

Legislative Council Panel on Constitutional Affairs

Prevention of Conflict of Interest under the Code for Principal Officials under the Accountability System

Introduction

The Code for Principal Officials under the Accountability System (“the Code”) applies to the Secretaries of Department and Directors of Bureau, i.e. principal officials under the accountability System (“POs”). It outlines the basic principles and requirements which POs should follow in the performance of their duties, including measures which aimed at preventing conflict of interest.

The Code for Principal Officials under the Accountability System

Guiding Principles

2. POs should observe the principles of fairness and impartiality in discharging their duties. They should avoid putting themselves in a position where they might arouse any suspicion of dishonesty, unfairness or conflict of interest, and should refrain from handling cases with actual or potential conflict of interest.
3. Without the written consent of the Chief Executive (CE), POs should not 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. POs should ensure that there is no actual or apparent conflict of interest between his official duties and any interests that he may have in any organizations or bodies and that his interests in such organizations or bodies would not cause embarrassment to the Government, the CE or other POs of the Government.
4. POs should report to the CE any private interests that might influence, or appear to influence, their judgement in the performance of their duties.

Specific Requirements

5. To prevent conflict of interest, specific requirements are set out in the Code to provide practical guidelines for POs on declaration and handling of investments/interests, acceptance of advantages and sponsored visits, registration of gifts and other advantages, and arrangements on stepping down from office.

Declaration and handling of investments/interests

6. POs should declare their investments and interests for the purpose of securing public trust and confidence. Interests declared include land and buildings (including self-occupied property); proprietorships, partnerships or directorships; and shareholdings of 1% or more of the issued share capital in any company (both listed and unlisted). The declaration is made available for public inspection.

7. If it appears to the CE that there is or may be a conflict of interest between a PO's investments or interests and his official duties, the CE may require the PO 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 CE.

Acceptance of advantages

8. As public servants employed by the Government, POs 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) (“POBO”). POs should observe the relevant provisions in the laws.

9. POs should avoid accepting any gift or hospitality which might compromise their judgement or place them under an improper obligation. POs should not accept entertainment from any person if the entertainment is likely to lead to embarrassment of the PO in the discharge of his functions, or to bring the PO or the public service into disrepute.

10. In considering whether to accept any hospitality or free service, POs should take note of the relevant provisions in law and consider if acceptance will lead to conflict of interest with their official duties or place them in a position of obligation to the donor, or will lead to embarrassment in the discharge of their functions, or will bring them or the public service into disrepute.

Sponsored Visits

11. POs should seek permission from the CE if they wish to accept sponsorship in relation to –

- (a) a sponsored visit in their official capacity at the invitation from a foreign government;
- (b) a sponsored visit in their official capacity at the invitation from an outside organization; or
- (c) a sponsored visit for their spouses.

Registration of gifts etc.

12. POs are subject to the provisions under the POBO and should, if necessary, seek guidance from the CE as to the acceptance and retention of gifts, advantages or other benefits.

13. POs 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 POs.

Arrangements on stepping down from office

14. Within one year after stepping down from office, POs should not represent any person in connection with any claim, action, demand,

proceedings, transaction or negotiation against or with the Government; nor should they engage in any lobbying activities on matters relating to the Government.

15. POs should seek the advice of a committee appointed for this purpose by the CE 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 within one year after stepping down from office. The proceedings of the committee are kept confidential, but the advice given should be made public.

Conclusion

16. The employment contract of POs requires that they should comply with the provisions set out in the Code. The Code provides rules and principles for appropriate conduct expected of POs. It cannot encompass all the circumstances that a PO may face. 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 should seek the advice of the CE.