

# 立法會

## *Legislative Council*

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### **Panel on Constitutional Affairs**

#### **Background Brief prepared by Legislative Council Secretariat**

#### **Prevention of conflict of interest of principal officials and related issues**

#### **Purpose**

The Panel on Constitutional Affairs will discuss the item of "Prevention of conflict of interest and related issues arising from the incident of the Financial Secretary purchasing a vehicle shortly before the announcement of the increase in motor vehicles first registration tax" at its meeting on 17 March 2003. This paper summarises the main provisions of the Code for Principal Officials under the Accountability System (the Code) and the employment contract for principal officials (POs) relating to prevention of conflict of interest.

#### **The Code**

##### Status of the Code

2. In response to concerns expressed by the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues (the Subcommittee) about possible conflict of interest on the part of POs, the Administration had advised that the employment contract of POs would stipulate a requirement for POs to observe the rules and principles contained in a code for POs. The employment contract between the Government and respective POs would be legally binding. A contravention of the code would be regarded as a breach of the employment contract.
3. A copy of the draft code was provided to the Subcommittee for reference. In response to views/suggestions made by Members on the draft code, the Administration had agreed to include additional provisions, such as membership of political party and holding offices as company directors in the code.
4. A member of the Subcommittee had also suggested that the code should be subject to scrutiny by the Legislative Council (LegCo) and changes to the

code should not be made by the Chief Executive (CE) unilaterally. The Administration responded that the sanctions as provided in existing legislation and employment contract, in addition to public monitoring, would be sufficient. The Administration also advised the Subcommittee that it would publish the code in the Gazette and inform the relevant LegCo Panel should there be any changes to the code.

5. The Code for POs was published in the Gazette on 28 June 2002. Although it does not have legislative effect and was not tabled in Council, the Code has legal force on the POs. According to the Administration, provisions of the Code are incorporated by reference into the employment contract for POs, so that POs are legally bound to comply with them.

#### Provisions of the Code relating to conflict of interest

6. Some of the main provisions of the Code relating to conflict of interest include the following -

- (a) clause 1.2 (6) -- which states that POs shall observe the highest standards of personal conduct and integrity at all times;
- (b) clause 1.2 (7) -- which states that POs shall ensure that no actual or potential conflict arises between their public duties and their private interests;
- (c) clause 1.3 -- which states that the Code does not specify every type of potential act or behaviour expected of POs. Rather, it provides rules and principles for appropriate conduct under certain circumstances. Where the circumstances are not prescribed, it is the responsibility of POs to judge in accordance with the principles set out in the Code, how best to act in order to uphold the highest standards. In case of doubt, POs shall seek the advice of the CE;
- (d) clause 1.4 -- which states that the Code shall be read in conjunction with legislation applicable to POs. These include the Prevention of Bribery Ordinance (Cap. 201) and the Official Secrets Ordinance (Cap. 521);
- (e) clause 5.1 -- which states that POs shall avoid putting themselves in a position where they might arouse suspicion of dishonesty, unfairness or conflict of interest; and
- (f) clause 5.4 -- which states that POs shall report to CE any private interests that might influence, or appear to influence, their judgement in the performance of their duties.

7. In his letter dated 10 March 2003 to the Chairman of the Panel, which was issued to Members vide LC Paper CB(2) 1480/02-03 dated 13 March 2003, Dr Hon YEUNG Sum expressed the view that in purchasing a new vehicle shortly before the announcement of the increase in motor vehicles first registration tax, the Financial Secretary may have contravened clauses 1.2(6), 1.2(7), 5.1 and 5.4.

8. The Code does not contain any provisions stipulating the sanctions for breaches of the Code. As mentioned in paragraph 2 above, the Administration had advised that the employment contract of POs would stipulate a requirement for POs to observe the rules and principles contained in a code for POs.

9. A copy of the Code for POs published in the Gazette on 28 June 2002 is in **Appendix I** for Members' easy reference.

#### Previous discussions by Panel on Constitutional Affairs

10. Members of the Panel on Constitutional Affairs will recall that the Panel held meetings on 9 July, 7 and 21 October 2002 to discuss prevention of conflict of interest and related issues. The issues discussed included, inter alia, timing for POs to make declarations of interest; interests to be declared; information on properties; company directorships; use of British Virgin Islands companies to hold assets; declaration on liabilities; blind trusts; prevention of conflict of interest in participating in the business of the Executive Council, and the ties of the Secretary for Education and Manpower with the Chinese University of Hong Kong.

11. A background brief summarising the main views and concerns raised by Panel members regarding prevention of conflict of interest of POs and related issues was issued to Members vide LC Paper No. CB(2)726/02-03 on 19 December 2002.

### **Employment contract of POs**

#### Main Provisions

12. The Administration had set out in a paper (**Appendix II**) submitted to the Subcommittee the main provisions in the employment contract for POs under the accountability system and the measures that would be put in place to guard against conflict of interest. The Administration advised the Subcommittee that the employment contract would contain express provisions to -

- (a) prohibit a PO from undertaking any service, task or job or doing anything during his term of office which may reasonably be considered to give rise to situation where the interests of the PO, his

relatives or partners may conflict or compete with his official duties as a PO;

- (b) prohibit a PO from using his official position or any information made available to him in his official capacity to benefit himself or any other person (except for the proper performance of his official duties as a PO), financially or otherwise;
- (c) prohibit a PO from providing assistance, advice or information to any persons (except for the proper performance of his official duties as a PO) if this will give the recipient an unfair advantage over other persons;
- (d) require a PO to observe the Government's Security Regulations which set out rules on safe-keeping, dissemination and handling of classified information; and
- (e) prohibit a PO from using, divulging or communicating to any person, unless with the prior written consent of the CE, any sensitive information which may come to his knowledge in the course of performing his duties. This includes any classified or restricted information concerning the Government, information relating to a corporation or property which is not generally known, information relating to the security of Hong Kong, and personal information of any person who would reasonably expect his privacy to be protected.

### Sanctions

13. The Administration had advised the Subcommittee that any violations of the provisions of the Prevention of Bribery Ordinance, Official Secrets Ordinance, or the common law offence of "misconduct in public office" would be subject to legal sanctions. In the case of the breach of the employment contract, depending on the circumstances, the Government could terminate the employment or commence legal proceedings for damages or for an injunction for the restraint of breaches.

### **Applicable laws**

14. The Administration had also advised the Subcommittee that POs fall within the definition of "public servants" in the Interpretation and General Clauses Ordinance (Cap.1) and therefore would be subject to the same restrictions and control provided for in law and applicable to other public servants. In addition, POs would fall within the definition of "Crown servant" in the Prevention of Bribery Ordinance (Cap. 201) and therefore would be subject to the same restrictions applicable to civil servants.

15. The Administration had pointed out to the Subcommittee that POs as public servants would be liable to prosecution for any breach of the common law offence of "misconduct in public office". In this connection, Members may wish to note that, according to the Court of Final Appeal<sup>1</sup>, the elements of the offence of misconduct in public office are: (a) a public official; (b) who in the course of or in relation to his public office; (c) wilfully and intentionally; (d) culpably misconducts himself, and the misconduct is serious.

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<sup>1</sup> Shum Kwok Sher v. HKSAR [2002] 3 HKC 117 at 121 and 140

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

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**CHAPTER 1: INTRODUCTION**

- 1.1. This Code applies to the Secretaries of Department and Directors of Bureau, i.e., principal officials under the accountability system (hereinafter referred to as "principal officials").
- 1.2. The basic principles which principal officials shall follow in the performance of their duties include the following:
  - (1) Principal officials shall 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) Principal officials shall be dedicated to their duties and be responsible to the Government of the HKSAR.
  - (3) Principal officials shall uphold the rule of law, abide by the law, and protect the integrity of public office.

- (4) Principal officials shall act in the best interests of the HKSAR as a whole.
- (5) Principal 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) Principal officials shall observe the highest standards of personal conduct and integrity at all times.
- (7) Principal officials shall ensure that no actual or potential conflict arises between their public duties and their private interests.
- (8) Principal officials shall at all times actively uphold and promote a permanent, honest, meritocratic, professional and politically neutral civil service.
- (9) Principal officials shall not use any public resources for non-government purposes (including purposes relating to any political party).
- (10) Principal officials shall promote and support the above principles by leadership and example.

- 1.3. This Code does not specify every type of potential act or behaviour expected of principal officials. Rather, it provides rules and principles for appropriate conduct under certain circumstances. Where the circumstances are not prescribed, it is the responsibility of principal 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, principal officials shall seek the advice of the Chief Executive.
- 1.4. This Code shall be read in conjunction with legislation applicable to principal 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. Principal officials shall devote the whole of their time and attention to the discharge of their duties as principal officials of the Government, and shall use their best endeavours to promote the interests of the Government.
- 2.2. Principal officials are responsible for their respective portfolios designated to them by the Chief Executive and lead the executive departments within their respective portfolios. Principal 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. Principal officials shall be bound by and collectively responsible for the decisions taken by the Chief Executive in Council.
- 2.4. Principal officials shall note that they may be directed as necessary by the Chief Executive, during the temporary absence of other principal officials, to exercise the powers or perform the duties of the absent principal officials, including the duty to attend meetings of the Legislative Council, its committees, subcommittees and panels and to speak on behalf of the government.
- 2.5. Principal officials shall note that given the special role and responsibility of the positions of the Secretary for Justice and Secretary for the Civil Service, special arrangements are made during their temporary absence. During the temporary absence of the Secretary for Justice, relevant Law Officers will exercise the powers and perform the duties of the Secretary for Justice, including the duty to attend meetings of the Legislative Council, its committees, subcommittees and panels and to speak on behalf of the government. During the temporary absence of the Secretary for the Civil Service, the Permanent Secretary in the Civil Service Bureau will exercise the powers and perform the duties of the Secretary for the Civil Service, including the duty to attend meetings of the Legislative Council, its committees, subcommittees and panels and to speak on behalf of the government.

- 2.6. Principal officials shall note that the civil servants designated to attend meetings of the Legislative Council, its committees, subcommittees or panels and speak on behalf of the Government are required to limit themselves to established policy.

### **Responsibility in relation to the Legislative Council**

- 2.7. Principal 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.
- 2.8. Principal 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 principal officials when they attend meetings of the Legislative Council, its committees, subcommittees and panels.
- 2.9. Principal officials have a duty to represent the Government and to transact business at meetings of the Legislative Council, and as necessary 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.
- 2.10. Principal officials shall endeavour to ensure that they would be available to attend meetings of the Legislative Council when matters relating to their respective portfolios are discussed.
- 2.11. Principal officials shall give accurate and truthful information to the Legislative Council and correct any error at the earliest opportunity.

### **Responsibility in relation to civil servants**

- 2.12. Principal officials shall at all times actively uphold and promote a permanent, honest, meritocratic, professional and politically neutral civil service. In particular, principal officials shall actively uphold and promote the core values of the civil service:
- (a) commitment to the rule of law;
  - (b) honesty and integrity;
  - (c) accountability for decisions and actions;
  - (d) political neutrality;
  - (e) impartiality in the execution of public functions; and
  - (f) dedication, professionalism and diligence in serving the community.
- 2.13. Principal officials shall give fair consideration and due weight to honest, informed and impartial advice from civil servants and shall have due regard to Government Regulations which are applicable to civil servants or otherwise regulate the operation of the Government.
- 2.14. Principal 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 Regulations 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.



- 2.15. Principal officials shall note that the Secretary for the Civil Service is responsible to the Chief Executive for civil service policy and the management of the civil service. Principal officials shall also note that one of the major tasks of the Secretary for the Civil Service is to safeguard the core values of the civil service.
- 2.16. Principal officials shall note that civil servants are appointed, managed and promoted on the basis of merit and in accordance with the principles of openness and fairness and with the prevailing rules and regulations applicable to the civil service.
- 2.17. Principal 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.
- 2.18. Principal officials shall note the independent role of the Public Service Commission in advising the Government on the appointment, promotion and discipline of civil servants.
- 2.19. Principal officials shall cooperate fully with the Secretary for the Civil Service 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**

- 2.20. Principal 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 all expenditure of the bureaux and departments falling within their purview.
- 2.21. Principal officials shall note that controlling officers are required to obey all regulations made and directions or instructions given by the Financial Secretary for the safety, economy and advantage of public moneys and Government property. Principal officials have a duty to give fair consideration and due weight to honest, informed and impartial advice from the controlling officers.

### **CHAPTER 3: OFFICIAL SECRETS AND SECURITY**

- 3.1. Principal officials shall note that they fall within the definition of “public servant” in the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) and must therefore abide by the provisions therein applicable to a “public servant”.
- 3.2. Principal 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 capacity 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. Principal 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, principal 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. Principal 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 has 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. Principal 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) unless prior written approval has been obtained from the Chief Executive. The relevant provisions of the Official Secrets Ordinance continue to apply to principal officials after they have stepped down from office.

#### **Evidence in court**

- 3.7. Principal 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 documents is involved, the principal official concerned shall assess whether there are any grounds for suggesting that the giving of such evidence or the production of such documents would cause damage to the proper functioning of the public service or would in any way be contrary to the public interest. The principal official concerned shall seek advice from the Secretary for Justice in all such cases.

#### **CHAPTER 4: INVOLVEMENT IN POLITICAL ACTIVITIES**

- 4.1. Principal officials shall note that as prescribed public officers defined in the Chief Executive Election Ordinance (Chapter 569 of the Laws of Hong Kong), 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 Chief Executive, of the Legislative Council or of a District Council. They are also disqualified from being elected as an elected member of the Legislative Council or a District Council.
- 4.2. Principal officials shall declare to the Chief Executive 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. Principal officials shall declare to the Chief Executive if there is any change in their status in relation to any political party. The declaration will be made available for public inspection on request.
- 4.3. For the purposes of this Code, “political party” has the same meaning as that provided for under section 31(2) of the Chief Executive Election Ordinance (Chapter 569 of the Laws of Hong Kong).
- 4.4. Principal officials shall note that while their freedom of association is protected by law, they are required to ensure that when taking part in activities organised by political parties, they 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 principal officials shall arise in their participation in such activities;
  - (b) the principal official’s participation in such activities shall not cause any embarrassment to the Government, the Chief Executive or other principal officials;
  - (c) since the Government has a prior call at all times on the abilities, energies and attention of principal officials, any activities which may impair the performance of their official duties as principal officials or distract their attention must be avoided; and
  - (d) principal officials shall not sign or procure signatures to any public petition regarding the actions or proposals of the Government.

- 4.5. Principal officials, when considering to become a member of any political party or taking part in activities organised by political parties, shall ensure that no conflict shall arise with their oaths to uphold the Basic Law and their oaths of allegiance to the HKSAR.
- 4.6. In case of doubt, principal officials shall seek advice from the Chief Executive.

## **CHAPTER 5: PREVENTION OF CONFLICT OF INTEREST**

- 5.1. Principal officials shall avoid putting themselves in a position where they might arouse any suspicion of dishonesty, unfairness or conflict of interest.
- 5.2. Principal officials shall observe the principles of fairness and impartiality in discharging their duties and in their dealings with members of the public and with their staff.
- 5.3. Principal officials shall refrain from handling cases with actual or potential conflict of interest.
- 5.4. Principal officials shall report to the Chief Executive any private interests that might influence, or appear to influence, their judgement in the performance of their duties.
- 5.5. During the term of office, principal officials shall not, without the consent in writing of the Chief Executive, engage or be concerned either directly or indirectly as principal, agent, director or shadow 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 practice. The consent of the Chief Executive is likely to be given where a principal official is appointed to the relevant board of directors in his official capacity or in connection with his private family estate. A principal official may retain or accept honorary posts in non-profit making organisations or charitable bodies. In all these cases, the principal official shall ensure that there is no actual or apparent conflict of interest between his interests in such organisations or bodies and his official duties and that his interests in such organisations or bodies would not cause embarrassment to the Government, the Chief Executive or other principal officials of the Government.

### **Declaration and handling of investments/interests**

- 5.6. Given that the principal officials will have access to highly sensitive information including commercially sensitive information, they shall declare their investments and interests for the purpose of securing public trust and confidence. The declaration will be made available for public inspection on request.
- 5.7. If it appears to the Chief Executive at any time that there is or may be a conflict of interest between a principal official's investments or interests and his official duties, the Chief Executive may require the principal 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**

- 5.8. Principal 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.

- 5.9. As a general rule, principal 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, principal officials shall take note of the relevant provisions in law and 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.
- 5.10. A principal 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 principal official and the other person, or of the character of that person:
- (a) to lead to embarrassment of the principal official in the discharge of his functions; or
  - (b) to bring the principal official or the public service into disrepute.

#### **Sponsored visits**

- 5.11. A principal official may receive an invitation from a foreign government to make a sponsored visit in his official capacity. If the principal official wishes to accept the sponsorship in relation to the visit, he shall seek permission from the Chief Executive.
- 5.12. A principal official may receive an invitation from an outside organization to make a sponsored visit in his official capacity. If the principal official wishes to accept the sponsorship in relation to the visit, he shall seek permission from the Chief Executive.
- 5.13. If a principal official wishes to accept a sponsored visit for his spouse, he shall seek permission from the Chief Executive.

#### **Register of gifts etc.**

- 5.14. Principal officials shall note that they are subject to 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, principal 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 principal officials. The register will be made available for public inspection on request.

#### **On stepping down from office**

- 5.15. Within one year after stepping down from office, principal officials shall seek the advice of a committee appointed for this purpose by the Chief Executive 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. The proceedings of the committee shall be kept confidential but the advice given shall be made public.
- 5.16. Within one year after stepping down from office, principal officials shall not represent any person in connection with any claim, action, demand, proceedings, transaction or negotiation against or with the Government.
- 5.17. Within one year after stepping down from office, principal officials shall not engage in any lobbying activities on matters relating to the Government.

## **CHAPTER 6: TRAVEL**

### **Travel in Hong Kong**

- 6.1. Each principal official shall be provided with the free use at his discretion of a car and driver in Hong Kong.

### **Travel outside Hong Kong**

- 6.2. When travelling on duty outside Hong Kong, principal officials shall travel on first class at government expense. Where protocol requires the presence of the spouse, their spouses shall also travel on first class at government expense.
- 6.3. Principal officials (and their spouses) who are on duty outside Hong Kong shall be granted a subsistence allowance at the same rate and manner as those applicable to the highest-ranking civil servants. Principal officials are subject to the same rules and regulations in relation to subsistence allowance applicable to the highest-ranking civil servants.

### **Use of flight awards from government passages**

- 6.4. There is no obligation on principal officials who travel on duty to claim flight awards from airlines. However, if and when such awards are claimed and credited to a principal official's mileage account, the principal official should report the awards to his bureau/department to facilitate planning for possible use of the awards for subsequent duty travel.
- 6.5. For flight awards earned from government passages, the first call on the use of such awards shall be for subsequent duty travel.
- 6.6. If an award is not expected to be used for subsequent duty travel before the expiry date of the award, the principal official may seek approval from the Chief Executive to use the award for private purposes.

## **CHAPTER 7: OTHERS**

### **Reporting of criminal offences and attempted bribes**

- 7.1. Principal 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.
- 7.2. Principal officials shall note that they have no discretion in deciding which cases to report.

### **Legal proceedings**

- 7.3. Principal officials may institute legal proceedings for defamation in connection with matters arising out of their official duties. But before doing so, they shall notify the Chief Executive and 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. Principal officials instituting legal proceedings for defamation shall observe that the proposed legal action shall not bring the Government into disrepute.

- 7.4. When a principal 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 shall immediately inform the Chief Executive and the Secretary for Justice.
- 7.5. When a principal official is involved in any criminal proceedings (whether arising out of his employment or official duties or otherwise), he shall immediately inform the Chief Executive.
- 7.6. It is open to a principal official injured by the wrongful act of a third party to institute proceedings against the third party.
- 7.7. In certain circumstances, the Government may provide legal representation to principal 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 principal official of his official duties.
- 7.8. A principal 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.

28 June 2002

Richard M. F. YUEN *Private Secretary to Chief Executive*

**Subcommittee to Study the Proposed  
Accountability System for Principal Officials and Related Issues**

**Employment Contract and Conflict of Interest**

**Introduction**

This paper sets out the content of the main provisions in the employment contract for principal officials under the accountability system and the measures that would be put in place to guard against conflict of interest.

**Employment contract**

2. The content of the main provisions in the employment contract for principal officials under the accountability system are as follows:

- (a) the term of employment will be for a period of not more than five years commencing on 1 July 2002;
- (b) the principal official will be entitled to a fixed monthly salary, provident fund contribution by the Government, paid vacation leave of 22 working days per annum, and the same medical and dental benefits and treatment available to civil servants but not any pension or end of contract gratuity payment;
- (c) during the term of office, the principal official will be provided with the use of a car and driver;
- (d) the principal official will be required to declare his investments and interests in a similar manner as incumbent members of the Executive Council and senior civil servants (further elaborated in paragraphs 11 to 14 below);
- (e) the principal official will not be allowed to undertake any service, task or job or do anything which may reasonably be considered to conflict or compete with his official duties as a principal official (see also paragraph 16(a) below);
- (f) the principal official will be required to observe the Government's

Security Regulations and will be prohibited from using, divulging or communicating to any person, unless with the prior written consent of the Chief Executive, any sensitive information which may come to his knowledge in the course of performing his duties. Such prohibition will continue to apply after expiry of office (see also paragraphs 17 and 18 below);

(g) the principal official will be required not to use his official position to benefit himself or any other persons, or to provide assistance, advice or information to any person other than for the proper performance of his official duties as a principal official. Such prohibition will continue to apply after expiry of office (see also paragraphs 16(b) and (c) and 18 below);

(h) the principal official will also be subject to other prohibitions which include:

- prohibition on soliciting and accepting advantages as defined in the Prevention of Bribery Ordinance (further elaborated in paragraph 5 below);
- prohibition on accepting entertainment which may cause embarrassment or bring disrepute to the Government;
- prohibition on lending money at interest;
- prohibition on using a subordinate officer as a guarantor for a loan or hire purchase agreement;
- prohibition on borrowing money at interest other than from licensed money-lenders;
- prohibition on being involved in the production of publication in which paid advertisements are made unless with the consent of the Chief Executive;
- prohibition on collecting donations other than for bona fide reasons;
- prohibition on disclosing sensitive information. Such prohibition will continue to apply after expiry of office (see also paragraph 17 below); and
- prohibition on paid outside work;



- (i) subject to the relevant provisions of the Basic Law, the principal official may resign by giving one month's prior notice or by paying the Government one month's salary in lieu of such notice;
  - (j) subject to the relevant provisions of the Basic Law, the Government may terminate the employment of the principal official at any time by giving one month's prior notice or by paying the principal official one month's salary in lieu of such notice;
  - (k) subject to the relevant provisions of the Basic Law, the Government and the principal official may resolve the employment contract at any time by mutual agreement;
  - (l) within one year after termination of employment, the principal official will be required to seek advice from a committee appointed by the Chief Executive for the purpose if he intends to commence any employment or start any business or profession; and
  - (m) within one year after termination of employment, the principal official will be barred from representing any person in connection with any claim or negotiation with the Government and from lobbying the Government (further elaborated in paragraphs 19 to 21 below).
3. The employment contract will also stipulate a requirement for principal officials to observe the rules and principles contained in a Code, a draft copy of which is at **Annex**. The Code will contain, among other things, the following:
- (a) certain basic principles which principal officials will have to observe including the need:
    - to uphold the Basic Law and swear allegiance to the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China;
    - to be dedicated to their duties and be responsible to the HKSAR;
    - to uphold the rule of law;
    - to act in the best interests of the HKSAR;
    - to be accountable for their decisions;
    - to observe the highest standards of personal conduct and integrity;

and

- to ensure that no conflict arises between their public duties and their private interests;
- (b) the requirement for principal officials to give accurate and truthful information to the Legislative Council;
- (c) the requirement for principal officials to uphold and promote a permanent, honest, meritocratic, professional and politically neutral civil service;
- (d) the guidelines on the safe keeping of classified information entrusted to them;
- (e) the rules and principles which principal officials would have to observe when taking part in activities organised by political organisations;
- (f) the reminder for principal officials to avoid putting themselves in a position where they might arouse suspicion of dishonesty, unfairness or conflict of interest;
- (g) the reminder to observe the principles of fairness and impartiality in discharging their duties;
- (h) the guidelines on accepting gifts or hospitality; and
- (i) the reminder to report to the appropriate authority all instances of crime and alleged crime including attempted bribery.

### **Applicable laws**

4. Principal officials fall within the definition of “public servants” in the Interpretation and General Clauses Ordinance (Cap 1) and therefore are subject to the same restrictions and control provided for in law and applicable to other public servants.

5. Principal officials also fall within the definition of “Crown servant”<sup>1</sup> in the Prevention of Bribery Ordinance (Cap 201) and therefore are subject to the same restrictions applicable to civil servants. Specifically,

- (a) a principal official who, without the general or special permission of

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<sup>1</sup> or “prescribed officer” following passage of the Adaptation of Laws Bill 2001

the Chief Executive, solicits or accepts any advantage<sup>2</sup> would be guilty of an offence under section 3 of the Prevention of Bribery Ordinance;

- (b) a principal official who, without lawful authority or reasonable excuse, solicits or accepts any advantage<sup>2</sup> as an inducement to or reward for or otherwise on account of his:
  - (i) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a principal official,
  - (ii) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act in his capacity as a principal official, or
  - (iii) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body

would be guilty of an offence under section 4 of the Ordinance;

- (c) a principal official who, without lawful authority or reasonable excuse, solicits or accepts any advantage<sup>2</sup> as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in:
  - (i) the promotion, execution or procuring of, or
  - (ii) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract with a public body would be guilty of an offence under section 5 of the Ordinance; and

- (d) a principal official who
  - (i) maintains a standard of living above that which is commensurate with his present or past official emoluments, or
  - (ii) is in control of pecuniary resources or property disproportionate to his present or past official emoluments

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<sup>2</sup> this includes, among other things, any gift, loan, fee, reward, commission, office, employment, contract, payment, service and favour

would, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under this control would be guilty of an offence under section 10 of the Ordinance.

6. In addition, principal officials as public servants are liable to prosecution for any breach of the common law offence of “misconduct in public office”.

7. Principal officials under the accountability system also fall within the definition of “public servant” in the Official Secrets Ordinance (Cap 521) and therefore are subject to the same restrictions as applicable to civil servants. It would be an offence if they, without lawful authority, make a damaging disclosure of any information, document or other article relating to:

- (a) security or intelligence,
- (b) defence,
- (c) international relations, or
- (d) commission of offences and criminal investigations

that is or has been in their possession by virtue of their official positions.

### **Conflict of interest**

8. To address concerns about possible conflict of interest on the part of principal officials under the accountability system, we have paid special attention to the measures that should be put in place to guard against conflict of interest.

9. We need to provide for a degree of transparency on the investments and interests of principal officials to facilitate public scrutiny. We also need to ensure that principal officials do not use their official positions to pursue their private interests, whether in office or after stepping down from office.

10. That said, we need to strike a balance between public interest on the one hand and on the other hand the legitimate rights of the individual principal officials. Any measures that are to be put in place must be reasonable and proportionate. They should not be such that prospective candidates may be deterred from accepting nomination for appointment as principal officials under the accountability system. We should also bear in mind that unlike employment

as civil servants which is a lifelong career, appointment as principal officials is for a definite duration only and therefore it would be unreasonable to impose undue barriers on principal officials from taking up employment or business after their tenure as principal officials.

***Declaration of investments and interests***

11. Before taking up office, principal officials under the accountability system will be required to declare their investments and interests. 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 will cover not only investments and interests held in the name of the principal official, but also those held in the name of the principal official's spouse, children or any other persons or companies but are actually acquired on the principal official's account or in which the principal official has a beneficial interest.

12. If there appears a conflict of interest between a principal official's investments or interests and his official duties, the Chief Executive may require the principal official to take the following measures:

- (a) to divest himself of all or any of the investments/interests;
- (b) to refrain from acquiring or disposing of the investments/interests;
- (c) to freeze any investment transaction for a specified period;
- (d) to place the investments/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.

13. Fresh declarations would have to be made annually. Between annual declarations, they would have to declare any investment transactions involving more than \$200,000.

14. The declaration requirements set out above are essentially the same as those currently applicable to Executive Council members and senior civil servants. The declarations would be made available for public inspection.

***Register of gift, etc.***

15. In addition to the above requirements, principal officials will be required to keep a register of any gift, advantage, payment, sponsorship (including sponsored visits) and 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. The register will also be made available for public inspection.

### **Other contractual obligations**

16. We will write into the employment contract clear provisions:

- (a) prohibiting a principal official from undertaking any service, task or job or doing anything during his term of office which may reasonably be considered to give rise to a situation where the interests of the principal official, his relatives or partners may conflict or compete with his official duties as a principal official;
- (b) prohibiting a principal official from using his official position or any information made available to him in his official capacity to benefit himself or any other person (except for the proper performance of his official duties as a principal official), financially or otherwise; and
- (c) prohibiting a principal official from providing assistance, advice or information to any person (except for the proper performance of his official duties as a principal official) if this will give the recipient an unfair advantage over other persons.

17. The employment contract will contain express provisions to:

- (a) require a principal official to observe the Government's Security Regulations which set out rules on safe-keeping, dissemination and handling of classified information; and
- (b) prohibit a principal official from using, divulging or communicating to any person, unless with the prior written consent of the Chief Executive, any sensitive information which may come to his knowledge in the course of performing his duties. This includes any classified or restricted information concerning the Government, information relating to a corporation or property which is not generally known, information relating to the security of Hong Kong, and personal information of any person who would reasonably expect his privacy to be protected.

18. The prohibitions set out in paragraph 16(b) and (c) and in paragraph

17(b) will continue to apply after a principal official has stepped down from office.

19. Moreover former principal officials will be required to obtain the advice of a committee appointed for this purpose by the Chief Executive before taking up any employment or going into any business within one year after stepping down from office.

20. In tendering its advice, the committee will have regard to:

- (a) the nature of the proposed employment or business;
- (b) the nature and extent of the principal official's responsibilities in the Government in relation to the activities of the proposed employment or business; and
- (c) whether the principal official's right to reasonably exploit his technical skills and experience will be unreasonably restricted.

The purpose is to avoid or minimise any perception that the Government's performance of its functions during the principal official's term of office or during the one year subsequent to that might have been compromised. The advice of the committee would be made public to facilitate public scrutiny.

21. In addition, former principal officials will be barred from representing any person in connection with any claim or negotiation with the Government and from lobbying the Government within one year after stepping down from office.

## **Sanctions**

22. Any violations of the provisions in the Prevention of Bribery Ordinance, the Official Secrets Ordinance, or the common law offence of "misconduct in public office" would be subject to legal sanctions. In the case of the breach of the employment contract, depending on the circumstances, Government may terminate the employment or commence legal proceedings for damages or for an injunction for the restraint of breaches.