits as serving cadres of equivalent ranks.”

⁷ See Article 76 of the Interim Regulations on State Civil Servants.

⁸ 徐頌陶《中國公務員制度》商務印書館，1997年版。

(b) Old-age insurance

Old-age insurance, which is the pension, is the living allowance paid by the state to retired civil servants according to relevant provisions.⁹

(c) Other benefits

According to the statutory provisions of Chinese laws, other benefits mainly include the following:

- (i) Benefits enjoyed by civil servants while in office, such as publicly-funded medical treatment, housing and rental allowances as well as general subsidies in relation to consumer prices, can be retained after retirement;
- (ii) Additional benefits are specially provided for retired persons. For instance, for those who have been granted the award of national labour heroes or model labourers, and those who have obtained the honour of advanced workers or war heroes etc. awarded by a province, a ministry or the armed forces, the rate of their retirement entitlement may be increased by 5% to 15% over the basis of the normal rate;
- (iii) In order to encourage state civil servants to serve in remote border regions with poor working conditions, it is stipulated by the state that civil servants who have served in those regions for prolonged periods may, upon their retirement, obtain a retirement allowance at a rate 5% to 10% higher than the normal rate and which is calculated according to their length of service; and

⁹ The Interim Regulations on State Civil Servants provided that “State civil servants, on retirement, are entitled to an old-age insurance and all other benefits as provided by the state.” It is stipulated by the state that the amount of pension payable to civil servants is calculated according to the basic salary and service-related salary while they are in office at the original rate, whereas their position-related salary and level-related salary are calculated and payable at a specified proportion to the original rate. To illustrate, for those who have completed 30 years of service, they will receive an amount equivalent to 88% of the sum of position-related and level-related salaries; for those who have completed 30 years but less than 35 years of service, they will receive an amount equivalent to 82% of the sum of position-related and level-related salaries; for those who have completed 20 years but less than 30 years of service, they will receive an amount equivalent to 75% of the sum of position-related and level-related salaries.

- (iv) Retired civil servants who have sustained injuries resulting in disabilities in the course of work or who cannot look after themselves as a result of injuries sustained in the course of work may be granted a nursing allowance fixed at a certain sum.

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28 March 2002
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