

## APPENDIX B CIVIL SERVICE SYSTEM ON PREVENTION OF CONFLICT OF INTEREST

### Introduction

B.1 The Civil Service is the main workforce of the Government of the Hong Kong Special Administrative Region (HKSARG), comprising some 160,000 civil servants working in various government bureaux and departments and providing a wide range of public services<sup>75</sup>. It is governed by relevant provisions in the Basic Law and applicable legislation, and is managed through a number of executive and administrative instruments<sup>76</sup>. The Civil Service Bureau (CSB), headed by the Secretary for the Civil Service (SCS), is responsible for policies on the management of the Civil Service.

### Instruments Governing Civil Service Conduct Matters

B.2 The Administration adopts a multi-pronged approach in its management of conduct of the Civil Service. On the legal front, the Prevention of Bribery Ordinance (Cap.201) (POBO) imposes specific restrictions on the solicitation or acceptance of advantages by civil servants. Any civil servant who, without lawful authority, solicits or accepts any advantages is liable to criminal prosecution under the POBO. Apart from the statutory offences under the POBO, civil servants are also subject to the common law offences of bribery and misconduct in public office.

B.3 Under the common law offence of bribery, it is a criminal offence for a civil servant to accept a bribe and for anyone to bribe a civil servant<sup>77</sup>. Where there is no acceptance of bribe or pecuniary advantage, a civil servant may be liable to criminal prosecution under the common law offence of misconduct in public office if he seriously abuses his official position and, wilfully and without any reasonable excuse, misconducts himself by act or omission.

B.4 Other than compliance with the law, civil servants must comply with government regulations, rules and guidelines on conduct by virtue of their employment contracts. As part of the system for the management of the Civil Service, CSB has put in place service-wide rules and guidelines to uphold the integrity of the Civil Service and regulate the conduct of civil servants<sup>78</sup>. The Civil Service Code<sup>79</sup> promulgated by CSB sets out the core values and standards of conduct which civil servants are expected to uphold, including commitment to the rule of law; honesty and integrity; objectivity and impartiality; political neutrality; accountability for decisions and actions; and dedication, professionalism and diligence. Civil servants who fail to observe the relevant rules and guidelines are liable to disciplinary action.

B.5 The following sections provide a brief summary of the existing arrangements on the

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<sup>75</sup> Apart from civil servants, there are other government staff who are employees on non-civil service terms. They include staff employed under the Non-Civil Service Contract (NCSC) Scheme who are subject to conduct rules applicable to civil servants by virtue of their employment contracts, Officials under the Political Appointment System, and a number of senior appointees on non-civil service terms such as the Commissioner of the Independent Commission Against Corruption.

<sup>76</sup> These include the Public Service (Administration) Order which is an executive order issued by the Chief Executive (CE) for the management of the civil service, and the Government Regulations including the Civil Service Regulations (CSRs) made by SCS under delegated authority from the CE, supplemented by CSB Circulars and Circular Memoranda issued by SCS under delegated authority from the CE.

<sup>77</sup> In practice, the specific offences applicable to civil servants under the POBO (e.g. bribery under section 4 of the POBO) are more often invoked than the common law offence of bribery.

<sup>78</sup> The service-wide rules and guidelines issued by CSB may be supplemented by specific guidelines issued by individual bureaux and departments for their staff having regard to their operational requirements. These departmental rules and guidelines are not covered here.

<sup>79</sup> See Civil Service Code dated September 2009 ([http://www.csb.gov.hk/english/admin/conduct/files/CSCCode\\_e.pdf](http://www.csb.gov.hk/english/admin/conduct/files/CSCCode_e.pdf)).

prevention and handling of conflict of interest by civil servants, including the provisions on declaration of interests and investments, acceptance of advantages, acceptance of entertainment, and acceptance of outside work and employment after leaving the Civil Service.

## **Prevention and Handling of Conflict of Interest**

B.6 The rules on conduct for civil servants are put in place to uphold the honesty and integrity as well as the objectivity and impartiality of the Civil Service, so as to gain and retain the respect and confidence of the public and to contribute to good governance. A fundamental principle for the safeguarding of integrity of the Civil Service is the need for civil servants to avoid any actual, perceived or potential conflict of interest.

### Conflict of Interest Situations

B.7 A conflict of interest situation<sup>80</sup> arises where the “private interests” of a civil servant<sup>81</sup> compete or conflict with the interests of the Government or his official duties. Such “private interests” go beyond pecuniary interests, and include circumstances where a tie or association which does not give rise to a financial interest can influence the judgement of a civil servant in discharging his official duties, or may reasonably be perceived as having such an influence.

### Avoidance and Declaration of Conflict of Interest

B.8 Under the existing rules and guidelines, it is the duty of all civil servants to avoid situations which may give rise to any actual, perceived or potential conflict of interests<sup>82</sup> between their official duties and private interests. They should also avoid placing themselves in a position of obligation to any person or organization with whom they have, or are likely to have, dealings in their official capacity. When a situation involving a conflict of interest cannot be avoided, a civil servant is required to declare as soon as possible to his supervisor all relevant interests which may, or may be seen to, conflict with his official duties. Under no circumstances should a civil servant –

- (a) use his official position to benefit himself, his family, relatives or friends or any person to whom he owes a favour or is obligated in any way; or
- (b) put himself in a position that may reasonably arouse suspicion of dishonesty, or of using his official position to benefit himself or his family, etc.

B.9 Having made a declaration, the civil servant should refrain from taking part in any part of the work in question unless otherwise authorised by his supervisor. If he has doubts as to whether a relationship or an interest would cause concern over his impartiality in the discharge of his duties, he should consult his supervisor.

### Review of Declaration of Interest

B.10 When a civil servant declares interests to his supervisor, the supervisor should examine the facts of the case to determine whether there is any conflict, taking into account the duties of the civil servant concerned, the relationship between the civil servant and the person(s)/organization(s)

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<sup>80</sup> See CSB Circular No. 2/2004 dated 31 January 2004 on “Conflict of Interest”.

<sup>81</sup> “Private interests” include the financial and other interests of a civil servant, his family or other relations, his personal friends, the clubs and associations to which he belongs, any other groups of people with whom he has personal or social ties, or any person to whom he owes a favour or is obligated in any way.

<sup>82</sup> The rules and guidelines describe and provide examples on conflict of interest situations that may arise in the use of discretionary power, use of official position, use of official information, being put in a position of obligation, accepting entertainment, acquiring investments, and engaging in outside work and activities.

with whom/which he has official dealings, and/or whether the relationship could lead to embarrassment or loss of impartiality in the discharge of his duties. Where necessary, the supervisor should interview the civil servant concerned to seek further information on the matter and to remind the civil servant of the consequences of a conflict of interest.

### Handling of Conflict of Interest

B.11 Where a conflict of interest may arise, the supervisor should decide on the course of action to be taken, having regard to the civil servant's role in the matter including the extent to which he is called upon to exercise discretion, the sensitivity of the matter and the practicability of assigning the matter to another civil servant. The supervisor will normally relieve the civil servant from the task which may give rise to the conflict, or if necessary, transfer the civil servant to another post. If the conflict of interest arises from the civil servant's private investments, he may be asked to divest himself of his investment. The supervisor will advise the civil servant of the action(s) to be taken and keep proper record of the case accordingly.

B.12 If a supervisor or departmental manager receives any report/complaint that a civil servant has breached the requirements on avoidance of or declaration of conflict of interest, he should consult his own senior officer as necessary on the appropriate follow-up action. If there is a criminal element in the allegation, he should refer the case to the appropriate law enforcement agency.

### **Declaration of Investments**

B.13 As a general principle, civil servants are free to make any private investment provided that such investment does not lead to conflict of interest with their official duties. However, they must not use their official position or privileged information made available to them in their official capacity to further personal interests or the private interest of others. The Administration has put in place a system requiring civil servants filling designated posts, notably the more senior posts or posts with access to sensitive information, to declare their private investments.

### Declaration Requirements

B.14 Under the existing rules<sup>83</sup>, civil servants in all directorate posts and designated posts<sup>84</sup> (categorized into Tier I and Tier II posts) are required to declare, on appointment and thereafter at prescribed intervals, their private investments<sup>85</sup> in and outside Hong Kong and the occupation of their spouse<sup>86</sup>. They are also required to declare any investment transaction equivalent to or exceeding \$200,000 or three months' salary in value, whichever is the less, within seven days of the transaction.

### Confidential Declaration

B.15 The declaration of investments covers specific details of investments including

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<sup>83</sup> See CSRs 461 to 466 on "Investments", CSB Circular No. 8/2006 dated 28 December 2006 on "Declaration of Investments by Civil Servants" and CSB Circular Memorandum No. 14/2008 dated 5 June 2008 on "Revised Declaration and Report Forms".

<sup>84</sup> There are now about 1 400 directorate posts and some 2 400 non-directorate designated posts.

<sup>85</sup> "Investments" is defined in CSR 463(1) to include any investment, shareholding or direct or indirect interests in any company (including directorship, proprietorship or partnership), and any interest in land or building (including self-occupied property) in and/or outside Hong Kong; including securities, futures and options, and those belonging to an officer but held by other persons; excluding unit trusts, mutual funds, life insurance policies, bank deposits, currency transactions, government bills, multilateral agency debt instruments and investments held as trustee or for charitable purposes with no beneficial interest.

<sup>86</sup> Civil servants may also be subject to additional requirements stipulated by individual bureaux and departments which are not covered here.

shareholding or direct or indirect interest in any company, remunerated and non-remunerated directorship, proprietorship or partnership of any company, details of involvement in private companies if any, and land and property (including self-occupied property). Bank deposits, government bills and certain investment tools such as unit trusts and mutual funds where the fund managers concerned make active investment decisions completely independent of beneficial ownership, thus rendering the chance of potential conflict of interest between such investment and official duties minimal, are excluded. Spouse's occupation with field/area of work and name of employer are also included in the declaration. This declaration is kept confidential.

### Open Declaration

B.16 The most senior positions in the Civil Service (referred as Tier I posts), which include all permanent secretary posts in bureaux and the Chief Executive's Office and a number of head of department positions, are subject to the additional requirement to register, on appointment and thereafter on an annual basis, general descriptions of their financial interests including shareholding of 1% or more in any company, all directorship, proprietorship or partnership of any company, and land and property (including self-occupied property). The register is open to public inspection on request.

### Handling of Conflict of Interest

B.17 The declaration of investments is submitted to SCS (for Tier I posts) or the relevant Permanent Secretary or head of department of the bureau or department in which the civil servant works (for Tier II posts), and the submissions are examined for any conflict of interest. If it appears that there is or may be a conflict of interest between a civil servant's investments and official duties, the civil servant may be required to take certain actions including to divest himself of the investments, freeze any investment transaction for a specified period (e.g. until certain market sensitive information is equally available in the public domain), place the investment in a blind trust, refrain from acquiring or disposing of the investments, or refrain from handling cases with potential conflict of interest. The concerned management may also assign the duties that may give rise to a perceived or actual conflict of interest to another civil servant.

B.18 Any instructions given and action(s) taken by the management following the review of the declaration returns, together with any explanation, clarification or additional information provided by the civil servant concerned, will be properly documented.

### **Acceptance of Advantages**

B.19 The acceptance of advantages by civil servants is governed by the POBO and the Acceptance of Advantages (Chief Executive's Permission) Notice (the AAN)<sup>87</sup>. Guidance is also provided to civil servants on the acceptance of advantages offered to them in their private capacity and official capacity<sup>88</sup>. The key provisions are summarized below.

### ***Prevention of Bribery Ordinance***

B.20 Civil servants, who form the largest group of persons termed "prescribed officers" under section 2(1) of the POBO, are subject to the most stringent provisions under the POBO. In particular, it is an offence for a civil servant to solicit or accept any advantage, without the general or special permission of the Chief Executive (section 3 of the POBO), irrespective of whether any

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<sup>87</sup> See CSR 444(1) on "Acceptance of advantages".

<sup>88</sup> See CSB Circular No. 3/2007 on "Acceptance of advantages offered to an officer in his private capacity" and CSB Circular No. 4/2007 on "Advantages/entertainment offered to an officer in his official capacity and gifts and donations to a department for the benefit of staff", both dated 16 February 2007.

acts of bribery has been committed. This is a stringent preventive measure against potential risk of corruption. It is also intended to avoid civil servants being placed in an obligatory position towards the offerors of advantage.

B.21 Under section 8(1) of the POBO, it is an offence for any person to offer, without lawful authority or reasonable excuse, any advantage to a civil servant (or any prescribed officer), while having dealings of any kind with the department or office in which the civil servant is employed.

B.22 “Advantage” is defined widely under the POBO (section 2(1)) to cover gifts (including gifts of money), loans (of money), passages, employment, contract, services, favours, etc., but exclude “entertainment” which is defined as the provision of food or drink (i.e. meals) and any accompanying entertainment. Under section 2(2) of the POBO, solicitation or acceptance of advantage by a person includes solicitation or acceptance by any other person acting on his behalf, whether for himself or any other person.

***Acceptance of Advantages (Chief Executive’s Permission) Notice***

B.23 The AAN<sup>89</sup> specifies the circumstances under which general permission is given for civil servants (among other prescribed officers) to solicit and/or accept four types of advantages, namely gifts (whether of money or otherwise), discounts, loans (of money) and passages, and the need to seek special permission from approving authority to solicit and/or accept these advantages under circumstances other than the specified ones. The AAN also gives general permission for civil servants to solicit and accept advantages other than these four types.

General Permission

B.24 In a nutshell, the AAN gives general permission, for the purpose of the restriction on the solicitation and acceptance of advantages under section 3 of the POBO, for civil servants to –

- (a) solicit or accept any of the four types of advantage from a “relation” which is specifically defined to include family members and close relatives;
- (b) solicit or accept any of the four types of advantage from a tradesman or company provided that the advantage is available on equal terms to other persons;
- (c) solicit or accept loans from a close personal friend or any other person, subject to different limits in monetary value applicable to different categories of persons (see **Table** below), provided the loan is repaid within 30 days; and
- (d) accept but not solicit gifts or passages from a close personal friend or any other person, on a special occasion or any other occasion, subject to different limits in monetary value applicable to different categories of persons and occasions (see **Table** below).

**Table: Monetary Limits of General Permission for Acceptance of Advantages**

	Loan (of money)	Gift or Passage	
		On special occasions e.g. birthday/wedding	On other occasions
From close personal friends	\$3,000	\$3,000	\$500
From other persons	\$1,500	\$1,500	\$250

<sup>89</sup> The AAN is revised from time to time and the latest version was issued in April 2010.

B.25 Except for the situation set out in B.24(a) above<sup>90</sup>, the above general permission does not apply when the person offering the advantage has official dealings with the civil servant or the department or organization in which the civil servant works, or when the advantage is offered to the civil servant in his official capacity. In other words, the general permissions above pertain primarily to advantages in relation to a civil servant's private capacity where no official dealings with the offerors are involved. The general permission set out in B.24(c) and B.24(d) above also does not apply when the person offering the advantage is subordinate to the civil servant concerned.

#### Advantages in Official Capacity

B.26 Advantages (such as gifts or sponsored visits) offered to a civil servant and/or his spouse by virtue of his official position or on an occasion attended in his official capacity are regarded as advantages to the bureau or department in which the civil servant works<sup>91</sup>. These offers are handled by individual bureaux and departments in accordance with set procedures, having regard to relevant considerations such as whether there would be any actual, potential or perceived conflict of interest, or whether the bureau or department or the Government would be placed in an obligatory position towards the offerors.

B.27 In such cases, acceptance of advantages by the civil servant arises only when the civil servant wishes to retain personally the advantages offered to him in his official capacity. The AAN (section 7) gives general permission, for the purpose of the general restriction on the solicitation and acceptance of advantages under section 3 of the POBO, for a civil servant to accept but not solicit a gift (other than a gift of money) or passage which the prescribed officer has been permitted to accept under government regulations. These cover situations where permission is given for a civil servant to retain personally any official gifts.

B.28 Under the present rules, where it is considered appropriate for a civil servant to accept a gift in his official capacity, in general he is given blanket permission (by way of circulars or departmental instructions issued by the Civil Service Bureau and bureaux/departments) to retain the official gift personally in certain circumstances, namely –

- (a) a gift or souvenir which does not exceed \$50 or 0.1% of the substantive salary of the civil servant, whichever is the higher (e.g. a ball pen, a memo pad, etc. often widely distributed to participants at events like conferences); and
- (b) a gift or souvenir which does not exceed \$400 and is personally inscribed with the civil servant's name or received by the civil servant at official functions as the guest of honour or an officiating guest (e.g. a commemorative souvenir inscribed with the organizer's name and is of limited commercial value).

B.29 A civil servant is required to seek permission for personal retention of any official gifts or souvenirs other than those covered by the above blanket permissions. Permission may be given to a civil servant to retain a gift or souvenir below \$1,000 if it is personally inscribed with the civil servant's name or received by the civil servant at official functions as the guest of honour or an officiating guest, provided there is no conflict of interest or other factors suggesting impropriety. The present rules provide that personal retention would not normally be permitted for a gift or souvenir above \$1,000 unless in very exceptional circumstances.

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<sup>90</sup> Although no condition is set for the general permission for the acceptance or solicitation of advantages from a relation, a civil servant, if being offered or solicit advantages from a relation who has official dealing with him or the department in which the civil servant works, should follow the guidelines on conflict of interest and declare to his supervisor the relevant interests which would, or might reasonably be seen to, compromise his integrity or judgment or influence the discharge or non-discharge of his duties or responsibilities.

<sup>91</sup> See CSR 444(2) on "Acceptance of advantages".

## Special Permission

B.30 For advantages outside the circumstances provided for by the general permission under the AAN, e.g. loans, gifts or passages exceeding the specified monetary limits, a civil servant must seek special permission from the specified decision authority for solicitation or acceptance. A civil servant is also required to ensure that he has obtained the necessary permission before he accepts any sponsored visits, either in an official or private capacity, although a sponsored visit in official capacity is considered as an advantage offered to the bureau/department of the civil servant concerned.

B.31 In practice, it is not uncommon for such special permission to be sought and given for the acceptance of advantages where there is no conflict of interest or any impropriety, e.g. a gift for a civil servant on retirement from colleagues including subordinates, a souvenir with commemorative value to the civil servant concerned but of little value to other persons, or a complimentary concert ticket offered to a civil servant by his friend with a monetary value slightly over the prescribed limit of general permission.

B.32 Civil servants may be liable to disciplinary action if they solicit or accept any advantage (even one permitted under the AAN) if this has led, or could have led, to an actual or perceived conflict between their private interests and their official duties or position, or if this brings the Government into disrepute.

## **Acceptance of Entertainment**

B.33 Acceptance of entertainment by civil servants is governed by rules and guidelines laid down by CSB<sup>92</sup>. Entertainment, defined as provision of food or drink and accompanying entertainment in section 2 of the POBO, is not an advantage per se and its acceptance is generally not subject to the POBO and the AAN.

B.34 Under existing rules and guidelines, civil servants should not accept invitations to meals or entertainment that are excessive in nature or frequency, or are inappropriate (e.g. from persons with whom they have direct official dealings), or are undesirable (e.g. taking into account the character of the host), so as to avoid being placed in a position of obligation or giving rise to the perception that their impartiality might be compromised.

B.35 A civil servant is liable to disciplinary proceedings if he accepts entertainment from any person that is likely (for example, by reason of its excessive nature or of the relationship between the civil servant and the offeror of entertainment, or of the character of the offeror of entertainment) to lead to the embarrassment of the civil servant in the discharge of his functions, or to bring the civil servant or the public service into disrepute.

## **Outside Work and Post-Service Outside Work**

### Outside Work

B.36 The key principle underlying the existing control regime on outside work<sup>93</sup> while in active service is that civil servants are expected to devote their abilities, energies and attention to their jobs. Therefore, outside work which may or appears to conflict with a civil servant's duties,

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<sup>92</sup> See CSR 431-435 relating to entertainment and CSB Circular No. 4/2007 dated 16 February 2007 on "Advantages/entertainment offered to an officer in his official capacity and gifts and donations to a department for the benefit of staff". Individual bureaux and departments may also issue specific guidelines for their staff having regard to their own operation circumstances.

<sup>93</sup> See CSR 550-553 on "Outside Work".

or may impair the performance of his duties or distract him from such duties must be avoided.

B.37 A civil servant in active service must seek prior permission before he undertakes any paid outside work outside his normal working hours. However, Permanent Secretaries and heads of department would not normally be permitted to undertake paid outside work. Paid or unpaid outside work during working hours is only permissible in exceptional circumstances and provided that it is clearly in the public interest. While approval is not required for unpaid outside work outside working hours, it remains the responsibility of individual civil servants to ensure that such unpaid outside work will not give rise to any conflict of interest with their official duties; otherwise, prior approval is required.

#### Post-Service Outside Work

B.38 Non-directorate civil servants retiring on pensionable terms and directorate civil servants leaving government service (e.g. on retirement or resignation) are subject to post-service outside work control. The degree of control exercised over directorate civil servants is greater than that over non-directorate civil servants because of their seniority and influence on policy formulation and decision making. The objective of the control is to ensure that civil servants leaving the Government do not enter into any employment which may compromise them or the Government, whether through any actual, potential or perceived conflict of interest with their former government duties or by taking up work which could undermine the image of the Civil Service or embarrass the Government.

B.39 Under existing rules<sup>94</sup>, directorate civil servants leaving the Government are required to apply and obtain approval from the decision authority (i.e. SCS) before they may take up post-service outside work within the specified control periods of one to three years (depending on their rank, terms of appointments and years of service) after ceasing active service and exhausting any remaining leave balance. Those leaving on retirement are also subject to a minimum sanitisation period of six or 12 months (depending on the rank) from ceasing active service during which approval would not normally be given for them to take up outside work. An Advisory Committee on Post-Service Employment of Civil Servants (the Advisory Committee) has been set up to advise the Administration on the principles and criteria to be adopted in formulating the policy and arrangements on post-service outside work control, and to consider and advise specifically on applications to take up post-service employment from directorate civil servants or any applications referred by the decision authority.

B.40 The basic principle for consideration of post-service outside work by directorate civil servants is that there should be no impropriety, having regard to relevant considerations including whether an ex-directorate civil servant's involvement in policy formulation or decision while in government service could have benefited his prospective employer, whether the prospective employer might gain an unfair advantage over competitors because of the directorate civil servant's previous access to sensitive information, the public perception of the directorate civil servant taking up the proposed work, and whether the proposed work would embarrass the Government or give rise to any suggestions of impropriety. The decision authority will consider and decide each application for post-service outside work on its merits and having regard to the advice of the Advisory Committee. Where appropriate, the authority may approve an application subject to a prescribed waiting period and/or specific conditions such as a ban on involvement by the applicant in dealings between the prospective employer and the Government. A register containing basic

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<sup>94</sup> See CSR 397-398, CSB Circular No. 13/95 dated 12 July 1995 on "Acceptance of Outside Appointments After Retirement" and CSB Circular No. 10/2005 dated 1 December 2005 on "Taking Up Outside Work by Directorate Civil Servants After Ceasing Active Service" and CSB Circular No. 7/2011 dated 29 August 2011 on "Taking Up Outside Work by (1) Directorate Civil Servants on Final Leave and (2) Former Directorate Civil Servants".



information of cases of approved and taken-up post-service outside work by ex-directorate civil servants is kept and available for public inspection.

## **Sanctions**

B.41 Civil servants are subject to criminal sanctions if they are convicted of offences under the POBO, the common law offence of “Bribery” and “Misconduct in Public Office”. They are also liable to disciplinary punishment arising from these criminal offences.

B.42 Civil servants who fail to observe the laid down rules and regulations, including those mentioned above on prevention and handling of conflict of interest, declaration of investments, acceptance of advantages/entertainment and outside work, are liable to disciplinary proceedings, and in certain circumstances, criminal prosecution.

B.43 Civil servants found guilty in disciplinary proceedings are subject to a number of possible punishments, including verbal or written warnings, reprimand, severe reprimand, financial penalty, reduction in rank, compulsory retirement, dismissal, etc. Ex-civil servants who are eligible for pension may also be liable to cancellation, suspension, or reduction of their pension under the circumstances specified in the relevant pension legislation.

B.44 In the case of post-service outside work, legal actions may be taken against ex-civil servants who fail to follow the stipulated rules controlling post-service outside work. Ex-civil servants who are pensioners may also be liable to suspension of pension under the relevant pension legislation. Other sanctions include reprimand and public criticism, etc.