

Date: April 14, 2012

To: **Independent Review Committee for the  
Prevention and Handling of Potential Conflicts of Interests**  
8/F, West Wing, Central Government Offices,  
11 Ice House Street, Central,  
Hong Kong

Dear Officer:

Re: Submission of Personal views on the existing regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests concerning the Chief Executive, Members of the Executive Council, and Politically-Appointed Officials.

For this submission, I would appreciate to remain anonymous when published; and in this regard, a pseudonym is used for this submission.

## **Part I**

Numerous Professional Standards for Certified Fraud Examiners (CFE) of the Association of Certified Fraud Examiners (ACFE; website: [www.afce.com](http://www.afce.com)) are applicable to the regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests concerning the Chief Executive, Members of the Executive Council, and Politically-Appointed Officials (Principal Officials).

With necessary adaptation, below CFE Professional Standards can be the Standards of the Principal Officials for governing the prevention and handling of their potential conflicts of interests.

### **Section 1.1 – Integrity**

CFEs shall conduct themselves with integrity, knowing that public trust is founded on integrity. CFEs shall not sacrifice integrity to serve the client, the employer, or the public interest.

#### **Guidance**

Integrity can be defined as an adherence to moral and ethical principles; soundness of moral character; honesty. These are traits that CFEs are expected to uphold. CFEs should be mindful that the integrity they exhibit reflects not only on them, but also on the ACFE and the anti-fraud profession in general. Part of the ACFE's core mission is to inspire public confidence in the integrity, objectivity, and professionalism of CFEs. If a CFE fails to act with integrity, then public confidence in the ACFE itself may be diminished.

### **Section 1.4 – Conflicts of Interest**

Prior to accepting a professional engagement, CFEs shall investigate for actual and/or potential conflicts of interest. If actual conflicts of interest and/or potential conflicts of interest arise at any time before or during an engagement, CFEs shall disclose such conflicts to their employers or prospective clients as soon as the conflicts are known to the CFE.

#### **Guidance**

An *actual conflict of interest* exists when a member's ability to act objectively, or in the best interests of his client/employer, will be impaired by any current, prior, or future relationship with

parties relevant to the engagement. An example of an actual conflict of interest might include being asked to conduct a fraud examination of someone with whom you have strong personal or business ties, such as a relative, a friend, or a business partner. A *potential conflict of interest* exists when a member's private interest could result in a conflict of interest in the future. An example of a potential conflict of interest might include being asked to conduct an examination of a Company A when you have business interests in an entity that is a supplier of Company A and derives a substantial amount of its revenue from Company A.

#### **1.4.1 – Mitigation of Actual and Potential Conflicts of Interest**

1.4.1.1 – Actual Conflicts of Interest: CFEs shall refrain from conducting any examination where an actual conflict of interest exists until such a time when the actual conflict of interest no longer exists or when informed consent is obtained from all affected parties.

1.4.1.2 – Potential Conflicts of Interest: In situations where potential conflicts of interest exist, CFEs should take all necessary steps to ensure that an actual conflict of interest does not materialize. This could include reassigning personnel, tasks, job duties, and/or responsibilities. CFEs should also refrain from conducting any examination until the potential conflict has been disclosed to the client/employer and informed consent has been obtained.

#### **Section 1.5 – Discreditable Acts**

CFEs shall not commit discreditable acts, and shall always conduct themselves in the best interests of the reputation of the profession.

**Guidance** A *discreditable act* is any act conducted by a CFE that would be reasonably expected to diminish his/her trustworthiness or integrity. ...

... CFEs who commit discreditable acts tarnish their reputation, the reputation of the ACFE, and the public perception of the CFE designation. Therefore, CFEs should strive to live by the spirit as well as the letter of the law, and they should seek to serve as role models for ethics, integrity, and honesty.

#### **1.5.1 – Criminal Acts**

CFEs shall not commit criminal acts or knowingly induce others to do so.

##### **Guidance**

CFEs operate in many different jurisdictions and under varying circumstances and conditions, but regardless of where they live or operate, CFEs are expected to comply with the law and avoid engaging in criminal conduct. ... or crimes of moral turpitude.

**Moral turpitude** is a legal concept in the United States that refers to "conduct that is considered contrary to community standards of justice, honesty or good morals."<sup>[1]</sup> It appears in U.S. immigration law from the nineteenth century.<sup>[2]</sup> In other common law jurisdictions it is dated or obsolete.<sup>[3]</sup>

The concept of moral turpitude escapes precise definition but has been described as an "act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man."<sup>[4]</sup>

#### **Section 1.7 – Due Professional Care**

CFEs shall exercise due professional care in the performance of their services. Due professional care requires diligence, critical analysis, and professional skepticism in discharging professional responsibilities.

**Guidance**

*Due professional care* can be defined as the care that a reasonable person in the same profession and in the same situation would exercise to achieve the desired results.

The standard of due professional care requires that CFEs utilize techniques and approaches that are accurate, professional, ethical, and legal when compared to others in the profession. A useful question to ask when considering whether one has exercised due professional care is: If another CFE with expertise in this field was brought in to critique my work, would that CFE generally utilize the same or similar approaches and make the same or similar decisions in conducting the examination? If the answer is no, then it is possible that the primary CFE was not utilizing due professional care.

**Section 1.8 – Confidentiality**

CFEs shall not disclose confidential or privileged information obtained during the course of a professional engagement without the express permission of the client/employer or another appropriate authority.

**Guidance**

Due to the nature of the anti-fraud profession, CFEs often will come into contact with sensitive, privileged, or otherwise confidential information. It is imperative that CFEs maintain integrity and trustworthiness and safeguard such information from unauthorized viewing or disclosure.

CFEs must maintain confidentiality regarding the sharing of information outside of the scope of their responsibilities until directed by an appropriate authority to turn over confidential information. The appropriate authority could be the client/employer, a judicial or legislative body, or an investigative review board, depending on the circumstances.

**1.8.1 – Unauthorized Use of Confidential Information**

CFEs shall not use sensitive, privileged, or otherwise confidential information obtained during the course of a professional engagement for their own personal benefit or profit or for the benefit of their family members, friends, or business associates.

**Guidance**

When a CFE is made privy to a client/employer's sensitive, privileged, or otherwise confidential information, such information must be used only in furtherance of his/her professional responsibilities. Any other use of confidential information, without the client/employer's knowledge and consent, is prohibited—particularly if such use is for the CFE's personal benefit. For example, a CFE who uses a client's customer database to promote his/her own services would be in violation of this standard. The same would be true of a CFE who buys or sells stock based on confidential financial information that he/she obtained during a fraud examination or other professional engagement.

**Section 2.4 – Conscious Disregard for Responsibilities**

CFEs shall not knowingly neglect or disregard their responsibilities owed to clients/employers during the course of engagements.

**Guidance**

CFEs are expected to hold themselves accountable to the promises and agreements they make to clients/employers. CFEs who purposefully fail to deliver promised services, work product, or documentation cast a shadow on the CFE designation.

**Section 2.5 – Awareness of Client/Employer Manipulation**

CFEs shall remain alert and vigilant to the possibility that the client/employer has retained the services of the CFE to further a fraudulent or unethical business dealing.

**Guidance**

CFEs should always be aware of the motives of clients/employers. In most instances these motives are positive and constructive; i.e. identify fraud, waste and abuse, remove wrongdoers, or improve a business. In instances where the motives are less than honorable, a CFE could become an unwitting pawn in advancing a client/employer's inappropriate goals, i.e. misdirection from a larger fraud, targeting a scapegoat to conceal the misdeeds of another, or retaliating against whistleblowers and other innocent parties. If a CFE becomes reasonably certain that the motives of the client are fraudulent or unethical and that the CFE's services are being utilized for inappropriate purposes, the CFE should resign the engagement or report the CFE's concerns about the client/employer's improper motives, provided that such a report does not violate the CFE's duty of confidentiality to the client/employer.

### **Section 2.6 – Duty to Self-Report Material Errors and Omissions**

CFEs shall notify their clients/employers of any situation or circumstance in which the CFE generated any material errors or omissions in association with the engagement.

#### **Guidance**

This Standard is an extension of Standard 1.2 – Truthfulness, which requires CFEs to be truthful in their communications, findings, and professional dealings. A CFE who knowingly fails to notify his client/employer of a material error or omission and thereby allows the client/employer to proceed based on incomplete or inaccurate information does not fulfill his/her duty of truthfulness to the client.

## **Part II**

Below are some of the major international agreements for which Hong Kong, and P.R. China are members and endorsees, and they are essential basis for enhancing the regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests concerning the Chief Executive, Members of the Executive Council, and Politically-Appointed Officials (Principal Officials) of Hong Kong SAR.

### **OECD**

- Combating Bribery of Foreign Public Officials in International Business Transaction.
- Recommendation on Principles for Transparency and Integrity in Lobbying
- Anti-Corruption Action Plan for Asia and the Pacific

### **Asia Development Bank and OECD**

- ADB/OECD Anti-Corruption Initiative for Asia and the Pacific: Managing Conflict of Interest – Frameworks, Tools, and Instruments for Preventing, Detecting, and Managing Conflict of Interest

### **United Nations**

- United Nations' Convention Against Corruption (UN Convention)

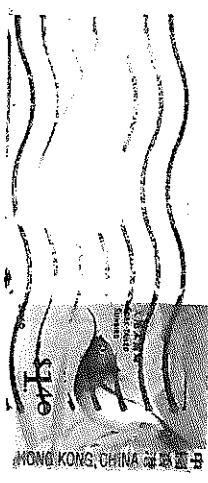
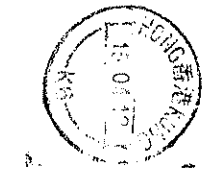
The UN Convention encourages Member states to criminalize the following acts of corruption:

- The demand of bribes by foreign public officials
- The supply and demand of bribes by private sector actors
- Trading in influence
- The abuse of official functions or position
- Illicit enrichment
- Embezzlement by private sector actors
- The concealment or retention of proceeds of a crime
- The obstruction of justice

I hope the above views contributive.

Yours truly,

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