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Independent Review Committee
8th Floor West Wing
Central Government Offices
11 Ice House Street
Hong Kong

12 April 2012

Dear Sir

This letter is in response to the invitation for public submissions to the committee considering the prevention and handling of potential conflicts of interest. It is sent on the basis that it may be published, but remain anonymous.

The review covers the Chief Executive, members of the Executive Council and politically appointed officials. Each needs to be approached from a different perspective.

The issues involved are unlikely to be resolved by a comprehensive set of rules, but by the exercise of commonsense, not just thinking of conflicts of interest but of equal importance is maintaining the dignity and authority of the institutions or offices concerned. From recent events it is less than clear that the latter has received sufficient consideration in the minds of those involved.

The Hong Kong Chief Executive is a very powerful office. Numerous government decisions are expressed in his name, with or without consultation with the Executive Council. His power is so great that he has the potential to affect the lives of all people he meets. Because of this, the Hong Kong CE as a potential conflict of interest with everyone in Hong Kong, and this should be the starting point of any analysis. i.e the assumption should be a conflict of interest exists and an argument made that it is not, or could not become a conflict. To a lesser degree this is also the case of a number of government offices- the Chief Justice, Secretary of Justice, and head of the Police come to mind.

One of the burdens of these offices is that the lives of the incumbents' have to be more distant from even close friends than before, if the job is to be carried out objectively. These are tough jobs because they demand a degree of seclusion from normal life. The statement of former police chief Dick Lee that in his position he could not be seen at balls, dinners or cocktail parties because it would give the wrong signal to society were wise words indeed.

Nor is it sensible to try to distinguish between public and private time – an error apparently made recently. The holders of these offices are always on duty. I understand that the government operates a curious system appointing an official “acting” for the CE and others. This may have been appropriate in days when communications were poor, but with today’s instant communications I recommend that it be abandoned to recognize that officials are indeed always available wherever they are in the world.

I have no idea if the HKCE accepts invitations to private dinners or entertainment from others, but I would hope it was only on very limited occasions. It would seem to me that the dignity of the office

demands that the HKCE should be inviting different sections of society to meet him on social occasions in government house, and that there should be sufficient budget for him to do so. It also means that greater care can be taken to assess the implication of meeting different individuals. One solution to accusations of conflict of interest through meetings would be to publish a list of all engagements of the CE, and who he meets, as was certainly done in the UK in past years.

One of the items of information provided on the consultation website is a "Chief Executive's Permission". It is a comprehensive document indeed. An addition would be a central register of the permissions and exceptions granted that would both be a useful (public) record and a means to ensure that there is a degree of consistency in the decisions made. Another document says that the Chief Executive would follow the same rules. This is entirely appropriate as one would expect a senior person in an organization prescribing rules, to apply to himself rules at least as strict as those he applies to others. It is not clear to whom the Chief Executive would apply for exceptions. In a commercial context this would be handled by the CEO referring to a non-executive chairman, company secretary or senior non-executive director. In the case of the Hong Kong CE it might be the convener of the executive council or the secretary for justice. Whoever is selected, it should be clarified.

The material provided includes lists of gifts received by the CE. It would be much more reassuring if it included a more thorough description of the gift (in February 2012 what is learned from four items described as "a display item"?), its "perceived value", the name of the donor, and what happened to the gift. It is not clear to me why items of under HKD400 of "perceived value" should not be listed.

The declarations of interest for a number of people are included in the material provided. They include broad descriptions of property and company names, but are unconvincing as a comprehensive assessment of interests. For instance, no portfolio investments seem to be included. Could there not be a conflict with a fund manager holding assets for a declarant? What is the magic of owning more than 1% of a company? The important matter to assess a conflict is the size of an investment in relation to the whole of a person's assets, not the percentage he owns of the asset (i.e. someone who owns 1000 shares in one company that are 100% of his total assets would have a greater potential conflict in decisions affecting that company than someone who owns the same number of shares of the same company representing only 1% of his total assets). The conclusion is that declarations of interest should include a comprehensive statement of assets and liabilities, with greater detail than the current vague disclosures.

There has been recent controversy over contributions to the cost of private travel. It has been suggested that the appropriate reimbursement is the cost of alternative regular travel (i.e. travel by private plane but reimburse economy ticket cost). This is really loose thinking. If reimbursement is necessary then it must be a proper proportion of the total cost involved. The absurdity of doing otherwise is apparent by thinking of other examples such as sharing a bottle of Chateau Latour 1982 and reimbursing the cost of Chilean red wine on the basis that is what the person normally drinks! As indicated above I think the HKCE would be well advised to avoid the need for these matters to be considered at all. Indeed as a matter of principle someone in a leadership position should experience the same process of travel, immigration, security, etc. as every other citizen so he is able to appreciate the real situation.

The handling of costs incurred by organizations on behalf of the HKCE or other officer holders on official visits is a related issue. Many organizations would be happy to arrange visits hoping to impress and incur transportation and entertainment costs. It should be a rule that the government is assiduous in identifying and reimbursing all such costs. I understand that this was the case many years ago, but maybetoday less attention is paid to preventing the suspicion of a conflict through allowing the cost of visits to be left with the host.

I hope these observations are useful, and repeat that they can be published, but anonymously.

Best regards.

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