

**Extract from minutes of meeting on
Panel on Constitutional Affairs on 18 February 2002**

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II. Restrictions on activities of former heads of government and former senior members of government

(LC Paper Nos. CB(2)2042/00-01(04); 1081/01-02(02) to (04) and 1186/01-02(01); Research Report on "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government" (RP02/01-02 circulated under LC Paper No. CB(2)887/01-02))

7. The Chairman welcomed Professor K C WONG and Mr Wilson WONG from the Department of Government and Public Administration, the Chinese University of Hong Kong, to the meeting. She also drew members' attention to a written submission (LC Paper No. CB(2)1081/01-02(03)) from Professor Frank FU of the Baptist University, who was unable to attend the meeting.

8. At the invitation of the Chairman, Professor K C WONG and Mr Wilson WONG presented their views on the subject as detailed in their written submissions to the Panel (LC Paper Nos. CB(2)1186/01-02(01) and 1081/01-02(02) respectively).

9. The Chairman then invited views from members.

10. Dr YEUNG Sum expressed the view that a monitoring mechanism should be put in place for the purpose of regulating post-office activities of the Chief Executive (CE) and principal officials. He said that in many democratic countries, although there were no written rules or statutes governing post-office activities of the head of government and senior members of government, the operation of a fully representative system of government, as well as established conventions, provided effective safeguards against possible abuse of powers by government officials and conflict of interest in the exercise of such powers. Under democratic election, a ruling party to which the head and senior members of government belonged would be voted out of power if it failed to win the support of the people. In Hong Kong, however, the CE was not directly elected. There were no statutory restrictions on CE's activities, apart from BL 46 which provided that CE might serve for not more than two consecutive terms. As regards the principal officials who would be politically appointed under the new accountability system, they would have a relatively less secure tenure of office as compared with their permanent civil service counterparts. Therefore, it was likely that they would continue to pursue a post-government career after departure from office.

11. Professor K C WONG considered that the need for introducing post-office restrictions was both necessary and urgent. He added that apart from the CE and

the principal officials, the scope of the restrictions should also be extended to other people who had access to sensitive and confidential government information to prevent them from using such information for personal gains.

12. Ms Cyd HO said that a possible scenario could arise where a holder of the office of the CE or principal officials might be appointed to a political office in the Mainland of the People's Republic of China (PRC) after leaving office in the Hong Kong Special Administrative Region (HKSAR). The prospect of such future appointment might influence how the officials performed their duties when in office. Hence, she considered that the scope of restrictions should also cover engagement in political activities after leaving office. In her opinion, it would not be appropriate for an ex-CE to be appointed to a substantive political office outside Hong Kong after stepping down from office in the HKSAR.

13. Following up on Dr YEUNG Sum's point on the monitoring role played by political parties, Ms Cyd HO said that the existing legislative requirement that the CE should not be a member of a political party should be reviewed.

14. Mr Wilson WONG shared the view that in implementing restrictions on post-office activities so as to uphold public confidence in the integrity of government officials, the need to introduce safeguards against persons with high political motives seeking to pursue their own self-interest should also be taken into account. He said that this consideration was particularly pertinent in the unique situation of the HKSAR where issues relating to the interests of the HKSAR vis-à-vis that of the Central Government had often aroused great public concern.

15. On the issue of the monitoring role played by political parties, Mr Wilson WONG considered that the effect could only be viewed in the context of the long term development of political parties in Hong Kong. At present, political parties only played a low profile in the political arena of Hong Kong and their influence was limited.

16. Mr Howard YOUNG said that enactment of statutes and development of convention took time. He enquired whether the setting up of independent monitoring bodies such as an ethics commission would be the first necessary step in implementing a framework for regulating post-office activities.

17. Professor K C WONG said that regulatory bodies were useful in developing an ethics culture and promoting ethical conduct in and out of government and therefore should be established at an early stage. In the long term, a comprehensive and multiple-measure approach should be adopted. He added that restrictions, particularly those intended to be applicable to the CE, should be implemented on a case-by-case approach, rather than using an all-embracing rule, taking into account the individual circumstances and nature of the post-office activities concerned. He drew members' attention to his recommendations as listed under item 5 in page 4 of his written submission.

18. Mr Wilson WONG said that introduction of regulatory means such as legislation, convention, or independent monitoring bodies should proceed at the same time and without delay. He added that there were precedent cases of abuse of powers by public officers which had attracted huge public outcry and substantial media comments. In his view, some form of convention could start to be developed on that basis.

19. Mr CHEUNG Man-kwong said that the Administration should introduce post-office restrictions as a matter of urgency. He pointed out that as the new accountability system for principal officials would be implemented by July 2002 when the second term CE assumed office, it would be necessary for the restrictions to be promulgated before that time, and written into the contracts of the newly appointed principal officials. It would be unfair if the Administration were to introduce legislation to impose the restrictions on CE and the principal officials with retrospective effect. He said that the Administration should explain how it would deal with this pressing issue.

20. Ms Cyd HO said that the restrictions should be published before the second CE and the principal officials assumed office.

21. Both Professor K C WONG and Mr Wilson WONG agreed that it was desirable to have all the requirements and restrictions in place and made known to the public as the second CE took up office in July 2002.

22. Miss Margaret NG said that whether or not certain statutory provisions should apply retrospectively depended on the particular nature of the issues involved. She pointed out that there was a difference between public law and private law, and cited the example of the Prevention of Bribery Ordinance whose provisions, when enacted, applied to all government officers with retrospective effect.

23. Miss Margaret NG added that restrictions on post-office activities should be clearly stipulated in the employment contracts of the principal officials appointed under the new accountability system. She said that since CE as well as the principal officials were not civil servants, the Administration should clarify the following issues -

- (a) with whom the principal officials would be entering into the employment agreements;
- (b) which were the appropriate authorities responsible for enforcing sanctions against the CE and principal officials for violation of the post-office restrictions; and
- (c) whether or not the common law offence of public officers abusing their positions to gain personal advantage applied to the CE.

24. Ms Cyd HO said that the Administration should clarify to whom the CE was responsible and explain the mechanism for conducting investigation into a suspected case of violation of post-office restrictions by the CE.

25. Miss Margaret NG suggested that, in considering measures to deal with potential conflict of interest, the Administration should review what lesson could be learned from the case of the former Privacy Commissioner for Personal Data who took up an employment which was closely related to his work soon after leaving office.

26. Mr SZETO Wah asked whether the principal officials appointed under the new accountability system would be required to swear allegiance to the HKSAR.

27. At the invitation of the Chairman, Acting Secretary for Constitutional Affairs (SCA(Atg)) made the following initial comments and clarifications -

- (a) In the countries and places covered by the Research Report, heads of government/political appointees/civil servants were subject to post-office restrictions on their activities to avoid conflict of interest. The restrictions generally took the form of statutes, express rules and guidelines, convention, public opinion and pressure from the media etc. The Administration would take all these into consideration in its study. As far as civil servants were concerned, they were not allowed to take up employment within a specified period of time after leaving the service of the government unless approval from government was given. Hong Kong adopted a similar practice;
- (b) The Administration was aware of the need to introduce post-office restrictions to help maintain public confidence in the integrity of the CE and senior members of government, and to safeguard their right to post-office employment. Whatever restrictions would be introduced in future, the clear principle was that they should not result in deterring able and dedicated people from joining the government and making contributions to Hong Kong. In the end, it was a matter of striking the right balance for the overall benefit of the society;
- (c) The proposed accountability system would be applicable to most principal official posts specified in BL 48(5). However, certain principal official posts would be excluded and remain as civil service posts. Principal officials were subject to the requirements stipulated in BL 104, i.e. they must swear to uphold the BL of the HKSAR and swear allegiance to the HKSAR.

28. SCA(Atg) said that the Administration would provide an overall response at the next meeting of the Panel on 18 March 2002, after having considered the

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Research Report and the various issues raised by the Panel. Members requested the Administration to explain, in particular, the proposed means of imposing post-office restrictions on activities of former holders of the office of the CE and senior members of government, as well as the timetable for implementing the measures.

29. The Chairman said that as future discussion might touch on issues relating to employment matters and contractual arrangements under the new accountability system, representatives from both the Constitutional Affairs Bureau and the Civil Service Bureau should be invited to attend the next meeting on 18 March 2002 for discussion of the item.

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