

## **INFORMATION NOTE**

### **Supplementary Information on Selected Issues Relating to Declaration of Interests and Avoidance of Conflicts of Interests by Senior Members of Government**

#### **1. Background**

1.1 At its meeting on 7 October 2002, the Panel on Constitutional Affairs requested the Research and Library Services Division (RLSD) to provide supplementary information regarding the information note entitled "Selected Issues Relating to Declaration of Interests and Avoidance of Conflicts of Interests by Senior Members of Government"(IN35/01-02).

#### **2. Declaration of interests for Presidential Appointees in the US and Ministers in the UK**

2.1 The US declaration of interests procedure provided in IN35/01-02 applies not only to Cabinet Secretaries, but also other Presidential Appointees. Presidential Appointees in the US cover a wide range of leadership posts, including full-time positions in independent executive agencies (such as the Small Business Administration), full-time regulatory positions (such as the Federal Trade Commission and the Securities and Exchange Commission), and many part-time positions (such as the Legal Services Corporation and the Postal Service Board of Governors).

2.2 Similarly, the UK declaration of interests procedure described in IN35/01-02 applies not only to Cabinet Ministers, but also other Ministers not in the Cabinet, including those Ministers without portfolio.

#### **3. Penalties in violation of the declaration requirement in the US**

3.1 Cabinet Secretaries in the US are subject to disciplinary procedures for improper filings of interests, which include acts of wilful omission, falsification and failure to file. Civil and administrative penalties are also available. The Attorney General may bring a civil action against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that is required. In addition, there are criminal sanctions for falsifying information on Federal forms.

#### **4. Difference in the declaration of interests for Ministers and Members of Parliament in the UK**

4.1 As mentioned in paragraph 2.12 of IN35/01-02, both the House of Commons and the House of Lords maintain a register of Members' interests. Ministers who are Members of either House have to file their returns.

4.2 In the House of Commons, Members of Parliament (MPs) are required to declare their interests, which are being recorded in the Register of Members' Interests. The Register of Members' Interests is published annually. Ten categories of interests are required to be registered:

- (a) remunerated directorships;
- (b) remunerated employment, professions and offices;
- (c) the names of clients for whom a Member provides services which arise out of his or her parliamentary position;
- (d) sponsorship or financial support;
- (e) gifts, benefits and hospitality;
- (f) overseas visits;
- (g) overseas benefits and gifts;
- (h) land and property of substantial value (excluding a Member's home);
- (i) registrable shareholdings; and
- (j) miscellaneous and unremunerated interests.

4.3 There are some major differences in the declaration systems for Minister and MPs. The Register of Members' Interest is open for public inspection, while ministerial disclosures are treated in complete confidence and may not be disclosed without Ministers' permission. In certain areas, the rules applicable to Ministers are stricter than those relating to MPs. For instance, Ministers are required to resign directorships in all companies and to divest themselves of any investments which might involve a conflict of interests.

4.4 The House of Lords also maintains a similar declaration of interests system, which is known as the Register of Lords' Interests. The Register is open for public inspection.

#### **5. What is a family trust?**

5.1 A family trust is a legal way to protect and hold assets for a person's family. The person setting up a trust is called the settlor and the trustees are the ones who look after assets in the trust. The beneficiaries are the individuals who benefit from the trust; they could be the settlor, his or her family members, his or her friends or charities. Family trusts are usually set up for the benefits of protecting one's assets for the future and against creditors, and for the purpose of reducing tax liability.

## 6. A Comparison of Various Attributes of Selected Issues

	US	UK	HK
<b>1. Declaration of Interests</b>			
Regulatory framework	By law.	By the <i>Ministerial Code</i> .	By the <i>Code for Principal Officials Under the Accountability System (Code)</i> .
Interests/Investments to be declared	<ol style="list-style-type: none"> <li>1) Assets and income;</li> <li>2) transactions;</li> <li>3) gifts;</li> <li>4) reimbursements, and travel expenses;</li> <li>5) liabilities;</li> <li>6) agreements or arrangements;</li> <li>7) outside positions; and</li> <li>8) compensation in excess of US\$5,000 paid by one source.</li> </ol>	<ol style="list-style-type: none"> <li>1) Financial instruments and partnerships;</li> <li>2) financial interests such as unincorporated businesses and real estate; and</li> <li>3) relevant non-financial private interests such as links with outside organizations and previous relevant employment.</li> </ol>	<ol style="list-style-type: none"> <li>1) Land and buildings (including self-occupied property);</li> <li>2) proprietorships, partnerships or directorships;</li> <li>3) shareholding of 1% or more of the issued share capital in any company (both listed and unlisted); and</li> <li>4) 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 a Principal Official.</li> </ol>
Requirement to report real estate	A Cabinet Secretary is required to describe its nature, location and value. There is no requirement to report the specific address or the acreage. If the real estate is held in connection with a business operation, the business name, type and location must be indicated.	Required to declare. Pending reply from the UK concerning detailed requirement.	<ol style="list-style-type: none"> <li>1) The location (country/city/area) of the property; and</li> <li>2) if a property is owned through a company in which a Principal Official holds a beneficial interest, both the property and the company must be reported.</li> </ol>

	US	UK	HK
<b>1. Declaration of Interests (cont'd)</b>			
Requirement to report liabilities	A Cabinet Secretary is required to identify and give the category of amount of the liabilities which he, his spouse or dependent child owed to any creditor which exceeded US\$10,000 at any time during the reporting period. <sup>1</sup>  He is also required to report any liability of any non-public company, investment pool, or other entity, in which he, his spouse or dependent child have an interest, unless (1) the liability is incidental to the primary trade or business, or (2) the entity is an excepted investment fund.	Pending reply from the UK.	Not required to report any liabilities.
Family interests/investments to be declared	Spouses and dependent children's financial interests on: 1) assets and income; 2) transactions; 3) gifts; 4) reimbursements and travel expenses; and 5) liabilities.	Interests of a spouse or partner, of children who are minors, of a trust of which a Minister, or a spouse, or partner is a trustee or beneficiary, or closely associated persons.	Not required to declare interests of family members.  Required to declare only if the interests are held in the name of the Principal Official's spouse, children or other persons or companies, but are actually acquired on the Principal Officials' account or in which the Principal Official has a beneficial interest.

<sup>1</sup> There are some exceptions, including 1) a personal liability owed to his spouse or dependent child, or to his parent, brother, sister, or to his child, his spouse's child or child of his dependent child; 2) a mortgage or home equity loan secured by real property which is the personal residence (or a second residence not used for producing income) of him or his spouse; 3) a loan secured by a personal motor vehicle, household furniture, or appliances, where the loan does not exceed the purchase price of the item; 4) a revolving charge account where the outstanding liability did not exceed US\$10,000 as of the close of the reporting period; and 5) any liability of his spouse or dependent child which represents the sole financial interest or responsibility of the spouse or child, and about which he has no knowledge, and which is not derived from his income, assets, or activities, and concerning which he neither derives nor expects to derive any financial or economic benefit.

	US	UK	HK
<b>2. Procedures to Avoid Conflicts of Interests</b>			
Regulatory framework	By law and the Executive Order.	By the <i>Ministerial Code</i> .	By the <i>Code</i> .
Directorship	Required to resign from any position they hold as a director or officer of a company.	Must resign any directorships, no matter whether the directorship is in a public or private company and whether it carries remuneration or is honorary.	Principal Officials can not, without the consent 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. A Principal Officer may retain or accept honorary posts in non-profit making organisations or charitable bodies.
Conflicts of interests during meetings	<p>A Cabinet Secretary cannot participate personally and substantially in matters in which he has a financial interest.</p> <p>If a Cabinet Secretary does not have advance notice that issues come up at a meeting which would create a conflict of interests, simply revealing the interest to the other attendees at the meeting and then not speaking during the meeting may not be sufficient to eliminate the appearance of participation in the meeting.</p> <p>The safest course of action is for him to leave the meeting.</p>	<p>A Minister should declare related interests to Ministerial colleagues if they have to discuss public business which in any ways affects the interests.</p> <p>The Minister should also remain entirely detached from the consideration of that business.</p> <p>Similar steps would be necessary if a matter under consideration in a department relates in some way to a Minister's previous or existing private interests such that there is or may be thought to be a conflict of interests.</p>	<p>In cases of possible conflicts of interests, the relevant Executive Council (ExCo) papers and extracts from the minutes would be withheld from the Member (including Principal Officials).</p> <p>Details of Member's declarations and withdrawal from discussion at ExCo meetings are recorded in the minutes.</p>

	US	UK	HK
<b>3. Blind Trust</b>			
Regulatory framework	By law.	By the <i>Ministerial Code</i> .	By the <i>Code</i> .
Specific arrangement	There are detailed legal procedures that need to be followed if a Cabinet Secretary chooses to set up a blind trust.  There is a model blind trust agreement, which is issued and administered by the Office of Government Ethics.	Ministerial blind trusts do not need to be cleared by the Cabinet Office although the Office is normally consulted about the processes to be followed.  There is no model blind trust agreement.	No definition of the term 'blind trust' in the <i>Code</i> , nor in relevant local legislation such as the <i>Trustee Ordinance</i> .
<b>4. British Virgin Islands Companies</b>			
Regulatory framework	No absolute prohibition against an official to use a foreign company to hold assets.  If a Cabinet Secretary uses a foreign company to hold assets, he is required to report the ownership on the Public Financial Disclosure Report .	No restriction on Ministers using BVI Companies to hold assets.  It is likely that any Minister using BVI Companies to hold assets would be reminded by their departmental Permanent Secretary of the potential allegations of criticism on the grounds of tax avoidance.  If the Minister is, for example, a Treasury Minister, he would be advised to surrender such assets so as to avoid conflicts of interests.	No prohibition against a Principal Official to use a foreign company to hold assets.

Prepared by CHAU Pak Kwan  
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Tel: 2869 9593

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