

Legislative Council Panel on Constitutional Affairs
Follow-up on matters discussed at the meeting on 20 June 2005

Remuneration and Post-office Arrangements for the Chief Executive

Post-office Restrictions

- (a) Main provisions of the written agreement to be signed by the Chief Executive
1. The restrictions on a former Chief Executive's (CE) involvement in commercial/professional activities after leaving office are to be set out in a written undertaking in the form of an agreement under seal to be signed by the CE.
 2. The written agreement will stipulate the restrictions to be applicable to a former CE in respect of the use of official information. A former CE shall not make improper use of any information made available to him during his term of office that has not yet been known to the public to benefit himself or any other person, financially or otherwise. Except with the prior written approval of the Government, a former CE shall not use, divulge or communicate to any person any classified or market sensitive information which came to his knowledge during his term of office and which has not yet become known to the public.
 3. The written agreement will also stipulate that a former CE will be subject to post-office employment control within three years after leaving office. During the first year, a former CE shall not undertake any employment, become a director or a partner in any business or profession, or start any business or profession. In the following two years, a former CE is required to seek advice from an advisory committee before taking up any employment or engaging in any business or professional activities in or outside Hong Kong.
 4. During the three-year control period, a former CE may, without seeking advice from the advisory committee, accept appointments made by the Central Authorities or the HKSAR Government, appointments to charitable, academic, other non-profit-making organizations, or non-commercial regional or international organizations. A former CE should inform the Government of any such appointment during the three-year control period.

5. During the second and third year of the control period, a former CE shall not:
 - (a) enter into employment with or become a director of any company with land or property development being part of its business or which was awarded with any franchise or licence approved by the Executive Council during his time in office;
 - (b) represent any person in connection with any claim, action, demand, proceedings, transaction or negotiation against or with the Government;
 - (c) engage in any lobbying activities on matters relating to the Government;
 - (d) enter into employment with or become a director of a company which is involved in on-going litigation against the Government; and
 - (e) be involved personally in the bidding for any government land, property, project, contract, licence or franchise.
- (b) Enforceability of the undertaking
- (c) Handling of cases of non-compliance
6. The written undertaking to be signed by the CE signifying his agreement to abide by the relevant restrictions will be in the form of an agreement under seal. It will be a legally enforceable agreement between the CE and the Government. It may be enforced by civil proceedings in the courts.
- (d) Sanctions imposed on former heads of government in other countries/territories for failure to comply with post-office restrictions
7. Of the 12 countries/territories covered in the Administration's survey, seven of them have specific restrictions governing the post-office activities of former heads of government. Broadly speaking, restrictions in these seven countries/territories are either stipulated in behavioral codes or enforced by statute. Examples of the former group include the United Kingdom and Canada. Their restrictions are incorporated into a code for public office holders/ministers, which does not carry the force of law. It appears that these countries rely on the transparency of the system and public scrutiny to ensure compliance. On the other hand, in California and Ontario post-office restrictions for former heads of government are underpinned by

legislation. In case of non-compliance, civil proceedings may be initiated.

8. The possible sanctions in case of non-compliance by a former CE are broadly comparable to the arrangements in California and Ontario.

Services for former CEs

(e) Comparison of post-office services proposed for former CEs and those provided to former heads of governments in other countries/territories

9. In the 12 countries/territories studied, post-office services for former heads of government are common. Such services include office accommodation and staff, traveling expenses, medical and dental care, a car and driver and security protection. Most of the services are provided on a life-long basis.
10. The provision of post-office services to former heads of government in these countries/territories is not subject to any pre-conditions. None of the countries/territories covered by our research has published guidelines or regulations governing the provision or continuation of such services.
11. In line with practices in most of these countries/territories, medical and dental care and protocol related arrangements will be provided to former CEs on a life-long basis. As for security protection, it will be provided to former CEs subject to the assessment of the Police. Office accommodation and administrative support will be provided to former CEs to support them in performing promotional and protocol-related functions. The office will provide former CEs with transport and chauffeur services. Taking into account Members' views, we will develop guidelines with regard to the operation of the office in supporting former CEs to fulfill the "ambassadorial role" and activities incidental thereto.
12. The provision of post-office services for former CEs is a new requirement. We will keep under review the appropriateness of the package, in the light of the practical experience gained over the next few years. However, the basic principle remains that such services, in particular office and administrative support, should be made available for any former CE who is prepared to play an "ambassadorial role" for the country and Hong Kong.