

Hon Albert HO Chun-yan's amending motion

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

AND

RULE 29(6) OF THE RULES OF PROCEDURE OF THE LEGISLATIVE
COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

AMENDING MOTION

RESOLVED that the motion to be moved by the Secretary for Constitutional Affairs under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) at the Legislative Council meeting of 19 June 2002 be amended -

- (a) in paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), by deleting “with effect from 1 July 2002” and substituting “with effect from 1 July 2002 and subject to the publication by the Chief Executive in the Gazette of the Code for Accountable Officials under the Accountability System as attached in the Annex”;
- (b) in paragraph (14)(a), by adding “subject to the publication by the Chief Executive in the Gazette of the Code for Accountable Officials under the Accountability System as attached in the Annex,” before “anything lawfully done”;
- (c) in paragraph (14)(b), by adding “subject to the publication by the Chief Executive in the Gazette of the Code for Accountable Officials under the Accountability System as attached in the Annex,” before “anything that”.

Annex

**CODE FOR ACCOUNTABLE OFFICIALS
UNDER THE ACCOUNTABILITY SYSTEM**

CHAPTER 1: INTRODUCTION

2

CHAPTER 2: RESPONSIBILITIES

4

Responsibility in relation to the Legislative Council

4

Responsibility in relation to civil servants

5

The role of the Controlling Officer

6

CHAPTER 3: OFFICIAL SECRETS AND SECURITY

8

On stepping down from office

8

Evidence in court

9

CHAPTER 4: INVOLVEMENT IN POLITICAL ACTIVITIES

10

CHAPTER 5: PREVENTION OF CONFLICT OF INTEREST

11

Declaration and handling of investments/interests

11

Acceptance of advantages

12

Sponsored visits

13

Register of gifts etc.

13

On stepping down from office

14

CHAPTER 6: OTHERS

15

Reporting of criminal offences and attempted bribes

15

Legal proceedings

CHAPTER 1: INTRODUCTION

1.1. This Code applies to the Secretaries of Departments, Directors of Bureaux, and the Director of Chief Executive's Office under the accountability system (hereinafter referred to as "accountable officials").

1.2. The basic principles which accountable officials shall follow in the performance of their duties include the following:

- (1) Accountable officials must swear to uphold the Basic Law and swear allegiance to the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China.
- (2) Accountable officials shall be dedicated to their duties and be responsible to the Government of the HKSAR.
- (3) Accountable officials must uphold the rule of law, abide by the law, and protect the integrity of public office.
- (4) Accountable officials shall act in the best interests of the HKSAR as a whole.
- (5) Accountable officials shall be as open as possible about the decisions that they make and the actions that they take. They shall be accountable for their decisions.
- (6) Accountable officials shall observe the highest standards of personal conduct and integrity at all times.
- (7) Accountable officials shall ensure that no actual or potential conflict arises between their public duties and their private interests.
- (8) Accountable officials shall at all times uphold and

promote a permanent, honest, meritocratic, professional and politically neutral civil service.

(9) Accountable officials shall promote and support the above principles by leadership and example.

1.3. This Code does not specify every potential act or behaviour expected of accountable officials. Rather, it provides rules and principles for appropriate conduct under certain circumstances. Where the circumstances are not prescribed, it is the responsibility of accountable officials to judge in accordance with the principles set out in this Code, how best to act in order to uphold the highest standards. In case of doubt, accountable officials shall seek the advice of the Chief Executive.

1.4. This Code shall be read in conjunction with legislation applicable to accountable officials. These include the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).

CHAPTER 2: RESPONSIBILITIES

- 2.1. Accountable officials shall devote the whole of their time and attention to the discharge of their duties as accountable officials of the Government, and shall use their best endeavours to promote the interests of the Government.
- 2.2. Accountable officials are responsible for their respective portfolios designated to them by the Chief Executive and lead the executive departments within their respective portfolios. Accountable officials are responsible for formulating, explaining and defending government policies as well as canvassing support from the public and the Legislative Council. They are accountable to the Chief Executive for the success or failure of their policies.
- 2.3. Accountable officials shall be bound by and collectively responsible for the decisions taken by the Chief Executive in Council.

Responsibility in relation to the Legislative Council

- 2.4. Accountable officials shall note that under Article 64 of the Basic Law, the Government must abide by the law and be accountable to the Legislative Council: it shall implement laws passed by the Legislative Council and already in force; it shall present regular policy addresses to the Legislative Council; it shall answer questions raised by members of the Legislative Council; and it shall obtain approval from the Legislative Council for taxation and public expenditure.
- 2.4.1. *After the Legislative Council passes a motion of no confidence in relation to an accountable official, the accountable official concerned will be expected to offer his or her resignation to the Chief Executive.*

- 2.5. Accountable officials shall give accurate and truthful information to the Legislative Council and correct any error at the earliest opportunity. Accountable officials who knowingly mislead the Legislative Council will be expected to offer their resignation to the Chief Executive.
- 2.6. Accountable officials will be designated under Article 62(6) of the Basic Law to attend meetings of the Legislative Council, its committees, subcommittees and panels and to speak on behalf of the Government. The immunities and privileges provided for in sections 3, 4, 5 and 6(2) of the Legislative Council (Powers and Privileges) Ordinance (Chapter 382 of the Laws of Hong Kong) are extended to accountable officials when they attend meetings of the Legislative Council, its committees, subcommittees and panels.
- 2.7. Accountable officials have a duty to represent the Government and to transact business at meetings of the Legislative Council, and its committees, subcommittees and panels, e.g. to introduce bills or motions, address the Legislative Council, present papers, make statements, answer questions and take part in debates in respect of matters relating to their respective portfolios.
- 2.8. Accountable officials shall make arrangements to ensure that they would be available to attend meetings of the Legislative Council when matters relating to their respective portfolios are discussed.

Responsibility in relation to civil servants

- 2.9. Accountable officials shall at all times uphold and promote a permanent, honest, meritocratic, professional and politically neutral civil service. In particular, accountable officials shall uphold and promote the core values of the civil service:

- (a) commitment to the rule of law;
- (b) honesty and integrity;
- (c) accountability in government decisions and actions;
- (d) political neutrality;
- (e) impartiality in the execution of public functions; and
- (f) dedication, professionalism and diligence in serving the community.

2.10. Accountable officials shall give fair consideration and due weight to honest and impartial advice from civil servants.

2.11. Accountable officials shall not require or influence civil servants directly or indirectly to act in any way which:

- (a) is illegal, improper or in conflict with the core values of the civil service;
- (b) is in breach of any Government Regulation including Civil Service Regulations;
- (c) may involve possible maladministration;
- (d) would conflict with their role as civil servants; or
- (e) would conflict with the principle of political neutrality.

2.12. The Chief Secretary for Administration is responsible to the Chief Executive for civil service policy and the management of the civil service. Accountable officials shall note that one of the major tasks of the Chief Secretary for Administration is to safeguard the core values of the civil service.

2.13. Accountable officials shall note that civil servants are appointed, managed and promoted in accordance with the principle of openness and fairness and with the prevailing rules and regulations applicable to the civil service.

- 2.14. Accountable officials shall note that civil servants are subject to the prevailing civil service disciplinary system, under which allegations of misconduct against individual civil servants are determined through an impartial process based on consideration of factual evidence.
- 2.15. Accountable officials shall note the independent role of the Public Service Commission in advising the Government on the appointment, promotion and discipline of civil servants.
- 2.16. Accountable officials shall cooperate fully with the Chief Secretary for Administration to follow up on complaints from civil servants that they have been asked to act in a manner which conflicts with their role as civil servants or with the core values of the civil service.

The role of the Controlling Officer

- 2.17. Accountable officials shall note that, subject to the regulations made and directions or instructions given by the Financial Secretary, controlling officers designated under the Public Finance Ordinance (Chapter 2 of the Laws of Hong Kong) are responsible and accountable for the expenditure of the bureaux and departments falling within their purview.
- 2.18. Accountable officials shall note that controlling officers are responsible for tendering appropriate advice to them on the safety, economy and advantage of public moneys and Government property. Accountable officials have a duty to give fair consideration and due weight to informed and impartial advice from the controlling officers.
- 2.19. Accountable officials shall note that controlling officers, if necessary, are responsible for submitting

written report to the Director of Audit on the safety, economy and advantage of public moneys and Government property.

CHAPTER 3: OFFICIAL SECRETS AND SECURITY

- 3.1. Accountable officials shall note that they fall within the definition of "public servants" in the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) and must therefore abide by the provisions stated therein applicable to a "public servant" .
- 3.2. Accountable officials shall not reveal the agenda, papers or proceedings of the Executive Council, or any document communicated to them or any matter coming to their knowledge in their capacities as members of the Executive Council. Discussion and deliberation at the Executive Council shall be kept in strict confidence. The internal process through which a decision has been made shall not be disclosed.
- 3.3. Accountable officials are required to take due care in the safe keeping of classified information entrusted to them. They shall bear in mind the general principle that dissemination of classified information shall be no wider than is required for the efficient conduct of the business at hand and shall be restricted to those who are authorised to have access to such information.

On stepping down from office

- 3.4. On stepping down from office, accountable officials shall hand over government documents in their possession and ensure that all drafts and personal copies of such documents have been properly disposed of.
- 3.5. Accountable officials shall note that all classified information, documents or other articles protected against disclosure by the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) which had come into their possession as a result of their appointment in the Government, remain covered by the Ordinance after their stepping down from office and may not be disclosed.

3.6. Accountable officials shall note that they are liable to be prosecuted under the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) if, either in Hong Kong or abroad, they communicate, either orally or in writing, including publication in a speech, lecture, radio or television broadcast or in the press or in book form or otherwise, to any unauthorised person any information falling within the purview of the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong). The relevant provisions of the Official Secrets Ordinance continue to apply to accountable officials after they have stepped down from office.

Evidence in court

3.7. Accountable officials may be called upon to answer to subpoenas to give oral evidence and/or to produce official documents in Court relating to their official duties. In cases where oral evidence or the production of official document is involved, the accountable official concerned shall assess whether there are any grounds for suggesting that the giving of such evidence or the production of the documents would cause damage to the proper functioning of the public service or would in any way be contrary to the public interest. The accountable official concerned shall seek advice from the Secretary for Justice in all such cases.

CHAPTER 4: INVOLVEMENT IN POLITICAL ACTIVITIES

- 4.1. Accountable officials shall note that as prescribed public officers defined in the Legislative Council Ordinance (Chapter 542 of the Laws of Hong Kong) and District Councils Ordinance (Chapter 547 of the Laws of Hong Kong), they are disqualified from being nominated as a candidate at an election of the Legislative Council or of a District Council, and from being elected as an elected member.
- 4.2. Accountable officials may participate in political organisations or bodies as members. Accountable officials, when taking part in activities organised by political organizations or bodies, shall observe the following rules and principles:
- (a) No actual or potential conflict of interest with the business of the Government and/or the official duties of the accountable officials shall arise in their participation in such activities.
 - (b) Accountable officials shall not sign or procure signatures to any public petition regarding the actions or proposals of the Government.
- 4.3. In case of doubt, accountable officials shall seek advice from the Chief Executive.

CHAPTER 5: PREVENTION OF CONFLICT OF INTEREST

- 5.1. Accountable officials shall avoid putting themselves in a position where they might arouse any suspicion of dishonesty, unfairness or conflict of interest.
- 5.2. Accountable officials shall observe the principles of fairness and impartiality in discharging their duties in their dealings with members of the public and with their staff.
- 5.3. Accountable officials shall refrain from handling cases with actual or potential conflict of interest.
- 5.4. Accountable officials shall report to the Chief Executive any private interests that might influence, or appear to influence, their judgment in the performance of their duties.

Declaration and handling of investments/interests

- 5.5. Given that the accountable officials will have access to highly sensitive information including commercially sensitive information, they shall declare any investments and interests for the purpose of securing public trust and confidence. The declaration requirement covers not only investments and interests held in the name of the accountable official, but also those held in the name of the accountable official's spouse, children and any other persons or companies but are actually acquired on the accountable official's account or in which the accountable official has a beneficial interest. The declaration will be made available for public inspection on request.
 - 5.5.1 Fresh declarations would have to be made annually. Between annual declarations, they would have to declare any investment transactions involving more than \$200,000.

5.6. If it appears to the Chief Executive at any time that there is or may be a conflict of interest between an accountable official's investments or interests and his official duties, the Chief Executive may require the accountable official to take any one or more of the following measures:

- (a) to divest himself of all or any of the investments or interests;
- (b) to refrain from acquiring or disposing of the investments or interests;
- (c) to freeze any investment transaction for a specified period;
- (d) to place the investments or interests in a "blind trust" ;
- (e) to refrain from handling cases with actual or potential conflict of interest; and
- (f) to take other actions as directed by the Chief Executive.

Acceptance of advantages

5.7. Accountable officials shall note that as public servants employed by the Government, they are subject to the relevant provisions in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) and the Independent Commission Against Corruption Ordinance (Chapter 204 of the Laws of Hong Kong), and shall if necessary seek guidance from the Chief Executive as to the acceptance and retention of gifts, advantages or other benefits.

5.8. As a general rule, accountable officials 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, accountable officials shall take note of the

following before accepting any such offer:

- (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.
- 5.9. An accountable official 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 accountable official and the other person, or of the character of that person:
- (a) to lead to embarrassment of the accountable official in the discharge of his functions; or
 - (b) to bring the accountable official or the public service into disrepute.

Sponsored visits

- 5.10. An accountable official may receive an invitation from a foreign government to make a sponsored visit in his official capacity. If the accountable official considers it to be in the public interest to take up the invitation, the visit may be regarded as official and the accountable official should notify the secretariat of the Executive Council.
- 5.11. An accountable official may receive an invitation from an outside organization to make a sponsored visit in his official capacity. If he wishes to accept the invitation, he shall seek approval from the Chief Executive. If the Chief

Executive considers this to be in the public interest and approval is given, there is no need for the accountable official to take leave to make the sponsored visit.

5.12. An accountable official may receive an invitation from a foreign government or an outside organization to make a sponsored visit in his private capacity and this may include free hotel accommodation, free passages or both. If he wishes to accept the invitation, he must seek approval from the Chief Executive.

5.13. If an accountable official wishes to accept a sponsored visit for his spouse, he must seek the approval of the Chief Executive.

Register of gifts etc.

5.14. Accountable officials shall note that they are to abide by the provisions of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) and shall if necessary seek guidance from the Chief Executive as to the acceptance and retention of gifts, advantages or other benefits. In addition, accountable officials are required to keep a register of any gift, advantage, payment, sponsorship (including financial sponsorships and sponsored visits) or any material benefit received by them or their spouses from any organization, person or government other than the Government which in any way relates to their office as accountable officials. The register will be made available for public inspection.

On stepping down from office

5.15. Within one year after stepping down from office, accountable officials shall seek the approval of a committee appointed for this purpose by the Chief Executive before taking up any employment or going into any business.

5.16. Within one year after stepping down from office, accountable officials are barred from representing any person in connection with any claim or negotiation with the Government and from lobbying the Government.

CHAPTER 6: OTHERS**Reporting of criminal offences and attempted bribes**

- 6.1. Accountable officials shall report to the appropriate authority all instances of crime, alleged crime including attempted bribery which they may come across in either their official or personal capacities. The appropriate authority is the Commissioner Against Corruption in the case of offences or alleged offences under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), the Independent Commission Against Corruption Ordinance (Chapter 204 of the Laws of Hong Kong) and the Elections (Corrupt and Illegal Conduct) Ordinance (Chapter 554 of the Laws of Hong Kong), and the Commissioner of Police in the case of other criminal offences.
- 6.2. Accountable officials are reminded that they have no discretion in deciding which cases to report.

Legal proceedings

- 6.3. Accountable officials may institute legal proceedings for defamation in connection with matters arising out of their official duties. They are required to notify the Chief Executive beforehand and must seek prior permission from the Chief Executive for the use of any Government information and the involvement of other officers to give evidence in the legal proceedings. Accountable officials instituting legal proceedings for defamation shall observe that the proposed legal action shall not bring the Government service into disrepute.
- 6.4. When an accountable official is served with a writ, or receives a letter threatening civil proceedings in which he or she may be named as a party in relation to any matters arising out of his employment or official duties, he must immediately inform the Chief Executive and the Secretary

for Justice.

- 6.5. When an accountable official is involved in any criminal proceedings (whether arising out of his employment or official duties or otherwise), he must immediately inform the Chief Executive.
- 6.6. It is open to an accountable official injured by the wrongful act of a third party to institute proceedings against the third party.
- 6.7. In certain circumstances, the Government may provide legal representation to accountable officials. Each case will be considered on its merits by the Chief Executive but in general, assistance will be provided only if the matter arises out of or in the course of the performance by the accountable official of his official duties.
- 6.8. An accountable official who has been granted legal assistance and has subsequently been awarded costs is required to refund to the Government all or part of the costs awarded to offset the legal expenses incurred by the Government.

