

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 System¹⁰ was first introduced on 1 July 2002¹¹ for the political appointment of officials to certain positions as Principal Officials¹². It was expanded in 2008 with the creation of the positions of Under Secretary and Political Assistants¹³. **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 Secretaries¹⁴); and

¹⁰ Formerly called the Accountability System for Principal Officials.

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

¹² 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.

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

¹⁴ 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 Assistants¹⁵).

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 entertainment¹⁶. 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

	Politically Appointed Officials (PAOs)	Executive Council (ExCo) Members	The Chief Executive (CE)
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.

¹⁵ 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.

¹⁶ 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”.

	Politically Appointed Officials (PAOs)	Executive Council (ExCo) Members	The Chief Executive (CE)
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 ¹⁷	-
	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

¹⁷ 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)*¹⁸ and *Sin Kam-wah v HKSAR (2005)*¹⁹, 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*²⁰, 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)²¹, **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

¹⁸ 5 HKCFAR 381.

¹⁹ 8 HKCFAR 192.

²⁰ FACC No. 3 of 2011 (2 April 2012).

²¹ 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 19th 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)²².
- (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 Council²³, 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).

²² 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.

²³ 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)**²⁵, 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 behaviour²⁶. 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

²⁴ 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.

²⁵ 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**.

²⁶ 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.²⁷

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”²⁸, 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 following²⁹ –

- (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

²⁷ 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.

²⁸ 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”.

²⁹ 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/departments³⁰. 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 Regulations³¹, 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 –

³⁰ 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.

³¹ 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 work³². These restrictions are included and

³² 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 Office³³. 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

³³ <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 employment³⁴. 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 PAOs³⁵, 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

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

³⁵ 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 guidelines³⁶ 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 vacation³⁷. 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

³⁶ 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".

³⁷ 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 2007³⁸, 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 website³⁹.

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 HKSAR⁴⁰. 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.”*

³⁸ 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”.

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

⁴⁰ 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 Committee⁴¹ 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

⁴¹ 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 note⁴² which has not been published. However, the system in general has been described on various occasions to LegCo in documents in the public domain⁴³. A comparison of the key declaration requirements for ExCo

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

⁴³ 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 inspection⁴⁴. 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.

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

⁴⁴ <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 inspection⁴⁵.

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.

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

Table 3.3 Comparison of Requirements for Declaration of Investments/Interests

	Open declaration of investments/interests	Civil servants⁴⁶	PAOs	CE	ExCo Members	LegCo Members
	<p>Open declaration (for public inspection)</p>	<ul style="list-style-type: none"> shareholding ≥ 1% in any company (with % of shareholding held) remunerated and non-remunerated directorship, proprietorship or partnership of any company land and property (including self-occupied property) (general description of the above items without specific details) 	<p>Those for civil servants plus:</p> <ul style="list-style-type: none"> political parties affiliation 	<p><i>In his capacity as President of ExCo, CE observes the ExCo System⁴⁷.</i></p>	<p>Those for civil servants plus:</p> <ul style="list-style-type: none"> remunerated employment, office, trade or profession personal services to clients relating to ExCo membership organization/board/committee membership (e.g. chamber of commerce) except: <ul style="list-style-type: none"> % of shareholding held for directorship, proprietorship or partnership, only remunerated ones 	<ul style="list-style-type: none"> shareholding ≥ 1% in any company (without size) remunerated directorship remunerated employment, occupation, etc. land and property except residence ordinarily lives in election donations, financial sponsorships, sponsored visits, payments or other materials benefits in relation to LegCo membership
	<p>Confidential declaration (not for public inspection)</p>	<p>(1) investments⁴⁸ including:</p> <ul style="list-style-type: none"> shareholding (irrespective of % of shareholding held) or direct or indirect interest in any company remunerated and non-remunerated directorship, proprietorship or partnership of any company land and property (including self-occupied property) details of involvement in private companies if any (all of the above items with specific details) <p>(2) spouse's occupation, with field/area of work and name of employer</p>	<p>Those for civil servants plus:</p> <ul style="list-style-type: none"> investment by way of foreign currency transactions ≥ \$200,000 	<p><i>ditto</i></p>	<p>Those for civil servants plus:</p> <ul style="list-style-type: none"> futures and options contracts currency transactions ≥ \$200,000 except: <ul style="list-style-type: none"> 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 "blind trust"⁴⁹ remunerated and non-remunerated directorship, proprietorship or partnership of any company (remunerated ones are included in open declaration) spouse's occupation, field/area of work and employer name 	<p><i>not applicable (all registration of interests by LegCo Members are open for public inspection)</i></p>

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ 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.

⁴⁹ Investments managed by a third party who has unfettered discretion to place investments.

	Civil servants⁴⁶	PAOs	CE	ExCo Members	LegCo Members
Ad hoc declaration of specific interests	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.
Register of gifts, advantages, etc.	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