

# Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests

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May 2012



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for the Prevention and Handling of  
Potential Conflicts of Interests**

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## KEY TERMS AND ABBREVIATIONS

<b>Term</b>	<b>Description</b>
BL, the Basic Law	The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China
HKSAR, the Hong Kong Special Administrative Region	The Hong Kong Special Administrative Region of the People's Republic of China
Government, the Government of HKSAR or HKSARG	The Government of the Hong Kong Special Administrative Region
CE, the Chief Executive	The Chief Executive of the Hong Kong Special Administrative Region of the People's Republic of China
CEO, CE's Office	The Chief Executive's Office
ExCo, the Executive Council	The Executive Council of the Hong Kong Special Administrative Region
LegCo, the Legislative Council	The Legislative Council of the Hong Kong Special Administrative Region
LegCo President, the President of LegCo	The President of the Legislative Council of the Hong Kong Special Administrative Region
CJ, the Chief Justice	The Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region
Principal Officials	Principal Officials appointed under Article 48(5) of the Basic Law
PAOs, politically appointed officials	Officials under the Political Appointment System
PAO Code	Code for Officials under the Political Appointment System
CSB	Civil Service Bureau
CSR	Civil Service Regulations
POBO	The Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong)
AAN	The Acceptance of Advantages (Chief Executive's Permission) Notice 2010 (given by the Chief Executive for the purpose of section 3 of the Prevention of Bribery Ordinance)
ICAC	The Independent Commission Against Corruption established under the Independent Commission Against Corruption Ordinance (Chapter 204 of the Laws of Hong Kong)
IRC, the Independent Review Committee	The Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests

## NOTE

All words in this report in the masculine gender form refer to both the feminine and masculine gender, except where the context specifies or requires otherwise.

## EXECUTIVE SUMMARY

### Introduction

Hong Kong takes great pride in its international reputation as a clean society free of corruption. This reputation is hard-earned and, in order to maintain it, eternal vigilance by all, both the Government and citizens, is required. A clean public service is a core value of our community. The public has the highest expectations that holders of high public offices would observe the highest standards of conduct. Our citizens fundamentally value a culture of probity in government.

2. Arising from public controversies concerning certain actions by the Chief Executive (CE), the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests (“the IRC”) has been set up to review the present regulatory system for the prevention and handling of potential conflicts of interests concerning the CE, Members of the Executive Council (ExCo Members) and politically appointed officials (PAOs). This Report sets out the IRC’s review and recommendations.

3. The IRC has reviewed the present system for the prevention and handling of potential conflicts of interests, including the arrangements for declaration of interests and investments, acceptance of advantage and entertainment<sup>1</sup>, and post-office outside work (*Chapter 3*). In its review, the IRC has taken full account of the present system applicable to the Civil Service, which represents a good system and is widely regarded as setting the gold standard (*Appendix B*). The IRC has also taken note of the practices in various overseas jurisdictions and local public bodies/institutions (*Appendices C-D*).

4. The IRC is guided by the following considerations in its review –

- (a) Leaders should lead by example. The system applicable to the highest public officials should be at least as stringent as that applicable to those they lead.
- (b) The system must command public confidence.
- (c) The system must have an appropriate degree of transparency.
- (d) The system must take into account legitimate privacy concerns of individuals.
- (e) The system must not be unduly burdensome for the efficient conduct of government business.

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<sup>1</sup> The Prevention of Bribery Ordinance (Cap.201) (the POBO) defines the terms “advantage (利益)” and “entertainment (款待)”, but does not contain the term “hospitality”. The Code for Officials under the Political Appointment System (the PAO Code) contains the terms “advantage (利益)”, “entertainment (款待)” and “hospitality (款待)”, with the latter two terms being the same in Chinese. “Hospitality” may be an “advantage” and/or “entertainment” within the POBO, depending on its nature and circumstances. See also paragraphs 3.44-3.45. For the sake of clarity, this Report refers to “advantage (利益)” and “entertainment (款待)” as used under the POBO, and refers to “hospitality”, without attempting a definitive legal definition of it, as “招待” in Chinese although the PAO Code uses “款待”.

5. Based on its review, the IRC has identified inadequacies in the present system, and put forward 36 recommendations to improve them (*Chapter 4*) which are summarized below. In formulating its recommendations, the IRC has taken into account views received during its public consultation exercise through written public submissions and at a public forum (*Appendix E*).

## The Legal Framework

6. The present system for the prevention and handling of conflict of interests is underpinned by a legal framework. The common law offences of misconduct in public office and bribery, which criminalize corrupt activities and abuse of authority, including those arising in conflict of interest situations, apply to the CE, PAOs and ExCo Members in the same way as civil servants. The Prevention of Bribery Ordinance (Cap.201) (the POBO) contains provisions relating to bribery that apply to all persons (including the CE, PAOs, ExCo Members and civil servants). It also contains various provisions which apply differently to different categories of holders of public offices –

- (a) **Section 3** criminalizes the solicitation and acceptance of an advantage without the CE's permission by a category of "prescribed officers" including PAOs and civil servants. It does not apply to the CE or ExCo Members. "Advantage" is defined under POBO to include gifts, loans, passages<sup>2</sup>, any other service or favour, but exclude "entertainment" which is defined as the provision of food or drink, that is, lunches, dinners and the like and any accompanying performance.
- (b) **Sections 4 and 5** criminalize bribery concerning the CE and a broader category of "public servants" which cover all prescribed officers including PAOs and civil servants, and also ExCo Members, LegCo Members, District Council Members, and members and staff of public bodies.
- (c) **Section 8** criminalizes the offer of an advantage by anyone, without lawful authority or reasonable excuse, while having dealings with a government department, to a prescribed officer (including any PAO or civil servant) employed in that department. It also criminalizes an offer of an advantage by anyone to a public servant in similar circumstances. It does not apply to the CE.
- (d) **Section 10** criminalizes possession of unexplained property by the CE and prescribed officers (including PAOs and civil servants). It does not apply to ExCo Members.

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<sup>2</sup> The term "passage" is not defined or referred in the POBO, but the Acceptance of Advantages (Chief Executive's Permission) Notice (AAN) refers to "passage (旅費)" and "air, sea or overland passage (機票費、船費或車費)" as one of the types of advantages for which general permission is given for prescribed officers to solicit or accept under specified circumstances. A passage includes an air, sea or overland passage not only in the form of a ticket on a commercial airline, cruise or coach but also travel on a private jet or yacht as a service. For the sake of clarity, this Report refers to "passage" as "旅程" in Chinese although the AAN uses "旅費".



## **Politically Appointed Officials (PAOs)**

7. The regime for the prevention and handling of conflict of interest applicable to PAOs is essentially the same as that applicable in the Civil Service. PAOs are subject to the POBO in the same way as civil servants. PAOs are governed by the Code for Officials under the Political Appointment System (the PAO Code)<sup>3</sup> which provides guidance on the acceptance of advantages and entertainment, which is similar to the guidance in the Civil Service. On declaration of conflict of interest, PAOs are required under the PAO Code to report any potential conflict of interests to the CE, and to make regular declaration of a wide range of investments and interests. These provisions mirror closely those applicable in the Civil Service.

8. The IRC considers that the present systems applicable to PAOs regulating declaration of interests and investments and acceptance of advantages and entertainment, which are essentially the same as that applicable in the Civil Service, are largely satisfactory. The IRC has made a number of recommendations to improve upon the systems applicable to PAOs in the following aspects –

- (a) In deciding on matters concerning PAOs relating to conflict of interests or acceptance of advantages or entertainment, the CE should adopt an approach which should be at least as stringent as that applicable in the Civil Service.
- (b) Transparency of the systems should be enhanced by publishing to the public the applicable guidelines for dealing with conflict of interest questions and for giving special permission to solicit or accept advantages, the process for dealing with alleged breaches of the PAO Code, and the applicable sanctions in case of breach. Transparency should also be enhanced by making public instances of PAOs withdrawing due to conflict of interest, and expanding the PAO Register of Advantages to include advantages accepted with special permission together with their estimated values.
- (c) The provisions in the PAO Code providing guidance on the acceptance of advantages and entertainment should be improved to distinguish between advantages and entertainment, and to strengthen the guidelines for PAOs in considering the propriety of accepting any advantage or entertainment.

### **(Recommendations 1-12)**

9. On post-office outside work, PAOs are subject to a control regime different from that applicable in the Civil Service. Considering that the Political Appointment System has been in place for a decade and expanded in the interim, and that the control regime in the Civil Service has been reviewed and revised recently, the IRC recommends that the Administration should review the control regime for PAOs. The review should take into account the differences in the nature of employment of PAOs and civil servants which may appear to justify some differences in the arrangements, and consider the possibilities of

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<sup>3</sup> Relevant excerpts of the PAO Code are at *Appendix A*.

providing for different control periods for PAOs of different ranks and lengths of service and making the control restriction on PAOs legally binding. **(Recommendations 13-15)**

### **The Chief Executive (CE)**

10. The strict regime under section 3 of the POBO is a stringent corruption prevention measure and is underpinned by criminal sanctions. Section 8 is also part of that regime. A fundamental defect in the present system regulating the solicitation or acceptance of advantages is that the strict regime under sections 3 and 8 of the POBO is applicable to PAOs and civil servants, but not the CE. The CE decides on the solicitation or acceptance of advantages for himself and is not subject to any check and balance. The IRC considers that this is totally inappropriate. The CE should not be above the law which applies to PAOs and civil servants.

11. The IRC fully recognizes the unique constitutional status of the office of the CE. He is the head of the HKSAR and the Government and he is accountable to the Central People's Government and the HKSAR. But the IRC sees no justification for exempting the CE from the statutory regime to which PAOs and civil servants are subject. All public officials are servants of the people. Indeed the CE should be regarded as "the Chief Servant" of the people. The public expect our public officials, particularly the CE, to observe the highest standards of conduct. Indeed the high constitutional status of the CE makes it all the more important that he sets a good example for all, especially PAOs and the Civil Service which he leads.

12. The IRC considers that, as a matter of principle, the CE should observe rules that are at least as stringent as those applicable to PAOs and the Civil Service which he leads. Indeed, this is essential for upholding the dignity and honour of the office of the CE, and maintaining public trust in the integrity and probity of the system. The IRC does not accept the reasons put forward by the Administration for not applying sections 3 and 8 to the CE when amending the POBO in 2008. It recommends that the statutory regime on the solicitation and acceptance of advantages governing PAOs and civil servants should be applied to the office of the CE as follows –

- (a) Legislation should be enacted to render it a criminal offence for the CE to solicit or accept any advantage without the general or special permission of a statutory Independent Committee, which should consist of three members appointed jointly by the Chief Justice and the President of LegCo.
- (b) The process of appointment of the Independent Committee and the process of that Committee giving permission under the statutory regime should be apolitical and any risk of politicization should be avoided.
- (c) The members of the Independent Committee should be permanent residents of the HKSAR and persons of high standing in the community. All prescribed officers (including serving PAOs, civil servants and judges) and also serving Members of ExCo, LegCo and District Councils should not be eligible for appointment.

- (d) The Independent Committee would have the responsibility of giving general permission to the CE to accept advantages in defined circumstances and giving special permission in particular cases. It should publish a Notice setting out the scope of general permission and should adopt and publish guidelines for giving special permission which generally should be at least as stringent as those applicable to PAOs and in the Civil Service.
- (e) Legislation should also be enacted to make it a criminal offence for any person to offer any advantage to the CE, without lawful authority or reasonable excuse, where the person has any dealings with the Government, unless the acceptance of the advantage by the CE is covered by general permission.
- (f) To address the problem of modest gifts offered to the CE (or his spouse) on various events or visits as normal gestures of goodwill by members of the public, the Independent Committee should consider giving general permission to the CE to accept gifts up to \$400 from any person offered to him (or his spouse) in his official capacity.
- (g) To enhance transparency, the CE Register of Gifts should be renamed Register of Advantages and expanded to include all advantages received by the CE in his private capacity and accepted with the special permission of the Independent Committee, including their estimated values.

**(Recommendations 16-22)**

13. With the above recommendations, a statutory regime on the solicitation and acceptance of advantages would be applied to the CE, which would essentially be the same as that applicable to PAOs and the Civil Service. Under such a regime, it would be a criminal offence for the CE to accept any advantage (including any gift, hotel accommodation, any purchase or rental of premises at an undervalue, any passage, whether on a commercial airline, private jet or private yacht) without the general or special permission of the Independent Committee.

14. The IRC recommends that the CE in Council<sup>4</sup> should decide as a matter of policy that the CE has the duty to observe the PAO Code applicable to PAOs and the ExCo system of declaration of interests applicable to ExCo Members. The IRC considers that it should not be a matter of voluntary choice by the incumbent holder of the office of the CE. In applying the provisions in the PAO Code, the CE should adopt standards at least as stringent as those he would adopt in deciding on such matters for PAOs and ExCo Members. In particular, when deciding on conflict of interest questions concerning himself in relation to any matter, he should follow the same guidelines he adopts for PAOs and may seek the advice of ExCo if and as he considers appropriate. **(Recommendations 23-27)**

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<sup>4</sup> Defined in the Interpretation and General Clauses Ordinance (Cap.1) to mean the Chief Executive acting after consultation with the Executive Council.

15. On entertainment (that is, lunches, dinners and the like including any accompanying performance), the CE, PAOs and the Civil Service are all subject to similar administrative guidance. The IRC considers that it would be impracticable to impose control mechanisms for the acceptance of entertainment, for example, an approval mechanism with detailed rules and procedures. The CE, as the head of the HKSAR, has a duty to conduct himself with total propriety so as to command public confidence and respect. He should set a good example for PAOs and civil servants. In accepting entertainment, as with PAOs and civil servants, to ensure propriety, the CE would have to exercise vigilance in making good judgement with common sense applying suitable guidelines.

16. The CE would have the duty to observe the PAO Code as recommended. The recommended provision in the PAO Code would make clear that in accepting entertainment, the CE must consider whether having regard to matters such as its lavish or excessive nature, the relationship with his host, and the character or reputation of his host or known attendees, attendance by the CE is likely to lead to a conflict of interest, to place him in a position of obligation or under any improper obligation, to compromise his judgement or to lead to a reasonable perception of such compromise, to lead to embarrassment or to bring the CE or the Government into disrepute, bearing in mind public perception. It is of particular importance that the CE should exercise great vigilance in deciding on the acceptance of entertainment and adopt a cautious approach that should be at least as stringent as that which is expected of PAOs and in the Civil Service. The IRC considers it appropriate for the CE to follow the maxim: “if in doubt, don’t”. **(Recommendation 28)**

17. On post-office outside work, the office of the CE is subject to a control regime which is much more extensive than that for former PAOs and no less stringent than that applicable to Permanent Secretaries as the most senior civil servants. He is subject to a control period of three years. During the first year, he is prohibited from undertaking any employment, becoming a director or partner in any business. During the second and third years, he must seek the advice of the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials before taking up any employment or engaging in any business or professional activities in or outside Hong Kong and is in any event prohibited from a wide range of activities. The IRC considers that the present regime for former CEs is largely satisfactory. If the post-office outside work restriction for PAOs is made legally binding following the recommended review of the regime for PAOs, the IRC recommends that a similar change should be considered for a former CE. **(Recommendation 29)**

### **Members of the Executive Council (ExCo Members)**

18. ExCo Members, both Official and Non-Official, are subject to the ExCo system of declaration of interests, under which they are required to make regular declaration of a specified range of interests and investments, and also ad hoc declaration of specific interest in any matters in respect of individual items to be submitted before ExCo for discussion. The declaration system is in substance similar to those applicable to PAOs and in the Civil

Service. The declaration requirements are reviewed and revised from time to time in the light of experience.

19. The IRC considers that the current ExCo declaration system is on the whole satisfactory, and recommends that its transparency should be enhanced by publishing a document setting out the system for dealing with conflict of interest in ExCo, and annual statistics on the number of occasions where one or more ExCo Members withdrew from its decision-making process due to conflict of interest. **(Recommendations 30-31)**

20. ExCo has a large membership, including many Non-Official Members. The IRC recognizes that ExCo acts as a collective body in advising the CE in ExCo. An individual ExCo Member does not act on his own in relation to ExCo business and is not vested with any executive power or responsibility. Its Non-Official Members are drawn from many different fields in the community. They continue to be involved in the community in various capacities and are usually fully engaged in various fields. The fact that they come from different fields can be regarded as the strength of the Non-Official membership of ExCo. They serve part-time and are not full-time officials. The IRC considers that it is inappropriate to subject them to the same regulatory regime for the acceptance of advantages and entertainment as applicable to full-time officials like the CE, PAOs and civil servants.

### **General Transparency**

21. The IRC recommends that, for consistency, all documents at present or recommended to be made available for public inspection or published should be made accessible to the public through the relevant websites. **(Recommendations 32-34)**

### **Review**

22. The IRC recommends that the system for the prevention and handling of potential conflicts of interests concerning the CE, ExCo Members and PAOs should be subject to review at least once every five years in the light of experience to ensure that they meet the expectations of the public in rapidly changing times. **(Recommendation 35)**

23. The IRC recommends that the general permission given for the solicitation and acceptance of advantages under the POBO for PAOs and civil servants, and those to be given by the proposed Independent Committee for the CE), including the permissible circumstances and the associated monetary limits, should be reviewed from time to time having regard not only to inflation but also evolving social conventions. **(Recommendation 36)**



## Chapter 1 BACKGROUND

1.1 Hong Kong takes great pride in its international reputation as a clean society free of corruption. This reputation is hard-earned and, in order to maintain it, eternal vigilance by all, both the Government and citizens, is required. A clean public service is a core value of our community. The public has the highest expectations that holders of high public offices would observe the highest standards of conduct. Our citizens fundamentally value a culture of probity in government. They detest and have zero tolerance for corruption. And they regard as unacceptable any improper or unethical conduct on the part of officials.

1.2 In February 2012, there was wide media coverage regarding the Chief Executive (CE) concerning his travelling on private yachts and private jets of his friends, renting a residence in Shenzhen for use after leaving office, selling to a businessman his personal wine collection (with the proceeds of sale donated to charities), and accepting hospitality offered by his friends including a banquet in Macau.

1.3 The media reports aroused controversies in the community and led the public to express disappointment and cast doubt on the probity of the CE's actions. After reflection, the CE concluded that "there is obviously a gap between the current rules ... and the expectations of Hong Kong people", that public servants must "not only stay well clear of any suspicion of impropriety but be seen to do so"<sup>5</sup>.

1.4 In the light of the controversies and widespread public concern arising from the recent incidents, the CE announced on 26 February 2012 the setting up of the **Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests ("the IRC")** with the following terms of reference –

- (a) to review the existing regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests concerning the Chief Executive, Non-Official Members of the Executive Council, and Officials under the Political Appointment System respectively, including the arrangements for declaration of investments/interests and acceptance of advantage/entertainment/hospitality;
- (b) in light of the review, to make recommendations on the existing frameworks and procedures, including changes and revisions where appropriate; and
- (c) to submit a report with recommendations to the Chief Executive within three months.

1.5 As mandated by its terms of reference, the IRC's duty is to review the present system for the prevention and handling of potential conflicts of interests concerning the highest public offices, and make recommendations to improve the system. The IRC approaches its task by examining the present problems, collecting public views, considering local and overseas experience, and proposing concrete solutions. Having regard to its terms of reference, it is not within the powers of the IRC to conduct an investigation into the incidents concerning the CE.

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<sup>5</sup> The CE's article in the South China Morning Post on 26 February 2012 titled "It's time to rewrite the rule book".

## Chapter 2 WORK OF THE INDEPENDENT REVIEW COMMITTEE

### Overview

2.1 This Chapter gives a brief account of how the IRC has proceeded with its work to review the existing regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests concerning the Chief Executive (CE), Officials under the Political Appointment System (politically appointed officials or PAOs), and Members of the Executive Council (ExCo Members) respectively.

### Declaration of Interests

2.2 The Chairman and Members of the IRC have declared the following interests that may relate to matters to be reviewed within its terms of reference –

- (a) The Chairman and Members each know the CE, some PAOs and some ExCo Members personally through work and/or social contacts.
- (b) The CE is the Chancellor of the Chinese University of Hong Kong, in which Prof LIU Pak-wai works as Professor of Economics.
- (c) The CE is the Patron of the Hong Kong Jockey Club, of which Mr Thomas Brian STEVENSON is the Chairman.
- (d) The spouse of the incumbent CE is the Patron of the International Social Service Hong Kong Branch, of which Mr Stephen YAU How-boa is the Chief Executive.
- (e) Mr Lawrence FUNG is the chairman of a media company, but he would keep the Committee's materials entirely separate from his business.
- (f) Prof LIU Pak-wai is a member of the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials.

2.3 The IRC concluded that the declared interests should not affect the work of members in conducting its review in an objective and impartial manner.

### Review by the IRC

2.4 The IRC conducted its business through consideration of papers and deliberations in meetings. It convened its first meeting on 5 March 2012 and had held a total of 8 meetings from March to May 2012. In conducting the review, the IRC had undertaken the following –

- (a) The IRC had examined the present regulatory frameworks and procedures for the prevention and handling of potential conflict of interest concerning the CE, PAOs and ExCo Members, including the arrangements for declaration of investments and interests, and acceptance of advantage and entertainment. This is summarized in *Chapter 3*.
- (b) The IRC had drawn reference from the present system applicable to the Civil



Service for the prevention and handling of potential conflict of interest. The IRC had studied the overall framework and the relevant legislative and administrative provisions regulating the Civil Service in this regard. A summary of the civil service system is set out in *Appendix B*.

- (c) The IRC had also researched into the practices in various overseas jurisdictions, namely, Australia, Canada, New Zealand, Singapore and the United Kingdom, especially the regulatory regimes applicable to heads of government and ministers on conflict of interests and acceptance of advantages and entertainment. A summary of the findings on individual jurisdictions is set out in *Appendix C*.
- (d) Further, the IRC had also taken note of the present systems to prevent conflict of interest in the Legislative Council and the Judiciary, and also various local public bodies, namely, the Hong Kong Monetary Authority, the Securities and Futures Commission and the Mandatory Provident Fund Schemes Authority. A summary of the systems in these institutions is set out in *Appendix D*.

## **Public Consultation**

2.5 To collect the community's views on the matters being reviewed, the IRC conducted a consultation exercise from 9 March to 16 April 2012. To this end, the IRC invited any individuals, institutions or organizations, including current and previous holders of those public offices covered by the review, to express their views by written submissions to the IRC by 16 April 2012. The IRC also invited members of the public to express their views at a public forum held on 12 April 2012.

2.6 The invitation for public submissions and to the open forum was widely publicized in 9 local Chinese and English newspapers, and was posted on the IRC's website<sup>6</sup>. Public announcements of the invitation for public submissions and to the public forum were also made through radio broadcast throughout the consultation period. In order to facilitate the public to express their views on the review, the IRC made available through its website the documents relevant to the present system applicable to the CE, PAOs and ExCo Members.

2.7 The IRC had received a total of 33 written submissions from 25 individuals and 8 organizations through the consultation. All written submissions received are available on the IRC's website<sup>7</sup> (with 8 submissions kept anonymous<sup>8</sup>). A total of 15 participants attended the public forum on 12 April 2012 and 9 of them expressed their views verbally at the forum. A full video recording of the forum is available on the IRC's website<sup>9</sup>. A summary of the views gathered in the public consultation exercise and an index to the written submissions received are set out in *Appendix E*.

2.8 The IRC would like to express its sincere gratitude to members of the public and the organizations for the views they had put forward during the consultation exercise. Their views have been helpful to the IRC in understanding the public's expectations for the

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<sup>6</sup> <http://www.irc.gov.hk/eng/consultation/consultation.htm>

<sup>7</sup> <http://www.irc.gov.hk/eng/report/report.htm>

<sup>8</sup> These include seven submissions the writers of which requested anonymity and one submission from a member of the public referred to the IRC by the LegCo Secretariat with the writer's name concealed.

<sup>9</sup> <http://www.irc.gov.hk/eng/report/report.htm>

prevention and handling of potential conflicts of interests concerning the relevant public offices.

### **Formulation of Recommendations**

2.9 Having regard to the research into the present systems both locally and overseas and the views expressed during the public consultation, the IRC has identified inadequacies in the present system, and put forward a number of recommendations to improve the system for the prevention and handling of potential conflicts of interests applicable to the CE, PAOs and ExCo Members respectively. These are set out in *Chapter 4*.

### **Acknowledgement**

2.10 The IRC would like to record its great appreciation for the invaluable support provided by the IRC secretariat led by the Secretary to the IRC, Mr Thomas Chan. That support was essential in enabling the IRC to conduct its work and to finish its Report within the given timeframe. The IRC would also like to thank various offices of the Administration and various public bodies and institutions in supplying factual information for the review.

## Chapter 3 PRESENT SYSTEM FOR PREVENTION AND HANDLING OF CONFLICT OF INTEREST

### Overview

3.1 This Chapter examines the current regulatory framework and procedures for the prevention and handling of potential conflicts of interests applicable to the Chief Executive (CE), Officials under the Political Appointment System (politically appointed officials or PAOs), and Members of the Executive Council (ExCo Members).

### Positions Covered by the Review

3.2 **The Chief Executive (CE)** is the head of and represents the Hong Kong Special Administrative Region (HKSAR). He is accountable to the Central People's Government and the HKSAR in accordance with the Basic Law (Article 43 of the Basic Law, or "BL43"). He is the head of the Government of the HKSAR, being the executive authorities of the Region (BL59-60).

3.3 The Political Appointment System<sup>10</sup> was first introduced on 1 July 2002<sup>11</sup> for the political appointment of officials to certain positions as Principal Officials<sup>12</sup>. It was expanded in 2008 with the creation of the positions of Under Secretary and Political Assistants<sup>13</sup>. **Officials under the Political Appointment System (politically appointed officials or PAOs)** currently comprise those in the following 32 positions –

- (a) Secretaries of Department (currently the Chief Secretary for Administration, the Financial Secretary, the Secretary for Justice) and Directors of Bureau (currently 12 Secretaries of various government bureaux). Currently they make up 15 out of the 20 Principal Officials.
- (b) Director of the Chief Executive's Office (D/CEO);
- (c) Deputy Directors of Bureau (currently 7 Under Secretaries<sup>14</sup>); and

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<sup>10</sup> Formerly called the Accountability System for Principal Officials.

<sup>11</sup> LegCo Paper on "Accountability System for Principal Officials" provided by the Constitutional Affairs Bureau to Members of the Legislative Council on 17 April 2002.

<sup>12</sup> Principal Officials refer to those nominated by the CE and appointed by the Central People's Government under BL48(5), and they include:

- (a) Secretaries and Deputy Secretaries of Department (currently comprising three officials namely the Chief Secretary for Administration, the Financial Secretary and the Secretary for Justice; there is currently no Deputy Secretary of Department);
- (b) Directors of Bureau (currently comprising 12 Secretaries of various government bureaux, namely the Secretary for the Civil Service, Secretary for Commerce and Economic Development, Secretary for Constitutional and Mainland Affairs, Secretary for Development, Secretary for Education, Secretary for Environment, Secretary for Food and Health, Secretary for Financial Services and the Treasury, Secretary for Home Affairs, Secretary for Labour and Welfare, Secretary for Security and Secretary for Transport and Housing); and
- (c) Commissioner Against Corruption (referring to the Commissioner of the Independent Commission Against Corruption), Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise.

<sup>13</sup> LegCo Brief on "Implementation of Further Development of the Political Appointment System" dated 23 October 2007.

<sup>14</sup> Under Secretary for Constitutional and Mainland Affairs, Under Secretary for Education, Under Secretary for Environment, Under Secretary for Financial Services and the Treasury, Under Secretary for Home Affairs, Under

- (d) Political Assistants to the Chief Secretary for Administration, Financial Secretary, and Directors of Bureau (currently 9 Political Assistants<sup>15</sup>).

3.4 The Executive Council of HKSAR (ExCo) is an organ for assisting the CE in policy-making (BL54). **Members of ExCo (ExCo Members)** are appointed by the CE from among principal officials of the executive authorities, members of the Legislative Council (LegCo) and public figures (BL55).

3.5 Currently all 15 Principal Officials under the Political Appointment System (those in paragraph 3.3(a) above) are appointed as **Official ExCo Members**, and a total of 13 LegCo Members and public figures are appointed as **Non-Official ExCo Members**.

3.6 Five Principal Officials, namely the Commissioner of the Independent Commission Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise, are not PAOs and are not appointed as ExCo Members. They are **not** covered in this review.

## Overview of Present Regulatory Framework

3.7 The CE, PAOs and ExCo Members are subject to various legislative and administrative provisions relating to prevention and handling of potential conflicts of interests, including declaration of interests and investments, and acceptance of advantages or entertainment<sup>16</sup>. These are summarized in **Table 3.1**. The detailed application of these provisions to the CE, PAOs and ExCo Members are set out in the ensuing sections. Individual bureaux may stipulate additional administrative guidelines or rules applicable to their staff (including PAOs), which are not covered here.

**Table 3.1 Provisions Relating to Prevention and Handling of Potential Conflict of Interest Applicable to the CE, PAOs and ExCo Members**

	<b>Politically Appointed Officials (PAOs)</b>	<b>Executive Council (ExCo) Members</b>	<b>The Chief Executive (CE)</b>
Offences relating to conflict of interest / bribery	Common law offence of misconduct in public office	Common law offence of misconduct in public office	Common law offence of misconduct in public office
	Common law offence of bribery	Common law offence of bribery	Common law offence of bribery
	POBO s.4-5 on bribery <i>applicable to public servants</i>	POBO s.4-5 on bribery <i>applicable to public servants</i>	POBO s.4-5 on bribery <i>applicable to CE</i>
	POBO s.6, 7, 9 on bribery <i>applicable to all persons</i>	POBO s.6, 7, 9 on bribery <i>applicable to all persons</i>	POBO s.6, 7, 9 on bribery <i>applicable to all persons</i>

Secretary for Security and Under Secretary for Transport and Housing.

<sup>15</sup> Political Assistants to the following Principal Officials: Financial Secretary, Secretary for Development, Secretary for Education, Secretary for Environment, Secretary for Food and Health, Secretary for Financial Services and the Treasury, Secretary for Home Affairs, Secretary for Labour and Welfare and Secretary for Security.

<sup>16</sup> The Prevention of Bribery Ordinance (Cap.201) (the POBO) defines the terms “advantage (利益)” and “entertainment (款待)”, but does not contain the term “hospitality”. The Code for Officials under the Political Appointment System (the PAO Code) contains the terms “advantage (利益)”, “entertainment (款待)” and “hospitality (款待)”, with the latter two terms being the same in Chinese. “Hospitality” may be an “advantage” and/or “entertainment” within the POBO, depending on its nature and circumstances. See also paragraphs 3.44-3.45. For the sake of clarity, this Report refers to “advantage (利益)” and “entertainment (款待)” as used under the POBO, and refers to “hospitality”, without attempting a definitive legal definition of it, as “招待” in Chinese although the PAO Code uses “款待”.

	<b>Politically Appointed Officials (PAOs)</b>	<b>Executive Council (ExCo) Members</b>	<b>The Chief Executive (CE)</b>
System on declaration of interests / investments	-	-	BL47 on CE to declare assets to CJ on assumption of office
	PAO Code on declaration of interests and investments	-	<i>CE voluntarily observes PAO Code (but CE follows ExCo system on declaration of interests)</i>
	ExCo Declaration System (applicable to PAOs appointed as ExCo Members)	ExCo Declaration System	<i>CE voluntarily observes ExCo Declaration System</i>
System on acceptance of advantages	POBO s.3 on solicitation and acceptance of advantage applicable to prescribed officers	-	-
	POBO s.10 on possession of unexplained property applicable to prescribed officers	-	POBO s.10 on possession of unexplained property applicable to CE
	POBO s.8(1) on offer of advantage to prescribed officers while having official dealings	POBO s.8(2) on offer of advantage to public servants while having official dealings <sup>17</sup>	-
	PAO Code on acceptance of advantages, gifts, hospitality, free service, etc.	-	<i>CE voluntarily observes PAO Code (on sections which require reporting to or approval by CE, CE handles and decides on the matters by himself)</i>
	PAO Code on PAOs' Register of gifts, advantages, payment, etc.	ExCo Declaration System declaration of gifts and sponsorships	CE's Register of gifts
System on acceptance of entertainment	PAO Code on acceptance of entertainment & hospitality	-	<i>CE voluntarily observes PAO Code (on sections which require reporting to or approval by CE, CE handles and decides on the matters by himself)</i>
System on post-office outside work	PAO Code on post-office outside work control	-	Post-office outside work restrictions for former CEs
Sanctions (apart from criminal sanctions)	Sanctions by CE	Sanctions by CE	BL73(9) on impeachment of CE

Note:

BL	The Basic Law
POBO	Prevention of Bribery Ordinance
PAO Code	Code for Officials under the Political Appointment System
ExCo Declaration System	System of Declaration of Interests by ExCo Members
CJ	Chief Justice of the Court of Final Appeal of the HKSAR

<sup>17</sup> Section 8(2) of the POBO provides that any person who, without lawful authority or reasonable excuse, whilst having dealings of any kind with any public body offers any advantage to any public servant "employed" by that public body, shall be guilty of an offence. Whilst ExCo and LegCo Members are public servants and ExCo and LegCo are public bodies as defined in the POBO, it is doubtful whether ExCo and LegCo Members are "employed" by ExCo and LegCo within the meaning of section 8 of the POBO.

## Common Law Offence of Misconduct in Public Office

3.8 The **common law offence of misconduct in public office** (“MIPO”) has a long history. It had not been widely used in Hong Kong until the early 1990’s when the Independent Commission Against Corruption (ICAC) started to detect cases that were not straight forward bribery cases. They involved individuals in the public sector who abused their position and powers for the benefit of themselves and others, without involving the solicitation or acceptance of an advantage. Over the years, the offence of MIPO has been used in relation to corrupt activities and illegal acts in the public sector involving abuse of authority of varying nature and degree, including conflict of interest.

3.9 The Court of Final Appeal (CFA), in its judgments in *Shum Kwok-sheer v HKSAR (2002)*<sup>18</sup> and *Sin Kam-wah v HKSAR (2005)*<sup>19</sup>, has laid down the elements of the offence. In *Sin Kam-wah v HKSAR*, the CFA held (at 210I-211B) that the offence is committed where –

- (a) a public official;
- (b) in the course of or in relation to his public office;
- (c) wilfully misconducts himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;
- (d) without reasonable excuse or justification; and
- (e) where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

3.10 In its recent decision in *HKSAR v Wong Lin Kay*<sup>20</sup>, the CFA emphasized that the essential nature of the offence is an abuse by the public official of the powers, discretions or duties exercisable by virtue of his official position conferred on him for the public benefit.

3.11 The CE, ExCo Members and PAOs are covered by the common law offence of MIPO as public officials. A public official who commits such an offence is liable to punishment under section 101I(1) of the Criminal Procedure Ordinance (Cap.221), which provides for a maximum sentence of imprisonment for seven years and a fine.

## Common Law Offence of Bribery

3.12 Under common law, it is an offence for a public officer to accept a bribe and for anyone to bribe a public officer. According to *Russell on Crime* (12th ed 1964)<sup>21</sup>, **the common law offence of bribery** is –

*“the receiving or offering [of] any undue reward by or to any person whatsoever, in a public office, in order to influence his behaviour in office, and incline him to*

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<sup>18</sup> 5 HKCFAR 381.

<sup>19</sup> 8 HKCFAR 192.

<sup>20</sup> FACC No. 3 of 2011 (2 April 2012).

<sup>21</sup> William Oldnall Russell and James William Cecil Turner, “*Russell on Crime*”, 12th edition (1964), p.381.

*act contrary to the known rules of honesty and integrity.”*

3.13 The CE, ExCo Members and PAOs are covered by the common law offence of bribery as public officials. A public official who commits such an offence is also liable to punishment under section 101I(1) of the Criminal Procedure Ordinance (Cap.221), which provides for a maximum sentence of imprisonment for seven years and a fine. In practice, the specific offences applicable to public officials under the Prevention of Bribery Ordinance (Cap.201), such as bribery and solicitation or acceptance of advantages, are more often invoked than this common law offence.

### **Prevention of Bribery Ordinance (Cap.201)**

3.14 **The Prevention of Bribery Ordinance (Cap.201) (the POBO)** dated back to the 19<sup>th</sup> century. It was significantly strengthened in 1971 with new offences, heavier penalties and stronger investigative powers to become the POBO of today. It contains various stringent provisions aimed at punishing bribery and preventing corruption. Certain provisions in the POBO making bribery an offence apply to all persons irrespective of whether they work in the public or private sector, e.g. sections 6 and 7 concerning tenders and auctions related to public bodies and section 9 concerning corrupt transactions with agents. Certain provisions in the POBO apply only to specific categories of persons in the public sector –

- (a) **“Prescribed officers”** are subject to the strictest provisions under the POBO. They are defined to mean persons holding offices of emolument whether permanent or temporary under the Government (which cover civil servants and PAOs) and specifically include Principal Officials, staff of the Hong Kong Monetary Authority (including its Chief Executive), staff of the ICAC, judicial officers and Judiciary staff, and Chairman of the Public Service Commission. They are prohibited from soliciting or accepting any advantages without the CE’s permission (section 3). They are also subject to the provision on the possession of unexplained property (section 10)<sup>22</sup>.
- (b) **“Public servants”** are subject to the specific bribery offences in the POBO (sections 4-5). They include all “prescribed officers” and cover broader classes of persons including Non-Official ExCo Members, LegCo Members, District Council Members, members of any board or committee appointed by the CE or CE in Council<sup>23</sup>, and members and employees of specified public bodies.
- (c) **The CE** is neither a “prescribed officer” nor a “public servant” under the POBO. The POBO was amended in 2008 to apply certain provisions to the CE by express reference. These include bribery offences applicable to public servants (sections 4-5) and possession of unexplained property applicable to prescribed officers (section 10), but exclude solicitation or acceptance of advantages applicable to prescribed officers (section 3).

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<sup>22</sup> Under the POBO section 10, a prescribed officer commits an offence if he maintains a standard of living or controls assets disproportionate to his present or past official salaries without satisfactory explanations.

<sup>23</sup> Defined in the Interpretation and General Clauses Ordinance (Cap.1) to mean the Chief Executive acting after consultation with the Executive Council.

3.15 The POBO also makes it an offence for any person to offer any advantage, without lawful authority or reasonable excuse, to a prescribed officer (section 8(1)) or public servant (section 8(2)), while having dealings with the government department or public body in which the prescribed officer or public servant is employed.

3.16 The applicability of the provisions of the POBO to or concerning the CE, PAOs and ExCo Members in comparison with civil servants and LegCo Members is summarized in **Table 3.2** below.

**Table 3.2** Applicability of POBO to the CE, PAOs, Civil Servants, Non-Official ExCo and LegCo Members

	CE	PAOs	Civil servants	Non-Official ExCo Members	LegCo Members
		(prescribed officers)		(public servants)	
Solicit/accept advantages (POBO s.3)	✗	✓	✓	✗	✗
Bribery (POBO s.4-5)	✓	✓	✓	✓	✓
Possession of unexplained property (POBO s.10)	✓	✓	✓	✗	✗
Offer advantages while having dealings (POBO s.8)*	✗	✓	✓	see footnote 24	see footnote 24

\* POBO s.8 applies to persons who offer advantages to public servants, not the public servants themselves.

3.17 Details of the application of section 3 of the POBO to PAOs are described in the following section on “PAOs”.

### Politically Appointed Officials (PAOs)

3.18 PAOs are governed by **the Code for Officials under the Political Appointment System (the PAO Code)**<sup>25</sup>, which all PAOs are required to observe by virtue of their employment contracts constituted by their appointment letters and the Memorandum on Terms and Conditions (MOTC) for the Employment of PAOs. Certain provisions in the PAO Code are also specified in greater detail in that MOTC.

3.19 The PAO Code contains general provisions governing the duties and responsibilities of PAOs as well as their conduct and behaviour<sup>26</sup>. Chapter 1 stipulates that PAOs shall observe the highest standards of personal conduct and integrity at all times (paragraph 1.3(5)); and PAOs shall ensure that no actual or potential conflict arises between

<sup>24</sup> Section 8(2) of the POBO provides that any person who, without lawful authority or reasonable excuse, whilst having dealings of any kind with any public body offers any advantage to any public servant “employed” by that public body, shall be guilty of an offence. Whilst ExCo and LegCo Members are public servants and ExCo and LegCo are public bodies as defined in the POBO, it is doubtful whether ExCo and LegCo Members are “employed” by ExCo and LegCo within the meaning of section 8 of the POBO.

<sup>25</sup> First published in the Gazette on 28 June 2002 as the Code for Principal Officials under the Accountability System, and last revised in October 2007 in view of revisions to the Political Appointment System. Relevant excerpts of the PAO Code are at **Appendix A**.

<sup>26</sup> The PAO Code is a broad code of conduct covering basic principles governing PAOs in the performance of their duties, responsibilities generally and specifically in relation to the Legislative Council and civil servants, obligation to observe official secrecy, guidance on involvement in political activities, provisions on prevention of conflict of interest, and miscellaneous provisions including travel arrangements, reporting of criminal offences, and involvement in legal proceedings.



their public duties and their private interests (paragraph 1.3(6)). Chapter 5 contains specific provisions on prevention of conflict of interest concerning PAOs.

### ***Handling of Conflict of Interest***

3.20 The first part of Chapter 5 of the PAO Code sets out provisions on general conduct and handling of conflict of interest by PAOs. In particular, PAOs are required under the PAO Code to –

- (a) avoid putting themselves in a position where they might arouse any suspicion of dishonesty, unfairness or conflict of interest (paragraph 5.1);
- (b) observe the principles of fairness and impartiality in discharging their duties and in their dealings with the public and their staff (paragraph 5.2);
- (c) refrain from handling cases with actual or potential conflict of interest (paragraph 5.3); and
- (d) report to the CE any private interests that might influence, or appear to influence, their judgement in the performance of their duties (paragraph 5.4).

3.21 These provisions are essentially the same as those applicable to civil servants. Under civil service rules, civil servants have a duty to avoid conflict of interest and are required to declare to their supervisors any relevant interests that may or may be seen to conflict with their official duties; and their supervisors are responsible for examining the interests declared and deciding on the course of action including relieving the civil servants from handling the matters involved (see **Appendix B** paragraphs B.6-B.12). In the case of PAOs, the CE is responsible for determining if there is any conflict of interest and, if so, deciding on the appropriate course of action.

3.22 For example, if a PAO has a significant shareholding in a company controlled by his family which will benefit from a decision to be made by the PAO concerned (e.g. award of a tender), the PAO should declare his interest to the CE in accordance with the Code, and the CE would decide on the appropriate action, such as requiring the PAO to refrain from taking part in the matter and assigning the matter to another PAO for handling. If a PAO has a child who is a member of a profession (e.g. a lawyer) which may as a class benefit from a policy within the portfolio of the PAO, upon the PAO's declaration, the CE may consider that the interest is of such a nature that it would not affect the impartiality of the PAO in the matter and decide that no action is required.

### ***Declaration of Investments and Interests***

3.23 The second part of Chapter 5 of the PAO Code contains specific provisions requiring PAOs to declare their investments and interests (paragraph 5.6). The purpose is to check whether there may be conflict of interest between a PAO's private investments and interests with his official duties. The declaration requirements are elaborated in the MOTC and consist of two parts –

- (a) **The confidential part** which is kept confidential. It contains specific details of investments and financial interests including equities and derivatives, investment

transactions by way of foreign currency, shareholding and any other direct or indirect interests in any company (including directorship, proprietorship or partnership), and details of involvement in private companies.

- (b) **The open part** which is subject to public inspection. It contains general information on certain investments and interests, including land and property (including self-occupied property); directorship, proprietorship or partnership of any company; shareholding of 1% or more in any company; and affiliation with political parties.

3.24 The CE may, if it appears to him at any time that there is or may be a conflict of interest between a PAO's investments or interests and his official duties, require the PAO to take certain actions, including to divest himself of all or any of the investments or interests, or to refrain from handling cases with actual or potential conflict of interest (paragraph 5.7).

3.25 These provisions on declaration and handling of investments and interests applicable to PAOs are effectively the same as those relating to declaration and handling of investments applicable in the Civil Service (especially those applicable to Permanent Secretaries at the most senior level of the Civil Service), except that PAOs are also required to declare their affiliations with political parties in their open declarations, and investment transactions by way of foreign currency in their confidential declarations. The key requirements for declaration of investments and interests applicable to PAOs, ExCo Members and the CE (on a voluntary basis), in comparison with those for civil servants and LegCo Members, are summarized at **Table 3.3**.

3.26 In practice, PAOs who are Principal Officials and D/CEO are required to submit their declarations of investments and interests in prescribed formats to the CE, and the declarations are examined by and deposited with the Chief Executive's Office (the CE's Office). The open parts of these declarations are made available for public inspection on request at the respective Principal Official's office (for Principal Official's declaration) and the CE's Office (for D/CEO's declaration), and are also provided to the LegCo Panel on Constitutional Affairs for public information.

3.27 For other PAOs i.e. the Under Secretaries and Political Assistants, they are required to submit their declarations of investments and interests to their respective Principal Officials, and are deposited with the Principal Officials' office and examined by the respective Principal Officials under delegated authority from the CE. The open parts of their declarations are made available for public inspection on request at the respective Principal Official's office.

3.28 The ExCo system of declaration of interests applies to both Official and Non-Official ExCo Members (see section below on "*ExCo Members*"). For PAOs who are Principal Officials and are appointed as Official ExCo Members, they are also subject to the ExCo system and their declarations under that system are submitted to the ExCo Secretariat.

### ***Acceptance of Advantages***

3.29 PAOs are subject to the POBO in the same way as civil servants. In particular, as with civil servants under section 3, it is an offence for PAOs to solicit or accept any

advantage without the permission of the CE. PAOs thus require permission from the CE to solicit or accept any advantage. In the absence of permission, he would commit a criminal offence.

3.30 It should be noted that under the POBO, an official would be soliciting or accepting an advantage under section 3 if in the absence of permission, he or any other person on his behalf directly or indirectly solicits or accepts any advantage, whether for himself or any other person. So an official would commit the criminal offence under section 3 if he asks for an advantage for his spouse or child, or if his spouse or child acting on his behalf obtains an advantage for themselves, without permission.<sup>27</sup>

3.31 “Advantage” is widely defined in the POBO to include any gift, any loan and “any other service or favour (other than entertainment)”. A “passage”<sup>28</sup>, although not specifically mentioned in the statutory definition, is an advantage being a service. “Entertainment” is expressly excluded. That is defined as the provision of food or drink for consumption on the occasion when it is provided, and of any other entertainment connected with or provided at the same time. In essence, entertainment as defined covers lunches, dinners and the like and any accompanying performances.

### General permission

3.32 The **Acceptance of Advantages (Chief Executive’s Permission) Notice (the AAN)** applies to all prescribed officers, including both civil servants and PAOs. The AAN gives general permission to them to solicit or accept advantages under certain circumstances, which consist essentially of the following<sup>29</sup> –

- (a) General permission is given for PAOs, same as civil servants, to accept four types of advantages, namely gifts, loans, passages and discounts, subject to different conditions and/or monetary limits applicable to different types of advantages, categories of offerors, and/or occasions, including the following –
  - (i) Solicit and/or accept any of the four types of advantages from a tradesman or

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<sup>27</sup> Section 2(2) of the POBO provides that –

- (a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person;
- (b) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and
- (c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

<sup>28</sup> The term “passage” is not defined or referred in the POBO, but the Acceptance of Advantages (Chief Executive’s Permission) Notice (AAN) refers to “passage (旅費)” and “air, sea or overland passage (機票費、船費或車費)” as one of the types of advantages for which general permission is given for prescribed officers to solicit or accept under specified circumstances. A passage includes an air, sea or overland passage not only in the form of a ticket on a commercial airline, cruise or coach but also travel on a private jet or yacht as a service. For the sake of clarity, this Report refers to “passage” as “旅程” in Chinese although the AAN uses “旅費”.

<sup>29</sup> Section 2(a) of the AAN provides that “the general permission of the Chief Executive is given to all prescribed officers in respect of any advantage, other than gifts, discounts, loans of money or passages not permitted by sections 3 to 7 [of the AAN]”. Sections 3 to 7 of the AAN specify the circumstances for general permission to solicit or accept gifts, discounts, loans of money or passages.

company if the advantage is available on equal terms to other persons.

- (ii) Solicit and/or accept loans from a close personal friend or any other person of not more than \$3,000 or \$1,500 respectively, subject to the loan being repaid within 30 days.
- (iii) Accept but not solicit gifts from a close personal friend or any other person, of not more than \$3,000 or \$1,500 in value respectively on a special occasion, or of not more than \$500 or \$250 in value respectively on any other occasion.

This general permission does not apply (that is, it is disapplied) in the following situations –

- (1) when the offeror has official dealings with the PAO concerned (in the case of a tradesman or company in (i) above) or with the department or organization in which the PAO works (in the case of close personal friend or any other person in (ii) and (iii) above);
  - (2) when the offeror is a subordinate of the PAO working in the same department or organization; or
  - (3) when the advantage is given to the PAO in his official capacity or by virtue of the official position he holds.
- (b) General permission is also given for PAOs, same as civil servants, to solicit or accept the four types of advantages from a “relation” which is defined to include specific family members and close relatives.

#### Advantages in official capacity

3.33 As is the case with civil servants, any advantage including gift received by PAOs or their spouses from any person, institution or government (other than the HKSAR Government) which in any way relates to their offices as PAOs, i.e. in their official capacity, are in practice treated as belonging to the Government. However, whereas this is expressly stated in the relevant civil service rules, the PAO Code does not expressly so state. Acceptance of such advantages is subject to general guidance in the PAO Code (see section below on “*Additional guidance*”).

3.34 Where advantages are offered to PAOs in their official capacity, if the PAO concerned wishes to accept or retain it personally, he would require permission (general or special) under section 3 of the POBO. The CE has given blanket permission under section 3 of the POBO for PAOs to accept or retain personally certain types of advantages offered to them in their official capacity –

- (a) official gifts at or below \$400 in value;
- (b) officials gifts at or below \$1,000 in value which are personally inscribed with the PAO’s name or are received by the PAO as the guest of honour or an officiating guest; and
- (c) invitations to functions and performances at or below \$2,000 in value per head for

the PAO and his spouse. This permission does not apply to Political Assistants.

Such blanket permission was communicated to PAOs by emails from the CE's Office in 2007 and 2008. The fact that such blanket permission has been given has not been made public. In the case of civil servants, blanket permission for the acceptance of certain advantages offered to them in their official capacity has also been given by way of circulars or departmental instructions issued by the Civil Service Bureau and bureaux/departments<sup>30</sup>. These circulars and departmental instructions are normally restricted for internal circulation (for details, see *Appendix B* paragraphs B.28-B.29).

### Special permission

3.35 PAOs need to seek special permission from the CE to accept any advantages in circumstances other than those covered by general permission referred to above. The approving authority in respect of PAOs has been delegated to the Permanent Secretary of the CE's Office. Unlike the case of civil servants where the factors for considering special permissions are stated in internal circulars, the guidelines for considering special permission in respect of PAOs have not been set out in any document. In practice, as PAOs are required under the MOTC to have due regard to the Government Regulations<sup>31</sup>, the Permanent Secretary of the CE's Office makes reference to the factors stated in the internal circulars applicable to the Civil Service in exercising his delegated authority.

3.36 PAOs are also required under the PAO Code to seek the CE's permission to accept any invitation from a foreign government or an outside organization for him (or him and his spouse) to make a sponsored visit in his official capacity (paragraphs 5.11-5.13). Such sponsored visits by PAOs are undertaken as part of their official duties.

### Additional guidance

3.37 The PAO Code (paragraph 5.8) reminds PAOs of the statutory control under the POBO and states that they should if necessary seek guidance from the CE as to the acceptance and retention of gifts, advantages or other benefits.

3.38 Paragraph 5.9 of the PAO Code contains additional guidance concerning the acceptance of any gift, hospitality or free service. It provides –

*“As a general rule, [PAOs] shall avoid accepting any gift or hospitality which might or might reasonably appear to compromise their judgement or place them under an improper obligation. Although the acceptance of hospitality or free service is not prohibited, [PAOs] are required to take note of the relevant provisions in law and the following before accepting any such offer –*

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<sup>30</sup> In the case of the Civil Service, the blanket permission given for the acceptance of gifts received in official capacity cover those with value not exceeding \$50 or 0.1% of the substantive salary of the civil servant concerned, whichever is higher (this amounts to about \$200 in the case of a Permanent Secretary), or up to \$400 in value 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.

<sup>31</sup> The Government Regulations are a set of Regulations, including the Civil Service Regulations, made by or with the authority of the CE (or those to whom he has delegated such authority) to regulate matters relating to the conduct of government business. These Regulations may be supplemented by Circulars and Circular Memoranda and the instructions therein are of equal application and force to the Regulations.

- (a) *whether the acceptance of the hospitality or free service will lead to a conflict of interest with their official duties or place them in a position of obligation to the donor;*
- (b) *whether the acceptance of the hospitality or free service will lead to embarrassment in the discharge of their functions; and*
- (c) *whether the acceptance of the hospitality or free service will bring them or the public service into disrepute.”*

#### Register of gifts etc.

3.39 PAOs are required under the PAO Code to keep a register of gift, advantage, payment, sponsorship or material benefit received by them or their spouses from any organization, person or government which in any way relates to his office as PAO (paragraph 5.14). The PAO registers are available in the PAOs’ respective offices for public inspection on request. The register covers advantages received by PAOs or their spouses in official capacity, but does not cover advantages received by them outside their official capacity.

#### ***Acceptance of Entertainment***

3.40 As has been noted, entertainments (that is, lunches, dinners and the like and any accompanying performances) are not advantages under the POBO. But the acceptance of entertainment by PAOs is subject to administrative rules and guidance, as is the case with civil servants.

3.41 Similar to civil servants, PAOs are subject to guidelines under the PAO Code on the acceptance of entertainment. Paragraph 5.10 of the Code provides that –

*“[PAOs] shall not accept entertainment from any person if the entertainment is likely, for example by reason of its excessive nature, or of the relationship between the official and the other person, or of the character of that person –*

- (a) *to lead to embarrassment of the PAO in the discharge of his functions; or*
- (b) *to bring the PAO or the public service into disrepute.”*

It should be noted that the guidelines are also similar to those applicable to hospitality and free service as stated in paragraph 5.9 of the PAO Code quoted above, except that the consideration of whether the acceptance would lead to a conflict of interest with their official duties or place them in a position of obligation to the donor is omitted from the guidelines on entertainment.

3.42 Further, as a general provision under the PAO Code, it is the responsibility of PAOs to judge in accordance with the principles set out in the PAO Code how best to act in order to uphold the highest standards, and, in case of doubt, they shall seek the advice of the CE (paragraph 1.4).

3.43 These guidelines relating to entertainment are similar to those applicable to the Civil Service (see **Appendix B** paragraphs B.33-B.35).

## ***Advantages and Entertainment***

3.44 It is important to distinguish between advantages and entertainment. As PAOs are subject to the POBO section 3, they require permission to solicit or accept any advantage, and soliciting or accepting any advantage without permission is a criminal offence. On the other hand, entertainments (that is, lunches, dinners and the like) are not considered advantages within the POBO, and their solicitation or acceptance is not regulated by the POBO, but are subject to administrative rules and guidelines.

3.45 It should be noted that, apart from referring to “gifts” (5.8, 5.9, 5.14), “advantages” (5.8, 5.14) and “entertainment” (5.10), Chapter 5 of the PAO Code refers to “hospitality” (5.9), “free service” (5.9), “other benefits” (5.8, 5.14), “payment” (5.14), “sponsorship” (5.14), “financial sponsorship” (5.14), “sponsored visits” (5.11-5.13, 5.14), and “material benefit” (5.14) (corresponding paragraph number of the PAO Code in brackets). Whether any of these items is an advantage within the POBO or amounts to entertainment (which is not an advantage within the POBO) is a question of fact. Depending on the circumstances, for example, hospitality comprising ticket to a performance, passages such as travel on a private jet or yacht or a commercial airline, or accommodation in a hotel room, might fall within the scope of advantages; whereas hospitality such as dinner and entertainment show thereat or a cocktail party might be regarded as entertainment.

## ***Outside Work***

3.46 PAOs shall be dedicated to their duties (paragraph 1.3(1) of the PAO Code) and are not expected to take up any outside engagements. Under the PAO Code, PAOs shall not without the consent in writing of the CE engage or be concerned either directly or indirectly as principal, agent, director, employee or otherwise in any other trade, business, occupation, firm, company (private or public), chamber of commerce or similar bodies, public body or private professional practices (paragraph 5.5).

3.47 The PAO Code (in the same paragraph) states that the CE is likely to give consent where a PAO is appointed to the relevant board of directors in his official capacity or in connection with his private family estate. A PAO may also retain or accept honorary posts in non-profit making organizations or charitable bodies. In all cases, the PAO shall ensure that there is no actual or apparent conflict of interest between his interests in such organizations or bodies and his official duties, and that his interests in such organizations or bodies would not cause embarrassment to the Government, the CE or other PAOs.

## ***Post-Office Outside Work***

3.48 The last part of Chapter 5 of the PAO Code on “*Prevention of Conflict of Interest*” contains restrictions of post-office outside work<sup>32</sup>. These restrictions are included and

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<sup>32</sup> Chapter 3 of the PAO Code deals with Official Secrets and Security. This includes provisions which remind PAOs that on stepping down from office, they should hand over government documents (paragraph 3.4); all classified information protected against disclosure by the Official Secrets Ordinance (Cap.521) remain covered by that Ordinance after their stepping down and may not be disclosed (paragraph 3.5); and that the relevant provisions of that Ordinance continue to apply to PAOs after their stepping down (paragraph 3.6).

elaborated in the MOTC for the Employment of PAOs. They have been in place since the political appointment system was introduced in 2002. Within the control period of one year after stepping down from office, PAOs are subject to the following control relating to employment or appointment under the PAO Code –

- (a) PAOs are prohibited from –
  - (i) representing any person in connection with any claim, action, demand, proceedings, transaction or negotiation against or with the Government; or
  - (ii) engaging in any lobbying activities on matters relating to the Government.
- (b) PAOs are required to seek the advice from the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials (“the Advisory Committee”) before commencing any employment, becoming a director or a partner in any business or profession or starting any business or profession on his own account or with others (“post-office employment”).

3.49 The Advisory Committee published a Guidance Note on Post-office Employment for Politically Appointed Officials (April 2008) (“the Guidance Note”) on the website of the CE’s Office<sup>33</sup>. As stated in the Guidance Note, these control arrangements are –

*“designed to ensure that within one year after stepping down from office (...), a former official does not take up any employment, directorship, partnership in any business or profession or start any business or profession on his own account or with others (...), which will or is likely to constitute a conflict of interest, adversely affect or compromise the Government’s performance, cause negative public perception or enable the prospective employer or business to gain an unfair advantage over its competitors. The restrictions, however, should not unreasonably restrict a former official’s right to take up an employment or appointment.”*

3.50 These matters are essentially the principles and criteria used by the Advisory Committee for guidance in considering requests for advice from former PAOs. As stated in the Guidance Note, the Committee will, in tendering its advice, consider, among other factors –

- (a) whether the proposed employment or appointment and any consequential associations necessarily and directly incidental thereto has adversely affected or compromised, or will adversely affect or compromise the Government’s performance of its functions;
- (b) whether the proposed employment or appointment would give rise to any reasonable belief, concern or public perception that the Government’s performance of its functions during the PAO’s term of office and within one year thereafter could have been or could be adversely affected or compromised;
- (c) whether the proposed employment or appointment is likely to cause reasonable

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<sup>33</sup> <http://www.ceo.gov.hk/poo/eng/index.htm>



negative public perception;

- (d) whether the proposed employment or appointment would enable the prospective employer or business to gain any unfair advantage over competitors by making use of privileged information obtained by the PAO while in office; and
- (e) whether the right of the PAO to work and to exploit his technical skills and experience would be unreasonably restricted.

3.51 The Guidance Note further states that the Advisory Committee will also take into account the nature and objectives of the proposed employment or appointment, and if necessary the specific duties involved in the proposed employment or appointment, and the specific duties and official dealings the PAO was engaged in while in office. The Advisory Committee may also take into account the length of the PAO's service and the rank held during that service.

3.52 The Advisory Committee's advice with reasons will be conveyed to the former PAO in writing. The Advisory Committee publishes its advice in the form of a press release and through the website of the CE's Office in each case where the former PAO concerned has decided to take up the proposed employment<sup>34</sup>. The advice however is not legally binding on the former PAO. The Administration's position is that public scrutiny and public censure are powerful deterrents.

### ***Sanctions***

3.53 Where PAOs are in breach of the PAO Code, the sanctions are not expressly stated in any document. But it is implicit in the system for the appointment of PAOs that in the case of Principal Officials, the CE may recommend to the Central People's Government their removal. In the case of other PAOs, since they are appointed by the CE, he can impose sanctions such as dismissal or suspension.

3.54 With the incorporation of the PAO Code into the employment contract of PAOs<sup>35</sup>, legal actions may also be taken by the Government against PAOs for their breach of the PAO Code as breach of contractual terms.

3.55 PAOs are also subject to criminal sanctions under statutes such as the POBO and the common law such as the offence of misconduct in public office.

### **The Chief Executive (the CE)**

3.56 The CE is in a unique position in the present regulatory framework for the prevention and handling of conflict of interest. As the head of HKSAR and the executive branch of the Government, he is the authority for deciding on matters relating to declaration of interests and investments and conflicts of interest concerning PAOs and ExCo Members, for giving permission on the solicitation or acceptance of advantages by PAOs (among

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<sup>34</sup> <http://www.ceo.gov.hk/poo/eng/press.htm>

<sup>35</sup> The Memorandum on Terms and Conditions for the Employment of PAOs (clause 3.2) provides that the PAO Code shall be deemed to form part of the Memorandum. If there is any conflict between them, the Memorandum shall prevail.

prescribed officers) under the POBO statutory regime, and for giving guidance to PAOs on the propriety of accepting advantages, entertainment and hospitality in general.

3.57 Before reunification, the office of the Governor was not subject to the provisions of the POBO applicable to public servants (including prescribed officers) or any civil service guidelines. This remained the position after reunification with the office of the CE.

3.58 The question of the application of the POBO to the office of the CE was first raised in 1999. In 2005, the Administration proposed to apply certain provisions of the POBO to the office of the CE. This led to the amendment of the POBO in 2008 to apply sections 4, 5 and 10 to the office of the CE. It was a considered decision by the Administration which was accepted by LegCo after extensive debate and over some dissenting views that sections 3 and 8 would not be applied to the office of the CE.

### ***The PAO Code***

3.59 The CE has chosen to voluntarily observe the principles and spirit of the PAO Code since he took up the office of CE in June 2005, insofar as the provisions are applicable and with the modification that, where the CE could not observe provisions which provide for or require approval from a higher authority such as the CE himself, the CE would need to decide for himself. Specifically in relation to Chapter 5 on “*Prevention of Conflict of Interest*” –

- (a) Paragraph 5.8 of the PAO Code on the acceptance of advantages, reminding PAOs of the POBO and the need to seek guidance from the CE, has no application since section 3 of the POBO does not apply to the CE, and the CE decides for himself on such matters. However, the CE observes paragraph 5.9 of the PAO Code that provides additional guidance on the acceptance of gift, hospitality or free services.
- (b) The CE also follows the principle in paragraph 5.4 of the PAO Code in that he would handle and decide by himself situations involving any private interests of his own that might influence or appear to influence his judgement in the performance of his duties.
- (c) On regular declaration of investments and interests, the CE follows the requirements under the ExCo declaration system instead of the requirements in the PAO Code (paragraph 5.6).
- (d) The CE keeps a separate register of gifts presented to CE that is different from the register of gifts, advantages, etc. that PAOs are required to keep under the PAO Code (paragraph 5.14).
- (e) In other sections of the PAO Code which require reporting to or approval by the CE (e.g. paragraphs 5.11-5.13 on sponsored visits), the CE has to handle and decide on the matters by himself.

## *Declaration of Investments and Interests*

### The CE's Declaration under Basic Law Article 47

3.60 BL47 stipulates that the CE must be a person of integrity, dedicated to his duties, and that the CE, on assuming office, shall declare his or her assets to the Chief Justice of the Court of Final Appeal of the HKSAR (CJ), and for the declaration to be put on record. This is a confidential declaration. The term "assets" is not specifically defined under the Basic Law. In practice, such a declaration is made by the CE upon assuming office including for a second term.

### The CE's Declaration under ExCo System

3.61 The CE is the President of ExCo. He observes the ExCo system relating to regular declaration of interests (including making notification upon changes) as applied to all ExCo Members. The requirement to make such declaration has been included in the terms and conditions of appointment to the office of the CE and is thus legally binding on him. The CE has also chosen voluntarily to observe the ExCo system relating to ad hoc declaration of interests in matters before ExCo. In fact, in 1997 when the ExCo declaration system (both the regular and ad hoc declarations) was discussed by ExCo Members, ExCo Members advised that the CE should declare interests in accordance with the ExCo system. (For details, see the section below on "*ExCo Members*".)

3.62 Therefore, the CE makes an annual declaration of registrable interests for the purpose of public inspection, and also makes an annual confidential declaration of financial interests deposited with the Clerk to ExCo. As with ExCo Members, the CE also notifies changes to the declared interests in accordance with the system. Further, the CE would declare his interests, if any, on specific matters to be discussed at ExCo, in accordance with the ExCo declaration system. Under that system, exclusionary interests (usually requiring withdrawal) are distinguished from declaratory interests (usually requiring declaration but not withdrawal) and interests to be noted (such as memberships of boards which are noted, although they are, strictly speaking, not declaratory interests) –

- (a) The responsible bureau or department submitting an item to ExCo (which has access to the open declarations) and the Clerk to ExCo (which has access to both the open and confidential declarations) would, in exercising due diligence, examine whether the CE or any ExCo Member may have an interest in the subject matter to be submitted to ExCo. (This is done by reference to the declarations of ExCo Members and any information known to them.)
- (b) Where available information shows that the CE may have an **exclusionary or declaratory interest** in the matter, the Clerk to ExCo will, prior to the relevant ExCo meeting, draw the CE's attention to that interest for the CE to consider whether the interest should be declared at the meeting and how the ExCo discussion should be handled.

### Declaration of investments and interests under PAO Code

3.63 As stated above, while the CE voluntarily observes the PAO Code, the CE follows the requirements to declare investments and interests under the ExCo declaration system

instead of under the Code. However, it should be noted that the ExCo declaration requirements and the PAO declaration requirements are almost identical in content, in that most interests declarable under the PAO system are also declarable under the ExCo system, with the only exception of non-remunerated directorship, which is declarable in the former but not the latter (see **Table 3.3**).

### *Acceptance of Advantages*

3.64 As stated above, the CE is not subject to section 3 of the POBO on the solicitation or acceptance of advantages. Paragraph 5.8 (reminder of the application of the POBO on the acceptance of advantages and asking PAO to seek guidance from the CE) is thus not applicable to the CE. However, the CE voluntarily observes paragraph 5.9 of the PAO Code providing guidance on the acceptance of gifts, hospitality or free service. Provisions in the PAO Code on sponsored visits (paragraphs 5.11-5.13) requiring PAOs to obtain permission from the CE to accept any sponsored visits are also inapplicable. The CE has to decide for himself on matters of acceptance of advantages and sponsored visits.

### Rules on acceptance of advantages adopted by the CE

3.65 The CE has adopted the following rules when considering acceptance of advantages –

- (a) **Official gifts:** The CE's Office has adopted a set of general guidelines<sup>36</sup> on the arrangements for handling official gifts presented to the CE, i.e. any gift presented to the CE or his spouse from any person, institution or government (other than the HKSAR Government) which in any way relates to his office as the CE (that is, in his official capacity). For those items that the CE decides to retain for personal use, the CE will make a payment at a sum equivalent to the resale value as assessed by the Government Logistics Department. Official gifts not retained for personal use by the CE will be disposed of by the CE's Office in accordance with internal procedures (e.g. to be displayed at government premises, to be donated to the Community Chest, or to be given away through office functions such as lucky draw prizes). These guidelines do not apply to gifts received by the CE in his private capacity.
- (b) **Private passages:** The CE has, since July 2007, adopted an internal rule to govern his acceptance of an invitation by a friend to travel on the friend's private jet or yacht during the CE's private vacation<sup>37</sup>. This rule provides that where no conflict of interest is involved, the CE may consider accepting a friend's invitation, provided that the CE pays to his friend the fare of the same journey on commercial transport service which he would otherwise have obtained from the market to show that he does not save any travelling expenses by accepting the invitation. This rule, which is applicable only to the CE's private activities, was first applied in April 2011. The CE's Office does not have any formal record of this rule or

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<sup>36</sup> CE's Office Internal Circular No. 2/2007 dated 3 July 2007 on "General Guideline on Arrangements for Handling Official Gifts Presented to the Chief Executive".

<sup>37</sup> See correspondence between the IRC and the CE's Office in March 2012 (<http://www.irc.gov.hk/pdf/Letter%20to%202012.03.08%20and%20reply%20from%202012.03.13%20CE%27s%20Office.pdf>).

instances of its application.

3.66 Apart from the above, no other rules or guidelines have been laid down for considering acceptance of advantages by the CE.

#### Register of gifts presented to the CE

3.67 The CE's Office has since 1997 established a register of gifts presented to the CE in his official capacity. The arrangements for compiling the register of gifts was last revised in July 2007<sup>38</sup>, whereby all gifts of an estimated value exceeding \$400 presented to the CE or his spouse which relates to his office as the CE are recorded in the register. The register is updated on a monthly basis, and is available for public inspection on the CE's Office website<sup>39</sup>.

3.68 The register does not cover gifts received by the CE outside his official capacity. And it does not cover other types of advantages (that is, advantages apart from gifts, such as passages) received by the CE or his spouse whether in official capacity or otherwise.

#### ***Post-Office Outside Work***

3.69 The control regime for post-office outside work of a former CE were put in place in June 2005, on the recommendation of the Independent Commission on Remuneration Package and Post-office Arrangements for the Chief Executive of the HKSAR<sup>40</sup>. The control restrictions are set out in an Undertaking in the form of a Memorandum of Agreement under seal to be signed by each CE on taking up office. (The present CE has executed such an Undertaking when he was returned through the by-election in 2005.)

3.70 The Undertaking provides that the basic principles which the 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.”*

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<sup>38</sup> CE's Office Internal Circular No. 2/2007 dated 3 July 2007 on “General Guideline on Arrangements for Handling Official Gifts Presented to the Chief Executive”.

<sup>39</sup> <http://www.ceo.gov.hk/eng/register.htm>

<sup>40</sup> See “Report of the Independent Commission on Remuneration Package and Post-office Arrangements for the Chief Executive of the HKSAR” published in June 2005, which made a number of recommendations on the remuneration package for the CE, involvement in political and commercial/professional activities by former CEs, and services to be provided for former CEs.

3.71 The Undertaking prohibits the CE after leaving office from making any improper use of his former official position or using any information which has not been made public. The Undertaking imposes on the CE the following post-office employment control within three years after leaving office –

- (a) During the first year, a former CE shall not undertake any employment (full-time or part-time), become a director or a partner in any business or start any business or profession.
- (b) During the second and third year, a former CE is required to seek advice from the Advisory Committee<sup>41</sup> before taking up any employment or engage in any business or professional activities in or outside Hong Kong, and is in any event prohibited from the following –
  - (i) 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 license approved by ExCo during his time in office;
  - (ii) represent any person in connection with any claim, action, demand, proceedings, transaction or negotiation against or with the Government;
  - (iii) engage in any lobbying activities on matters relating to the Government;
  - (iv) enter into employment with or become a director of a company which is involved in on-going litigation against the Government; and
  - (v) be involved personally in the bidding for any government land, property, project, contract, license or franchise.
- (c) During the three-year control period, a former CE may, without seeking advice from the Advisory Committee, accept appointments made by Central Authorities or the HKSAR Government, appointments to a charitable, academic, or other non-profit-making organizations, or non-commercial regional or international organizations, but he should inform the Government of any such appointment.

3.72 As the control restrictions, including the obligation to seek the Advisory Committee's advice, are contained in an undertaking in the form of a Memorandum of Agreement under seal, they are legally binding on a former CE. However, the advice by the Advisory Committee is, as with PAOs, not legally binding on a former CE.

3.73 The Advisory Committee has not published the criteria applicable to advice for a former CE. However, the Undertaking provides that in deciding on its advice, the Advisory Committee shall be guided by two broad principles, namely, to prevent conflict of interest, and to avoid negative public perception, and elaborates upon them of 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*

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<sup>41</sup> Same “Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials” as referred in paragraph 3.48(b) in relation to post-office outside work control of PAOs.

*[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 second and third year, after leaving office]; 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 second and third year after leaving office], 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."*

3.74 The Undertaking provides that the Advisory Committee shall, in communicating its advice to a former CE, set out in its response the reasons for so advising irrespective of whether the advice is in the affirmative or otherwise. It also provides that the proceedings of the Advisory Committee shall be kept confidential, but the advice given by the Advisory Committee shall be made public as soon as the former CE has taken up the proposed employment or appointment. No announcement will be made if the former CE decides not to proceed with his plans after obtaining the advice of the Advisory Committee.

### ***Sanctions***

3.75 Under the current constitutional framework, the CE is subject to sanctions under BL73(9) which prescribes the process of impeachment of the CE by LegCo on serious breach of law or dereliction of duty.

3.76 The CE is subject to sections 4 (bribery), 5 (bribery for giving assistance in regard to contract) and 10 (possession of unexplained property) of the POBO, which provide for criminal offences.

3.77 The control restrictions on post-office employment are set out in a written undertaking in the form of an agreement signed under seal by the CE and are thus legally binding on the CE. Legal actions may be taken by the Government against any breach of the provisions by a former CE. But as stated above, the advice of the Advisory Committee is not legally binding on the former CE.

### **ExCo Members**

#### ***System of Declaration of Interests by ExCo Members***

3.78 ExCo has adopted a system of declaration of interests with the aim to ensure that ExCo Members offer unbiased and impartial advice to the CE. The system applies to all ExCo Members, both Non-Official ExCo Members and Official ExCo Members (who are Principal Officials among PAOs). The current system of declaration of interests by ExCo Members is set out in an internal guidance note<sup>42</sup> which has not been published. However, the system in general has been described on various occasions to LegCo in documents in the public domain<sup>43</sup>. A comparison of the key declaration requirements for ExCo

<sup>42</sup> A restricted "Guidance Note for Members of the Executive Council on Declaration of Interest" issued by the Executive Council Secretariat in July 2010.

<sup>43</sup> The latest in a paper provided by the Administration to the LegCo Panel on Constitutional Affairs on 15 November

Members with those for PAOs, civil servants and LegCo Members are set out in **Table 3.3**.

3.79 The ExCo declaration system comprises mainly two parts –

- (a) **Regular declaration** on an annual basis of registrable interests (open for public inspection) and of financial interests within specified scope (kept confidential), together with notification of changes to declared interests between annual declarations.
- (b) **Ad hoc declaration** of specific exclusionary interests (direct and significant interests that would usually require withdrawal of the ExCo Member), declaratory interests (usually not requiring withdrawal), or interests to be noted (for noting although not declaratory interests) on matters to be discussed at ExCo meetings.

These parts are described in greater detail in the following sub-sections.

#### Regular declaration – open declaration

3.80 On first appointment and annually thereafter, each ExCo Member should declare their personal **registrable interests** by completing the “Annual Declaration of Registrable Interests of Members of the Executive Council” (“the Register”). The Register of all Members, both Non-Official and Official (who are PAOs), is available on the ExCo website for public inspection<sup>44</sup>. Changes to any items of interests declared should be notified to the Clerk to ExCo within 14 days of their occurrence.

3.81 “Registrable interests” include the following –

- (a) remunerated directorships in any public or private company;
- (b) remunerated employments, offices, trades, profession, etc.;
- (c) if the interests at (a) or (b) above include provision to clients of personal services which arise out of or relate in any manner to Members’ position as ExCo Members, the names of clients;
- (d) land and property owned by Members in or outside Hong Kong, including those which are held in the name of Members’ spouses, children or other persons or companies but are actually owned by Members; or those which are not owned by Members but in which Members have a beneficial interest;
- (e) names of companies or bodies in which Members have, either themselves or with or on behalf of their spouses or children, a beneficial interest in shareholdings of a nominal value greater than 1% of the issued share capital; and
- (f) membership of boards, committees or other organizations.

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2010 on “System of Declaration of Interests by Members of the Executive Council”.

<sup>44</sup> <http://www.ceo.gov.hk/exco/eng/interests.html>



### Regular declaration – confidential declaration

3.82 On first appointment and annually thereafter, each ExCo Member should declare to the CE on a confidential basis and in greater detail their **financial interests**, including shareholdings (irrespective of the amount) in companies as well as futures and options contracts, held by themselves or jointly with their spouses, children or other close relatives. ExCo Members should also notify any changes to such interests declared as well as any currency transactions involving the Hong Kong Dollar amounting to more than \$200,000 to the Clerk to ExCo within two trading days after their occurrence.

### Ad hoc declarations in respect of individual items discussed by ExCo

3.83 ExCo Members have the personal responsibility to examine whether they have an interest in any item discussed by ExCo, and declare it before the ExCo discussion. Based on the interest declared, the CE will assess whether ExCo Members may have a potential or real conflict of interests in the item considered by ExCo. The CE will decide whether Members should participate in or withdraw from the discussion of that item.

- (a) The responsible bureau or department submitting an item to ExCo (which has access to the open declarations) and the Clerk to ExCo (which has access to both the open and confidential declarations) would, in exercising due diligence, examine whether any ExCo Member may have an interest in the subject matter. (This is done by reference to the declarations of ExCo Members and any relevant information known to them.)
- (b) Where available information shows that any ExCo Member may have an **exclusionary interest** in the matter, the Clerk to ExCo will, prior to the relevant ExCo meeting, seek the CE's decision on whether the ExCo Member should be asked to withdraw from the ExCo discussion and whether the ExCo memorandum should be withheld from the ExCo Member. Upon the CE's decision that the ExCo Member should so withdraw and the ExCo memorandum should be so withheld, the Clerk to ExCo will convey to the ExCo Member the CE's decision before the relevant ExCo meeting, and will withhold the issue of the ExCo memorandum to the ExCo Member. At the relevant ExCo meeting, the ExCo Member should withdraw from the discussion after declaring the exclusionary interest.
- (c) Where available information shows that any ExCo Member may have a **declaratory interest** in the matter, the Clerk to ExCo will draw the ExCo Member's attention to the interest before the relevant ExCo meeting and invite him to consider declaring the interest at the meeting.

3.84 ExCo Members may also have memberships of boards and committees (e.g. University Grants Committee, University Councils, or other statutory and non-statutory advisory boards, committees and tribunals) which are not strictly speaking declaratory interests. However, it is normal that such positions are made known and noted ("**interests to be noted**").

## Declaration of sponsorships and gifts

3.85 Apart from the regular declaration of registrable and confidential interests, and ad hoc declaration of interests on matters discussed at ExCo, ExCo Members should declare the acceptance by them or their spouses of any financial sponsorship, sponsored overseas visits, or gifts worth \$2,000 or more in relation to their ExCo membership, by completing the “Declaration of Acceptance of Sponsorships and Gifts”. The declarations are uploaded to the ExCo website for public inspection<sup>45</sup>.

### ***Acceptance of Advantages and Entertainment by ExCo Members***

3.86 Non-Official ExCo Members, who are part-time advisers to the Government drawn from LegCo Members and public figures and who may come from many different fields and professions, are not subject to section 3 of the POBO on the solicitation and acceptance of advantages or the rules or guidelines on the acceptance of advantages and entertainment applicable to PAOs. They are public servants under the POBO (as are LegCo Members, District Council Members, and members of other boards and committees of the Government). As public servants, they are subject to various provisions of the POBO, including sections 4 (bribery) and 5 (bribery for giving assistance in regard to contract).

3.87 The only requirement applicable to ExCo Members relating to the acceptance of advantages is the requirement, as stated above as part of the ExCo declaration system, for them to declare any financial sponsorship, sponsored overseas visits, or gifts worth \$2,000 or more in relation to their ExCo membership, which are subject to public inspection.

### ***Sanctions***

3.88 ExCo Members are appointed and removed by the CE. In case of breach of the ExCo declaratory system, they are subject to appropriate actions as may be decided by the CE, including warning, reprimand or removal. However, these sanctions are not expressly stated in any document at present.

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<sup>45</sup> <http://www.ceo.gov.hk/exco/eng/interests.html>

**Table 3.3 Comparison of Requirements for Declaration of Investments/Interests**

	<b>Open declaration of investments/interests</b>	<b>Civil servants<sup>46</sup></b>	<b>PAOs</b>	<b>CE</b>	<b>ExCo Members</b>	<b>LegCo Members</b>
	<p><b>Open declaration</b> (for public inspection)</p>	<ul style="list-style-type: none"> <li>shareholding ≥ 1% in any company (with % of shareholding held)</li> <li>remunerated and non-remunerated directorship, proprietorship or partnership of any company</li> <li>land and property (including self-occupied property) (general description of the above items without specific details)</li> </ul>	<p>Those for civil servants <u>plus</u>:</p> <ul style="list-style-type: none"> <li>political parties affiliation</li> </ul>	<p><i>In his capacity as President of ExCo, CE observes the ExCo System<sup>47</sup>.</i></p>	<p>Those for civil servants <u>plus</u>:</p> <ul style="list-style-type: none"> <li>remunerated employment, office, trade or profession</li> <li>personal services to clients relating to ExCo membership</li> <li>organization/board/committee membership (e.g. chamber of commerce)</li> </ul> <p><u>except</u>:</p> <ul style="list-style-type: none"> <li>% of shareholding held</li> <li>for directorship, proprietorship or partnership, only remunerated ones</li> </ul>	<ul style="list-style-type: none"> <li>shareholding ≥ 1% in any company (without size)</li> <li>remunerated directorship</li> <li>remunerated employment, occupation, etc.</li> <li>land and property except residence ordinarily lives in</li> <li>election donations, financial sponsorships, sponsored visits, payments or other materials benefits in relation to LegCo membership</li> </ul>
	<p><b>Confidential declaration</b> (not for public inspection)</p>	<p>(1) investments<sup>48</sup> including:</p> <ul style="list-style-type: none"> <li>shareholding (irrespective of % of shareholding held) or direct or indirect interest in any company</li> <li>remunerated and non-remunerated directorship, proprietorship or partnership of any company</li> <li>land and property (including self-occupied property)</li> <li>details of involvement in private companies if any (all of the above items with specific details)</li> </ul> <p>(2) spouse's occupation, with field/area of work and name of employer</p>	<p>Those for civil servants <u>plus</u>:</p> <ul style="list-style-type: none"> <li>investment by way of foreign currency transactions ≥ \$200,000</li> </ul>	<p><i>ditto</i></p>	<p>Those for civil servants <u>plus</u>:</p> <ul style="list-style-type: none"> <li>futures and options contracts</li> <li>currency transactions ≥ \$200,000</li> </ul> <p><u>except</u>:</p> <ul style="list-style-type: none"> <li>shareholding in listed companies is confined to companies incorporated locally or registered locally as overseas companies, whose shares are traded on HKEx or overseas bourses</li> <li>"blind trust"<sup>49</sup></li> <li>remunerated and non-remunerated directorship, proprietorship or partnership of any company (remunerated ones are included in open declaration)</li> <li>spouse's occupation, field/area of work and employer name</li> </ul>	<p><i>not applicable (all registration of interests by LegCo Members are open for public inspection)</i></p>

<sup>46</sup> The requirements here refer to those applicable to the most senior positions in the Civil Service (Tier I) which include all permanent secretary posts in bureaux and the Chief Executive's Office and a number of head of department positions. Civil servants may also be subject to additional requirements stipulated by individual bureaux/departments which are not covered here.

<sup>47</sup> The requirement for regular declaration of investments and interests in accordance with the ExCo System is set out in the terms and conditions of appointment of the CE and is contractually binding on the CE.

<sup>48</sup> Defined in the Civil Service Regulations to include 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>49</sup> Investments managed by a third party who has unfettered discretion to place investments.

	<b>Civil servants<sup>46</sup></b>	<b>PAOs</b>	<b>CE</b>	<b>ExCo Members</b>	<b>LegCo Members</b>
<b>Ad hoc declaration of specific interests</b>	Civil servants are required to declare to their supervisors all relevant interests which may, or may be seen to, conflict with their official duties.	PAOs are required to notify CE any facts which have come to their knowledge and which may reasonably be considered to give rise to a situation where the interests of the PAO or of the PAO's spouse or dependent children, or associated persons, in form or substance, directly or indirectly, conflict or compete, or may conflict or compete, with their official duties.	<i>In his capacity as President of ExCo, the CE voluntarily observes ExCo's declaration system</i>	ExCo Members are required to declare any exclusionary or declaratory interests or interest to be noted on matters discussed at ExCo meetings.	LegCo Members shall not move motion or amendment or speak on any matter in which they have direct or indirect pecuniary interests, except where they disclose the nature of that interest.
<b>Register of gifts, advantages, etc.</b>	Civil servants are required to apply for permission to accept advantages in private or official capacity in accordance with AAN and relevant government regulations. These are kept on records not for public inspection.	PAOs are required to apply for permission to accept advantages in private or official capacity in accordance with AAN and PAO Code; and to keep a register of gift, advantage, payment, sponsorship or material benefit received by them or their spouse in relation to their offices for public inspection.	CE keeps a register of gifts > \$400 presented to him or spouse in relation to his office for public inspection.	ExCo Members are required to declare any financial sponsorship, sponsored overseas visits or gifts ≥ \$2,000 accepted by them or their spouse in relation to their ExCo membership for public inspection.	<i>Included in registration and declaration requirements above and available for public inspection.</i>

**Abbreviations:**

- PAOs Politically appointed officials
- CE The Chief Executive
- LegCo Members Members of the Legislative Council
- ExCo Members Members of the Executive Council
- AAN The Acceptance of Advantages (Chief Executive's Permission) Notice 2010
- PAO Code Code for Officials under the Political Appointment System
- HKEx Hong Kong Exchanges and Clearing Ltd

## **Chapter 4 ASSESSMENT AND RECOMMENDATIONS**

### **Overview**

4.1 This Chapter sets out the assessment and recommendations of the IRC on the regulatory framework and procedures for the prevention and handling of potential conflicts of interests applicable to the Chief Executive (CE), Officials under the Political Appointment System (politically appointed officials or PAOs), and Members of the Executive Council (ExCo Members).

### **General Considerations**

4.2 A clean public service is a core value of our society. The public offices covered in this review are our highest public offices and their holders are our political leaders. Indeed, the CE is the head of the HKSAR. The community has highest expectations that these public officials would observe the highest standards of conduct. Mere compliance with the law is plainly insufficient. They must conduct themselves in a manner which will maintain and strengthen public confidence in the integrity of the Government and avoid conduct which runs the risk of undermining public trust.

4.3 The public has reaffirmed such a view strongly during the public consultation and through the media. It is of crucial importance that the public should have full confidence in the system for maintaining integrity and probity in our Government. It is fundamental to the integrity of public administration that the decision-making process must be fair and impartial and be perceived to be so. It is only with a good system that we can uphold the dignity and honour of these highest public offices.

4.4 Public officials are members of the community. As such, it is inevitable that they have interests, both financial and otherwise. It is of fundamental importance that there is in place a sound system for the prevention and handling of potential conflicts of interests concerning public officials which commands public confidence. Such a system is vital for ensuring fairness and impartiality in the conduct of government business.

4.5 In reviewing the present system, the IRC considers that it is appropriate to be guided by the following considerations –

- (a) Leaders should lead by example. The system applicable to the highest public officials should be at least as stringent as that applicable to those they lead.
- (b) The system must command public confidence.
- (c) The system must have an appropriate degree of transparency.
- (d) The system must take into account legitimate privacy concerns of individuals.
- (e) The system must not be unduly burdensome for the efficient conduct of government business.

4.6 In reviewing the present system, the IRC has studied the system applicable in the Civil Service for the prevention and handling of potential conflicts of interests, including

the regulatory framework and procedures for the declaration and handling of interests and investments and those for the acceptance of advantages and entertainment (summarized at *Appendix B*). The IRC considers that the civil service system is a good system. It has stood the test of time and commands public confidence. Indeed, having been improved from time to time over the years in the light of experience, the civil service system has been widely regarded as setting the gold standard. Accordingly, the IRC has taken full account of the civil service system in the present review.

4.7 Having regard to the above considerations, the assessment and recommendations of the IRC on the regulatory regime for the prevention and handling of conflicts of interests concerning PAOs, the CE and ExCo Members respectively are set out in the ensuing sections.

## **Politically Appointed Officials (PAOs)**

### *Declaration and Handling of Conflict of Interests*

4.8 PAOs are subject to the Code for Officials under the Political Appointment System (the PAO Code)<sup>50</sup> which contains provisions for the prevention of conflict of interest<sup>51</sup>. Specifically, they are required to report to the CE any private interest that might influence, or appear to influence, their judgement in the performance of their duties. They are also required to make regular declaration of a wide range of investments and interests, parts of which are open for public inspection. These requirements are as comprehensive and extensive as those in the civil service declaration system.

4.9 In these provisions, the reference to “interest” or “interests” include not only the official’s pecuniary interests but also his non-pecuniary interests. Non-pecuniary interests may include matters such as family ties, friendships, membership of organizations and associations<sup>52</sup>. Where a conflict of interest may have arisen, the CE will determine whether there is any conflict and if so, the appropriate course of actions.

4.10 These arrangements are similar to those in the Civil Service, where interests declared by a civil servant are examined by his supervisor to determine whether there is any conflict, taking into account the duties of the civil servant concerned, his relationship with the persons concerned, and/or whether the relationship could lead to embarrassment or loss of impartiality in the discharge of his duties. If a conflict of interest may have arisen, the civil servant may be relieved of his involvement in the matter concerned and the matter may be assigned to another civil servant.

4.11 The IRC considers that the present system of declaration and handling of interests and investments concerning PAOs set out in the PAO Code, which is consistent with that applicable to the Civil Service, is largely satisfactory. When PAOs may have potential conflict of interest, the consideration and handling of such question should not be laxer than

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<sup>50</sup> Relevant excerpts of the PAO Code are at *Appendix A*.

<sup>51</sup> Certain provisions are also elaborated in the “Memorandum on Terms and Conditions for the Employment of PAOs” which, together with the appointment letters of PAOs, constitutes their employment contracts.

<sup>52</sup> For instance, see paragraph 3 of Civil Service Bureau (CSB) Circular No. 2/2004 on “Conflict of Interests” dated 31 January 2004 elaborating on scope of “private interests”.

the approach for civil servants.

4.12 **Recommendation 1:** The IRC **recommends** that, in deciding on conflict of interest questions concerning PAOs, the CE should adopt an approach which should be at least as stringent as that applicable in the Civil Service.

### Transparency

4.13 To inspire public confidence in the operation of the present system for handling potential conflict of interests concerning PAOs, the IRC considers that an appropriate degree of transparency in the system is necessary. This includes publishing the guidelines relating to consideration of potential cases of conflict of interests concerning PAOs, that is, publishing them publicly. Where this Report refers to “publish” or “publication”, it means public publication.

4.14 In addition, to demonstrate to the public that the system is functioning, the IRC considers that the Administration should, in announcing any decision, make it known to the public where any PAO has withdrawn from the decision-making process due to conflict of interest. The IRC notes that this has been done in a recent occasion when the Secretary for Justice withdrew himself from handling a case involving the arrest of a former Principal Official to avoid any possible perception of bias or improper influence<sup>53</sup>.

4.15 **Recommendation 2:** The IRC **recommends** that the CE should formulate, adopt and publish the guidelines applicable to his consideration and handling of conflict of interest questions concerning PAOs.

4.16 **Recommendation 3:** The IRC **recommends** that, where any PAO has withdrawn from the decision-making process in relation to any matter due to conflict of interest, this fact should be stated as and when the decision concerning that matter is publicly announced by the Administration, identifying the PAO in question and the nature of the interest involved.

### Sanctions

4.17 A civil servant who fails to declare a conflict of interest is liable to civil service disciplinary proceedings. He is subject to sanctions, including warning, reprimand, compulsory retirement or dismissal if found guilty. If breach of the law is suspected, e.g. the common law offence of misconduct in public office, the civil servant may also be subject to investigation and prosecution and on conviction, criminal sanctions. However, in respect of PAOs, the handling process and the applicable sanctions in case of alleged breach of the PAO Code including its provisions on the prevention of conflict of interest are not expressly spelt out at present.

<sup>53</sup> See press release issued by the Government on “Statement by the Department of Justice” dated 29 March 2012 (<http://www.info.gov.hk/gia/general/201203/29/P201203290472.htm>).

4.18 **Recommendation 4:** The IRC **recommends** that the PAO Code should be amended to make clear that in the event of any allegation of breach of the PAO Code relating to conflicts of interests by PAOs, the CE after due process would decide on whether breach is established and if so, on the applicable sanctions, including warning, public reprimand, suspension or dismissal; or in the case of Principal Officials, recommendation to the Central People’s Government for their suspension or dismissal. The relevant contracts of employment involving PAOs should enable such sanctions to be imposed.

### *Acceptance of Advantages*

4.19 PAOs are currently subject to the same regulatory regime as civil servants on the solicitation and acceptance of advantages, including the Prevention of Bribery Ordinance (Cap.201) (the POBO). Under section 3 of the POBO, it is a criminal offence for PAOs to solicit or accept any advantage without the CE’s permission. “Advantages” under the POBO include gifts, loans, passages, any other service or favour, but exclude entertainment which covers lunches, dinners and the like and any accompanying performance.

4.20 “Prescribed officers” which include both PAOs and civil servants are given general permission by the CE by virtue of the Acceptance of Advantages (Chief Executive’s Permission) Notice (the AAN) to solicit or accept certain types of advantages under specified circumstances (e.g. accept a gift of value not more than \$3,000 from a close personal friend, or not more than \$500 from any other person, on special occasions such as wedding or birthday; or accept a gift of value not more than \$1,500 from a close personal friend, or not more than \$250 from any other person, on any other occasion). PAOs, like civil servants, must seek special permission from the CE to solicit or accept advantages not covered by the general permission in the AAN. So, this is essentially the same system as that applicable in the Civil Service<sup>54</sup>.

4.21 The civil service system for regulating the solicitation and acceptance of advantages is well-established, sound and commands public confidence. It is imperative that the regulatory regime applicable to PAOs for the acceptance of advantages should be at least as stringent as that applicable to the Civil Service. The IRC considers that the present system regulating the acceptance of advantages by PAOs, provided for in section 3 of the POBO and the AAN, being the same system as that applicable to the Civil Service, is largely satisfactory.

### Guidelines for special permission

4.22 The guidelines for considering applications from PAOs for special permission are not expressly spelt out at present. By comparison, the Civil Service has set out a number of factors in internal circulars for considering applications from civil servants for special permission to solicit or accept advantages. It is essential that the guidelines to be adopted by the CE in considering applications by PAOs for special permission should not be laxer than those applicable in the Civil Service. They should be published for transparency.

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<sup>54</sup> Except that PAOs are given blanket permission for personal retention of gifts and invitations received in official capacity which differs slightly from similar blanket permission given in the Civil Service (see paragraph 3.34).



4.23 **Recommendation 5:** The IRC **recommends** that the CE should formulate, adopt and publish guidelines for considering applications by PAOs for special permission to solicit or accept advantages, which should be at least as stringent as those applicable in the Civil Service<sup>55</sup>.

#### Guidance in PAO Code

4.24 Chapter 5 of the PAO Code on “*Prevention of Conflict of Interest*” currently includes a section on “*Acceptance of advantages*” (paragraphs 5.8-5.10) which contains provisions that remind PAOs of the statutory provisions and provide guidance in relation to the acceptance of advantages, gifts, hospitality, free service, other benefits, and entertainment. Whether any hospitality, free service and benefit amounts to an advantage or to entertainment depends on its nature and circumstances. For example, hospitality consisting of hotel accommodation or passage would be advantages, whilst hospitality consisting of a meal and accompanying performance would be entertainment.

4.25 There is a need to distinguish clearly between provisions in the PAO Code applicable to advantages and those applicable to entertainment. The former are subject to the POBO and administrative guidance, whilst the latter is not subject to the POBO and is subject to administrative guidance only.

4.26 Further, the provision in the PAO Code reminding PAOs of the relevant statutory provisions (part of current paragraph 5.8) and the need to seek permission from the CE for the acceptance of advantages should be separated from the provisions on administrative guidance.

4.27 **Recommendation 6:** The IRC **recommends** that the section in the PAO Code concerning the acceptance of advantages should be re-formulated to have a separate and specific provision reminding PAOs of –

- (a) the POBO and the Independent Commission Against Corruption Ordinance (Cap.204), including in particular section 3 of the POBO which provides that solicitation or acceptance of advantages without permission is a criminal offence;
- (b) section 2(2) of POBO which provides that an official solicits or accepts an advantage if he or any other person on the his behalf, directly or indirectly, solicits or accepts any advantages, whether for himself or any other person; and
- (c) the requirement to seek special permission from the CE to solicit or accept advantages in circumstances other than those for which general permission has been given by the AAN.

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<sup>55</sup> Guidelines for considering special permission for the acceptance of advantages by civil servants are set out in CSB Circular No. 3/2007 on “Acceptance of advantages offered to an officer in his private capacity” dated 16 February 2007 and 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” dated 16 February 2007.

4.28 As stated above, there is a need to separate out advantages from entertainment in different provisions in setting out guidance in the PAO Code. Paragraph 5.9 of the Code mixes together the acceptance of gift, hospitality and free service. The guidelines set out therein echo those in the Civil Service: whether the acceptance of advantages by PAOs might or might reasonably appear to compromise their judgement or place them under an improper obligation, or would lead to a conflict of interest with their official duties, place them in a position of obligation, lead to embarrassment in the discharge of their functions, or bring them or the public service into disrepute. Such guidelines can be expanded and presented in a clearer way in the PAO Code.

4.29 **Recommendation 7:** The IRC **recommends** that the section in the PAO Code concerning the acceptance of advantages should be re-formulated to have a separate and specific provision giving guidance for PAOs on the acceptance of advantages. This provision should only deal with advantages and should not be confused with matters which may amount to entertainment.

4.30 The provision should be amended to make clear that in deciding whether to accept any advantage, apart from observing the relevant legal provisions, the PAO shall consider whether, having regard to matters such as the frequent or excessive nature of the advantage, the relationship between the official and the offeror, and the character or reputation of the offeror, acceptance of the advantage by the PAO is likely –

- (a) to lead to a conflict of interest with the PAO’s official duties;
- (b) to place the PAO in a position of obligation to the offeror or under any improper obligation;
- (c) to compromise the judgement of the PAO or to lead to a reasonable perception of such compromise;
- (d) to lead to embarrassment of the PAO or the Government; or
- (e) to bring the PAO or the Government into disrepute bearing in mind public perception.

*(Underlined parts indicate additions to existing guidelines.)*

4.31 The provision should make clear that, when in doubt, the PAO shall seek guidance from the CE on the acceptance of any advantage, irrespective of whether special permission is required. The CE should in giving guidance adopt an approach which is at least as stringent as that in the Civil Service.

#### Advantages received in official capacity

4.32 In the Civil Service, advantages such as gifts received in official capacity by civil servants or their spouses belong to the Government, unless permission has been given for the civil servant concerned to accept or retain personally. While this is also the practice in respect of PAOs, such arrangement is not specified in the PAO Code at present.

4.33 **Recommendation 8:** The IRC **recommends** that the section in the PAO Code concerning the acceptance of advantages should be re-formulated to include a provision which makes clear that any advantage received by a PAO or his spouse from any organization, person or government (other than the HKSAR Government) which in any way relates to his office as PAO, i.e. in his official capacity, belongs to the Government, unless permission is given for the PAO to accept or retain the advantage personally.

4.34 PAOs have been given blanket permission to accept and retain personally gifts offered to them in their official capacity, of up to \$400 in value, or up to \$1,000 in value if the gift is inscribed with the PAO's name or received by him as the guest of honour or an officiating guest. This covers modest gifts offered to PAOs in the course of various events or visits as normal gestures of courtesy or appreciation. Such permission is entirely appropriate and is consistent with similar blanket permission given in the Civil Service in the relevant Civil Service Bureau Circular or departmental instructions<sup>56</sup>. However, such blanket permission for PAOs has not been published. We consider that any blanket permission given for PAOs to accept advantages should be published for transparency.

4.35 **Recommendation 9:** The IRC **recommends** that any blanket permission given by the CE for PAOs to accept advantages, received in official capacity or otherwise, should be published to enhance transparency.

#### PAO Register of Advantages

4.36 To ensure transparency in the operation of the system regulating acceptance of advantages by PAOs, the current arrangements under the PAO Code (paragraph 5.14) whereby a PAO is required to maintain a register of gift, advantage, payment, sponsorship or material benefit received by him or his spouse in official capacity should be revised with the register renamed the PAO Register of Advantages and expanded to cover –

- (a) all advantages (gifts, passages, hotel accommodation, sponsored visits, etc.) received by the PAO or his spouse in official capacity above a certain monetary limit, say \$400, which belong to or are undertaken for the Government and will be dealt with or disposed of by the Government, unless permission is given by the CE for the PAO to accept or retain the advantages personally;
- (b) the advantages in (a) that are accepted or retained personally by the PAO in accordance with the (general or special) permission given by the CE; and
- (c) all advantages received by the PAO in private capacity and accepted in accordance with the special permission given by the CE, i.e. beyond the circumstances for which general permission is given.

<sup>56</sup> 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” dated 16 February 2007 gives blanket permission for the acceptance of gifts in official capacity to Permanent Secretaries and provides that Permanent Secretaries and Heads of Department may consider giving similar blanket permission for officers under them. A number of them have done so.

For the advantages in (b) and (c), their estimated values should be stated in the Register. The IRC recognizes that in some cases, the value (if any) of an item may be unknown, e.g. a painting or some handicraft painted or made by a citizen which appears to be worth over \$400. In these instances, it would be acceptable for the Register to state that the item's value is unknown.

4.37 Such expansion of the Register would enhance the current transparency arrangements on the acceptance of advantages by PAOs. The Register would not include advantages received in official capacity, of an estimated value at or below \$400 and those received in private capacity which are covered by general permission in the AAN. This would reduce administrative work for compiling the Register. The proposed monetary limit of \$400 is in line with the general permission given for personal retention of official gifts by PAOs.

4.38 **Recommendation 10:** The IRC **recommends** that the PAO Register of Gifts etc. should be renamed the PAO Register of Advantages and should cover –

- (a) All advantages (gifts, passages and other advantages) of an estimated value of over \$400 received by a PAO or his spouse in official capacity, indicating –
  - (i) that they are not accepted or retained personally by the PAO and thus belong to and would be dealt with or disposed of by the Government; or
  - (ii) that they are accepted or retained personally by the PAO in accordance with any general or special permission given by the CE, indicating their estimated values.
- (b) All advantages received by a PAO in his private capacity and accepted in accordance with any special permission given by the CE (or under his delegated authority), indicating their estimated values.

### ***Acceptance of Entertainment***

4.39 Entertainment i.e. lunches, dinners and the like and any accompanying performance are not advantages under the POBO, but the acceptance of entertainment by PAOs is subject to guidance under the PAO Code. This is the case in the Civil Service where guidance is laid down in internal circulars. In particular, a PAO should not accept entertainment which may, for instance, lead to embarrassment of him in the discharge of his functions or bring him or the public service into disrepute.

4.40 We recognize that an important part of the PAOs' duties is to meet with people from various walks of life in the community, particularly those involved in the area of the particular portfolio of the PAO concerned, and that lunches, dinners and other similar social gatherings are a normal way of meeting people. Imposing control mechanisms for the acceptance of entertainment with detailed rules and procedures would be impracticable and unduly burdensome.

4.41 For example, it would be totally inappropriate to subject the acceptance of lunches, dinners and the like to an approval mechanism. A PAO could not reasonably be expected to obtain information of the cost of a meal from his host beforehand. To ensure propriety, suitable guidelines must be provided and PAOs must exercise vigilance in making good judgement with commonsense. Such an arrangement on the acceptance of entertainment is the same as that in the Civil Service and has worked satisfactorily. Where a PAO has fallen short of the expected standards, he may be subject to sanctions by the CE (see Recommendation 4) and also to public scrutiny and censure.

4.42 Taking into account the civil service guidelines on the acceptance of entertainment and the above recommended re-formulation of the guidelines relating to the acceptance of advantages by PAOs, the provision in the PAO Code on the acceptance of entertainment (paragraph 5.10) could be strengthened to provide guidance for PAOs in considering the propriety of accepting entertainment. It should also make clear that, when in doubt, PAOs should seek guidance from the CE who should adopt an approach which is at least as stringent as that in the Civil Service on the acceptance of any entertainment.

4.43 **Recommendation 11:** The IRC **recommends** that the section in the PAO Code concerning the acceptance of entertainment should be re-formulated to have a separate and specific provision under the heading “Acceptance of entertainment” providing guidance for PAOs on the acceptance of entertainment.

4.44 The provision should be amended to make clear that in deciding on the acceptance of entertainment (that is, lunches, dinners and the like and any accompanying performance), the PAO shall consider whether, having regard to matters such as the lavish or excessive nature of the entertainment, the relationship between the official and his host, and the character or reputation of his host or known attendees, attendance by the PAO is likely –

- (a) to lead to a conflict of interest with the PAO’s official duties;
- (b) to place the PAO in a position of obligation to the host or under any improper obligation;
- (c) to compromise the judgement of the PAO or to lead to a reasonable perception of such compromise;
- (d) to lead to embarrassment of the PAO or the Government; or
- (e) to bring the PAO or the Government into disrepute bearing in mind public perception.

*(Underlined parts indicate additions to existing guidelines.)*

4.45 The provision should also make clear that, when in doubt, the PAO shall seek guidance from the CE on the acceptance of any entertainment. The CE should in giving guidance adopt an approach which is at least as stringent as that in the Civil Service.

## *Spouse and Children*

4.46 We note that circumstances may arise where the acceptance of advantages or entertainment by the spouse and/or children of a PAO may put the PAO in a difficult, unsatisfactory or undesirable situation, although such acceptance may be outside the purview of the law including the POBO. PAOs should exercise their best endeavour to avoid any such circumstances.

4.47 **Recommendation 12:** The IRC **recommends** that the section in the PAO Code concerning the acceptance of advantages and entertainment should include an additional provision reminding that a PAO should exercise his best endeavours to ensure that his spouse and/or children do not accept any advantage or entertainment where it is likely to lead to the PAO being placed in a position referred to in the guidelines set out above for the acceptance of advantages and entertainment. (Recommendations 7 and 11)

## *Post-Office Outside Work*

4.48 Under the PAO Code, PAOs are subject to restrictions within a control period of one year on taking up outside work after leaving their office. During the one year, they are prohibited from representing anyone in dealings with the Government or engaging in lobbying activities on matters relating to the Government. They are also required to seek advice from the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials (“the Advisory Committee”)<sup>57</sup> before commencing any employment, becoming a director or partner, or starting any business or profession. The Advisory Committee has drawn up and published the principles and criteria to be adopted for the purpose of advising former PAOs on their post-office employment or appointment<sup>58</sup>.

4.49 The IRC considers that a review of the control regime for post-office outside work on PAOs is timely because –

- (a) the control regime has been in place since the introduction of the Political Appointment System in 2002 and considerable experience has been accumulated in its operation;
- (b) the Political Appointment System has been expanded in 2008 from its original scope of Principal Officials and Director of the Chief Executive’s Office (D/CEO) to the newly created positions of Under Secretary and Political Assistant; and
- (c) the control regime in the Civil Service has been reviewed and improved following the Report by the Committee on Review of Post-service Outside Work for Directorate Civil Servants published in July 2009<sup>59</sup>.

<sup>57</sup> The membership and terms of reference of the Advisory Committee can be found on the website of the CE’s Office (<http://www.ceo.gov.hk/poo/eng/index.htm>).

<sup>58</sup> See “Guidance Note on Post-office Employment for Politically Appointed Officials” published by the Advisory Committee in April 2008 ([http://www.ceo.gov.hk/poo/eng/images/guid\\_note.pdf](http://www.ceo.gov.hk/poo/eng/images/guid_note.pdf)).

<sup>59</sup> See the Report on Review of Post-Service Outside Work for Directorate Civil Servants by the Committee on Review

We note that, although the matter was outside its terms of reference, the Committee mentioned in sub-paragraph (c) above also recommended the Administration to carry out a separate review of such arrangements for PAOs.

4.50 **Recommendation 13:** The IRC **recommends** that the Administration should conduct a review of the control regime for post-office outside work of PAOs, seeking such advice as it considers appropriate from the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials.

4.51 While generally, PAOs should be subject to standards at least as rigorous as the civil servants they lead, in the area of post-service outside work, we recognize that there are material differences between the nature of the employment of PAOs and that in the Civil Service. Civil servants have a career in the Civil Service and would have served for a long period before reaching directorate level and say at least 20 years before reaching the most senior rank of Permanent Secretary. They enjoy a considerable measure of security in their employment. PAOs on the other hand are drawn from both the public and private sectors. They are appointed for a term that cannot exceed the five-year term of the CE who appoints them and their term may be terminated before then for a variety of reasons.

4.52 These differences would appear to justify some differences on the control arrangements for the two classes of persons respectively. The review of the control regime for post-office outside work on PAOs should have regard to the differences in the nature of their employment. It is important that the PAO system is able to continue to attract talent, whether from the public or the private sector, to serve as PAOs.

4.53 **Recommendation 14:** The IRC **recommends** that the differences in the nature of employment of PAOs and civil servants should be recognized and taken into account in considering whether and if so, how the control arrangements for PAOs should be revised in the Administration's review.

4.54 We recognize that in the Civil Service, different control periods are set for different levels of civil servants with different lengths of service. Under the expanded Political Appointment System, it may be argued that, as regards the extent of control of post-office outside work, a Principal Official who is the principal decision maker should be treated differently from a Political Assistant whose task is to provide assistance to the Principal Official, and that a Principal Official who has served two terms totalling 10 years should be subject to more stringent control than a Principal Official who has served a term of five years or less.

4.55 At present, the advice of the Advisory Committee to a former PAO on his proposed employment or appointment is not legally binding. We recognize that, in cases where the PAO decides to take up the employment or appointment, the advice is published and the case is thus subject to public scrutiny and censure. However, it may be argued that,

as is the case with the Civil Service, the control restriction on post-service outside work should be made legally binding on the PAO concerned, either by providing contractually that: (i) the advice of the Advisory Committee would be binding; or (ii) such advice should be given to the Administration and the Administration's decision, after obtaining the Advisory Committee's advice, would be binding.

4.56 **Recommendation 15:** The IRC **recommends** that, in the review of the control regime for post-office outside work of PAOs, the following possibilities may be considered:

- (a) whether to provide for different control periods for PAOs of different ranks with different lengths of service; and
- (b) whether to make the control restriction on the advice of the Advisory Committee legally binding.

## **The Chief Executive (the CE)**

### ***Prevention of Bribery Ordinance (POBO)***

4.57 The POBO is a key component of the present regulatory regime for the prevention of conflicts of interests in the public sector. It provides for specific offences of bribery such as sections 4 and 5, which are applicable to a broad class of "public servants" (including civil servants, PAOs, ExCo Members, LegCo Members, District Council Members and appointees to or employees of various public bodies). It also contains section 10 on the possession of unexplained property which applies to a narrower class of "prescribed officers" (including PAOs and civil servants).

4.58 Section 3 is an important provision in the regime. It is a stringent corruption prevention measure. It criminalizes the solicitation and acceptance of advantages by "prescribed officers" (which include PAOs and civil servants) without the CE's permission. Section 8 of the POBO makes it an offence for any person, without lawful authority or reasonable excuse, to offer advantages to "public servants" (including "prescribed officers") while having dealings with the government department or the public body in which the public servant is employed.

4.59 The office of the CE is subject to the common law offence of misconduct in public office and bribery in the same way as PAOs, ExCo Members and civil servants, as well as certain provisions in the POBO relating to bribery (such as sections 6, 7 and 9) which apply to any person. Following the amendment of the POBO in 2008, a number of its provisions applicable to public servants and prescribed officers, namely sections 4 and 5 on bribery and section 10 on the possession of unexplained property, also apply to the office of the CE by specific reference.

### ***The Administration's Position on Application of POBO Sections 3 and 8 to the CE***

4.60 It was the considered position of the Administration at the time the POBO was amended in 2008 that sections 3 and 8 should not apply to the office of the CE, and this was accepted by LegCo after debate. The Administration put forward the following main



- (a) **Unique constitutional status of the CE:** The CE is appointed by the Central People’s Government, is the head of HKSAR, and is accountable to the Central People’s Government and HKSAR in accordance with the Basic Law. Any proposal to extend the POBO provisions to CE must take into account his status.
- (b) **To reconcile CE’s unique constitutional status with an appropriate regulatory framework:** The Administration considered that under the POBO, the offences of solicitation, acceptance and offer of advantages are generally premised upon the existence of a principal-agent relationship. Civil servants are agents of the HKSARG. The Administration considered that the CE “is not an agent of HKSARG” within the meaning of the POBO. The Administration believed that the CE’s special constitutional position posed difficulties in fitting him within the structure of the existing offence provisions in the POBO.
- (c) **The CE already subject to statutory regulation and public scrutiny:** Under Article 47 of the Basic Law (BL47), the CE must be a person of integrity, dedicated to his or her own duties, and that he shall, on assuming office, declare his or her assets to the Chief Justice of the Court of Final Appeal (CJ). The CE is also subject to the common law offence of misconduct in public office and bribery. Sections 4 and 5 of the POBO as amended would also apply to the CE and would already cover the situations where a person offers a bribe to the CE or where the CE accepts a bribe. The Administration considered that section 4 of the POBO applicable to the CE would be construed widely such that offers of advantages to the CE in cases where there was a conflict of interest would be caught. Last but not least, the CE would also be subject to public scrutiny and his acts would be closely monitored by the media and public. The Administration considered that, given these, there was no need to subject the office of the CE to additional statutory control under sections 3 and 8 of the POBO.
- (d) **Difficulties in applying section 3 to the CE:** The CE is the authority to approve acceptance of advantages under the regime in section 3 of the POBO. The Administration considered that there would be no appropriate authority to give approval to the CE for the solicitation or acceptance of advantages. The Administration considered the proposal of creating an independent body to monitor or approve requests from the CE to solicit or accept advantages under

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<sup>60</sup> See the following documents relating to the Administration’s position during the deliberations on the application of certain provisions of the POBO to the CE –

- (1) the Administration’s paper for LegCo Panel on Constitutional Affairs on “Application of Certain Provisions of the Prevention of Bribery Ordinance (Cap. 201) to the Chief Executive” on 21 March 2005;
- (2) the Administration’s paper for LegCo Panel on Constitutional Affairs on “Proposal to Apply Certain Provisions of the Prevention of Bribery Ordinance to the CE” on 1 November 2005;
- (3) “Report of the LegCo Subcommittee on Application of Certain Provisions of the Prevention of Bribery Ordinance to the Chief Executive” to the LegCo Panel on Constitutional Affairs on 20 February 2006;
- (4) the Administration’s papers for the Bills Committee on Prevention of Bribery (Amendment) Bill 2007 -
  - (a) “Follow-up actions arising from the discussion at the meeting on 29 October 2007”;
  - (b) “Follow-up actions arising from the discussion at the meetings on 15 November and 4 December 2007”;
  - (c) “Follow-up actions arising from the discussion at previous Bills Committee meetings” dated February 2008;
- (5) “Report of the Bills Committee on Prevention of Bribery (Amendment) Bill 2007” dated 19 June 2008; and
- (6) Resumption of Second Reading debate on the Prevention of Bribery (Amendment) Bill 2007 on 25 June 2008.

section 3 inappropriate because there could not be a principal-agent relationship between the CE and any independent body set up for this purpose.

- (e) **Difficulties in applying section 8 to the CE:** The Administration cited the judgment of the Court of Final Appeal (CFA) in *Sin Kam-wah v HKSAR*<sup>61</sup> that “dealings of any kind” under section 8(1) of the POBO should be construed widely. Since the CE is the head of the Government, a person having dealings of any kind with any government department (e.g. applying for a restaurant or food license) would be liable for an offence under section 8(1) if he offered an advantage to the CE. The offence would have a much wider scope for the CE compared to civil servants in general and would inadvertently catch well-meaning citizens offering small tokens and souvenirs to the CE out of courtesy or respect.

### ***The IRC’s Views on Application of POBO Sections 3 and 8 to the CE***

4.61 The IRC fully recognizes the unique constitutional status of the office of the CE, in that he is the head of the HKSAR and the Government and he is accountable to the Central People’s Government and the HKSAR. The CE leads PAOs and the Civil Service. He is ultimately responsible for deciding on various matters concerning PAOs including matters relating to their standards of conduct and conflicts of interests. The management and administration of the Civil Service is also based upon his authority. Likewise, the CE is the ultimate authority on various matters concerning the Civil Service, including appointment, disciplinary proceedings and punishment. Some may view any regulation of the CE as compromising his high constitutional status.

4.62 But all public officials, including the CE, PAOs and civil servants, are servants of the people of Hong Kong. Indeed, the CE having regard to his high constitutional status should be regarded as “the Chief Servant” of the people. The public expect and have a right to expect that our public officials, particularly the CE, observe the highest standards of conduct. This is clear from the views expressed by the public in the media during the recent controversies and in the course of our public consultation. Indeed, the high constitutional status of the CE makes it all the more important that he sets a good example for all. It is reasonable for the public to expect the CE to observe rules at least as rigorous as those applied to PAOs and the Civil Service.

4.63 The IRC considers that, as a matter of principle, in order to command public confidence, the CE should observe rules that are at least as stringent as those applicable to PAOs and the Civil Service which he leads. Indeed, this is essential for upholding the dignity and honour of the office of the CE, and maintaining public trust in the integrity and probity of the system.

4.64 A fundamental defect in the present system regarding the solicitation or acceptance of advantages is that whilst PAOs and civil servants are subject to the strict regime under section 3 of the POBO which is underpinned by criminal sanctions, the CE is not. The CE decides on the solicitation or acceptance of advantages for himself and is not subject to any check and balance. The IRC believes that by reason of this defect, the present system is totally inappropriate. The CE should not be above the law which applies

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<sup>61</sup> 8 HKCFAR 192.

to PAOs and civil servants.

4.65 Some may hold the view that under the present system, one should be able to rely on the self-restraint of the CE and on media scrutiny and public censure. The IRC does not accept this view. There is no justification for exempting the CE from the strict regime relating to the solicitation or acceptance of advantages which is applicable to PAOs and the Civil Service, which he leads.

4.66 Further, in relation to the operation of the present system, it is totally inappropriate for the CE to have no record of the internal rule (and instances of its application) which he has adopted concerning his travelling on a friend's private jet or yacht during his private vacation (see paragraph 3.65(b)). The IRC is duty-bound to observe that the absence of documentation on such a matter is not consistent with the proper conduct of public administration.

4.67 Section 8 of the POBO makes it an offence for any person, without lawful authority or reasonable excuse, to offer advantages to any prescribed officer (including any PAO or civil servant) whilst having dealings with the government department or the public body in which the officer is employed. (It also criminalizes the offer of an advantage to a public servant in similar circumstances.) Section 8 focusing on the offeror is part of the regime for PAOs and civil servants. For reasons similar to those discussed above relating to section 3, the IRC considers that it should apply to the office of the CE.

4.68 Having regard to the above considerations, the IRC considers that the same statutory regulation in the solicitation and acceptance of advantages as that applicable to all PAOs and civil servants should apply to the office of the CE. The system under sections 3 and 8 of the POBO should similarly apply to the office of the CE. Including the office of the CE under statutory regulation would remove the defect in the current system and would apply to the office of the CE the same stringent regime as that applicable to PAOs and the Civil Service. The IRC recognizes that, in doing so, it is necessary to address various issues, including those identified by the Administration as stated above concerning the difficulties of applying sections 3 and 8 to the office of the CE.

### ***Proposals to Apply POBO Section 3 to the CE***

4.69 To apply the POBO section 3 to the office of the CE, it is necessary to put in place a mechanism for determining and giving permission for the CE to solicit or accept any advantage. The IRC recognizes that any proposal for the mechanism should take into account the unique constitutional status of the office of the CE. We propose to establish a statutory Independent Committee specifically for this purpose.

4.70 **Recommendation 16:** The IRC **recommends** that legislation should be enacted to render it a criminal offence for the CE to solicit or accept any advantage without the general or special permission of a statutory Independent Committee. This would in effect apply to the office of the CE the regime of section 3 of the POBO applicable to PAOs and civil servants. The penalties should be the same as those for an offence under section 3 of the POBO, i.e. a maximum of one year's imprisonment and a fine of \$100,000.

## The proposed Independent Committee

4.71 The sole function of the Independent Committee is to consider and decide on permission (both general and special) for the CE to solicit and accept advantages. It should be a committee of three members appointed jointly by the Chief Justice of the Court of Final Appeal (CJ) and the President of the Legislative Council (President of LegCo). The statute should prescribe that the persons to be appointed should be permanent residents and should be persons of high standing in the community. It is important that the persons appointed command public confidence. The statutes should provide that the appointment is for a renewable fixed term of, say not more than three years.

4.72 The appointment authority should ensure that the persons to be appointed do not have any conflict of interest and will be perceived to be impartial and unbiased. For this purpose, as part of the appointment process, the CJ and the President of LegCo may make appropriate inquiries of the persons being considered for appointment and if considered necessary, the CE, of facts concerning any family tie and any past or present association, relationship or dealings between them and the CE. In deciding whether to appoint them, the CJ and the President of LegCo would have to bear in mind whether they will be perceived by the public to be impartial and unbiased having regard to such facts.

4.73 It must be emphasized that the process of appointment of the Independent Committee and the process of that Committee considering and giving permission under the section 3 regime should be apolitical. Any risk of their politicization should be avoided. It would be the President of LegCo who, by virtue of his office and in his own right, would alone be responsible for making the appointment jointly with the CJ. LegCo as a body would not be involved. The CJ's independence as Head of the independent Judiciary cannot be questioned. The fact that the CE is the approving authority for him under the section 3 regime does not render his participation in the appointment process inappropriate.

4.74 The offices of the CJ and President of LegCo, as the heads of the judicial and legislative branches, are at the highest levels of the HKSAR. An appointment authority composed of the holders of these two high offices gives due recognition to the high constitutional status of the office of the CE. It is preferable to have an Independent Committee of three members rather than one person as there would be the benefit of collective wisdom, especially when the three persons may be drawn from different backgrounds.

4.75 All "prescribed officers" (including serving PAOs, civil servants and judges) would be ineligible for appointment since under the section 3 regime, the CE is the ultimate approval authority for them. Serving ExCo Members should also be ineligible since they are appointed by the CE. Serving Members of LegCo and District Councils should also be excluded. As pointed out earlier, the risk of politicizing the process of considering and giving permission for the acceptance of advantages should be avoided.

4.76 **Recommendation 17:** The IRC **recommends** that the legislation in establishing the Independent Committee should provide for the followings:

- (a) The Independent Committee should consist of three members, including a Chairman, appointed jointly by the Chief Justice and the President of LegCo.

- (b) The Chairman and the other two members of the Independent Committee should be permanent residents of the HKSAR and should be persons of high standing in the community. Serving ExCo Members, LegCo Members, District Council Members, PAOs, civil servants, judges and other prescribed officers should be ineligible for appointment. They should be appointed for a renewable fixed term of, say not more than three years. Decisions of the Independent Committee should be made by majority.
- (c) The Independent Committee's statutory terms of reference should be –
  - (i) to give general permission to the CE to solicit or accept advantages in certain defined circumstances; and
  - (ii) to give special permission to the CE to solicit or accept advantages in particular cases upon application by the CE.
- (d) The Independent Committee should be served by a secretariat which is independent of the CE's Office. It may be an existing independent secretariat serving various independent bodies.

#### General permission and guidelines for special permission

4.77 The Independent Committee should be transparent in the general permission it gives to the CE and the guidelines it adopts for considering special permission upon application by the CE. In particular, similar to the AAN for civil servants and PAOs, the Independent Committee should publish a notice setting out the general permission for the solicitation or acceptance of advantages by the CE. Further, the Independent Committee should also publish the guidelines for giving special permission that should generally be at least as stringent as those applicable to PAOs and in the Civil Service. Like the AAN, the notice of general permission as well as the guidelines for considering special permission for the CE would not be subsidiary legislation.

4.78 **Recommendation 18:** The IRC **recommends** that the Independent Committee should publish a Notice setting out the scope of general permission and the procedure for the application for special permission.

4.79 **Recommendation 19:** The IRC **recommends** that the Independent Committee should adopt and publish guidelines for giving special permission, which generally should be at least as stringent as those applicable to PAOs and in the Civil Service.

#### Problems of “dealings with the Government”

4.80 In considering the scope of general permission, the Independent Committee should address the problems that have been raised in connection with “dealings with the Government” in applying section 3 of the POBO to the office of the CE. Under the present AAN, the general permission for prescribed officers (including PAOs and civil servants) to accept gifts and passages from close personal friends or other persons would be

disapplied if the person offering the advantage has dealings with the government department or organization in which the prescribed officers work. It would appear that routine dealings are not covered<sup>62</sup>.

4.81 If the Independent Committee considers that its general permission should also be disapplied in the case of the CE when the offeror has dealings with the Government, it should then have to address the practical problem that the general permission would exclude modest gifts or souvenirs offered to the CE by a member of the public at various events or visits as normal gestures of courtesy or goodwill, since that member of the public is likely to have dealings of some kind with the Government. For example, the owner of a bakery seeing the CE on a visit to a district may offer him a pack of egg tarts to bring home when the owner might have dealings with the Government such as applying to renew his food license. It should be noted that such problems already exist to a certain extent for PAOs at higher levels who have responsibilities over a wide range of government bureaux and departments, e.g. the Chief Secretary for Administration.

4.82 To address this problem, the Independent Committee may consider giving general permission for the CE to accept and retain personally any gift up to \$400 in value offered to him (or his spouse) by any person which in any way relates to his office as the CE (i.e. in his official capacity), even if that person has dealings with the Government. This is the same as the blanket permission for PAOs to personally retain gifts received in official capacity<sup>63</sup>, and is broadly consistent with similar blanket permission for Permanent Secretaries<sup>64</sup>. Likewise, the Independent Committee may also consider giving the same general permission for the CE as the present blanket permissions for PAOs to accept: (i) gifts received in official capacity above \$400 but at or below say \$1,000 if the gift is inscribed with the CE's name or if he received it as the guest of honour or an officiating guest; and (ii) invitations to functions or performance for the CE and his spouse at value of not more than \$2,000 per head. The Independent Committee may also consider giving general permission for the CE to accept advantages offered to him (or his spouse) for personal use or retention as a matter of protocol by government authorities including on the Mainland.

4.83 **Recommendation 20:** The IRC **recommends** that the Independent Committee should consider –

- (a) giving general permission to the CE to accept the following advantages offered to him (or his spouse) in his official capacity:
  - (i) gifts up to \$400 from any person;

<sup>62</sup> It should be noted that paragraph 16 of CSB Circular No. 3/2007 stated that “official dealings” in this context are not considered to include routine contact with a government department in making use of the regular services provided by the Government, e.g. the postal, medical, fire and ambulance services, etc., or in making regular payment of tax, rent, rates, etc., and that sections 5(2)(a) and 6(2)(a) of the AAN are not designed to catch such cases.

<sup>63</sup> PAOs are given blanket permission to retain gifts received in official capacity up to \$400 in value, or up to \$1,000 in value if the gift is personally inscribed with the PAO's name or received by the PAO as the guest of honour or an officiating guest.

<sup>64</sup> Permanent Secretaries are given blanket permission to retain personally gifts received in official capacity up to 0.1% of their substantive salary (which amounts to about \$200) or up to \$400 in value if the gift is personally inscribed with the civil servant's name or received by the civil servant as the guest of honour or an officiating guest.

- (ii) gifts above \$400 up to \$1,000 from any person if the gift is inscribed with the CE's name or is received by the CE (or his spouse) as the guest of honour or an officiating guest; and
  - (iii) invitations to functions or performances for the CE and his spouse at value up to \$2,000 per head.
- (b) giving general permission to the CE to accept advantages offered to him (or his spouse) for personal use or retention as a matter of protocol by government authorities including on the Mainland.

### The CE Register of Advantages

4.84 To ensure transparency in the operation of the proposed statutory regime for the CE on the solicitation or acceptance of advantages, the current arrangements whereby the CE's Office maintains a register of gifts presented to the CE and/or his spouse in official capacity should be renamed the CE Register of Advantages and expanded to cover –

- (a) all advantages (gifts, passages, hotel accommodation, sponsored visits, etc.) received by the CE or his spouse in his official capacity above a certain monetary limit, say \$400, which belong to or are undertaken for the Government and will be dealt with or disposed of by the Government, unless permission is given by the Independent Committee for the CE to accept or retain the advantages personally;
- (b) the advantages in (a) that are accepted or retained personally by the CE in accordance with the (general or special) permission given by the Independent Committee; and
- (c) all advantages received by the CE in private capacity and accepted in accordance with the special permission given by the Independent Committee, i.e. beyond the circumstances for which general permission is given.

For advantages in (b) and (c), their estimated values should be stated in the Register. For similar reasons as for the PAO Register, where this cannot be done (e.g. a painting or handicraft by a citizen), it can be stated in the Register that the item's value is unknown.

4.85 **Recommendation 21:** The IRC **recommends** that the CE Register of Gifts should be renamed the CE Register of Advantages and should cover –

- (a) All advantages (gifts, passages, and other advantages) of an estimated value of over \$400 received by the CE or his spouse in official capacity, indicating –
  - (i) that they are not accepted or retained personally by the CE and thus belong to and would be dealt with or disposed of by the Government; or
  - (ii) that they are accepted or retained personally by the CE in accordance with any general or special permission given by the Independent Committee, indicating their estimated values.

- (b) All advantages received by the CE in his private capacity and accepted with the special permission of the Independent Committee, indicating their estimated values.

#### PAO Code and advantages

4.86 It is recommended that the CE should have the duty of following the PAO Code. Even where the solicitation or acceptance by the CE is within the parameters of the law, for example covered by general permission, the CE should in accordance with the Code to be revised as recommended, applying standards which are at least as stringent as those he would apply for PAOs, consider whether, having regard to matters such as the frequent and excessive nature of the advantage, the relationship between the CE and the offeror and the latter's character or reputation, acceptance of the advantage by the CE is likely –

- (a) to lead to a conflict of interest with the CE's official duties;
- (b) to place the CE in a position of obligation to the offeror or under any improper obligation;
- (c) to compromise the judgement of the CE or to lead to a reasonable perception of such compromise;
- (d) to lead to embarrassment of the CE or the Government; or
- (e) to bring the CE or the Government into disrepute bearing in mind public perception.

#### ***Proposals to Apply POBO Section 8 to the CE***

4.87 If the solicitation and acceptance of advantages by the CE is put under statutory regulation as recommended, similar to PAOs and civil servants, it would be necessary to put the offer of advantages to the CE by any person while having dealings with the Government under statutory control as well. This would mean the extension of section 8 of the POBO to cover the office of the CE in addition to "public servants" and "prescribed officers".

4.88 As regards the practical problems which would arise in relation to "any dealings with the Government", these have been discussed above. It should be made clear that the reach of the statutory provisions would not include any person offering an advantage to the CE where such acceptance of the advantage by the CE is covered by general permission given.

4.89 **Recommendation 22:** The IRC **recommends** that legislation should be enacted to make it a criminal offence for any person to offer any advantage to the CE, without lawful authority or reasonable excuse, where the person has any dealings with the Government. Such legislation would broadly be along the lines of the present section 8 of the POBO, and should make clear that offers of advantages by persons having "any dealings with the Government" would not be caught where the acceptance of advantages by the CE is covered by general permission.



## ***Response to the Administration's Position on Application of POBO Sections 3 and 8 to the CE***

4.90 The IRC has fully considered the matters put forward by the Administration at the time of the amendment of the POBO in 2008 in support of its position that sections 3 and 8 should not be made applicable to the CE. Many of these matters have been discussed above.

4.91 As has been stated, the IRC fully recognizes the unique constitutional status of the CE as head of the HKSAR and the Government who is accountable to the Central People's Government and the HKSAR. But in the IRC's view, the CE's status does not justify exempting him from a system applicable to the PAOs and civil servants led by him. His status is taken into account in having an appointment authority for the Independent Committee at the highest levels in the HKSAR. The recommended regime with an Independent Committee would not compromise the status of the office of the CE. On the contrary, by applying to him what is essentially the same regime as that for the PAOs and civil servants led by him, the standing and the honour and dignity of that office would be enhanced. The CE as head of the HKSAR and the Government is and remains accountable to the Central People's Government and the HKSAR, including for his observance of the laws in Hong Kong, including the recommended statutory regime.

4.92 The proposed Independent Committee is an appropriate authority and this overcomes any difficulty in applying the section 3 regime. The absence of a principal-agent relationship between it and the CE is not an obstacle to the establishment of the proposed mechanism. The fact that the CE is subject to other provisions of the POBO and the common law and to public scrutiny is beside the point. In the IRC's view, the system needs to be improved to meet high public expectations. The difficulties arising from "dealings with the Government" could be addressed as proposed above and should not be an obstacle either.

4.93 We would like to highlight that, with the application of the section 3 regime to the CE and with the proposed mechanism of the Independent Committee, the CE would be subject to a statutory regime which at present applies to PAOs and civil servants. This replaces the current arrangement under which the CE exercises complete discretion on his own relating to advantages without any check and balance. It would serve to reassure the public that the same stringent standards as those applicable to PAOs and in the Civil Service would be observed by the CE. The IRC considers this essential in restoring and maintaining public confidence in the integrity and probity of the Government.

### ***Summary on Advantages and the CE***

4.94 To sum up, with the above recommendations, a regime on the solicitation and acceptance of advantages, which would essentially be the same as that applicable to PAOs, would be applied to the office of the CE. That regime is in turn as stringent as that applicable in the Civil Service. Assuming the recommendations are implemented –

- (a) It would be a criminal offence for the CE to accept any advantage (including any gift, hotel accommodation, any purchase or rental of premises at an undervalue, any passage, whether on a commercial airline, private jet or private yacht) without the general or special permission of the Independent Committee.

- (b) It would be a criminal offence for any person, while having dealings with the Government, to offer any advantage to the CE unless the CE has the general permission of the Independent Committee.
- (c) Even where the solicitation or acceptance of the advantage is within the parameters of the law, the CE has the duty to observe the PAO Code on this matter. Applying the same stringent standards as he would apply for PAOs, he would have to consider a number of matters, including whether such acceptance would bring the CE or the Government into disrepute, bearing in mind public perception.
- (d) The Register of Advantages kept by the CE and open for public inspection would list out various items, including advantages received by him and his spouse in official capacity which are retained personally by the CE in accordance with general or special permission, and advantages accepted by the CE in private capacity with special permission.

### ***Observance of PAO Code by the CE***

4.95 As stated above, it is important that the CE should abide by standards at least as stringent as those applicable to the PAOs he leads. PAOs are subject to the PAO Code which contains a number of provisions relating to the prevention and handling of conflict of interests, including regular declaration of investments and interests, ad hoc declaration of private interests in specific matters being handled, guidance on the acceptance of advantages and entertainment, and restrictions on post-office outside work. The current CE has chosen to observe voluntarily the PAO Code insofar as they are applicable. The IRC considers that abiding by the PAO Code should not be a matter of voluntary choice by the incumbent holder of the office of the CE. It would give the public greater reassurance and confidence if observance of the PAO Code by the holder of the office of the CE is made a matter of government policy.

4.96 **Recommendation 23:** The IRC **recommends** that the CE in Council<sup>65</sup> should decide as a matter of policy that the CE has the duty to observe the PAO Code, including Chapter 5 relating to conflicts of interest.

4.97 However, various provisions in the PAO Code envisage or require approval or guidance from a higher authority i.e. the CE. For instance, PAOs must report to the CE any private interest that might influence or appear to influence their judgement in the performance of their duties and the CE may require the PAO concerned to take necessary action. Another instance is that PAOs are required to seek the CE's permission to accept any sponsored visit. In such situations, we recognize that the CE in observing the PAO Code has to handle and make decisions for himself. In doing so, the IRC considers that the CE should adopt an approach which should be no less rigorous than that he would apply in deciding similar matters for PAOs. (It should be noted that where solicitation or acceptance of advantages is concerned, with the recommended application of the section 3

<sup>65</sup> Defined in the Interpretation and General Clauses Ordinance (Cap.1) to mean the Chief Executive acting after consultation with the Executive Council.

regime of the POBO, the CE must have the permission of the Independent Committee.)

4.98 In particular, when dealing with conflict of interest questions concerning himself, we consider that the CE should follow the same guidelines as those he would formulate and publish for handling conflict of interest questions concerning PAOs (see Recommendation 2). As an additional measure to assist the CE, he may seek the advice of ExCo on matters of conflict of interests concerning himself, if and as he considers appropriate.

4.99 **Recommendation 24:** The IRC **recommends** that –

- (a) in observing the PAO Code, where the CE has to handle and make decisions for himself, he should adopt standards which are at least as stringent as those he would apply in deciding similar matters for PAOs; and
- (b) in particular, in deciding on conflict of interest questions concerning himself, the CE should adopt an approach which is at least as stringent as that applied by him on such questions concerning PAOs, following his published guidelines for handling of conflict of interest questions concerning PAOs, and that he may seek the advice of ExCo, if and as he considers appropriate.

4.100 We have recommended above (Recommendation 3) that the Administration should, as and when announcing a decision on any matter, make public where any PAO has withdrawn from the decision-making process in relation to that matter due to conflict of interest. We consider that the same should be applied to the CE in the interest of transparency.

4.101 **Recommendation 25:** The IRC **recommends** that, where the CE has withdrawn from the decision-making process in relation to any matter due to conflict of interest, this fact should be stated as and when the decision concerning the matter is publicly announced by the Administration, identifying the nature of the interests involved and stating who handled the matter with the CE's withdrawal.

### ***Declaration of Interests and Investments***

4.102 On the basis that the CE has the duty to observe the PAO Code as recommended above, it would follow that the CE would have to observe the provisions in the PAO Code concerning declaration of interests and investments, including both the regular declaration of investments and interests, and the ad hoc declaration of any private interest that might influence, or appear to influence, the CE's judgement in the performance of his duties.

4.103 **Recommendation 26:** The IRC **recommends** that, in accordance with his duty to observe the PAO Code, the CE should lodge the regular declaration of investments and interests, and also declare any private interest that might influence or appear to influence his judgement in the performance of his duties, as required by the PAO Code, to be deposited with the Permanent Secretary of the CE's Office.

4.104 At present, the CE observes the requirement for regular declaration of interests as applicable to ExCo Members, which has been included in the terms and conditions of his appointment. Such requirement is as extensive as the requirement for PAOs. Further, the CE has chosen to observe voluntarily the requirement for ad hoc declaration of interests on specific matters before ExCo. For similar reasons as in the case of the PAO Code, we consider that abiding by the declaration requirement applicable to ExCo Members should not be a matter of voluntary choice by the incumbent CE. It would give greater reassurance and confidence to the public if compliance by the holder of the office of the CE of the ExCo declaration system as a whole is made a matter of government policy.

4.105 **Recommendation 27**: The IRC **recommends** that the CE in Council should decide as a matter of policy that the CE as the President of ExCo should observe the declaration system applicable to ExCo Members, including both the regular declaration of interests (including registrable interests subject to public inspection and financial interests to be kept confidential, and notification of any change to declared interests) and ad hoc declaration of interest in specific matters put before ExCo.

4.106 We recognize that the requirements for regular declaration of investments and interests under the PAO Code and the ExCo system are essentially the same in substance, and that having to lodge both sets of declarations is likely to involve duplicative efforts. This is already the situation for Principal Officials who have to lodge regular declarations under both systems. However, the IRC recognizes that the two sets of declarations are made for different purposes, and there may thus be a need for keeping the two systems separate.

4.107 To reduce administrative work, the IRC suggests that consideration should be given to harmonize or combine the declaration forms for PAOs and ExCo Members under both declaration systems, so that those who are required to make declarations under both systems (i.e. the CE and Principal Officials) would only need to complete one set of forms or one form plus a supplementary form instead of two sets of forms.

### ***Acceptance of Entertainment by the CE***

4.108 On matters of acceptance of entertainment (that is, lunches, dinners and the like and any accompanying performance), as with civil servants, PAOs are subject to administrative guidelines. The PAO Code at present gives guidance on entertainment in the following terms. PAOs should not accept entertainment if it is likely, for example, by reason of its excessive nature or the relationship between the host and the PAO or the host's character, to lead to embarrassment of the PAO in the discharge of his functions or to bring the PAO or the public service into disrepute. These are broadly similar to the guidelines in the Civil Service. As the CE has voluntarily chosen to observe the PAO Code, he should at present follow the guidance in the Code. Under the Code, PAOs can seek guidance from the CE. In the case of the CE, he has to make a judgement for himself.

4.109 So, the position is that the CE, PAOs and the Civil Service are all subject to similar administrative guidance. As explained earlier in relation to PAOs, it would be impracticable to impose control mechanisms for entertainment with detailed rules and procedures. For example, it would be totally inappropriate to subject the acceptance of

lunches, dinners and the like to an approval mechanism. An official could not reasonably be expected to obtain information of the cost of a dinner from his host. For the CE, as with PAOs and civil servants, to ensure propriety, vigilance would have to be exercised in making good judgement with commonsense applying suitable guidelines.

4.110 We have already recommended that the PAO Code should be re-formulated in relation to guidance on entertainment (Recommendation 11). The recommended provision would make clear that in accepting entertainment (that is, lunches, dinners and the like), the PAO must consider whether having regard to matters such as its lavish or excessive nature, the relationship with his host, and the character or reputation of his host or known attendees, attendance by the PAO is likely to lead to a conflict of interest, to place him in a position of obligation or under any improper obligation, to compromise his judgement or to lead to a reasonable perception of such compromise, to lead to embarrassment or to bring the PAO or the Government into disrepute, bearing in mind public perception. As recommended above (Recommendation 23), the CE would have to follow the PAO Code, not as a matter of choice but of duty, including the foregoing re-formulated guidance on entertainment.

4.111 It is of particular importance that the CE should exercise great vigilance over the acceptance of entertainment. He is the head of the HKSAR. As the head of our community, he has a duty to conduct himself with total propriety so as to command public confidence and respect. It is the CE who should set a good example for PAOs and civil servants. It is the CE who should be setting the gold standard.

4.112 The CE must of course as part of his work communicate with persons from all walks of life. He must gain an understanding of the conditions and circumstances in all sectors as well as the challenges and problems faced by people in all sectors. But this does not have to be done at lavish dinners. The cost of the meal can have no bearing on the ability to have good and meaningful exchanges.

4.113 There is a further dimension to the acceptance of entertainment by the CE. The CE is the leader of all in our community, both the rich and the poor, and both the powerful and the weak. If the CE gives undue attention to one sector, for example business tycoons by accepting their invitations to lavish dinners most frequently, this may give rise to the perception that the Government is partial to their views. Such a perception would be unfortunate. In the context of the recommended revised guidelines, it is likely to lead to embarrassment of the CE or the Government.

4.114 Where a PAO in applying the guidance in the Code has exercised poor judgement in accepting inappropriate entertainment, he may be criticised by the CE. Especially where there are repeated instances, the CE may impose sanctions, ranging from warning to dismissal. In the case of the CE, leaving aside the impeachment process provided for in the Basic Law, the sanction is that of media scrutiny and public censure. The recent controversies have demonstrated that this is an effective and salutary sanction. The court of public opinion, reflecting the views of right thinking citizens, sets exacting standards and is a tough master.

4.115 **Recommendation 28:** Bearing in mind the matters discussed above, the IRC **recommends** that the CE should exercise great vigilance and adopt a cautious approach in deciding on the acceptance of entertainment in accordance with the guidance laid down in

the PAO Code to be revised as recommended. That approach should be at least as stringent as that which is expected of PAOs and in the Civil Service. It is appropriate for the CE to follow the maxim: “if in doubt, don’t”.

### *Post-Office Outside Work*

4.116 Following recommendations by the Independent Commission on Remuneration Package and Post-office Arrangements for the Chief Executive of the HKSAR in June 2005<sup>66</sup>, the office of the CE is subject to a control regime on post-office outside work which is much more extensive than that for former PAOs. The control restrictions together with the basic principles to be followed are set out in an Undertaking signed by the CE in the form of a Memorandum of Agreement under seal.

4.117 A former CE is subject to the prohibition against the improper use of any information which came to his knowledge during his term of office and which has not yet become known to the public, which is essentially the same as that applicable to PAOs. The control regime for post-office outside work for the CE is more extensive than that for former PAOs and no less stringent than that applicable to Permanent Secretaries as the most senior civil servants. He is subject to a control period of three years compared to a control period of one year for PAOs –

- (a) During the first year, he is prohibited from undertaking any employment, becoming a director or a partner in any business or starting any business or profession.
- (b) During the second and third years –
  - (i) he must seek the advice of the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials (“the Advisory Committee”) before taking up any employment or engaging in any business or professional activities in or outside Hong Kong.
  - (ii) he is, in any event, prohibited from a wide range of activities (see paragraph 3.71(b) for details), including –
    - entering into employment with or becoming a director of any company with land or property development being part of its business or which was awarded with any franchise or license approved by ExCo during his time in office;
    - representing any person in connection with any matter against or with the Government;
    - engaging in any lobbying activities on matters relating to the Government;

<sup>66</sup> See “Report of the Independent Commission on Remuneration Package and Post-office Arrangements for the Chief Executive of the HKSAR” published in June 2005.

- entering into employment with or becoming a director of a company which is involved in litigation against the Government; and
- being involved personally in the bidding for any government land, property, project, contract, license or franchise.

4.118 However, 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 a charitable, academic, or other non-profit-making organizations, or non-commercial regional or international organizations. He should inform the Government of any such appointment.

4.119 The IRC considers that the present control arrangements for former CEs to be largely satisfactory. First, he is subject to a control period which is longer than that for PAOs by two years. Secondly, during the first year, he is totally prohibited from taking up any employment or engaging in any business or professional activities. Thirdly, during the second and third years, apart from the obligation to seek advice from the Advisory Committee, he is in any event barred from an extensive range of activities.

4.120 We have recommended above (Recommendation 15) that consideration should be given to making the advice of the Advisory Committee on restriction on a former PAO legally binding. If this is to be done in respect of PAOs, then the same should be considered for the CE, so as to maintain a regime for the CE at least as stringent as that applicable to PAOs.

4.121 **Recommendation 29:** The IRC **recommends** that if, following review of the post-office outside work regime for PAOs, the advice of the Advisory Committee is made legally binding on a former PAO, the Administration should then consider a similar change for a former CE.

## Members of the Executive Council (ExCo Members)

### *ExCo System of Declaration of Interests*

4.122 ExCo Members, both Official and Non-Official, are subject to the ExCo system of declaration of interests. The system is set out in an internal guidance note which has not been published<sup>67</sup>. All current Official ExCo Members are also Principal Officials under the Political Appointment System and are thus also subject to the PAO Code including the requirements for declaration of interests and investments therein, in addition to the ExCo declaration requirements.

4.123 Under the ExCo declaration system, ExCo Members are required to make regular declaration of a specified range of interests and investments. Part of the declaration is open subject to public inspection. This covers general information of Members'

<sup>67</sup> A restricted "Guidance Note for Members of the Executive Council on Declaration of Interest" issued by the Executive Council Secretariat in July 2010.

remunerated directorships and employment, land and property, shareholding of a nominal value greater than 1% of the issued capital, and membership of boards, committees or other organizations. The other part of the declaration is kept confidential, covering in greater detail the financial interests of Members, including shareholding irrespective of amount and futures and options contracts. They are also required to notify any change to such interests declared and any currency transaction involving the Hong Kong Dollar amounting to more than \$200,000.

4.124 In addition, ExCo Members are required to make ad hoc declaration of specific interests in any matters in respect of individual items to be submitted before ExCo for discussion. The responsibility to make such declarations rests with the Members concerned. A system is also in place to check any potential conflict of interests on the basis of declared interests and any other known information (see paragraph 3.83). As a general rule, Members who have a direct and significant interest should withdraw from the discussion and the ExCo memorandum would be withheld from them. All interests declared, irrespective of whether they require the withdrawal of the Members concerned, would be noted on the records of ExCo meetings which are kept confidential.

4.125 The CE observes the ExCo requirement for regular declaration of interests and has also chosen to observe voluntarily the requirement for ad hoc declaration of interests on specific matters before ExCo. We have recommended above that the CE in Council should decide as a matter of policy that the CE as the President of ExCo should observe the ExCo declaration system as a whole (Recommendation 27).

4.126 The declaration requirements under the ExCo system are in substance similar to those applicable to PAOs and in the Civil Service, except for some minor differences in scope (e.g. ExCo Members' regular declaration is confined to remunerated directorship, while the regular declaration by PAOs and civil servants covers all directorships, both remunerated and non-remunerated). The ExCo declaration requirements are more extensive than those applied to LegCo Members. They are reviewed and revised from time to time in the light of experience. Where there is any allegation of breach of the requirements by any ExCo Member, the CE takes action to investigate and handle the matter<sup>68</sup>.

4.127 The IRC considers that the current system for declaration of interests by ExCo Members, being similar in substance to that applicable to PAOs and the Civil Service, is on the whole satisfactory. Adjustments and fine-tuning may be necessary from time to time. The IRC also notes that general statistics about the operation of the ExCo declaration system has been made public in response to questions raised<sup>69</sup>.

### Transparency

4.128 However, recognizing that ExCo deliberations and proceedings must be kept confidential, the IRC sees a need to enhance the transparency of the ExCo declaration system and its operation. This will give the public greater confidence. The IRC

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<sup>68</sup> For instance, see the statement by the CE's Office on the incident of alleged breach of declaration requirements by Hon LAU Wong-fat on 30 September 2010 (<http://www.info.gov.hk/gia/general/201009/30/P201009300363.htm>).

<sup>69</sup> For instance, see the reply by the Secretary for Constitutional and Mainland Affairs to Hon Emily LAU Wai-hing in LegCo on 22 February 2012 (<http://www.info.gov.hk/gia/general/201202/22/P201202220370.htm>).



considers that, without compromising the confidentiality of ExCo deliberations, the CE in Council should publish a document setting out the ExCo declaration system, the approach for handling conflict of interest, the procedures for handling alleged breaches, and the available sanctions such as warning, public reprimand or removal. The IRC also considers that the Administration should make the publication of general statistics on the operation of the ExCo declaration system a standing feature.

4.129 **Recommendation 30**: The IRC **recommends** that the CE in Council should publish a document setting out the system it has adopted for dealing with conflict of interest. This would include the declaration system, the procedure for ascertaining whether possible conflicts of interest may have arisen and the approach and guidelines for their consideration and resolution. It should also include the procedure for the investigation of alleged breaches of the declaration requirements and the available sanctions such as warning, public reprimand or removal.

4.130 **Recommendation 31**: The IRC **recommends** that the CE in Council should publish annual statistics of the number of occasions on which one or more Members withdrew from its decision-making process due to conflict of interest.

### *Acceptance of Advantages and Entertainment*

4.131 Non-Official ExCo Members are not subject to section 3 of the POBO. They are subject to the bribery provisions of the POBO as “public servants” which also include LegCo Members, District Council Members and members and staff of public bodies. They are not subject to any administrative control or guidance on the acceptance of advantages and entertainment, except that under the ExCo declaration system, ExCo Members are required to declare the acceptance by them or their spouses any financial sponsorship, sponsored overseas visit, or gift worth \$2,000 or more in relation to their ExCo membership. Such declarations are subject to public inspection.

4.132 Under the Basic Law, ExCo is an organ for assisting the CE in policy-making (BL54). Its Members are appointed from among Principal Officials, LegCo Members and public figures (BL55). The first category forms the Official Members. The latter two categories are the Non-Official Members. The CE has a duty to consult ExCo before making important policy decisions, introducing bills to LegCo, making subordinate legislation or dissolving LegCo. If the CE does not accept a majority opinion of ExCo, the CE has to put the specific reasons on record (BL56). ExCo Members must take an oath swearing to uphold the Basic Law, bear allegiance to the HKSAR and serve the HKSAR “conscientiously, dutifully, in full accordance with the law, honestly and with integrity”. They must also take an oath of secrecy.

4.133 ExCo has a large membership. At present, apart from the CE as the President, ExCo has a total of 28 Members (15 Official and 13 Non-Official). ExCo acts as a collective body in advising the CE in ExCo. An individual ExCo Member does not act on his own in relation to ExCo business and is not vested with any executive power or responsibility. The Non-Official Members are drawn from many different fields in the community. Unlike full-time public officials, they serve only part-time as ExCo Members.

They continue to be involved in the community in various capacities and are usually fully engaged in various fields. With their different backgrounds, experience and expertise, they advise the CE on the matters brought before ExCo. The fact that they come from different fields enables them to bring varied perspectives to the matters before ExCo. This can be regarded as the strength of the Non-Official membership of ExCo.

4.134 Having regard to the foregoing matters, the IRC considers that it would not be appropriate to subject them to the same or a similar regulatory regime for the acceptance of advantages and entertainment as that applicable to full-time officials like the CE, PAOs and civil servants.

## **Debts and Liabilities**

4.135 During our public consultation, a suggestion has been raised to introduce an additional requirement for the CE, PAOs and ExCo Members to declare in their regular declaration of investments and interests any personal debt or liability and any payment, release, discharge or liquidation thereof (“debts and liabilities etc.”).

4.136 Since any loan is an advantage, its solicitation or acceptance by a PAO, as with any civil servant, is subject to the section 3 regime of the POBO. General<sup>70</sup> or special permission by the CE is necessary. For the CE, with the recommended application of the section 3 regime to him, the permission of the proposed Independent Committee would be necessary. As pointed out above, Non-Official ExCo Members are not subject to the section 3 regime.

4.137 Under the present system, as is the case in the Civil Service, the CE, PAOs, and ExCo Members are always under a duty to avoid any conflict of interest. In relation to a specific matter arising for consideration before a particular official, the nature and extent of his debts and liabilities etc. and the identity of the creditor may be such as to give rise to a potential conflict of interest. In such a situation, as with any situation involving potential conflict of interest, the official concerned would have to disclose his debts and liabilities etc. so that a decision can be made on the appropriate course of actions to handle the conflict. In the case of PAOs and ExCo Members, the disclosure would be made to and the decision would ultimately be made by the CE. In the case of the CE himself, he would have to decide the matter for himself, seeking the advice of ExCo as appropriate as discussed above.

4.138 With the present system requiring ad hoc declarations of debts and liabilities etc. by the CE, PAOs and ExCo Members in relation to specific matters being considered and bearing in mind privacy concerns, the IRC does not consider it necessary to include the additional requirement to declare debts and liabilities etc. in their regular declarations of investments and interests. The IRC has noted that this is the position in the Civil Service

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<sup>70</sup> The AAN gives general permission for prescribed officers to solicit and accept loans from a company or an individual in certain circumstances. In relation to the former, the circumstances include that it has to be made in the normal course of business provided that it is equally available on equal terms to other persons and the company has no official dealings with the prescribed officer. In relation to the latter, the amounts of the loans depend on the relationship between the prescribed officer and the lender (\$3,000 from a close personal friend and \$1,500 from any other person) and the loans must be repaid within 30 days, provided that the lender has no official dealings with the department or organization in which the prescribed officer works.

where there is no general requirement to declare loans and liabilities etc. in regular declarations of investments<sup>71</sup>. And this appears to have worked satisfactorily.

4.139 It should be noted that the debts and liabilities etc. of a PAO or a civil servant may be examined as part of his financial situation in the integrity checking process. Integrity checking is conducted as part of the appointment process to senior positions or positions with access to sensitive information, for the purposes of ensuring that the potential appointees are of good conduct and high integrity as required of those positions and ascertaining whether they may be vulnerable to possible corrupt activities or other forms of pressure. The system of integrity checking is outside the review ambit of the IRC.

## General Transparency

4.140 In addition to various measures recommended above relating to transparency, the IRC considers that, for consistency, the documents which are at present or are recommended to be made available for public inspection or published should all be made accessible to the public through the relevant websites. Some of them which are at present open to public inspection can already be so accessed.

4.141 **Recommendation 32:** The IRC **recommends** that the documents relating to the regulatory regime for prevention and handling of conflict of interests concerning the CE, PAOs and ExCo Members<sup>72</sup> should be made accessible on the relevant websites, in so far as they are not at present.

4.142 **Recommendation 33:** The IRC **recommends** that the CE's, PAOs' and ExCo Members' open declarations of investments and interests subject to public inspection should be made accessible on the relevant websites, in so far as they are not at present.

4.143 **Recommendation 34:** The IRC **recommends** that the CE Register of Advantages<sup>73</sup>, the PAOs' Registers of Advantages<sup>74</sup>, and ExCo Members' declarations of gifts and sponsorships should be made accessible on the relevant websites, in so far as they are not at present.

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<sup>71</sup> However, individual departments may impose arrangements for declarations of such due to operational needs, e.g. the Hong Kong Police Force.

<sup>72</sup> These include but are not limited to the following: the PAO Code, the guidelines adopted by the CE for considering conflict of interest questions concerning PAOs (Recommendation 3), the general permission given by the CE for PAOs to solicit or accept advantages (Recommendation 9), the guidelines adopted by the CE for considering and giving special permission for PAOs (Recommendation 5), the general permission given by the Independent Committee for the CE to solicit or accept advantages and the procedure for the application for special permission (Recommendation 18), the guidelines adopted by the Independent Committee for considering and giving special permission for the CE (Recommendation 19), and the note describing the ExCo system for prevention and handling of conflict of interest (Recommendation 30).

<sup>73</sup> See Recommendation 21.

<sup>74</sup> See Recommendation 10.

## Review

4.144 In a rapidly changing world, public expectations of the standards of conduct of public officials may change over time. The system for the prevention and handling of potential conflict of interests must be adapted from time to time to keep up with public expectations in order to maintain public confidence. The IRC thus considers it necessary for the system to be subject to regular review. This should not preclude review during the interim as and when the need arises.

4.145 Further, the general permission for the acceptance of advantages for the purpose of section 3 of the POBO, as set out in the AAN for civil servants and PAOs, and the general permission to be given by the proposed Independent Committee for the CE, represents what is regarded as generally acceptable without the need for special permission. The IRC also sees a need for the general permission, especially the permissible circumstances and the associated monetary limits (which were last revised in 2007), to be subject to review from time to time to ensure that they remain relevant and appropriate.

4.146 **Recommendation 35**: The IRC **recommends** that the system for the prevention and handling of potential conflicts of interests concerning the CE, ExCo Members and PAOs should be subject to review at least once every five years in the light of experience to ensure that it meets the expectations of the public in rapidly changing times.

4.147 **Recommendation 36**: The IRC **recommends** that consideration should be given to reviewing the general permission given for the solicitation and acceptance of advantages under the POBO, including the permissible circumstances and the associated monetary limits, from time to time, having regard not only to inflation but also evolving social conventions, bearing in mind that the AAN is applicable to the entire Civil Service.

## **APPENDIX A CODE FOR OFFICIALS UNDER THE POLITICAL APPOINTMENT SYSTEM (EXCERPTS)**

*The following is an extract of the Chapters 1, 3 and 5 of the Code for Officials under the Political Appointment System (the PAO Code, attached as the Annex to the Report on Further Development of the Political Appointment System issued by the Government in October 2007), which are relevant to the matters being reviewed in this Report –*

- *Chapter 1 contains general provisions governing Officials under the Political Appointment System (politically appointed officials or PAOs).*
- *Chapter 3 contains provisions governing official secrets and security including requirement to maintain confidentiality after leaving government service.*
- *Chapter 5 contains provisions relating to the prevention of conflict of interests concerning PAOs, including declaration of interests and investments, acceptance of advantages, acceptance of entertainment, register of gifts and other advantages, and post-office outside work.*

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### **CHAPTER 1: INTRODUCTION**

1.1 In this Code, unless the context otherwise requires,

“politically appointed officials” means –

- (a) principal officials;
- (b) Director of the Chief Executive’s Office;
- (c) under secretaries; and
- (d) political assistants.

“principal officials” means principal officials under the Political Appointment System, i.e. the Secretaries of Department and Directors of Bureau.

“under secretaries” means Deputy Directors of Bureau.

“political assistants” means Political Assistant to the Chief Secretary for Administration, Political Assistant to the Financial Secretary, and Political Assistants to Directors of Bureau.

This Code applies to the politically appointed officials.

Where this Code confers powers or imposes duties upon the Chief Executive, he may delegate a principal official, the Director of the Chief Executive’s Office or Permanent Secretary of the Chief Executive’s Office, designated by name or by office, to exercise such powers or perform such duties on his behalf and thereupon, or from the date specified by the Chief Executive, the person so delegated shall have and may exercise such powers and perform such duties.

- 1.2 Principal officials shall swear to uphold the Basic Law and swear allegiance to the Hong Kong Special Administrative Region (HKSAR) of the People’s Republic of China.
- 1.3 The basic principles which politically appointed officials shall follow in the performance of their duties include the following:

- (1) Politically appointed officials shall be dedicated to their duties and be responsible to the Government of the HKSAR.
  - (2) Politically appointed officials shall uphold the rule of law, abide by the law, and protect the integrity of public office.
  - (3) Politically appointed officials shall act in the best interests of the HKSAR as a whole.
  - (4) Politically appointed officials shall be as open as possible about the decisions that they make and the actions that they take. They shall be accountable for their decisions.
  - (5) Politically appointed officials shall observe the highest standards of personal conduct and integrity at all times.
  - (6) Politically appointed officials shall ensure that no actual or potential conflict arises between their public duties and their private interests.
  - (7) Politically appointed officials shall at all times actively uphold and promote a permanent, honest, meritocratic, professional and politically neutral civil service.
  - (8) Politically appointed officials shall not use any public resources for non-government purposes (including purposes relating to any political party).
  - (9) Politically appointed officials shall promote and support the above principles by leadership and example.
- 1.4 This Code does not specify every type of potential act or behaviour expected of politically appointed officials. Rather, it provides rules and principles for appropriate conduct under certain circumstances. Where the circumstances are not prescribed, it is the responsibility of politically appointed officials to judge in accordance with the principles set out in this Code, how best to act in order to uphold the highest standards. In case of doubt, they shall seek the advice of the Chief Executive.
- 1.5 This Code shall be read in conjunction with legislation applicable to politically appointed officials. These include the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).

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### **CHAPTER 3: OFFICIAL SECRETS AND SECURITY**

- 3.1. Politically appointed officials shall note that they fall within the definition of “public servant” in the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) and must therefore abide by the provisions therein applicable to a “public servant”.
- 3.2. Politically appointed officials, irrespective of whether they are members of the Executive Council, shall not reveal the agenda, papers or proceedings of the Executive Council, or any document communicated to them or any matter coming to their knowledge concerning the work of the Executive Council. Discussion and deliberation at the Executive Council shall be kept in strict confidence. The internal process through which a decision has been made shall not be disclosed.
- 3.3. Politically appointed officials are required to take due care in the safe keeping of classified information entrusted to them. They shall bear in mind the general principle that dissemination of classified information shall be no wider than is required for the efficient conduct of the business at hand and shall be restricted to those who are authorised to have access to such information.

## **On stepping down from office**

- 3.4. On stepping down from office, politically appointed officials shall hand over government documents in their possession and ensure that all drafts and personal copies of such documents have been properly disposed of.
- 3.5. Politically appointed officials shall note that all classified information, documents or other articles protected against disclosure by the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) which has come into their possession as a result of their appointment in the Government, remain covered by the Ordinance after their stepping down from office and may not be disclosed.
- 3.6. Politically appointed officials shall note that they are liable to be prosecuted under the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) if, either in Hong Kong or abroad, they communicate, either orally or in writing, including publication in a speech, lecture, radio or television broadcast or in the press or in book form or otherwise, to any unauthorised person any information falling within the purview of the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) unless prior written approval has been obtained from the Chief Executive. The relevant provisions of the Official Secrets Ordinance continue to apply to politically appointed officials after they have stepped down from office.

## **Evidence in court**

- 3.7. Politically appointed officials may be called upon to answer to subpoenas to give oral evidence and/or to produce official documents in Court relating to their official duties. In cases where oral evidence or the production of official documents is involved, the politically appointed official concerned shall assess whether there are any grounds for suggesting that the giving of such evidence or the production of such documents would cause damage to the proper functioning of the public service or would in any way be contrary to the public interest. The politically appointed official concerned shall seek advice from the Secretary for Justice in all such cases.

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## **CHAPTER 5: PREVENTION OF CONFLICT OF INTEREST**

- 5.1. Politically appointed officials shall avoid putting themselves in a position where they might arouse any suspicion of dishonesty, unfairness or conflict of interest.
- 5.2. Politically appointed officials shall observe the principles of fairness and impartiality in discharging their duties and in their dealings with members of the public and with their staff.
- 5.3. Politically appointed officials shall refrain from handling cases with actual or potential conflict of interest.
- 5.4. Politically appointed officials shall report to the Chief Executive any private interests that might influence, or appear to influence, their judgement in the performance of their duties.
- 5.5. During the term of office, politically appointed officials shall not, without the consent in writing of the Chief Executive, engage or be concerned either directly or indirectly as principal, agent, director or shadow director, employee or otherwise in any other trade, business, occupation, firm, company (private or public), chamber of commerce or similar bodies, public body or private professional practice. The consent of the Chief Executive is likely to be given where the official is appointed to the relevant board of directors in his

official capacity or in connection with his private family estate. A politically appointed official may retain or accept honorary posts in non-profit making organisations or charitable bodies. In all these cases, the official shall ensure that there is no actual or apparent conflict of interest between his interests in such organisations or bodies and his official duties and that his interests in such organisations or bodies would not cause embarrassment to the Government, the Chief Executive or other politically appointed officials of the Government.

### **Declaration and handling of investments/interests**

- 5.6. Given that the politically appointed officials will have access to highly sensitive information including commercially sensitive information, they shall declare their investments and interests for the purpose of securing public trust and confidence. The declaration will be made available in a place designated by the Chief Executive's Office for public inspection on request.
- 5.7. If it appears to the Chief Executive at any time that there is or may be a conflict of interest between a politically appointed official's investments or interests and his official duties, the Chief Executive may require the official to take any one or more of the following measures:
- (a) to divest himself of all or any of the investments or interests;
  - (b) to refrain from acquiring or disposing of the investments or interests;
  - (c) to freeze any investment transaction for a specified period;
  - (d) to place the investments or interests in a "blind trust";
  - (e) to refrain from handling cases with actual or potential conflict of interest; and
  - (f) to take other actions as directed by the Chief Executive.

### **Acceptance of advantages**

- 5.8. Politically appointed officials shall note that as public servants employed by the Government, they are subject to the relevant provisions in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) and the Independent Commission Against Corruption Ordinance (Chapter 204 of the Laws of Hong Kong), and shall if necessary seek guidance from the Chief Executive as to the acceptance and retention of gifts, advantages or other benefits.
- 5.9. As a general rule, politically appointed officials shall avoid accepting any gift or hospitality which might or might reasonably appear to compromise their judgement or place them under an improper obligation. Although the acceptance of hospitality or free service is not prohibited, politically appointed officials shall take note of the relevant provisions in law and the following before accepting any such offer:
- (a) whether the acceptance of the hospitality or free service will lead to a conflict of interest with their official duties or place them in a position of obligation to the donor;
  - (b) whether the acceptance of the hospitality or free service will lead to embarrassment in the discharge of their functions; and
  - (c) whether the acceptance of the hospitality or free service will bring them or the public service into disrepute.



- 5.10. A politically appointed official shall not accept entertainment from any person if the entertainment is likely, for example by reason of its excessive nature, or of the relationship between the official and the other person, or of the character of that person:
- (a) to lead to embarrassment of the politically appointed official in the discharge of his functions; or
  - (b) to bring the politically appointed official or the public service into disrepute.

### **Sponsored visits**

- 5.11. A politically appointed official may receive an invitation from a foreign government to make a sponsored visit in his official capacity. If the official wishes to accept the sponsorship in relation to the visit, he shall seek permission from the Chief Executive.
- 5.12. A politically appointed official may receive an invitation from an outside organisation to make a sponsored visit in his official capacity. If the official wishes to accept the sponsorship in relation to the visit, he shall seek permission from the Chief Executive.
- 5.13. If a politically appointed official wishes to accept a sponsored visit for his spouse, he shall seek permission from the Chief Executive.

### **Register of gifts etc.**

- 5.14. Politically appointed officials shall note that they are subject to the provisions of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) and shall if necessary seek guidance from the Chief Executive as to the acceptance and retention of gifts, advantages or other benefits. In addition, politically appointed officials are required to keep a register of gift, advantage, payment, sponsorship (including financial sponsorships and sponsored visits) or material benefit received by them or their spouses from any organisation, person or government other than the Government which in any way relates to their office as politically appointed officials. The register will be made available in the bureau / office served by the official concerned for public inspection on request.

### **On stepping down from office**

- 5.15. Within one year after stepping down from office, politically appointed officials shall seek the advice of a committee appointed for this purpose by the Chief Executive before commencing any employment, becoming a director or a partner in any business or profession or starting any business or profession on his own account or with others. The proceedings of the committee shall be kept confidential but the advice given shall be made public.
- 5.16. Within one year after stepping down from office, politically appointed officials shall not represent any person in connection with any claim, action, demand, proceedings, transaction or negotiation against or with the Government.
- 5.17. Within one year after stepping down from office, politically appointed officials shall not engage in any lobbying activities on matters relating to the Government.

## 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.

## APPENDIX C PRACTICES IN SELECTED OVERSEAS JURISDICTIONS

### Introduction

C.1 This Appendix summarizes the IRC's research on the regulatory regimes for the prevention and handling of potential conflicts of interests in selected overseas jurisdictions, namely Australia, Canada, New Zealand, Singapore and the United Kingdom. The focus of the research is primarily on ministerial rank officials (including the heads of government, i.e. the prime ministers).

C.2 All the jurisdictions covered in the research adopt a Westminster system of government, in which the head of government and ministers are normally drawn from members of the parliament. In other words, the heads of government and ministers in these jurisdictions are also subject to parliamentary rules governing members' private interests. Parliamentary rules (only the lower houses for bicameral parliaments) are cited insofar as they are integral to the regulatory regime governing ministers.

C.3 The regulatory regimes in these jurisdictions may not have the same delineation of advantage and entertainment, as in the case of POBO. Hence, gifts, hospitality, service, passage and the like are referred to in this Appendix generically as gifts and other benefits.

### I. Australia

#### (a) *Regulatory Framework*

C.4 The Standards of Ministerial Ethics ("the Standards") was introduced by the Labour Government in 2007 to set out the standard of conduct required of Ministers. As Members of the Parliament, Ministers are also expected to abide by the relevant House of Representatives resolutions in respect of registration of interests.

#### (b) *Key Features*

##### Acceptance of gifts and other benefits

C.5 Ministers, in their official capacity, may accept customary official gifts, hospitality, or tokens of appreciation, but they must not seek or encourage any form of gift in their personal capacity. They must also not seek or accept any kind of benefit or other valuable consideration either for themselves or for others in connection with performing or not performing any element of their official duties.

C.6 As a Member of the House of Representatives, Ministers are required to register gifts valued at more than AUD\$750 received from official sources, or at more than AUD\$300 received from other than official sources. A gift received by the Minister, the Minister's spouse or dependent children from family members or personal friends in a purely personal capacity needs not be registered unless the Minister judges that an appearance of conflict of interest may be seen to exist. Members of the House of Representatives are also required to register any sponsored travel or hospitality received where its value exceeds AUD\$300.

##### Declaration of interests

C.7 As Members of the House of Representatives, Ministers must provide to the Registrar of Members' Interests a statement of registrable interests, including that of his spouse or dependent children (of which the Member is aware) within 28 days of taking office. The Registrar of Members' Interests should be notified of any alternation within 28 days. Registrable interests include: shareholdings; family and business trusts, real estate; registered directorships; partnerships;

liabilities; bonds, debentures and the like; saving and investment accounts; other assets over AUD\$7,500; other substantial sources of income; gifts, travel and hospitality (see paragraph C.6); membership of organizations, etc. The Registrar of Members' Interests is responsible for making the Register of Members' Interests available for public inspection.

C.8 Ministers are required by the Standards to comply with additional requirements for declarations of interests as may be determined by the Prime Minister and notify him of any significant change. In relation to matters discussed in the Cabinet, Ministers must declare any private interests held by them or their immediate family, which give rise to or likely to give rise to a conflict with their public duties.

#### Sanction

C.9 Where an allegation involving breach of the Standards is made against a Minister (including the Prime Minister), the Prime Minister may refer the matter to an appropriate independent authority for investigation and/or advice. If the Prime Minister regards a Minister's conduct as constituting a *prima facie* breach of the Standards, the Minister will be requested to stand aside. He would be requested to resign if the Prime Minister is satisfied that the Minister breached the Standards in a substantive and material manner.

## **II. Canada**

### **(a) Regulatory Framework**

C.10 The Conflict of Interest Act ("the Act") was enacted in 2006 to establish conflict of interest rules for public office holders, including a Minister of the Crown. The Conflict of Interest and Ethics Commissioner ("the Commissioner") is appointed by the Governor in Council and is solely responsible to the Parliament. The Commissioner administers the Act by, *inter alia*, providing confidential advice to public office holders, investigating into possible contraventions, and reporting to the Parliament.

### **(b) Key Features**

#### Acceptance of gifts and other benefits

C.11 A Minister and his family members shall not accept any gift or other advantage that might reasonably be seen to have been given to influence him in the exercise of an official power, duty or function. However, he may accept a gift or other advantage that is given by a relative or friend.

C.12 A Minister is also permitted to accept a gift or other advantage as a normal expression of courtesy or protocol. If the gift is valued at CAD\$1,000 or more, they should be forfeited to the Crown unless otherwise determined by the Commissioner. A Minister is required to disclose to the Commissioner and publicly declare if he or his family member accepts any single gift or advantage that has a value of CAD\$200 or more, except for gift from a relative or friend.

C.13 No Minister or his family member may accept travel on non-commercial chartered or private aircraft for any purpose unless required in his official capacity, in exceptional circumstances or with the prior approval of the Commissioner. If such travel is so accepted, the Minister should publicly declare within 30 days.

#### Declaration of interests

C.14 A Minister is required to provide, within 60 days of appointment, a confidential report to the Commissioner of all of his assets (except primary and secondary residence, automobiles, cash

and deposits, etc); liabilities; income; employment, business, directorship, membership of organizations; involvement in charitable and non-commercial activities; activities as a trustee, liquidator, etc. The Minister is required to report to the Commissioner any material change within 30 days. He is also required to make confidential report to the Commissioner on gifts or other advantages accepted (see paragraph C.12).

C.15 In addition, a Minister should also publicly declare within specified periods certain assets, liabilities more than CAD\$10,000; activities outside of his official duties; gifts and other advantages; travel (see paragraph C.12-C.13). A Minister is required to publicly declare if he has recused himself to avoid a conflict of interest situation.

### Sanction

C.16 The Commissioner is empowered under the Act to initiate investigations against contravention of the Act by a Minister, on request of a parliamentarian or on the Commissioner's own initiative. The Commissioner is required under the Act to submit the investigation report to the Prime Minister, and make the report public. Administrative monetary penalty not exceeding CAD\$500 may also be imposed by the Commissioner on violation of certain confidential disclosure and public declaration requirements under the Act.

## **III. New Zealand**

### **(a) Regulatory Framework**

C.17 The Cabinet Manual ("the Manual"), approved by the Cabinet in 2008, outlines the standards of conduct required of Ministers and provides guidance to avoid conflicts of interests. As Members of the House of Representatives, the Manual also requires Ministers to abide by, *inter alia*, the relevant Standing Orders of the House of Representatives in respect of declaration of interests ("the Standing Orders").

### **(b) Key Features**

#### Acceptance of gifts and other benefits

C.18 A Minister, as a Member of the House of Representatives, is required to register with the Registrar of Pecuniary and Other Specified Interests of Members of Parliament ("the Registrar") gifts and hospitality received by them valued at over NZD\$500, except for those from family members. Ministers are further required under the Manual to relinquish the gifts above NZD\$500 except with the express permission of the Prime Minister. Gifts received from close family members by Ministers need not be relinquished.

C.19 A Minister, as a Member of the House of Representatives, is required to register overseas travel except where the travel or accommodation costs were paid by himself, his family members, or by public funds. According to the Manual, proposals that a Minister accepts the payment of international airfares or other travel-related costs by another country or international organization must be approved by the Prime Minister and Minister of Foreign Affairs. For proposals from bodies other than government organizations to fund any travel, accommodation or other expenses incurred by Ministers, they should be assessed in the light of the guidance on the public duty and private interests of the Ministers.

#### Declaration of interests

C.20 A Minister, as a Member of the House of Representatives, is required to file declaration of interests within 90 days of taking office and annually thereafter. The return should include such interests of the Member as directorships; business interests; employment; trusts; memberships of

organizations that receive government funds; real property; superannuation schemes; debts over NZD\$50,000; credits over NZD\$50,000, etc. For the annual return, the Minister needs to include travel and gifts (see paragraph C.18-C.19), each new debt above NZD\$500 and payment received other than salaries and allowances, etc. The Registrar will publish the summary of returns made by the Members.

### Sanction

C.21 Failure to compile a return on Members' interests by a Member of the House of Representatives may be regarded as contempt of the House. On complaint by a Member for failure to compile a return in accordance with the Standing Orders, the Registrar could inquire into the complaint and report to the House of Representatives.

## **IV. Singapore**

### ***(a) Regulatory Framework***

C.22 The Code for Ministers ("the Code") was laid before the Parliament by the command of the President in 2005. It sets out detailed rules on how Ministers should act and arrange their personal affairs.

### ***(b) Key Features***

#### Acceptance of gifts and other benefits

C.23 A Minister should not accept gifts (include any intangible benefits, hospitality, tickets, concessions or free or undervalued services) which would, or might appear to, place the Minister under an obligation that conflicts with his public duty. The same principle applies to the Minister's spouse, children or other dependants. Furthermore, a Minister must not accept favour of any kind from persons who are in negotiation with the Government or seeking to obtain any license or enter into any contractual relations with the Government.

C.24 Gifts given to a Minister from members of the public should be refused and returned without delay, together with a personal explanation that acceptance would contravene the Code. If return of the gift would be offensive or not practicable, the gift should be handed over to the relevant Permanent Secretary. The Minister is allowed to retain the gift if it is less than SGD\$50 or, where the Permanent Secretary thinks fit, put on display. However, a Minister is not forbidden to accept gifts from family or personal friends in a genuinely personal capacity; gifts that are clearly unconnected with the ministerial office; or gifts that would not normally be regarded as influencing the Minister in performance of his duties.

#### Declaration of interests

C.25 Ministers must, upon appointment, disclose to the President via the Prime Minister in confidence his source of income (other than Ministerial and Parliamentary salaries); assets (including financial assets, real property, etc.) and financial liabilities.

### Sanction

C.26 The Code requires Ministers to take personal responsibility to comply with the Code and avoid all transactions that can give the impression that he may be doing anything forbidden by the Code. Breach of the Code may expose the Minister to removal from office.

## V. The United Kingdom

### *(a) Regulatory Framework*

C.27 The Ministerial Code provides guidance to Ministers on how they should act and arrange their affairs in order to uphold the required standards. The Prime Ministers and Ministers are also subject to the Code of Conduct of the Parliament.

C.28 The Independent Adviser on Ministers' Interests is appointed by the Prime Minister to provide an independent check and advice to Ministers on the handling of the latter's private interests, in order to avoid conflicts. The Independent Adviser also investigates, when the Prime Minister, advised by the Cabinet Secretary, so decides, allegations that Ministers may have breached the Ministerial Code.

### *(b) Key Features*

#### Acceptance of gifts and other benefits

C.29 The Ministerial Code stipulates that no Minister should accept gifts which would or might appear to place him under an obligation. The same principle applies if gift are offered to a member of their family. A gift given to a Minister in his Ministerial capacity becomes government property. Those of or less than £140 in value may be retained. Those of a higher value, more than £140, should be handed over to the department for disposal. The Minister may purchase the gift abated by £140. The relevant departments will publish, at least quarterly, details of gifts received and given by Ministers valued at more that £140.

C.30 If a Minister accepts hospitality in a Ministerial capacity, he should notify his Permanent Secretary. Departments will publish, at least quarterly, details of hospitality received by the Ministers in a Ministerial capacity. Ministers should not normally accept free travel. The only exception to this is in the case of an offer of transport from an overseas government provided no undue obligation is created.

C.31 As Members of the House of Commons, Ministers are required to register in the Register of Members' Financial Interests any tangible gifts (such as money, jewellery, glassware etc.), or other benefits (such as hospitality, tickets to sporting and cultural events, relief from indebtedness, loan concessions, provision of services etc.) if it exceeds 1% of a Member's annual parliamentary salary. Gifts and material benefits are exempt from registration if they do not relate in any way to membership of the House of Commons or to a Member's political activity. Overseas visits made by the Member or the Member's spouse or partner relating to or arising out of membership of the House of Commons where the cost of the visit exceeds 1% of the annual parliamentary salary and was not wholly borne by the Member or by public funds should also be registered.

#### Declaration of interests

C.32 The Ministerial Code sets out that, on appointment, Ministers must provide their Permanent Secretaries with a full list in writing of all interests which might be thought to give rise to a conflict with their public duties. The list should also cover interests of the Minister's spouse or partner and close family which might be thought to give rise to a conflict. The personal information is treated in confidence but a statement covering relevant Ministers' interests will be published twice yearly.

C.33 Ministers, as Members of the House of Commons, are also required to complete a registration form and submit it to the Parliamentary Commissioner for Standards within one month of their election to the House. Registrable interests include: remunerated directorships; remunerated employment, office, profession, etc; clients; sponsorships; gifts, benefits and

hospitality (in the UK); overseas visits; overseas benefits and gifts (see paragraph C.31); land and property; shareholdings; etc. It is the responsibility of Members to notify changes in their registrable interests within four weeks. The Register of Members' Financial Interests is open for public inspection on the Internet.

### Sanction

C.34 The Ministerial Code stipulates that if there is an allegation about a breach of the Code, and the Prime Minister, having consulted the Cabinet Secretary, feels that it warrants further investigation, he will refer the matter to the Independent Adviser on Ministers' Interests. The Prime Minister is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of the standards.



## APPENDIX D PRACTICES IN SELECTED LOCAL PUBLIC INSTITUTIONS/BODIES

### Introduction

D.1 This Appendix summarizes the IRC's research on the practices in selected local public institutions/bodies for the prevention and handling of potential conflicts of interests. The focus of the research is on the practices governing Members of the Legislative Council (LegCo) and those in the Hong Kong Monetary Authority (HKMA), Securities and Futures Commission (SFC), Mandatory Provident Fund Schemes Authority (MPFA) and the Judiciary.

### I. LegCo Members

#### (a) *Regulatory Framework*

D.2 LegCo Members are subject to the Prevention of Bribery Ordinance ("POBO") (Cap 201) as "public servants". They are also subject to the LegCo Rules of Procedure (RoP) with provisions on registration of Members' interests and declaration of pecuniary interests by Members in LegCo business. The Committee on Members' Interests (CMI) is empowered under the LegCo RoP to, among others, consider complaints made in relation to LegCo Members' registration and declaration of interests. The CMI has also drawn up a set of "Guidelines on Registration of Interests".

#### (b) *Key Features*

D.3 The LegCo RoP provides that a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest. He shall not vote upon any question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of government policy.

D.4 Every LegCo Member is required to declare all donations for meeting LegCo election expenses; financial sponsorships (i.e. financial sponsorships received by a Member or his spouse relating to his LegCo membership); overseas visits made by a Member or his spouse arising out of LegCo membership where the cost was not wholly borne by a Member or public funds and; payments or material benefits or advantages received by a Member or his spouse arising out of LegCo membership from or on behalf of any government or organization of a place outside Hong Kong or any person who is not a Hong Kong permanent resident.

D.5 The items to be declared also cover a Member's remunerated directorships of public or private companies (including the name of another company if the company concerned is a subsidiary of that other company within the meaning of section 2(4) of the Companies Ordinance (Cap 32)); remunerated employments, offices, trades, professions or vocations (including the names of clients for personal services by a Member which arise out of or are related in any manner to his LegCo membership); land and property; and the names of companies or other bodies in which a Member has either himself or with or on behalf of his spouse or infant children, a beneficial interest in shareholdings of a nominal value greater than 1% of the issued share capital. Such declarations have to be made by a LegCo Member not later than the first meeting of each term or 14 days from the date of a person becoming a new Member to fill a vacant seat in the course of a term. Any changes in declarations have to be reported within 14 days of such changes.

D.6 All declarations, available on LegCo's website<sup>95</sup>, are subject to public inspection. The CMI may on written complaint consider and investigate any complaint in relation to the registration or declaration of a Member's interests. Any Member who fails to comply with the registration of interests and disclosure of personal pecuniary interest requirements set out in RoP may be admonished, reprimanded or suspended by the LegCo on a motion to that effect.

## **II. HKMA<sup>96</sup>**

### **(a) Regulatory Framework**

D.7 HKMA staff and persons appointed by HKMA under section 5A and its sub-section (3) of the Exchange Fund Ordinance are subject to the POBO (Cap 201) as "prescribed officers". HKMA has promulgated a Code of Conduct with provisions covering the principles and procedures on the prevention and handling of potential conflicts of interests, with an administration circular setting out the rules on restrictions on investments included as an annex. There is a separate Code of Conduct for Members of the Exchange Fund Advisory Committee (EFAC) and its Sub-Committee.

### **(b) Key Features**

D.8 HKMA sets out in its Code of Conduct that it is the responsibility of every staff member to be alert to and avoid engaging in situations that may lead to an actual or perceived conflict of interests, which may arise when the private interests of a staff member compete or conflict with the interests of the HKMA and the public. All staff are strongly advised not to engage in writing of options or in leveraged tradings in futures or currency in view of the potential downside risk of these tradings. In securing a bank loan, staff should refrain from soliciting or receiving terms more favourable than would otherwise be available under normal market practices, or with any bank with which they have direct official dealings, unless they have obtained written approval to do so.

D.9 HKMA staff in designated divisions are not allowed to purchase or hold shares and warrants of any Authorized Institutions (AIs), including those shares and warrants purchased under monthly investment plans. The purchase and sale of shares or warrants of holding companies of AIs is only allowed if such AI-related business represents less than 20% of the asset size of its holding companies. Such restrictions are also applicable to the spouse and dependents of a staff member.

D.10 All HKMA staff are required to report within 7 calendar days of the transaction or within 7 calendar days when they are notified of the transaction for certain investments. They are also required to report on all the loan facilities that they have obtained from, or arranged through, AIs, where each of such facilities amount to \$100,000 or more or its equivalent in foreign currencies. Relevant changes subsequent to the first report have to be made within 7 calendar days of the date of the arrangement of such facilities.

D.11 Division Heads or above, or those occupying any other posts specifically designated by the Chief Executive/HKMA, must, on first appointment and thereafter annually in the second week of January each year, make full declarations of certain investments and interests. Senior Managers or above and any other posts specifically designated by the Chief Executive/HKMA for this purpose are required to report within 7 calendar days of the transaction on the details of purchase

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<sup>95</sup> [http://www.legco.gov.hk/general/english/cmi/yr08-12/reg\\_0812.htm](http://www.legco.gov.hk/general/english/cmi/yr08-12/reg_0812.htm)

<sup>96</sup> The investment rules in HKMA are being updated taking into account the evolving nature of investment products. The relevant rules described here have reflected the proposed revisions.

and sale of any interest in land and buildings in or outside Hong Kong. Declarations are also required for investments held other than in the names of staff members but are actually acquired, wholly or partly, on their account or in which they have a beneficial interest. Failure to comply with the restrictions or requirements set out in the administration circular on rules on restrictions on investments by HKMA staff may lead to disciplinary action against the staff member concerned. Where the gravity of the breach so warrants, and in accordance with the relevant disciplinary procedures, the employment of the staff member may be terminated.

D.12 Where no conflict of interest is involved, HKMA staff may accept visits and training sponsored or co-sponsored by multilateral institutions, central banks and cognate organizations (including course fee, passage, accommodation and related expenses). For visits or training organized by private institutions, HKMA staff may accept sponsorship of the course fee but not passages, hotel accommodation or related expenses if the institution concerned is obliged to provide knowledge transfer to HKMA staff and the offer of the course is on equal terms to other participants who are not HKMA staff.

D.13 The Chairman and Members of EFAC and its Sub-Committee are required to register in writing their personal interests, direct or indirect, pecuniary or otherwise, when they first join the Committee or Sub-Committee, and annually thereafter, to the Secretary. A register of Members' interests is kept by the Secretary and is made available for inspection on request by any member of the public.

### **III. SFC**

#### ***(a) Regulatory Framework***

D.14 SFC and its staff are subject to the POBO respectively as a "public body" and "public servants". There is a Code of Conduct in SFC containing principles and procedures on the prevention and handling of potential conflicts of interests. SFC Members and staff are both subject to the investment restrictions/reporting requirements under section 379(1) and (3) of the Securities and Futures Ordinance (SFO) and the Code of Conduct.

#### ***(b) Key Features***

D.15 In accordance with section 379(1) of the SFO, SFC Members and staff must not enter into any transaction regarding securities, futures contracts, leveraged foreign exchange contracts etc which they know is or is connected with an investigation or proceedings by the SFC. SFC Executive Directors are prohibited from dealing in securities and futures except under very limited circumstances. Additional obligations are imposed on SFC staff in respect of dealing in securities and futures contracts, including a minimum holding period and an approved list of securities.

D.16 SFC staff are required to decline any gift that is offered to them by a regulatee or applicant to be licensed or registered, unless the gift falls within the general policy. According to the Code of Conduct, the Commission has a general policy which applies to all staff (including Executive Directors and Non-Executive Directors) regarding when the staff may assume that they have been granted permission to accept a gift or benefit. This is subject to the overriding provision that the acceptance of such a gift or benefit must not influence the performance of their duties. To help staff decide whether accepting a gift or benefit will improperly influence their duties, they should ask themselves whether the nature of the gift or benefit or the frequency will make them feel obliged to show favour or otherwise assist the other party in business dealings. They should also be alert as to how accepting a gift would look to a reasonable outsider (regardless of whether or not they would actually feel obliged to show favour or assist the other party), e.g. would there be a perception that they are using their position for private gain or that they might be influenced.

D.17 In addition to the above, the Code of Conduct requires that SFC staff should exercise discretion and use common sense when considering whether to accept hospitality from regulated persons, professional advisers, suppliers and vendors or any other parties in respect of whom they might be put into a position of conflict or there might be a reasonable perception of conflict.

D.18 Every SFC Member and staff has to inform the SFC under section 379(3) of the SFO if he is required to consider any matters relating to any or an interest in any securities, futures contract, leveraged foreign exchange contract, regulated investment agreement or structured product in which he has a direct or an indirect interest; and a person by whom he is or was employed, a client, his associate (including spouse, minor child, any corporation of which the person is a director, etc), whom he knows is or was a client of a person with whom he is or was employed or who is or was his associate.

D.19 All SFC staff are required to report on their direct or indirect holdings in securities and futures contracts upon commencement of employment (or upon appointment in the case of Non-Executive Directors) and on an ongoing basis which must include any holdings of securities or futures contracts that SFC staff know are held by related persons or entities. Related persons or entities include a staff member's spouse; dependent child; any other relatives living together (including those of his spouse); a trust of which a staff member is a trustee (including the staff member or an immediate family member as a beneficiary); and a company over which a staff member or his spouse exercises control. Such declarations are not subject to public inspection. Failure to comply with the provisions set out in the Code of Conduct may result in disciplinary action or termination of employment of the staff member concerned.

#### **IV. MPFA**

##### ***(a) Regulatory Framework***

D.20 Staff in MPFA are subject to the POBO as "public servants". Apart from promulgating a Code of Conduct covering the principles and procedures on the prevention and handling of potential conflicts of interests which forms part of the employment contract with staff, MPFA has issued circulars to its staff (including Executive Directors) on declaration of interest requirements. MPFA Directors are subject to the requirements of disclosure of pecuniary interests under section 7 of Schedule 1A to the Mandatory Provident Fund Schemes Ordinance (MPFSO).

##### ***(b) Key Features***

D.21 Staff in MPFA may be allowed to accept advertising or promotional gifts, premium items and, during festive occasions, customary gifts not exceeding \$200 in value. The acceptance of customary gifts exceeding the specified value should be recorded. Non-cash gifts presented to staff attending social functions on behalf of MPFA should not exceed \$500 in value on any one occasion. Staff in designated divisions must obtain prior approval before they can invest in shares or warrants of any trustees (whether publicly listed or not), and also for the disposal of these investments.

D.22 MPFA Directors are required under the provisions of the MPFSO to disclose the nature of a pecuniary interest in a matter placed before the Board if the interest appears to raise a conflict with the proper performance of the directors' duties in relation to the consideration of the matter. Such declarations made at Board meetings will be recorded in a register available for public inspection. MPFA Directors are also required to disclose their general interests on appointment/re-appointment to the Board and review on an annual basis the correctness and currency of the information provided to MPFA. In the interim, should there be any changes to their disclosure of interests, MPFA directors have to notify MPFA as soon as possible, preferably within two weeks, after becoming aware of the relevant facts.

D.23 Declarations of interests of staff in MPFA cover investment interests, office holdings (such as proprietorships, partnerships or directorship of companies in or outside Hong Kong) and interests other than investments as prescribed. Staff in designated grades/divisions are required to make declarations of investments and office holdings, including those under their names and those of their spouses/de-facto spouses/co-habitees. Such declarations have to be made by staff on their first appointment or when they become staff in designated divisions/grades and then on an annual basis. Any single specified investment transaction with a worth of \$200,000 or more has to be declared within 7 days of the transaction as well. Staff members who fail to observe the restrictions or reporting requirements are liable to disciplinary action.

## **V. The Judiciary**

### ***(a) Regulatory Framework***

D.24 Judges and Judicial Officers (“JJOs”) are subject to the POBO as “prescribed officers”. Further, the Judiciary has promulgated a Guide to Judicial Conduct covering the principles governing the prevention and handling of potential conflicts of interests for JJOs.

### ***(b) Key Features***

D.25 JJOs are required to declare their investments on appointment under their Memoranda on Conditions of Service. The Guide to Judicial Conduct contains practical guidance to JJOs on what they should do in circumstances calling for disqualification from sitting due to actual, presumed or apparent bias (based on well established principles of law decided by the courts); and on the conduct that should be avoided in the area of non-judicial activities and association. On matters relating to investments and financial interests, JJOs should not hold directorships in commercial companies whose objects are profit-related and should resign from all such directorships upon appointment.

D.26 The guidelines and rules for the acceptance of advantages/entertainment/hospitality offered to JJOs in their official capacity are drawn up with reference to those for the civil servants. Acceptance of advantages/entertainment/hospitality by JJOs in their private capacity is governed by the Acceptance of Advantages (Chief Executive’s Permission) Notice under the POBO. Reference will be drawn from the framework and guidelines applicable to civil servants in processing applications for the acceptance of sponsored visits by JJOs.

## APPENDIX E PUBLIC SUBMISSIONS

### Purpose

E.1 This appendix summarizes the views expressed in public submissions received during the public consultation conducted by the IRC on the review of the system for prevention and handling of potential conflict of interest applicable to the CE, Members of the ExCo and PAOs. It also covers views expressed at the public forum held on 12 April 2012.

### General

E.2 A total of 33 written submissions from 25 individuals and 8 organizations have been received. The submissions are available on the IRC website<sup>97</sup>. A total of 9 participants expressed their views verbally at the public forum held on 12 April 2012. The video recording of the forum is available on the IRC website<sup>98</sup>. Views were focused mostly on the CE, though some of the suggestions covered ExCo Members and PAOs as well, and some specific suggestions were made in respect of the latter two categories.

E.3 The views expressed reflected a general consensus that a clean government is a core value of Hong Kong. Many respondents expressed sentiments that the media coverage on CE's alleged acceptance of advantages and hospitality earlier in February 2012 has eroded public confidence in the government, the rule of law and civil service morale. Respondents generally expected holders of the top public offices to display high ethical standards.

E.4 Some respondents considered that all the public office holders concerned should be governed by the same set of standards as rigorous as those applied under the relevant civil service conduct rules. A group of respondents opined that rules for the acceptance of advantages for the relevant public offices should have a statutory status. Some other respondents expressed the view that education about probity and integrity in the public office should be enhanced. A group of respondents suggested that the IRC, in conducting the review, should draw reference from morally upright persons, guidelines of professional bodies, or international conventions.

E.5 A number of respondents were supportive of setting up an independent institution (an independent adviser or a committee) to formulate rules for the prevention and handling of potential conflicts of interests concerning the relevant public offices. Such an institution may also take up the responsibilities of monitoring and advising the public office holders, in particular the CE, on their handling of private interests, and/or investigating into alleged breach of rules on conflicts of interests or acceptance of advantages or entertainment. Suggestions for composition of the institution include: members of the public, ex-CEs, the CJ, or representatives from the Administration, the LegCo and the Judiciary respectively.

### *Acceptance of Advantages and Entertainment*

E.6 Some respondents expressed the view that holders of the public offices should generally be prohibited from accepting any gift. One respondent considered that costs of official overseas visits should in most cases be covered by public funds.

E.7 A group of respondents suggested that acceptance of advantage by family members and relatives of the public office holders should be regulated while another respondent had reservation.

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<sup>97</sup> <http://www.irc.gov.hk/eng/report/report.htm>

<sup>98</sup> <http://www.irc.gov.hk/eng/report/report.htm>

One respondent raised that officials temporarily acting in the public offices concerned, and by extension their family members, should also be subject to regulation.

E.8 A group of respondents expressed the view that rules should be in place to identify and regulate acceptance of deferred rewards by the public office holders after they have left the Government in connection with benefits that they might have conferred on outside parties during their terms of office.

E.9 One respondent considered that acceptance of entertainment by public office holders should generally be permitted but it should be recorded and reciprocated.

### ***Declarations of Interests and Investments***

E.10 One respondent expressed the view that the public's right to know about the private interests held by public office holders should prevail over their privacy; and the financial positions of the public office holders, their spouses and immediate family members should be readily disclosed to facilitate public scrutiny. Another respondent suggested that personal debts, obligations or other liabilities of the public office holders, as well as relief thereof, should also be disclosed for public scrutiny.

### **The Chief Executive**

E.11 A majority of the public views focused on the system applicable to the office of the CE. The respondents generally recognized the need to strengthen or enhance the current regulatory system for the CE. One respondent remarked that self-discipline of the CE is an indispensable element to an effective system while some suggested explicit rules to be made for the CE. Many respondents agreed that the CE should be subject to higher or no less rigorous standards as the persons he leads, such as PAOs or the Civil Service.

E.12 One respondent suggested imposing a ceiling (to be determined with regard to the CE's remuneration) on the CE's assets during and after a certain period of his term of office, and forfeiting the excess to the Treasury.

### ***Acceptance of Advantages and Entertainment***

E.13 A number of respondents proposed that relevant provisions applicable to public servants, especially section 3 and section 8 under the POBO, should be extended to cover the office of the CE. Regarding the *modus operandi* for the CE to accept advantages, views were divergent and can be categorized into three main types –

- (a) permissions to accept advantages by the CE should be considered by a retired judge of the Court of Final Appeal (CFA), the ExCo Convener, or the Secretary for Justice;
- (b) in case of doubt, the CE should consult the CJ, ExCo and/or the ICAC before accepting the advantages; or
- (c) acceptance of advantages by the CE should be reported to the CJ for record.

E.14 One respondent suggested that all gifts accepted by the CE in his official capacity should be deposited with and disposed of by the Government. One respondent considered that the CE should not act as patron of any social club, as this would create a convenient avenue for the acceptance of advantages.

E.15 On overseas visits, one respondent expressed the view that overseas visits (including

transportation and entertainment costs) by the CE should be declared to and approved by ExCo, while another respondent held the view that detailed information about the CE's official overseas visits should be publicly declared. One respondent suggested that the CE should not be allowed to extend official overseas visits for personal purposes.

E.16 On entertainment, one respondent proposed that a committee formed by a High Court judge, a retired senior official, and an independent community member should devise rules to regulate acceptance of entertainment by the CE. One respondent expressed the view that the CE should avoid accepting excessive entertainment which may bring the Government into disrepute or give rise to actual or potential conflicts of interests. The CE should also avoid involvement in inappropriate social occasions. Another respondent suggested that acceptance of entertainment by the CE should be published for public scrutiny.

### ***Declaration of Interests and Investments***

E.17 One respondent considered that the current register of gifts by the CE should be beefed up with more details of each gift. Another group of respondents went further in proposing that all advantages accepted by the CE should be declared, including identities of the donor, descriptions of the advantages and the estimated values. One respondent specifically proposed that gifts received in personal capacity by the CE should also be declared.

E.18 One respondent suggested that the CE should report any case of potential conflicts of interests to the CJ and such information may be made available for further examination when necessary. Another respondent requested that the CE's declaration of assets to CJ on assuming office should be made public.

### **Executive Council Members**

E.19 One respondent proposed that Non-Official ExCo Members should also be subject to the PAO Code in respect of prevention of conflict of interest, given the level of their unfettered access to sensitive information being similar to PAOs. Another respondent pointed out that for declaration of shareholding in companies, the threshold for declaration should not be a proportion of the issued share capital held (currently shareholdings of a nominal value more than 1% of the issued share capital), but should instead be a proportion of the Member's personal assets, on the basis of the argument that the higher the shareholding as a proportion of the Member's assets, the greater the likelihood for a conflict of interests to arise.

### **Politically Appointed Officials**

E.20 One respondent remarked that while PAOs are subject to the POBO and the AAN, the relevant provisions under the AAN should be incorporated into the PAO Code for consistency.

### **Other Views**

E.21 There were certain views expressed that do not fall within the terms of references of the IRC. A number of respondents requested the IRC to investigate into the allegations about the incumbent CE's acceptance of advantages.

E.22 One respondent requested that the IRC should also look into the regulatory systems for the LegCo Members and the officials of the Central People's Government in Hong Kong. Another respondent opined that the rules applicable in the Civil Service should not be further tightened.



E.23 A group of respondents expressed view in relation to the LegCo procedures to impeach the CE, some of which stressed that caution should be exercised while other urged impeachment procedure should be initiated against the CE.

E.24 One respondent proposed that the ICAC should be accountable to the LegCo instead of the CE to ensure its independence; while another respondent suggested that the Commissioner of ICAC should be barred from returning to public office after end of his term.

E.25 A respondent raised that the CE's acceptance of private passage and subsequent reimbursement may constitute illicit transport services.

E.26 A group of respondents considered that public office holders should avoid accepting advantages from the tobacco industry and they should disclose and divest any commercial interest with the tobacco industry. A respondent raised concern about the Mandatory Provident Fund Scheme Trustees' investments in certain business they considered unethical, including the tobacco industry.

### List of Public Submissions

E.27 The written submissions received by the IRC are listed as follows. Respondents who requested to remain anonymous are also not identified. (Listed according to alphabetical order and the number of strokes of Chinese character.)

### Organizations

Serial no.	Submitted by
O001	Clear the Air
O002	LegCo Panel on Constitutional Affairs <sup>99</sup>
O003	School of Nursing, Li Ka Shing Faculty of Medicine, the University of Hong Kong The Jockey Club School of Public Health and Primary Care, Faculty of Medicine, the Chinese University of Hong Kong School of Public Health, Li Ka Shing Faculty of Medicine, the University of Hong Kong Hong Kong Council on Smoking and Health Asian Consultancy on Tobacco Control Dr Homer W.K. Tso, SBS, BBS, JP, DDS, Honorary Consultant, Department of Health, HKSAR
O004	Democratic Party
O005	南方民主同盟
O006	Hong Kong Chinese Civil Servants' Association
O007	Hong Kong Food and Environmental Hygiene Supervisory Staffs Union
O008	New People's Party

<sup>99</sup> At the meeting of the LegCo Panel on Constitutional Affairs on 16 April 2012, Members expressed various views and suggestions on the subject under review by the IRC. On the instruction of the Chairman of the Panel, the LegCo Secretariat referred the verbatim transcript of the relevant item at the meeting to the IRC for its consideration.

## Individuals

Serial no.	Submitted by
I001	Loretta CHAN
I002	Norman CHEUNG
I003	Dennis FREWIN
I004	Gregory KO
I005	Jennifer LIU
I006	LOK Kung-Nam, Peter
I007	Elvis W.K. LUK
I008	SC MAK
I009	NG CW
I010	Mike ROWSE
I011	何宗盛
I012	林超英
I013	胡進翔
I014	曾一喬
I015	馮思明、曲波際、劉建成
I016	溫醒堂
I017	蕭勵川
I018	<i>Anonymous</i> <sup>100</sup>
I019	<i>[Respondent requested to remain anonymous]</i>
I020	<i>[Respondent requested to remain anonymous]</i>
I021	<i>[Respondent requested to remain anonymous]</i>
I022	<i>[Respondent requested to remain anonymous]</i>
I023	<i>[Respondent requested to remain anonymous]</i>
I024	<i>[Respondent requested to remain anonymous]</i>
I025	<i>[Respondent requested to remain anonymous]</i>

<sup>100</sup> This submission was made by a member of the public to the President of LegCo and referred to the IRC by the LegCo Secretariat with the writer's identity concealed.

## **APPENDIX F THE INDEPENDENT REVIEW COMMITTEE**

### **Terms of Reference**

The Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests was appointed by the Chief Executive as announced on 26 February 2012 with the following terms of reference –

- (a) To review the existing regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests concerning the Chief Executive, Non-Official Members of the Executive Council, and Officials under the Political Appointment System respectively, including the arrangements for declaration of investments/interests and acceptance of advantage/entertainment/hospitality;
- (b) In light of the review, to make recommendations on the existing frameworks and procedures, including changes and revisions where appropriate; and
- (c) To submit a report with recommendations to the Chief Executive within three months.

### **Membership**

Chairman : The Honourable Mr LI Kwok-nang, Andrew, GBM, JP

Members : Mr FUNG Siu-por, Lawrence, GBS

Professor LIU Pak-wai, SBS, JP

Mr Thomas Brian STEVENSON, SBS, JP

Mr YAU How-boa, Stephen, BBS, MH, JP

(in alphabetical order by surname)

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