

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 website⁹⁵, 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. HKMA⁹⁶

(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

⁹⁵ http://www.legco.gov.hk/general/english/cmi/yr08-12/reg_0812.htm

⁹⁶ 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.