

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.