

Restrictions on post-office work of former Chief Executives for avoidance of conflict of interest

Background

In June 2005, an Independent Commission on Remuneration Package and Post-office Arrangements for the Chief Executive of the HKSAR (the Independent Commission) appointed by the HKSAR Government published a report on the post-office arrangements for the Chief Executive (CE). In this report, the Independent Commission recommended, among other matters, that a written undertaking in the form of an agreement under seal should be signed by each CE on taking up office, signifying agreement to abide by restrictions to prevent conflict of interest after leaving office as CE. This recommendation was accepted by the Government and has since been implemented. Details of those restrictions are elaborated in the ensuing paragraphs.

2. General principles

The basic principles which a former CE shall follow in preventing any possible conflict of interest after leaving office as CE include the following:

- (a) He shall not act, after leaving office, in such a manner as to take improper advantage of his previous public office, or cause embarrassment or bring disrepute to the Government.
- (b) He shall not, after leaving office, knowingly take advantage of, or benefit from, information that is obtained in the course of his official duties and responsibilities and that is not generally available to the public.
- (c) He shall not use his previous public office to unfair advantage in obtaining opportunities for employment, business or professional activities after leaving office. Nor shall he allow prospects of such opportunities to create a possible conflict of interest situation while in office.

3. Disclosure of official information

Before leaving office

- 3.1 He shall hand over all government documents in his possession and ensure that all drafts and personal copies of such documents have been properly disposed of, immediately before leaving office.

After leaving office

- 3.2 As former CE, he shall not make improper use of his former official position or use 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. Further, he shall not use information to which he had access while in office, and which has not yet been made known to the public to provide advice to any person if this will give the recipient an unfair advantage over any other person.
- 3.3 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. The form of disclosure includes publication in a speech, lecture, radio or television broadcast, in the press, or in book form or otherwise.
- 3.4 The information referred to in paragraphs 3.2 and 3.3 shall include:
- (a) confidential or restricted information (whether or not designated as such) concerning the Government, including without limitation its trade, businesses, organisations, operations, affairs, finances, budgets and strategies;
 - (b) information relating to the security, intelligence, defence or international relations of Hong Kong which fall within the purview of the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong);

- (c) information relating to a corporation or property which is not generally known to those persons who are accustomed or would be likely to deal in the securities of that corporation or in the property but which would, if it were generally known to them, be likely materially to affect the price of those securities or the property; and
- (d) personal information of any person where the former CE either knew or ought to have known that the person could reasonably expect his privacy to be protected.

4. Post-office employment control

Before leaving office

- 4.1 The CE shall not allow himself to be influenced in the pursuit of his official duties and responsibilities by plans for or offers of outside employment, business or professional activities.

After leaving office

- 4.2 As former CE, he shall be subject to post-office employment control within three years after leaving office.

- (a) During the first year, subject to paragraph 4.3, he shall not undertake any employment (either on a full-time or part-time basis), become a director or a partner in any business or profession, or start any business or profession on his own account or with others.
- (b) In the following two years (“the Relevant Period”), subject to paragraph 4.3, he shall seek advice from the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials (“the Committee”), before taking up any employment or engaging in any business or professional activity in or outside Hong Kong.

- 4.3 During the three-year control period, he may, without seeking the advice

of the Committee, accept the following appointments, remunerated or otherwise, on a full-time or part-time basis:

- (a) appointments made by the Central Authorities or the Government;
- (b) appointments to charitable, academic or other non-profit-making organisations; and
- (c) appointments to non-commercial regional or international organisations.

4.4 He shall inform the Government of any appointment covered by paragraph 4.3, remunerated or otherwise, accepted and undertaken by him during the three-year control period. He shall seek the advice of the Committee if he has any doubt as to whether paragraph 4.3 applies or if he wishes to accept an appointment which appears to him to be in the public interest, but which is not covered by paragraph 4.3. A register will be kept and made available for public inspection upon request.

4.5 During the Relevant Period, he 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.

4.6 In seeking advice from the Committee, he shall disclose in writing:

- (a) particulars of the proposed employment, directorship, partnership, business or profession as the case may be;
- (b) the nature of his proposed responsibilities; and
- (c) the nature of his dealings (in his previous official capacity) with, or (where there were no previous dealings) the nature of his official responsibilities in relation to, the proposed employer, company, partnership, business or profession.

4.7 In deciding on the advice to be given, the Committee shall be guided by two broad principles: to prevent conflict of interest and to avoid negative public perception. These two principles are elaborated upon as follows:

- (a) to ensure so far as reasonably possible that the Government's performance of its functions is not affected, compromised, or otherwise in any manner influenced by the former CE or the persons with whom he may associate in the course of the proposed employment, directorship, partnership, business or profession in the Relevant Period; and
- (b) to avoid or minimise any reasonable belief or perception that the Government's performance of its functions during the former CE's term of office as CE, or during the Relevant Period, might be or have been affected, compromised, or otherwise in any manner influenced by the former CE's proposed employment, directorship, partnership, business or profession.

4.8 The Committee shall communicate in writing its advice to the former CE within 14 days of receipt of the application unless within the said period of 14 days the Committee shall have cause to and does seek reasonable

clarification and particulars from him. In that event, the Committee shall make and convey in writing its advice as soon as is reasonably practicable upon receipt of the clarification and particulars sought but shall, in any event, communicate in writing its advice to the former CE within 14 days of receipt of such clarification and particulars.

- 4.9 In communicating its advice to the former CE in writing pursuant to paragraph 4.8, the Committee shall set out in its response the reasons for so advising, irrespective of whether the Committee's advice is in the affirmative or otherwise.
- 4.10 The proceedings of the Committee shall be kept confidential, but the advice given by the Committee shall be made public as soon as the former CE has taken up the proposed employment, directorship, partnership, business or profession as the case may be. No announcement will be made if the former CE decides not to proceed with his plans after obtaining the advice of the Committee.