

Guidance Note on Post-office Employment for Officials under Special Appointment

Purpose

The Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials (“the Advisory Committee”) appointed by the Chief Executive is tasked –

- (a) to draw up the principles and criteria to be adopted for the purpose of advising former Chief Executives and politically appointed officials on their post-office employment or appointment;
- (b) on the basis of the principles and criteria adopted, to consider and advise former Chief Executives and politically appointed officials on post-office employment or appointment; and
- (c) to consider and advise the Government on other cases which may be referred by the Chief Executive’s Office.

2. This note sets out the key principles and criteria to which the Advisory Committee will have regard when considering requests for advice from the Government on applications for post-office employment or appointment from former officials under special appointment at the directorate level. It also sets out the general procedure for processing such requests for advice.

3. The Advisory Committee also gives advice on post-office employment or appointment for former Chief Executives and politically appointed officials. The principles and criteria applicable for them are covered under separate guidelines.

Post-office employment restrictions

4. The post-office employment restrictions on officials under special appointment are designed to ensure that within a specific period of time after leaving office¹ (“the Relevant Period”), a former official does not commence any employment, become a director or a partner in any business or profession or start any business or profession on his or her own account or with others (together referred to hereinafter as “employment or appointment”), which will or is likely to constitute a conflict of interest with their former Government work, or cause well-founded negative public perception embarrassing the Government. The restrictions, however, should not unreasonably restrict a former official’s right to take up an employment or appointment.

5. The restrictions in this note apply to former officials under special appointment at the directorate level who are required under their employment contract to seek the agreement of the Government before taking up post-office employment or appointment.

Criteria for Advice

6. The Advisory Committee shall be guided by the following in considering applications from former officials –

- (a) whether the proposed employment or appointment and any consequential associations necessarily and directly incidental thereto will adversely affect or compromise the Government’s performance of its functions, or will give rise to any reasonable belief, concern or public perception that the Government’s performance of its functions could be adversely affected or compromised;
- (b) whether a fair-minded and informed observer, having considered the relevant facts, will conclude that the proposed employment or appointment might give rise to reasonable apprehension of deferred reward or benefit to the former

¹ The control period is one year if the former official leaves the Government with less than six years of continuous service, and two years with six or more years of continuous service.

official for the performance or non-performance of his or her duties while in office;

- (c) whether any aspect of the proposed employment or appointment will cause other well-founded negative public perception embarrassing the Government;
- (d) whether the proposed employment or appointment will enable the prospective employer or business to gain any unfair advantage over its competitors by making use of privileged information obtained by the former official while in office; and
- (e) whether the right of the former official to work and to exploit his or her technical skills and experience will be unreasonably restricted.

7. The Advisory Committee will take into account the nature and objectives of the proposed employment or appointment. Where necessary, the Advisory Committee will consider the specific duties involved in the proposed employment or appointment, and the specific duties and official dealings the former official was engaged in while in office. The Advisory Committee may also take into account the length of the former official's service and the rank held during that service.

Geographical Location of Proposed Employment or Appointment

8. A former official is required to seek the agreement of the Government before taking up any employment or appointment during the Relevant Period whether in or outside Hong Kong.

Application Form

9. Former officials should complete the application form at **Annex A**. They are encouraged to provide additional information that may assist consideration by the Advisory Committee and the Government. The Secretary, on behalf of the Advisory Committee, may seek supplementary information and clarification as and when necessary.

Consultation with Bureau(x)

10. On the basis of the information provided by the former official, the Advisory Committee will invite the concerned Office(s)/Bureau(x), including those in which the former official previously served and those that have policy responsibilities over the industry, trade or profession in which the former official will engage upon taking up the proposed employment or appointment, to provide an assessment. Assessments, to be provided by completing **Annex B**, should generally come from the incumbent Permanent Secretaries of the concerned Office(s)/Bureau(x) at the time when a request is raised, unless otherwise specified.

Notification and Publication of Advice

11. The Secretary shall endeavour to submit the application to the Advisory Committee for advice within 14 days of receipt of the application². The Government, taking into account the Advisory Committee's advice, will decide whether the application should be approved (with or without conditions) or rejected.

12. While the proceedings of the Advisory Committee shall be kept confidential, the advice of the Advisory Committee on a proposed employment or appointment may be published. Upon the Government's approval of an application, the former official is required to inform the Secretary in writing by a specified date, whether or not he or she will take up the proposed employment or appointment and, if yes, the date on which he or she will do so. After receipt of a confirmation that the former official will take up the proposed employment or appointment and upon cessation of his or her active Government service, the Secretary will arrange to publish the advice of the Advisory Committee and will keep the former official informed of the date of publication. Rejected applications and approved employment or appointment which the former official decides not to take up will not be made public.

² In case further information or clarification is sought from the former official, the 14-day period will start to run upon receipt of the additional information or clarification.

13. When the Advisory Committee's advice is published, the following personal data and brief facts of the proposed employment or appointment will also be made public –

- (a) the identity, last date of government service and last government post title of the former official;
- (b) the identity of the former official's prospective employer or business;
- (c) the position which the former official will hold in the proposed employment or appointment and a brief description of the duties involved; and
- (d) the Advisory Committee's advice.

14. A former official is required to indicate on the request form consent to the disclosure requirement.

Further Advice from Advisory Committee

15. Within the Relevant Period, if there is any material change to the nature, objectives or duties involved in the employment or appointment that the former official has taken up, he or she should inform the Government in writing. On the basis of the updated information, the Government will consider whether further advice from the Advisory Committee should be sought.

Withdrawal of Application

16. At any time, a former official may give written notice withdrawing an application.

Enquiries

17. Enquiries should be directed to the Secretary to the Advisory Committee –

Address : Assistant Secretary (1)
Chief Executive's Office
Tamar
Central

Telephone : 2878 3303

Fax : 2509 9144

Advisory Committee
June 2012

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Annex A

ADVISORY COMMITTEE ON POST-OFFICE EMPLOYMENT FOR FORMER CHIEF EXECUTIVES AND POLITICALLY APPOINTED OFFICIALS

Application Form (to be read with GN 03) (Updated in June 2017)

PART I : Particulars of the Applicant

1. Name _____
2. Address _____
3. Contact Number _____ (Tel) _____ (Fax)
4. Last day in Government Service _____ (on expiry or termination of contract)
5. History of Service¹ – Post(s) held in the Government

Title of post held	Dates	
	From	To

¹ The period of service history to be taken into account when making an assessment on the application is six years for former officials at D4-D8 (or equivalent), and three years at D1-D3 (or equivalent). Please provide information relevant to the applicable period of service history when completing Part I and Part II of this form. Where necessary, a longer period of service history may be considered; in such a case information related to that period will be further sought.

PART II : Information on the Proposed Employment or Appointment

6. Regarding the prospective employer or business -

(a) Name _____(English)
_____ (Chinese)

(b) Address _____

(c) Nature and Objective of business

(d) Parent company or group, if applicable

(e) Subsidiaries, associates or jointly controlled entities², if applicable

(f) Major clientele _____

7. Regarding the proposed employment or appointment -

(a) Job title _____

(b) Nature and objectives

(c) Brief description of the specific duties involved

² A **subsidiary** means any incorporated or unincorporated entity such as a partnership, that is controlled by another entity (known as the parent). An **associate** means any incorporated or unincorporated entity such as a partnership, over which the prospective employer has significant influence but not in the nature of a subsidiary or an interest in a joint venture. A **jointly controlled entity** is a joint venture that involves the establishment of a corporation, partnership or other entity in which the prospective employer is one of the venturers and has an interest. A jointly controlled entity operates in the same way as other entities, except that a contractual arrangement between the venturers establishes joint control over the economic activity of the entity. Reference should be made to the Hong Kong Accounting Standard issued by the Hong Kong Institute of Certified Public Accountants for the up-to-date definitions of subsidiaries, associates and jointly controlled entities.

(d) Proposed commencement date _____

(e) The proposed employment or appointment is –

- full time
- part time (_____ days/hours* per week/month/year*)
- one-off assignment
(please specify duration : _____)
- self-employment
(If it would involve the setting up of a business, please specify whether the prospective business will be solely owned by you. If it will involve other partner(s), shareholder(s) and/or investor(s), please provide details :____

_____)

(f) Will the proposed employment or appointment be paid?

- paid (amount of remuneration : _____)
- unpaid
- other kind of remuneration (please specify : _____)

(g) Will you be involved in any way in the business of the parent company, subsidiaries, associates or jointly controlled entities listed in section 6(d) or (e) above (hereinafter collectively called “the Entities”)? If yes, please provide details.

8. Is your prospective employer or business or any of the Entities connected to your previous position, duties or official dealings in the Government ?

- Yes
- No [Proceed to section 10]

* delete as appropriate

9. What was the nature of your dealings (in your official capacity) with, or where there were no personal dealings, the nature of your official responsibilities in relation to your prospective employer or business or the Entities ? Specifically –
- (i) Were you involved in the formulation of any policy or decisions, the effect of which directly or specifically benefited or could directly or specifically benefit your prospective employer or business or any of the Entities ? If affirmative, please elaborate.

 - (ii) Were you involved in any contractual or legal dealings to which your prospective employer or business or any of the Entities was a party ? If affirmative, please elaborate.

 - (iii) Did your prospective employer or business or any of the Entities have any connection with the assignments / projects and/or regulatory / enforcement duties in which you were involved ? If affirmative, please elaborate.

 - (iv) Please set out any other dealings or official responsibilities related to your prospective employer or business or the Entities aside from (i) - (iii) above.
10. Did you have any contacts with companies which may be considered as competitors of your prospective employer or business ? (If the answer is “yes”, please give details below. In particular, did you have access to commercially sensitive information about these competitors ?)

11. Will your proposed employment or appointment and any consequential associations necessarily and directly incidental thereto adversely affect or compromise the Government's performance of its functions ?

12. Will your proposed employment or appointment give rise to a reasonable belief, concern or public perception that the Government's performance of its functions could be adversely affected or compromised ?

13. Will a fair-minded and informed observer, having considered the relevant facts, conclude that the proposed employment or appointment might give rise to reasonable apprehension of deferred reward or benefit to you for the performance or non-performance of your duties while in office ?

14. Will any aspect of your proposed employment or appointment cause other well-founded negative public perception embarrassing the Government ?

15. Will your proposed employment or appointment enable any of the Entities to gain an unfair advantage over its competitors by making use of privileged information obtained by you while in post?

16. Any other relevant information which you consider relevant to the assessment of your case, including how you have acquired the proposed employment or appointment.

PART III : Declaration and Consent to Disclosure Requirement

17. I hereby confirm that the information given above is true and complete.

I understand that -

- (a) the information provided in the form is to enable the Government and the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials (“Advisory Committee”) to verify, assess and consider my application for post-office employment or appointment;
- (b) the Government and the Advisory Committee may pass the information I provided to the relevant Office(s)/bureau(x) for verification and assessment;
- (c) the Government and the Advisory Committee may seek further information and clarification from me. Failure to provide the information requested may lead to termination of processing of my request; and
- (d) information on my personal data and basic facts of the proposed employment or appointment as listed in paragraph 13 of GN 03 may be disclosed to the public together with the advice of the Advisory Committee.

Signature

Date

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Annex B

ADVISORY COMMITTEE ON POST-OFFICE EMPLOYMENT FOR FORMER CHIEF EXECUTIVES AND POLITICALLY APPOINTED OFFICIALS

Assessment Form

1. Please assess how the applicant's previous position, duties or official dealings in the Government as an official under special appointment¹ relate to his proposed employment or appointment.
2. Please assess whether the proposed employment or appointment and any consequential associations necessarily and directly incidental thereto will adversely affect or compromise the Government's performance of its functions.
3. Please assess whether the proposed employment or appointment will give rise to any reasonable belief, concern or public perception that the Government's performance of its functions could be adversely affected or compromised.

¹ The period of service history to be taken into account when making this assessment is six years for former officials at D4-D8 (or equivalent), and three years at D1-D3 (or equivalent). Where necessary, a longer period of service history may be considered; in such a case, information related to that period will be provided.

4. Please assess whether a fair-minded and informed observer, having considered the relevant facts, will conclude that the proposed employment or appointment might give rise to reasonable apprehension of deferred reward or benefit to the applicant for the performance or non-performance of his or her duties while in office.

5. Please assess whether any aspect of the proposed employment or appointment will cause other well-founded negative public perception embarrassing the Government.

6. Please assess whether the proposed employment or appointment will enable the prospective employer or business to gain an unfair advantage over its competitors by making use of privileged information obtained by the applicant while in office.

7. Any other relevant information -

Name _____

Signature _____

Rank/Post _____

Date _____