

***Restrictions on Activities of
Former Heads of Government and
Former Senior Members of Government***

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Prepared by

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C O N T E N T S

	<i>page</i>
Acknowledgements	
Executive Summary	
Part 1 - Introduction	1
Background	1
Objective of the Research	1
Methodology	2
Part 2 - Introduction	3
General Principles Underlying Post-Office Arrangements	3
<i>'Conflict of Interest' Principle</i>	3
<i>'Revolving Door' Principle</i>	4
<i>'Public Interest' Principle</i>	4
Part 3 - Arrangements Applicable to Former Heads of Government and Former Senior Members of Government in Countries and Places Studied	5
Post-Office Restrictions	5
<i>Heads of Government</i>	5
<i>Ministers / Political Appointees / Elected Officials</i>	8
<i>Senior Civil Servants</i>	11
Post-Office Benefits	13
<i>Heads of Government</i>	14
<i>Ministers / Political Appointees / Elected Officials</i>	15
<i>Senior Civil Servants</i>	16
Part 4 - Enforcement Mechanisms of Arrangements Applicable to Former Heads of Government and Former Senior Members of Government in Countries and Places Studied	17
Authorities Relating to Post-Office Restrictions	17
Operation of the Mechanism	18
<i>France</i>	18
<i>The United Kingdom</i>	20
<i>The United States</i>	21
<i>California</i>	22
<i>Ontario</i>	23

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Part 5 - Arrangements Applicable to the Chief Executive after Stepping Down from Office and to Former Senior Civil Servants in Hong Kong	24
Post-Office Restrictions and Benefits for the Chief Executive After Stepping Down from Office	24
Post-Office Restrictions for Former Senior Civil Servants	24
Post-Office Benefits for Former Senior Civil Servants	26
Part 6 - Analysis	27
A Comparison of Post-Office Restrictions for Senior Members of Government Among Hong Kong and Countries and Places Studied	27
Sources of Authority of Post-Office Restrictions	29
Enforcement of Post-Office Restrictions	30
Types of Post-Office Restrictions	30
Implications for Hong Kong	32
References	33

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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.

RESTRICTIONS ON ACTIVITIES OF FORMER HEADS OF GOVERNMENT AND FORMER SENIOR MEMBERS OF GOVERNMENT

PART 1 - INTRODUCTION

1. Background

1.1 The Panel on Constitutional Affairs at its meeting on 19 March 2001 requested the Research and Library Services Division (RLSD) to work in collaboration with the Government with a view to providing the Panel with information on the restrictions on activities of a former Chief Executive, pending the outcome of a study being conducted by the Government. At the meeting of 17 July 2001 when the preliminary findings prepared by the Government were discussed, it was decided that RLSD should conduct the research independently.

2. Objective of the Research

2.1 The objectives of this research paper are to examine and compare the arrangements applicable to former heads of government and former senior members of government, including ministers, political appointees and senior civil servants in overseas countries.

2.2 Having considered the following factors:

- (a) the state of the political, economic and social development;
- (b) systems of government; and
- (c) whether there are written or unwritten rules concerning post-office restrictions and benefits applicable to former heads of government and former senior members of government,

the following countries and places are chosen to be studied:

- (a) France;
- (b) the United Kingdom (UK);
- (c) the United States (US);
- (d) California of the United States (California); and
- (e) Ontario of Canada (Ontario).

3. Methodology

3.1 Information for this research report has been obtained from the Internet, government reports and relevant reference materials. Enquiries have also been sent to the relevant authorities in France, the UK, the US, California and Ontario. As of the date of the publication of this research report, some authorities in the UK, the US, California and Ontario have responded. Telephone interviews with officials of the relevant authorities in the UK, the US and California were also conducted.

PART 2 - INTRODUCTION

4. General Principles Underlying Post-Office Arrangements

4.1 Members of government, including the Head of Government, are expected to maintain certain standards of conduct in order to preserve public confidence, credibility and integrity of government. Many of these standards are designed to avoid a conflict of interest between the public duties of members of government and their private or personal interests. These standards normally apply both before and after leaving office. Restrictions are therefore imposed on certain activities of the Head or a member of government after he has left office in order to ensure that members of government derive no improper advantage from their former office and that public interest is protected.

4.2 In general, there are two types of post-office restrictions: post-office restrictions on political activities and post-office restrictions on commercial activities. The rationale of imposing the first type of post-office restrictions such as limiting heads of government to a specified number of terms is to limit the powers of heads of government, to maintain checks and balances which keep power dispersed, and to ensure that no heads of government would treat their seat like a personal monopoly.

4.3 Regarding the second type of post-office restrictions such as restricting freedom of future employment¹, one can identify the following three underlying principles:

- (a) the 'conflict of interest' principle;
- (b) the 'revolving door' principle; and
- (c) the 'public interest' principle.

'Conflict of Interest' Principle

4.4 One of the main principles underlying the arrangements applicable to former heads of government and former senior members of government is the 'conflict of interest' principle. A conflict exists when a member of government has knowledge of a private interest which is sufficient to influence the exercise of his public duties and responsibilities. For instance, a member of government might supply information obtained while in office to a company (thus giving that company an unfair advantage over its competitors) so as to enhance his job prospects with that company when he leaves office.

¹ The term 'employment' should be interpreted in a broader context, and it includes all forms of employment such as the practice of a profession.

4.5 Heads of government and senior members of government have the opportunity while in office to make decisions which may favour or discriminate against outside bodies, including individual firms. They are not impartial and acting with integrity if they could derive a personal benefit from their decisions. In this regard, the aim of post-office restriction arrangements is to ensure that decisions made by members of government while in office have not been influenced by their prospects of employment after leaving government.

'Revolving Door' Principle

4.6 Another principle commonly found in connection with post-office arrangements is the 'revolving door' principle. The 'revolving door' principle prohibits former members of government from doing business with departments in which they previously served for a period of time. Such post-office restrictions are designed to prevent pecuniary gains by individuals due to a prior relationship with their former offices.

'Public Interest' Principle

4.7 The essence of this 'public interest' principle is to reconcile two 'opposing values', namely, the need to avoid suspicion of impropriety over how members of government should behave themselves, and their freedom to look for employment without restriction. On the one hand, it is in the public interest that a high standard of conduct of people holding public office is being maintained and is seen to be maintained. They should avoid conduct which creates an appearance of impropriety, even though the conduct itself is not actually improper. On the other hand, it is also in the public interest to see as much interchange as possible because the benefits of interchange of talents between public and private sectors to the economy and to the country may be substantial.

4.8 Therefore, members of government should be allowed to contribute their expertise and their knowledge of government to private companies which wish to employ them. At the same time, post-office restrictions for former members of government should not have the effect of deterring people from joining the government. A flexible system should be designed such that it only curtails employment plans when they might threaten public confidence in the standards of conduct of members of government.

PART 3 - ARRANGEMENTS APPLICABLE TO FORMER HEADS OF GOVERNMENT AND FORMER SENIOR MEMBERS OF GOVERNMENT IN COUNTRIES AND PLACES STUDIED

5. Post-Office Restrictions

5.1 Tables 1 to 6 summarize post-office restrictions for former members of government in the five countries and places studied.

Heads of Government

Table 1 - Sources of Authority of Post-Office Restrictions for Former Heads of Government

Countries / Places	Sources of Authority of Post-Office Restrictions
France	Convention
The United Kingdom	Ministerial Code and convention
The United States	Convention
California	Political Reform Act
Ontario	Members' Integrity Act

Table 2 - Post-Office Restrictions for Former Heads of Government

Countries / Places	Post-Office Restrictions		
	Standing for elections to the Head of Government	Future employment	Others, e.g. making contracts with the government or seeking to influence government decisions for compensation
France	No	No	No
The United Kingdom	No	Yes	No
The United States	Yes	No	No
California	Yes	Yes	Yes
Ontario	No	Yes	Yes

France

5.2 Having approached the Consulate General of France in Hong Kong and having read the available information, we have not found any written rule including legislation seeking to limit the activities of former Prime Ministers in France. Media comments and the threat of hostile public reactions appear to have the effect of deterring unethical behaviour of former Prime Ministers.

The United Kingdom

5.3 In the UK, the Ministerial Code requires ministers, including the Prime Minister, on leaving office to seek advice from the Advisory Committee on Business Appointments (please see Table 12 for its constitution and responsibilities) about any appointments they wish to take up within two years of leaving office. If the Advisory Committee considers that an appointment could lead to public concern that the statements and decisions of the Prime Minister, when in government, have been influenced by the expectation of future employment with the firm concerned, or that an employer could make improper use of official information to which a former Prime Minister has had access, it may recommend a delay of up to two years before the appointment is taken up, or that for a similar period the former Prime Minister should stand aside from certain activities of the employer. The Advisory Committee may also advise that an appointment is unsuitable.²

5.4 A three-month waiting period [restriction period] from the date of leaving office will normally be expected for a former Prime Minister unless the Advisory Committee advises a longer restriction period. The Advisory Committee may also waive the three-month restriction period if no considerations of improper advantage could apply. Examples are the return to a family business or the practice of a profession such as medicine or teaching.

5.5 Although the Ministerial Code is not a rulebook and there is no designated authority to enforce it, ministers, including the Prime Minister, generally follow the guidance laid down in the Code.

² Cabinet Office, *Ministerial Code. A Code of Conduct and Guidance on Procedures for Ministers*, at <http://www.cabinet-office.gov.uk/central/2001/mcode/>.

The United States

5.6 In the US, there is no federal law or guideline governing the activities undertaken by former Presidents. US Presidents can take up any appointments they like after leaving public office. They are also free to participate in any political activities. However, there is always an unstated expectation that former Presidents should conduct themselves in a manner that does not detract from the position which they held. Nevertheless, its interpretation is a matter of individual judgement.

5.7 There is only one written restriction laid down in the US Constitution: US Presidents cannot stand for another Presidential election after serving two terms.

California

5.8 In California, the Political Reform Act restricts the activities of former state officials, including Governors, for one year after leaving the government. They are also permanently barred from working on the other side of a proceeding that they participated in while in office. In short, they are prohibited from representing anyone else and making a communication back to any government agency with the intention to influence any matter that they worked on while they were in government. They can neither seek to influence legislative or administrative action for compensation nor can they use their official position to influence any government decision directly relating to a prospective employer.

5.9 There is another restriction laid down in the California Constitution: Governors cannot stand for another gubernatorial election after serving two terms.

Ontario

5.10 According to the Members' Integrity Act 1994, former members of the Executive Council³, including former Premiers, cannot improperly use their positions to seek or accept employment with private sector companies that they dealt with when they were in government.

5.11 Former Premiers are also prohibited from accepting contracts or benefits granted or approved by the Executive Council of Ontario within one year after leaving government. They are also prohibited from making representations to the government on their own behalf or on another person's behalf with respect to that contract or benefit for one year after leaving office.

³ An Executive Council consists of ministers selected by the Premier. These ministers form the cabinet of the Ontario government.

5.12 There is no requirement in the Act that former members of the Executive Council, including former Premiers, must seek approval for their employment plans after leaving office.

5.13 There is no legislation limiting former Premiers from standing for elections to the Head of Government.

Ministers / Political Appointees / Elected Officials

Table 3 - Sources of Authority of Post-Office Restrictions for Former Ministers / Political Appointees / Elected Officials

Countries / Places	Sources of Authority of Post-Office Restrictions
France	Decree governing members of ministerial cabinets only
The United Kingdom	Ministerial Code and convention
The United States	Title 18 of the US Code Section 207
California	Political Reform Act
Ontario	Members' Integrity Act

Table 4 - Post-Office Restrictions for Former Ministers / Political Appointees / Elected Officials

Countries / Places	Post-Office Restrictions		
	Restriction period	Future employment	Others, e.g. making contacts or contracts with the government
France	5 years	✓	✓
The United Kingdom	3 months to 2 years	✓	✓
The United States	1 year / lifetime	✓	✓
California	1 year	✓	✓
Ontario	1 year	✓	✓

France

5.14 Having approached the Consulate General of France in Hong Kong and having read the available information, we have not found any legislation governing activities of former ministers of government.

5.15 However, members of ministerial cabinets (who are referred to as "collaborators of ministry cabinets" in France)⁴ are subject to Decree 95-168 of 17 February 1995. According to the Decree, a member of a ministerial cabinet is prohibited from engaging in activities in a private firm under the following conditions:

- (a) he has been responsible for the supervision or control of that company during the five years preceding his cessation of office; or
- (b) he has made contracts with that company or expressed an opinion as to such contracts during the five years preceding his cessation of office; or
- (c) he has owned a specified % of capital in that company; or
- (d) such activities should prejudice or compromise the dignity, normal operation, independence or neutrality of a government department.

5.16 The Ethics Commission in France (please see Table 12 for its constitution and responsibilities) may also impose behavioural conditions on members of ministerial cabinets. These conditions govern what members of ministerial cabinets after leaving office may not do for their new employers. For example, the conditions may prevent them from contacting their former departments or from dealing with certain matters relating to their former departments.

5.17 Under the Decree, members of ministerial cabinets are required to inform their superiors about private activities they intend to undertake after leaving office. The government upon receipt of this notification is required to consult the Ethics Commission. However, the decision as to whether to approve or disapprove the engagement in the proposed private activities rests with the government.

The United Kingdom

5.18 The post-office restrictions imposed on former ministers are the same as those imposed on former Prime Ministers. In other words, former ministers may seek advice from the Advisory Committee on Business Appointments regarding taking up outside appointments within two years of leaving government. Ministers may follow the advice on a voluntary basis. It is not compulsory to accept the advice. For details, please refer to paragraphs 5.3 to 5.5.

⁴ In France, various ministerial cabinets have been established to assist Cabinet Ministers in managing their departments. These ministerial cabinets permit Cabinet Ministers to assemble a group of personal collaborators, who typically enter and leave the ministerial cabinets with Cabinet Ministers and serve as their personal teams.

The United States

5.19 In the US, political appointees (who are referred to as "very senior employees" appointed by the President or Vice President in the US) are subject to post-office restrictions stipulated in Title 18 of the US Code Section 207. These restrictions prohibit a former political appointee from making representations to employees of his former government agency on matters regardless of his prior involvement. These restrictions usually last for one to two years; however, if a former political appointee has been personally and substantially involved in a matter while he was in government, a lifetime ban on making representations on the matter will be imposed on him.

5.20 There are also restrictions on political appointees seeking employment while they are still in government. For example, they are required to obtain a written waiver from an appropriate authority before they can have an arrangement concerning future employment.

5.21 While political appointees are not required to seek approval for a job which begins after government service, they are encouraged to seek advice on their job plans from government ethics officials⁵.

California

5.22 All elected state officials are subject to the same post-office restrictions laid down in the Political Reform Act for the Governor of California. They include:

- (a) a one-year ban on making communication back to their former government agency in an attempt to influence agency decision;
- (b) a permanent ban on 'switching sides', i.e. all former elected state officials are prohibited from representing anyone else, and making a communication back to any government agency with the intention to influence any matter that they worked on while they were in government; and
- (c) a restriction prohibiting the elected state official from influencing agency decision which is directly related to a prospective employer.

⁵ Government ethics officials are responsible for developing and implementing agency-specific ethics programmes; providing advice and assistance to federal employees; and training federal employees on all ethics statutes, regulations and policies.

Ontario

5.23 There is no difference in treatment regarding post-office restrictions for former Premiers and former members of the Executive Council. They are subject to the same provisions under the Members' Integrity Act 1994. In other words, they cannot improperly use their positions to seek or accept employment with private sector companies, and are prohibited from accepting contracts granted by the Executive Council, etc. For details, please refer to paragraphs 5.10 to 5.12.

Senior Civil Servants**Table 5 - Sources of Authority of Post-Office Restrictions for Former Senior Civil Servants**

Countries / Places	Sources of Authority of Post-Office Restrictions
France	Decree 95-168 of 17 February 1995
The United Kingdom	Business Appointment Rules
The United States	Title 18 of the US Code Section 207 and Executive Order
California	Political Reform Act
Ontario	We have not received any information

Table 6 - Post-Office Restrictions for Former Senior Civil Servants

Countries / Places	Are they required to submit job plans for approval?	Restriction Period?	Other Restrictions?
France	✓ Required to inform their superior of their private activities and seek approval	✓ 5 years from the date of leaving the government	✓ ~5 years ban on activities under specified conditions (see paragraph 5.15) ~ May impose behavioural conditions (see paragraph 5.16)
The United Kingdom	✓ Required to seek approval	✓ 2 years from the date of leaving the government	✓ May impose behavioural conditions for up to 2 years (see paragraph 5.27)
The United States	✗ Encouraged to seek guidance from the government's ethics officials	✓ 1 to 2 years ¹ / lifetime	✓ Restrictions on certain activities (see paragraph 5.28)
California	✗ Encouraged to seek guidance from ethics officials	✓ 1 year / lifetime	✓ Restrictions on certain activities (see paragraph 5.29)
Ontario	We have not received any information	We have not received any information	We have not received any information

Remarks:

1. This restriction does not prohibit civil servants from accepting employment with any private or public employment after government service. It only prohibits them from engaging in certain activities that involve the US government, whether or not done for compensation.

France

5.24 In France, post-office restrictions for former senior civil servants are the same as those for former members of ministerial cabinets. In short, they are prohibited from engaging in activities in a private firm under conditions specified in Decree 95-168 of 17 February, 1995. For details, please refer to paragraphs 5.15 to 5.17.

The United Kingdom

5.25 According to the Business Appointment Rules, senior civil servants as defined in the Civil Service Management Code are required to seek approval for their initial appointment and any further appointment within two years of leaving government. Applications are normally approved by the Prime Minister on the advice of the Advisory Committee on Business Appointments. (Applications from Special Advisors are approved by the Head of the Home Civil Service on the advice of the Advisory Committee.)

5.26 The Business Appointment Rules also specify that Permanent Secretaries are subject to an automatic minimum waiting period of three months between leaving government and taking up outside appointments. However, the Advisory Committee on Business Appointments has the discretion to recommend to the Prime Minister waiving the minimum waiting period, if it considers that no question of propriety will arise.

5.27 The Advisory Committee may also impose behavioural conditions on senior civil servants. These conditions govern what senior civil servants may not do for their new employers after leaving office. For example, the conditions imposed may prevent former senior civil servants from contacting their former departments or working on tenders for government projects.

The United States

5.28 Senior federal employees are subject to the same post-employment restrictions laid down in Title 18 of the US Code Section 207 for "very senior employees", i.e. political appointees. In short, they include:

- (a) one-year or two-year bans on making communications back to their former agency. This period may extend to lifetime if the federal employee is personally and substantially involved in the matter concerned; and
- (b) restrictions on actions in seeking employment while they are still in government.

For details, please refer to paragraphs 5.19 to 5.21.

California

5.29 State employees are subject to the same post-employment restrictions laid down in the Political Reform Act for "elected state officials". These restrictions are:

- (a) a one-year ban on communicating back to their former agency on a payment basis in an attempt to influence agency decision;
- (b) a permanent ban on 'switching sides'; and
- (c) a prohibition from influencing agency decision which is directly related to a prospective employer.

Ontario

5.30 As of the date of publication of this research report, we have not received any information on the post-office restrictions for former senior civil servants in Ontario.

6. Post-Office Benefits

6.1 In the countries and places studied, it is found that the reasons for providing post-office benefits to former members of government differ. For example, in the UK, since ministers, including the Prime Minister, are required to relinquish any outside appointments when they are first appointed, they have to forgo the salaries they might otherwise have drawn. Unlike many other areas of employment, there is no contractual term or any period of notice to serve out. Prime Ministers or ministers might face the immediate loss of their ministerial salary if they suffer a defeat in a general election or a ministerial reshuffle. Therefore, monetary allowance is provided to help them bridge the gap. In the US, pension was created in the Former Presidents Act in 1958 in view of President Truman's financial situation then. We have been told by the Office of the Integrity Commissioner of Ontario that it is a common practice in Ontario to provide post-office benefits for employees of government, including the Premier and ministers. For details of the post-office benefits granted to members of government, please see Tables 7 - 10.

Heads of Government**Table 7 - Post-Office Benefits for Former Heads of Government**

Countries / Places	Post-Office Benefits
France	We have not received any information.
The United Kingdom	~ Pension ¹ ; ~ If he remains a Member of Parliament (MP), he may receive full MP's pay and allowance; and ~ Allowance for covering expenses on losing office ² .
The United States	~ Pension ³ ; ~ Office space; ~ Secretariat help; ~ Secret Service protection for 10 years after leaving office ⁴ ; ~ Official travel expenses; and ~ Free mailing within the US and its territories / possessions.
California	We have not received any information.
Ontario ⁵	~ Pension; ~ Severance payment; ~ A specified payment to cover outplacement services offered by a professional transition firm, a legal or retirement counselor and/or expenses on educational courses; and ~ Life insurance.

Remarks:

1. The Prime Minister is entitled to receive a pension equal to one half of his final annual salary when leaving office. This payment is payable immediately unless he takes up another paid ministerial or related post.
2. This allowance is not payable to any former Prime Minister while he holds the office of Leader of Opposition because he will receive financial support attaching to that office.
3. The Former Presidents Act provides each former President a taxable pension which is equal to the annual rate of basic pay for the head of an executive department, currently US\$161,200 or HK\$1,257,360.⁶
4. A law passed in 1997 which limits protection of Presidents elected after 1997 to a decade after leaving office. Therefore, Bill Clinton is the last US President with lifetime Secret Service protection.
5. Post-office benefits are standard for elected members of the Ontario Provincial Parliament regardless of positions held. Therefore, a Premier, a minister and an elected member of the Ontario Provincial Parliament enjoy the same post-office benefits.

⁶ The exchange rate in November 2001 between HK\$ and US\$ was HK\$7.8 = US\$1. Source: Census and Statistics Department. *Hong Kong Monthly Digest of Statistics*. December, 2001.

Table 8 - Factors Affecting Entitlement to Post-Office Benefits

Countries / Places	Are there factors affecting the entitlement of heads of government to post-office benefits?
France	We have not received any information.
The United Kingdom	No.
The United States	Yes. Former Presidents are eligible to receive all the above benefits provided that they are not removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.(Art. II, Section 4 of the Constitution of the United States of America). ¹
California	We have not received any information.
Ontario	No.

Remark:

1. According to Bazan (1998)⁷, if a President is tried by the Senate in an impeachment trial, but not convicted; or if he were to resign before or during an impeachment proceeding, but before being convicted on an article of impeachment; he would still be eligible to receive post-office benefits.

Ministers / Political Appointees / Elected Officials**Table 9 - Post-Office Benefits for Former Ministers / Political Appointees / Elected Officials**

Countries / Places	Post-Office Benefits
France	We have not received any information.
The United Kingdom	~ Pension; ~ Severance payments ¹ ; and ~ If he remains a MP, he may receive full MP's pay and allowance ² .
The United States	~ A retirement fund.
California	We have not received any information.
Ontario	~ Pension; ~ Severance payment; ~ A specified payment to cover outplacement services offered by a professional transition firm, a legal or retirement counselor and/or expenses on educational courses; and ~ Life insurance.

Remarks:

1. Ministers are entitled to receive a severance payment of one quarter of their final annual ministerial salary when they leave office for whatever reason. This payment is made as long as the former minister is under the age of 65 and is not appointed to another relevant paid office within three weeks. The Prime Minister, Lord Chancellor and Speaker are excluded from this scheme. Source of authority: Ministerial and Other Pensions and Salaries Act 1991.
2. Members of the House of Lords do not receive a salary but they can be reimbursed for travel, subsistence and secretarial costs which may incur in connection with their parliamentary duties.

⁷ Bazan, E., *The Intersection Between the Former Presidents Act and the Impeachment Process*, 5 June, 1998 at <http://www.house.gov/judiciary/98-524.htm>.

Table 10 - Factors Affecting Entitlement to Post-Office Benefits

Countries / Places	Are there factors affecting the entitlement of ministers / political appointees / elected officials to post-office benefits?
France	We have not received any information.
The United Kingdom	No.
The United States	A removal for misconduct or delinquency is treated as a "voluntary separation". It does not disqualify an individual for voluntary retirement benefits if he is otherwise eligible. If a senior political appointee resigns during a change of Administration, or if the President accepts his resignation at any time, or his term of appointment expires, the separation from service is treated as an "involuntary separation not for cause". This allows the individual to qualify for an immediate benefit based on the lower age and service requirements.
California	We have not received any information.
Ontario	No.

Senior Civil Servants

6.2 In all of the five countries and places studied, the governments have provided former senior civil servants with pension as post-office benefits. However, as of the date of the publication of this report, we have not received any information indicating the existence of factors affecting senior civil servants' entitlement to post-office benefits.

**PART 4 - ENFORCEMENT MECHANISMS OF ARRANGEMENTS
APPLICABLE TO FORMER HEADS OF GOVERNMENT AND
FORMER SENIOR MEMBERS OF GOVERNMENT IN
COUNTRIES AND PLACES STUDIED**

7. Authorities Relating to Post-Office Restrictions

7.1 Tables 11 and 12 contain details of authorities which are either responsible for enforcing post-office restrictions or providing advice on post-office restrictions to senior members of government.

Table 11 - Authorities Relating to Post-Office Restrictions

Countries / Places	Heads of Government	Ministers / Political Appointees / Elected Officials	Senior Civil Servants
France	Not applicable	Ethics Commission	Ethics Commission
The United Kingdom	Advisory Committee on Business Appointments Committee	Advisory Committee on Business Appointments Committee	Advisory Committee on Business Appointments Committee
The United States	Not applicable	Office of Government Ethics	Office of Government Ethics
California	Fair Political Practices Commission	Fair Political Practices Commission	Fair Political Practices Commission
Ontario	Office of the Integrity Commissioner	Office of the Integrity Commissioner	We have not received any information

Table 12 - The Constitution and Responsibilities of Authorities Relating to Post-Office Restrictions

Countries / Places	Constitution	Responsibilities
France - Ethics Commission	The chairman and members are appointed by decree proposed by the minister in charge of public office	Responsible for assessing whether any conflict exists between the proposed private activity and the prior responsibilities of former members of government
The United Kingdom - Advisory Committee on Business Appointments	The Chairman and members are appointed by the Prime Minister	Responsible for giving advice to ministers and civil servants at senior levels on their applications for taking up outside appointments within two years of leaving government
The United States - Office of Government Ethics	The Director of the Office of Government Ethics is appointed by the President and confirmed by the Senate	Responsible for overseeing and providing guidance on government ethics for the executive branch
California - Fair Political Practices Commission	The Commission consists of five members: the Governor of California appoints the Commission Chairman and one Commission member, and the Secretary of State, the State Attorney General and the State Controller each appoints one Commission member	Responsible for educating the public and public officials on the requirements of the Political Reform Act, providing written and oral advice to public agencies and officials, investigating alleged violations of the Political Reform Act, and imposing penalties when appropriate
Ontario - Office of the Integrity Commissioner	The Integrity Commissioner is appointed by the Lieutenant Governor in Council	Responsible for advising elected Members of the Ontario Provincial Parliament, including Premier and ministers and preventing ethics violations before they occur

8. Operation of the Mechanism

France

8.1 In France, the government⁸ is required to consult the Ethics Commission about the suitability of private activities intended to be undertaken by members of ministerial cabinets and senior civil servants within five years of leaving office. The final decision, however, rests with the government.

8.2 Under Decree 95-168 of 17 February 1995, it is the duty of the government to draw the attention of members of ministerial cabinets and civil servants to post-office restrictions. Members of ministerial cabinets and civil servants are obliged to inform their superiors about their intention of taking up outside appointments after leaving government.

⁸ The word 'government' is generally understood to be composed of the Prime Minister and ministers. 潘小娟：《法國行政體制》中國法制出版社 1997。

8.3 The government is required to consult the Ethics Commission about an application for taking up outside appointment submitted by a member of a ministerial cabinet or a civil servant. A member of a ministerial cabinet or a civil servant may also choose to directly inform the Ethics Commission about his job plan but the Decree requires him to notify the government of such move.

8.4 The government is required to submit the following documents to the Ethics Commission for consideration:

- (a) the application letter made by the ministerial cabinet member or the civil servant concerned;
- (b) a declaration for engaging in a private activity by the applicant;
- (c) the status of the corps⁹ where the applicant belonged within the last five years of his leaving government; and
- (d) the status of the company or profession proposed.

8.5 The Ethics Commission is required to render an opinion within one month from the receipt of the above documents. Failure to notify by this deadline is equivalent to approving the application. The opinion of the Ethics Commission need not be made public.

8.6 The government is required to inform the applicant of the opinion given by the Ethics Commission within one month from the receipt of the Ethics Commission's opinion. Failure to do so might be considered as equivalent to an approval of the application.

8.7 Any person who has undertaken the prohibited activities under Decree 95-168 of 17 February 1995 is subject to both a fine and imprisonment. There might also be disciplinary punishment such as deductions from pensions or cancellation of pension rights.

⁹ Corps are unique groups of civil servants with similar training and specialization in the French Civil Service. Senior civil servants are identified by their membership of specific corps.

The United Kingdom

Prime Ministers and Ministers

8.8 In the UK, former ministers, including former Prime Ministers will, by convention, seek advice from the Advisory Committee on Business Appointments on any appointments they would like to take up within two years of leaving office. The Advisory Committee will consider details of the appointment and any contact the former minister has had with the prospective employer or competitors. It may then inform the minister concerned about its advice (e.g. a delay of up to two years before the appointment is taken up, or the appointment is unsuitable, etc). All approaches to the Advisory Committee will be considered in strict confidence, and will remain confidential if the appointment is not taken up. When a former minister takes up a post which the Advisory Committee has scrutinized, the Advisory Committee's advice will be published in the annual report of the Advisory Committee.

8.9 There is no legal requirement for former Prime Ministers and ministers to seek advice from the Advisory Committee on Business Appointments. Even if they have sought advice, it is entirely their decision to follow it or not. The Advisory Committee does not monitor whether or not its advice has been followed.

8.10 While the Advisory Committee will not take any action against any person if he does not follow its advice, there is little evidence suggesting that its advice has not been followed.¹⁰ One reason is that it may leave a bad image to the public if the minister concerned has had his personal interest overriding his public integrity. Another reason is that it may cause embarrassment between the prospective company in which the former minister concerned intends to join and the government, and this might affect the relationship between the two.

Senior Civil Servants

8.11 Senior civil servants are required to obtain government approval before taking up any form of full-time, part-time or fee-paying employment within two years of leaving government.

8.12 It is the duty of the government to draw the attention of senior civil servants to post-office restrictions in letters of appointment, circulars, staff handbooks, etc and to remind them of restrictions on retirement, resignation or at the end of a limited-period appointment.

¹⁰ According to the advice given by the Advisory Committee on Business Appointments during a telephone interview.

8.13 Applications for approval must be made by civil servants. They are required to supply the following particulars to the Advisory Committee via their government departments:

- (a) full details of the proposed employment; and
- (b) details of any official dealings with a prospective employer or with any other organization, including any competitors of the prospective employer.

8.14 The government department in which the civil servant concerned has served is also required to seek comments of a countersigning officer who can verify the information supplied by the civil servant concerned.

8.15 After considering all the information submitted, the Advisory Committee may advise the Prime Minister to approve the application unconditionally or with conditions.

8.16 In view of their access to sensitive information at the highest level, all applications from Permanent Secretaries are subject to an automatic minimum waiting period of three months between leaving government and taking up an outside appointment, unless they have been appointed from outside the civil service on a limited-period contract.

8.17 Appointments which are approved by the Prime Minister on the advice of the Advisory Committee and subsequently taken up may be the subject of public announcement. Therefore, senior civil servants are required to confirm to their departments their intentions of taking up any appointment for which an application has been considered by the Advisory Committee.

8.18 The Advisory Committee does not monitor whether or not its advice has been followed nor does it take any action if its advice is found to have not been followed.

The United States

8.19 Title 18 of the US Code Section 207 governs the post-employment conduct of senior members of government in the US. It is a criminal statute and is enforced by the Department of Justice through prosecution in the courts. Investigations of possible violations are carried out by the Inspector General's Office on the agency in which the senior member of government has served or by the Federal Bureau of Investigation or jointly.

8.20 There is no requirement in the Code for members of government to seek approval for their job plans. However, they are encouraged to seek advice from government ethics officials. The Office of Government Ethics has the overall responsibility for the ethics programmes in the executive branch. It reviews all the ethics programmes of government ethics officials to ensure that government ethics officials have carried out their duties properly.

8.21 If serving government officials suspect a representation made by a former member of government (either in person or in writing) has violated Title 18 of the US Code Section 207 (for example, the representation is about a project which the former member of government had been personally and substantially involved in while he was in government), they should refer the matter to an appropriate investigation authority. If the matter is one on which other private parties are also seeking government action, these private parties are also likely to act as 'watchdogs' to see that a former government official is not acting on behalf of one of their competitors.

8.22 Any person engaging in conduct constituting an offence of Title 18 of the US Code Section 207 shall be subject to a fine and/or imprisonment. An appeal can be made through the Federal Court system following the standard appellate procedures.

California

8.23 The Political Reform Act is enforced by the Enforcement Division of the Fair Political Practices Commission, which is assigned to investigate alleged violations of the Political Reform Act, and where appropriate, initiate formal administrative or civil enforcement proceedings.

8.24 Anyone who suspects a violation of the Political Reform Act may file a written complaint with the Fair Political Practices Commission. The Enforcement Division reviews the complaint to determine if it is appropriate for investigation.

8.25 A complaint found to merit a full investigation is assigned to a staff attorney and an investigator. There are several possible outcomes after an investigation. First, Commission members may be asked by the investigation staff to approve a settlement agreement in which the subject of the investigation agrees to pay an administrative fine or take other remedial action. Alternatively, the case may enter a formal process which can result in an administrative prosecution by the Enforcement Division and a hearing before an administrative law judge or the full Commission. Finally, the Commission may levy fines, dismiss the case or take other appropriate action.

8.26 The complainant or other members of the public may request access to information regarding the action taken and the decision made by the Commission by making a request to the Commission under the Public Records Act.

Ontario

8.27 The Members' Integrity Act of 1994 does not specifically authorize the giving of opinions by the Integrity Commissioner to former ministers who are no longer members of the Ontario Provincial Parliament. However, there were occasions in the past that the Integrity Commissioner provided former ministers with opinions on matters relating to their post-office employment.

8.28 A member of the Legislative Assembly who has reasonable and probable grounds to believe that a former Premier or a former minister who is now a backbencher has contravened s. 18 of the Members' Integrity Act (restrictions applicable to former members of the Executive Council) or has contravened Ontario parliamentary convention may request the Integrity Commissioner to give an opinion as to the matter. There is no provision in the Members' Integrity Act for the Integrity Commissioner to conduct an inquiry if the complaint is about a former minister who is no longer a member of the Ontario Provincial Parliament. However, in such cases, there might be repercussions for the company who employs that former minister and is attempting to do business with the Ontario government.

8.29 The Integrity Commissioner has the power to investigate a complaint from one member about the activities of another member only. The legislation does not provide for complaints received from the public.

8.30 When the Integrity Commissioner has completed an inquiry of a complaint, he is required to report to the Legislative Assembly and recommend in his report that:

- (a) no penalty be imposed; or
- (b) the member be reprimanded; or
- (c) the member's right to sit and vote in the Assembly be suspended for a specified period of time until a condition imposed by the Commissioner is fulfilled; or
- (d) the member's seat be declared vacant.

8.31 The Legislative Assembly can approve or disapprove the recommendation made by the Integrity Commissioner. Its decision is final and conclusive but it cannot impose a penalty other than the one recommended by the Integrity Commissioner.

8.32 An appeal may be made to the Divisional Court of the Ontario Court of Justice under the Statutory Powers of Procedures Act although it has never occurred.

PART 5 - ARRANGEMENTS APPLICABLE TO THE CHIEF EXECUTIVE AFTER STEPPING DOWN FROM OFFICE AND TO FORMER SENIOR CIVIL SERVANTS IN HONG KONG

9. Post-Office Restrictions and Benefits for the Chief Executive After Stepping Down from Office

9.1 There is at present no legislation in Hong Kong which imposes restrictions on the commercial or political activities which the Chief Executive wishes to undertake after his departure from office. However, there is one restriction laid down in the Basic Law: the Chief Executive may serve for not more than two consecutive terms. There is also no retirement protection arrangement for him.

10. Post-Office Restrictions for Former Senior Civil Servants

10.1 At present, the Hong Kong Government consists of civil servants only. There are no ministers or political appointees. The employment terms and conditions of service of senior civil servants¹¹ are specified in the Civil Service Regulations and circulars and memoranda issued by the Civil Service Bureau. Within these terms and conditions, there are post-office restrictions which are set out in Table 13 below.

Table 13 - Post-Office Restrictions For Former Senior Civil Servants

	Officers who are pensioners under the Hong Kong pensions legislation	Officers on agreement terms
Are they required to submit job plans for approval?	✓	✓
Restriction period?	~ 3 years from the date of leaving office for officers at ranks of Director of Bureau or above ~ 2 years from the date of leaving office for directorate officers	~ 1 year from the date of leaving office for principal officials and civil servants at D3 and above of the Directorate Pay Scale

¹¹ In this research report, senior civil servants are referred to directorate officers.

10.2 Under the pensions legislation, if retired senior civil servants (who retire either on or before reaching normal retirement age) wish to take up employment in which the principal part of business is carried out in Hong Kong, they are required to seek prior permission from the Chief Executive before they can take up such employment in Hong Kong. At present, retired officers at Director of Bureau rank or above are required to seek permission for employment which they wish to take up within three years after retirement. Retired directorate officers are required to seek approval within a two-year period. Failure to seek prior permission may result in pension suspension.

10.3 Senior civil servants who resign or are dismissed by the government are not required to seek permission from the Chief Executive before they take up any outside employment¹².

10.4 Since 1997, officers on agreement terms ranked at D3 and above are also required to seek prior permission before they take up employment outside the government within one year after the completion of their agreements. The requirement is written into new agreements offered since January 1997 and is enforced as a contractual obligation.

10.5 If directorate officers wish to seek permission to take up employment after leaving government, they are required to provide information covering details of their prospective employment, nature of any previous contacts they had with their prospective employers and their accessibility to commercially sensitive information while serving in the government.

10.6 Applications from directorate officers are centrally processed by the Civil Service Bureau on the advice of the Advisory Committee on Post-Retirement Employment. The chairman of the Advisory Committee is a High Court judge and its membership comprises two legal professionals and a member of the Public Service Commission.

¹² According to the advice given by the Civil Service Bureau during a telephone interview.

10.7 The key guiding principle for approving an application for post-office employment is that the prospective employment should not conflict with public interest or embarrass the government. Where necessary¹³, the government will specify a sanitisation period when a former senior civil servant would be barred from taking up the employment. The government may also impose restrictions on the scope of activities to be undertaken by a former senior civil servant, e.g. a ban on involvement of the former senior civil servant in dealings between the government and the prospective employer, or in dealings between the prospective employer and a named competitor.

11. Post-Office Benefits for Former Senior Civil Servants

11.1 Tables 14 - 15 summarize the post-office benefits granted to former senior civil servants.

Table 14 - Post-Office Benefits for Former Senior Civil Servants

	Officers who are pensioners under the HK pensions legislation	Officers on agreement terms
Post-Office Benefits	~ Pension ~ Medical benefits	~ Retirement benefits provided via the Mandatory Provident Fund Scheme; and ~ Gratuity specified in the appointment contract provided performance is satisfactory.

Table 15 - Factors Affecting Entitlement to Post-Office Benefits

Countries / Places	Are there factors affecting the entitlement of senior civil servants to post-office benefits?
Officers on pensions terms	Yes. For a person who is liable to disciplinary punishment (including dismissal), all his rights, privileges and benefits of office will be forfeited. If he resigns, he may or may not forfeit all rights and benefits of the service ¹⁴ .
Officers on agreement terms	Yes. For a person who is dismissed by the government or his service is terminated for reason of misconduct, all his accrued leave and leave passage benefits will be forfeited.

¹³ According to the advice given by the Civil Service Bureau during a telephone interview, there is *normally* a sanitisation period of a minimum of six months for directorate officers after leaving government. However, whether or not there is actually a sanitisation period imposed on a directorate officer after leaving government and for how long depend on if the proposed employment constitutes a conflict of interest with his previous employment in the civil service or if it will embarrass the government.

¹⁴ According to the advice given by the Civil Service Bureau in a telephone interview, senior civil servants who joined the government after 1987 and have served in the government for 10 years or above may retain their pension rights after resignation. However, for senior civil servants who joined the government prior to 1987 and did not opt for the new pension scheme, they forfeit all rights and benefits of the service after resignation.

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 Report¹⁵ (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.¹⁶

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:

¹⁵ 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.

¹⁶ 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.¹⁷ 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)¹⁸, "*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*".

¹⁷ Transcript of the forum, "The Ramifications of the Revolving Door: The Outgoing Government Official" organized by the American Enterprise Institute on 14 February 2001.

¹⁸ 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.

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