

For discussion on  
7 October 2002

## **Legislative Council Panel on Constitutional Affairs**

### **Declaration of Interests by the Chief Executive, Members of the Executive Council and Principal Officials under the Accountability System**

#### **Purpose**

This paper addresses issues raised by the Panel on Constitutional Affairs in connection with declaration of interests by the Chief Executive, members of the Executive Council (ExCo) and principal officials under the accountability system.

#### **Guidance notes on declaration of interests**

2. The Panel has asked the Administration to provide a copy of guidance notes or guidelines, if any, for the Chief Executive, ExCo members, and principal officials under the accountability system to complete the forms on declaration of interests.

3. ExCo members are required to declare their interests in “The Register of Interests of Members of the Executive Council” (“ExCo Member’s Declaration”) for the purpose of public inspection. The ExCo Member’s Declaration (copy at Annex A) is a self-explanatory form. There are no further guidance notes or guidelines. The Chief Executive’s declaration is also made on the same form.

4. Principal officials are required to declare their interests in the “Registration of Interests and Affiliation with Political Parties for Public Inspection” (copy at Annex B). The guidance notes are set out in Part B of the form.

#### **Interests required to be declared**

5. The Deputy Chairman of the Panel has requested the Administration to clarify whether liabilities and detailed information on shareholdings (e.g. amount of shares), properties (e.g. location) and other investments are required to be declared, and whether detailed information on shareholdings and investments is available for public inspection.

6. The Chief Executive, Members of ExCo and principal officials under the accountability system are not required to declare their liabilities.

7. Members of ExCo and principal officials under the accountability system are required to provide detailed information on their shareholdings (including the number of shares owned), properties (e.g. country/city/area), and other interests (including remunerated directorships, gifts and advantages received). Such information would enable the Chief Executive or the ExCo Secretariat to assess whether there is a potential or actual conflict of interest. Information on shareholdings including percentage of shares held (if more than 1%), remunerated directorships, and land and property owned is available for public inspection.

### **Prevention of conflict of interests**

8. The Deputy Chairman of the Panel has also requested the Administration to provide information on the criteria for the Chief Executive or the ExCo Secretariat to judge whether a principal official has a conflict of interest and whether the ExCo Secretariat keeps and publishes records on withdrawal from discussion or voting.

9. The general principle is that members of ExCo must tender to the Chief Executive impartial and disinterested advice. There are no hard and fast rules on what constitutes a conflict of interest but the following would likely be considered as having a conflict of interest:

- (a) significant personal pecuniary interests which may be materially affected by the decision of the Council;
- (b) directorship, partnership or advisory positions of companies or associations which may be materially affected by the decision of the Council;
- (c) professional positions held by Members in advising or representing any party in connection with the item under discussion; and
- (d) close or substantial interests which, if known publicly, may lead members of the public to think that a Member's advice may well have been motivated by his or her personal interest rather than by the duty to give impartial advice.

In cases of possible conflict of interest, the relevant ExCo papers and extracts from the minutes would be withheld from the Member. Details of Members' declarations and withdrawal from discussion at ExCo meetings are recorded in the minutes. The minutes of ExCo meetings are not made public.

### **Declaration systems**

10. The Deputy Chairman of the Panel has also requested the Administration to provide information on the declaration system adopted for members of the previous ExCo and senior civil servants, and the differences, if any, between this system and the system adopted for the Chief Executive, ExCo members and principal officials under the accountability system.

11. The declaration system for the current ExCo is the same as that for the previous ExCo.

12. The declaration system for principal officials under the accountability system is largely adopted from that which is applicable to senior civil servants generally covering officers ranked at D8. On first appointment and annually thereafter, senior civil servants and principal officials under the accountability system are required to declare their investments and interests in and outside Hong Kong. These include investment, shareholding or direct or indirect interest in any company or undertaking (including proprietorships, partnerships or directorships) and any interest in land or buildings in Hong Kong or in places outside Hong Kong. The declaration requirement covers not only investments and interests held in the name of the principal official, but also those held in the name of the spouse or children of the principal official or any other persons or companies but are actually acquired on the account of the principal official or in which he/she has a beneficial interest. A similar requirement exists for senior civil servants.

13. In addition to the above requirements, principal officials under the accountability system are required to declare any gift, advantage, payment, sponsorship (including sponsored visits) or any material benefit received by them or their spouse from any organisation, person or government other than the Government of the HKSAR which in any way relates to their office as principal officials. They are also required to declare whether they are in any way affiliated with any political party, whether they are members of any political party, and whether they hold

any office in any political party.

### **Operation and management of blind trusts**

14. The Chairman of the Panel has requested the Administration to provide information on:

- (a) the procedure for setting up a “blind trust”;
- (b) the operation and management of a “blind trust”; and
- (c) whether specific legislation is required for setting up and operation of a ministerial blind trust.

15. A trust is the legal relationship created when a person (the “settlor”) places assets under the name and control of another person (the “trustee”) for the benefit of some persons (who may include the settlor and the trustee and who are called beneficiaries) for a specified purpose. To set up a trust, one needs to appoint a trustee, who is responsible for managing or disposing of the assets in the trust in accordance with the terms of the trust. Normally, a Trust Deed will be drawn up with the help of legal advisers. The Trust Deed will set out, among other things, the duties and powers of the trustee and the settlor’s wishes or directions as to how the trust assets are to be managed or disposed of. The trustee can be a person or a company.

16. A “blind trust” is a kind of trust. In the laws of Hong Kong, there are no specific provisions on what constitutes a “blind trust”. Nor are there any provisions relating to the setting up, operation or management of a blind trust. However, as the term indicates, the settlor of a “blind trust” leaves all matters concerning the investment, management and disposal of the trust assets entirely in the hands of the trustee. The trustee acts in accordance with the terms of the Trust Deed. It is an essential term of the Trust Deed that at no time and in no manner shall the trustee seek, directly or indirectly, any advice, direction or instruction from the settlor in connection with the trust assets or the management, disposition or investment thereof or act upon any advice, direction or instruction which might nevertheless be proffered by the settlor or by anyone on behalf of the settlor.

17. The trustee may be required to furnish to the settlor on a regular basis statements showing the net value of the assets, net income or loss of the trust, etc. Usually, the trustee is also required from time to time

to provide the settlor such data and information in respect of the income and capital gains or losses of the trust assets as may be necessary to enable the settlor to prepare income tax and other returns required by the law.

18. We do not consider it necessary to enact any specific legislation for the management and operation of a “blind trust” for principal officials under the accountability system.

Constitutional Affairs Bureau  
2 October 2002

**Annex A**

**Register of Interests of  
Members of the Executive Council**

Name of Member: \_\_\_\_\_

**Registrable Interests****Contents**

1. Remunerated directorships in any public or private company

[Notes:

- (a) Remunerated directorships" include all directorships for which a fee, honorarium, allowance or other material benefit is payable.
- (b) Please give the name of the company, briefly stating the nature of the business of the company in each case.
- (c) Remunerated directorships of both Hong Kong companies and those outside Hong Kong are registrable.
- (d) Remunerated directorships through corporate directors are also registrable.
- (e) Where you are a remunerated director of a company, all subsidiary or associated directorships which you hold within the same group, whether remunerated or not, should also be registered.]

\* Please provide information on separate sheets if necessary. Please sign on every such separate sheet.

**Registrable Interests****Contents**

2. Remunerated Employments, Offices, Trades, Profession, etc.

[Notes:

- (a) Indicate the name of the employment, office, trade, or profession.
  - (b) An employment, office, trade or profession is remunerated" where a salary, honorarium, allowance or other material benefit is payable.
  - (c) remunerated offices" should include all remunerated" public offices.
  - (d) Members who have paid posts as consultants or advisers should indicate the nature of the consultancy in the register; for example, management consultant", legal adviser", etc.
  - (e) All remunerated employments in Hong Kong and outside Hong Kong are registrable.
3. Please indicate the names of clients if any of the above registrable interests includes provision to clients of personal services which arise out of or relate in any manner to your position as a Member of the Executive Council.

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**Registrable Interests****Contents**

4. Land and property owned in Hong Kong or outside Hong Kong, including those for self-occupation. Land or property which are held in the name of Members' spouses, children or other persons or companies, but are actually owned by Members; or land or property which are not owned by Members, but in which Members have a beneficial interest (e.g. rental income), are all registrable. It is not necessary to provide detailed addresses of the land or property.
  
5. Names of companies (both listed and unlisted ones) or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or children, a beneficial interest in shareholdings of a nominal value greater than 1% of the issued share capital.
  
6. Membership of Boards, Committees and other organisations which might be construed by members of the public as a declaratory interest - e.g. Hong Kong General Chamber of Commerce, Real Estate Developers Association, etc.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_



**Annex B**

**Registration of Interests and Affiliation with Political Parties for  
Public Inspection**

Name of Principal Official: \_\_\_\_\_

**Part A(1) – Financial and other interests**

Serial No.	Particulars of Interests

**Part A(2) – Affiliation with political parties**

Political party	Affiliation/Membership and office held

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**Part B****Points to note when completing the form on Registration of Interests  
and Affiliation with Political Parties  
for Public Inspection**

- (1) The "interests" which shall be declared for public inspection include:
- (a) land and buildings (including self-occupied property);
  - (b) proprietorships, partnerships or directorships;
  - (c) shareholdings of 1% or more of the issued share capital in any company (both listed and unlisted); and
  - (d) gift, advantage, payment, sponsorship (including financial sponsorships and sponsored visits) or any material benefit received by the Principal Official or his spouse from any organization, person or government other than the Government which in any way relates to his office as Principal Official.
- (2) If the interests mentioned in (1) above are held in the name of the Principal Official's spouse, children or other persons or companies, but are actually acquired on the Principal Official's account or in which the Principal Official has a beneficial interest, they shall be declared.
- (3) For reporting information on properties under (1)(a) above, the following information shall be included:
- (a) the location (country/city/area) of the property; and
  - (b) if a property is owned through a company in which the declarant holds a beneficial interest, both the property and the company shall be reported. For example, one residential flat in the New Territories (leased) co-owned by the Principal Official and his spouse under the name of a company in which the declarant holds a beneficial interest.

- (4) The Principal Official shall declare whether he is in any way affiliated with any political party, whether he is a member of any political party and whether he holds any office in any political party. The Principal Official shall also declare if there is any change in his status in relation to any political party.
- (5) The information provided in this form will be made available for public inspection on request.
- (6) The Principal Official who reports his financial or other interests or affiliation with any political party in this form will have a right to request access to and correction of the information provided herewith. Such requests can be made to Private Secretary to Chief Executive.
- (7) This registration will be retained until five years after the Principal Official has left office.