

For discussion on  
21 October 2002

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

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

#### **Purpose**

This paper addresses issues raised by the Panel on Constitutional Affairs in connection with declaration and handling of investments/interests by principal officials under the accountability system.

#### **Declaration of interests**

2. In deciding what information should be made available for public inspection, we need to strike a balance between transparency on the one hand, and the need to protect the privacy of the principal officials on the other.
3. Under current requirements, principal officials are required to declare, among other things, the following interests for public inspection:
  - (a) land and buildings (including self-occupied property);
  - (b) proprietorships, partnerships or directorships; and
  - (c) shareholdings of 1% or more of the issued share capital in any company.

4. Principal officials are not required to declare their liabilities. However, prior to their appointment, they were subject to comprehensive integrity checks which included an assessment of their financial position. During their term of office, they are required to observe the highest standards of personal conduct and integrity. They are also bound by their employment contract not to borrow money at interest other than from licensed money-lenders, banks or deposit-taking companies. In addition, they are required to abide by the same provisions in the Prevention of Bribery Ordinance applicable to civil servants.

5. The Panel has asked about the arrangements in respect of civil servants. Generally speaking, civil servants do not have to report their debts or liabilities except in certain specified circumstances. Such circumstances include the following:

- (a) in the case of new appointees, they are required to report and seek permission for any loans previously obtained through sources other than those covered by the general permission given under the Prevention of Bribery Ordinance;
- (b) in the case of applications for salary advances, applicants are required to declare their outstanding loans to facilitate assessment of their financial position and repayment capability; and
- (c) in the case of insolvency or bankruptcy for all civil servants.

Other than the above, individual departments would determine if it is justifiable to collect financial data from job applicants having regard to the nature of the duties to be carried out by the applicants. In the case of the Police Force, having regard to the nature of duties of police officers, successful applicants for police posts who may be offered employment and serving police officers seeking re-employment/further employment with the Force (including contract/agreement

renewals) will be asked to declare their financial obligations.

6. The Panel has also asked the Administration about the consequences of serious indebtedness on the part of civil servants. When personal financial difficulties infringe upon work performance to the extent that the job is not carried out satisfactorily, the officer renders himself liable to administrative action e.g. deferment of increments. Where serious pecuniary embarrassment has led to misconduct (such as obtaining unauthorised loans or undertaking unauthorised outside work), the officer will be subject to disciplinary proceedings.

### **Company directorships**

7. Under clause 5.5 of the Code for Principal Officials under the Accountability System, a principal official has to seek written consent from the Chief Executive if he/she is to be engaged as a director of a company. The Panel has asked the Administration what specific information relating to the company the principal official is required to provide to the Chief Executive.

8. Where a principal official holds a directorship in his private capacity, the principal official would be required to declare to the Chief Executive the nature of business of the company irrespective of whether it is a Hong Kong company or a foreign company, whether the company has active business activities, whether he/she has actively participated in the business of the company, and his/her shareholding and names of other shareholders which are known.

### **Arrangements to avoid any conflict of interest in respect of ExCo business**

9. The Panel has asked what arrangements, apart from declaration of conflict of interest made by a principal official at a meeting, are in place to

ensure that the Executive Council (ExCo) Secretariat is aware before a meeting that a principal official might have a conflict of interest in relation to a discussion item so that appropriate measures could be taken, e.g. to request the principal official not to participate in the discussion, or to withhold relevant ExCo papers and extract of minutes from him/her.

10. The Clerk to the Executive Council, who keeps the Register of Members' Interests, will check to ensure that the registered interests are duly declared by Members as appropriate. It is the personal responsibility of the individual ExCo Member to decide whether or not he or she has an interest in the matter under discussion and, if so, the Member should declare it. The basic principle is that a Member of ExCo must tender to the Chief Executive disinterested and impartial advice.

### **Family trusts and blind trusts**

11. The Panel has requested the Administration to provide information on the procedures a principal official should adopt if he/she wished to set up a "blind trust", the differences between a "family trust" and a "blind trust", and how the Administration classifies the trusts set up by the Chief Executive, the Secretary for Commerce, Industry and Technology, and the Secretary for Financial Services and the Treasury.

12. We have already elaborated on "blind trusts" vide LC Paper No. CB(2)2868/01-02(02). To set up a trust, the settlor 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. The special features of "blind trusts" have been set out in our earlier paper.

13. As regards family trusts, the term refers to a trust set up for the benefit of the settlor's spouse, children and other family members. The settlor could be

one of the beneficiaries.

14. The important point is that appropriate arrangements have been put in place to handle investments and interests of principal officials to avoid conflict of interest.

15. The Chief Executive has declared that he does not have any right to vote on the shares of Orient Overseas (International) Limited. He is not involved in the management and operation of the company.

16. In the case of the Secretary for Commerce, Industry and Technology, he declared that he had transferred all of his shares in his family companies to a trust of which his father is the trustee. He has no right to give instructions to the trust or its trustee. He is not involved in the management and operation of the companies in which he has shares.

17. The Secretary for Financial Services and the Treasury has set up a trust of which HSBC International Trustee Limited is the Trustee. Under the terms of the Trust, the Trustee has full discretionary powers in investment of the Trust assets. The Secretary for Financial Services and the Treasury does not participate in the decision-making of the Trust assets. The Trust holds no Hong Kong equities. No investment in Hong Kong equities is one of the investment parameters adopted by the Trustee.

#### **Clarification of “significant personal pecuniary interest”**

18. In paragraph 9 of LC Paper No. CB(2)2868/01-02(02) discussed at the meeting on 7 October 2002, we said that there are no hard and fast rules on what constitutes a conflict of interest. The term “pecuniary interest” appears in a number of ordinances. However, the term has not been defined in any of them. According to its plain and literal meaning, “pecuniary interests” refer to

financial interests or interests in money or money's worth.

19. What amounts to a significant personal pecuniary interest will depend on the facts of each particular case, such as the nature of the interest and how such interests will be affected by the outcome of the decision made by ExCo. Examples of having a significant personal pecuniary interest may include interest as owner, trustee, beneficiary, etc. which may be materially affected by the decision of ExCo. If an ExCo Member had such interests, he would not receive the papers and minutes and would not participate in the discussions of the relevant item. If the personal pecuniary interest was not considered significant enough to warrant this arrangement, the ExCo Member would still be required to declare his interest prior to the discussion of the relevant item.