

INFORMATION NOTE

Registration and disclosure of the occupation of the spouses of principal officials in selected places

1. Introduction

1.1 This information note provides information on whether principal officials, such as Ministers or Secretaries,¹ in overseas places must register the occupation (such as remunerated directorship, employment, office, trade or profession) of their spouses, and if so, whether the information is disclosed to the public.

1.2 The United States (US), Australia, the United Kingdom (UK), New Zealand and Canada are selected for this study because each of them has certain distinctive features in the arrangements for the registration and disclosure of the occupation of the spouses of principal officials. In the US, the occupation of the spouses of principal officials is a registrable interest for which public disclosure is required. In Australia, such information is also a registrable interest but only partial disclosure to the public is required. In the UK, while the occupation of Ministers' spouses is not a registrable interest, Ministers are required to register such information if it might be thought to give rise to a conflict of interest, and it could then be disclosed to the public. In New Zealand, Ministers are only required to disclose such information to the Prime Minister if necessary, and no public disclosure is required. In Canada, the occupation of the spouses of principal officials is not a registrable interest, but Ministers are required to make reasonable efforts to provide such information to a statutory ethics commissioner, who is not required to disclose it to the public.

¹ For relevancy to the context of Hong Kong, this information note focuses on the principal officials at the ministerial or cabinet level of the executive branch of the government in overseas places. Such officials are generally called Ministers or Secretaries. They are comparable to the Principal Officials of the Government of the Hong Kong Special Administrative Region in that they are politically appointed and in charge of departments.

1.3 In Hong Kong, the Government's Code for Principal Officials under the Accountability System (the Code) states in general terms that Principal Officials (i.e. Secretaries of Department and Directors of Bureau)² must "declare their investments and interests for the purpose of securing public trust and confidence", with the declaration being "made available for public inspection on request".³ In practice, they are required to register their interests in the Register of Interests of Members of the Executive Council, where the occupation of their spouses is not a registrable interest. Nonetheless, each Principal Official is required to register in the Registration of Interests and Affiliation with Political Parties for Public Inspection (the Registration) his or her interests, including those interests (such as "partnerships" or "directorships", as specified in the Registration) held in the name of the Principal Official's spouse, in which the Principal Official has a "beneficial interest".⁴ Meanwhile, the Code requires principal officials to "report to the Chief Executive any private interests that might influence, or appear to influence, their judgement in the performance of their duties",⁵ but such interests are not made available for public inspection.

1.4 For Members' easy reference, the **Appendix** compares the arrangements for the registration and disclosure of the occupation of the spouses of principal officials in Hong Kong and selected places.

2. The United States

2.1 In the US, the Secretaries, who are the most senior officers of the executive branch of the federal government, are required to register the occupation of their spouses in the Public Financial Disclosure Report (PFDR), which is provided to the government and available for public inspection.

² Clause 1.1, Code for Principal Officials under the Accountability System.

³ Clause 5.6, Code for Principal Officials under the Accountability System.

⁴ Clauses (1) and (2), Points to note when completing the form on Registration of Interests and Affiliation with Political Parties for Public Inspection.

⁵ Clause 5.4, Code for Principal Officials under the Accountability System.

2.2 PFDR provides that if a Secretary's spouse has an "earned or other non-investment income" exceeding US\$1,000 (HK\$7,800) from any one source, the Secretary must register the source (but not the amount) of such an income, which is disclosed to the public. The income registered includes salaries, fees, commissions, compensation for personal services and retirement benefits, but excludes honoraria, which are registered under another category. If the Secretary's spouse is self-employed in a business or profession, the Secretary must show in PFDR what business or profession his or her spouse conducts. The Secretary can be exempt from the disclosure requirements of PFDR, if his or her spouse's income is from employment by the US government or any retirement system or social security of the US. In addition, if a Secretary's spouse receives honoraria exceeding US\$200 (HK\$1,560) from any one source, the Secretary must report the source of each honorarium, the date of the services performed and the actual amount received, even if the honoraria have been donated to charity.

3. Australia

3.1 In Australia, Ministers, who are usually Members of the House of Representatives of the Parliament of Australia, are required by the House and the Prime Minister to register the occupation of their spouses. The information provided to the House, which needs not be specific, is disclosed to the public, but that provided to the Prime Minister, which goes into specifics, is not.

3.2 According to the Department of the Prime Minister and Cabinet, Ministers are mainly subject to the House's rules of registration and disclosure of interests in the same way as all other Members. Under the House's resolutions, each Minister as a Member must identify in the House's Register of Members' Interests (RMI) not only the Member's "registrable interests" but also "the registrable interests of which the Member is aware" of his or her spouse, which is not required to be in detail. The registrable interests include registered directorships of companies; partnerships indicating the nature of interests and activities of the partnerships; shareholdings in public or private companies indicating the name of the companies; and the nature of any other substantial sources of income. RMI is available for public inspection.

3.3 There are a few Ministers who are Senators. They are subject to the Senate's requirements for registering in the Register of Senators' Interests (RSI) their and their spouses' registrable interests, which are identical to those defined by the House for Ministers who are Members. Unlike the House's arrangement, the information on their spouses' interests is maintained in a separate part of RSI and kept "confidential to the Senate's Committee of Senators' Interests except where the Committee considers that a conflict of interest arises".⁶

⁶ Section 2, Resolutions relating to Senators' Interests.

3.4 According to the Department of the Prime Minister and Cabinet, besides registering their interests in RMI or RSI, Ministers must provide to the Prime Minister supplementary statements of their interests, including their spouses' interests, such as employment, partnerships, directorships or business undertakings, "to the extent to which they are aware of them". Compared to those registered in RMI or RSI, the Ministers' interests provided in the supplementary statements are required to be more detailed and specific, such as specifying the amount of income. These specifics are not disclosed to the public because they are provided "on the understanding that [they are] private and in confidence to the Prime Minister", according to the Department of the Prime Minister and Cabinet.

4. The United Kingdom

4.1 In the UK, the occupation of Ministers' spouses is not a registrable interest that Ministers are specifically required to register in their statements of interests provided to the government. Nevertheless, the Ministerial Code, published by the government's Cabinet Office to provide guidance on the core principles and practices expected of Ministers,⁷ requires Ministers to provide their Permanent Secretary with a full list in writing of all interests (including those of Ministers' spouses) "which might be thought to give rise to a conflict".⁸ Such information could be disclosed by the government in an annual statement covering the relevant Ministers' interests.

4.2 In addition, Ministers, who are by convention Members of the House of Commons of the UK Parliament, are subject to the rules of registration and declaration of interests in the same way as all other Members. The occupation of their spouses is not a registrable interest under the House's Register of Members' Interests, which is available for public inspection. Nevertheless, under the House's resolution of 22 May 1974, like all other Members, Ministers must "disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have" in any debate or proceeding of the House or its committees or transactions or communications with other Members.⁹

⁷ Ministerial Code, paras 1.5 and 7.2. Under the Ministerial Code, "it is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account of advice received from their Permanent Secretary and the Independent Adviser on Ministers' interests", who, appointed by the Prime Minister, is responsible for giving confidential advice on request from Ministers and investigating allegations of breaches of the Code at the request of the Prime Minister. The Code states that the Prime Minister is "the ultimate judge of the standards of behaviour expected of a Minister", who remains in office for so long as he or she retains the confidence of the Prime Minister.

⁸ Ministerial Code, para 7.3.

⁹ The Guide to the Rules relating to the Conduct of Members (2002), p. 22.

5. New Zealand

5.1 In New Zealand, the occupation of Ministers' spouses is not a registrable interest. According to the Cabinet Office under the Department of the Prime Minister and Cabinet, Ministers, who are by convention Members of the New Zealand Parliament, are required by the Prime Minister to review annually their private interests, including those of their spouses, in the light of their ministerial duties. Ministers are required to disclose their spouses' occupation to the Prime Minister, only if a conflict arises between the public duties of those Ministers and their private interests.¹⁰ Even in such cases, the information about their spouses' interests is not disclosed to the public.

5.2 Under the Parliament's Standing Orders, the Parliament's Register of Pecuniary Interests of Members of Parliament does not require Ministers to register the occupation of their spouses.¹¹ Nevertheless, the Standing Orders provide that before participating in the consideration of any item of business, Members (including Ministers) must declare any financial interest, including those held by their spouses, that they have in that business.¹²

¹⁰ According to the Cabinet Manual issued by the Cabinet Office under the government's Department of the Prime Minister and Cabinet, "if the conflict between a Minister's portfolio responsibilities and a personal interest is a substantial and enduring one, it may be necessary to consider a permanent change to some or all of the Minister's portfolio responsibilities".

¹¹ Section 4, Appendix B, Standing Orders of the Parliament of New Zealand.

¹² Standing Orders 165 and 166. Under Standing Order 165, a financial interest is "a direct financial benefit that might accrue to a Member personally, or to any trust, company or other business entity in which the Member holds an appreciable interest, as a result of the outcome of the House's consideration of a particular item of business".

6. Canada

6.1 In Canada, under the Conflict of Interest Act, which provides for conflict of interest rules for Ministers and other public office holders, the occupation of Ministers' spouses is not a registrable interest. Nevertheless, the Act requires each Minister to "make reasonable efforts" to provide to the statutory Conflict of Interest and Ethics Commissioner¹³ information about the private interests of each of his or her family members, including his or her spouse.¹⁴ Such interests include employment; engagement in the practice of a profession; serving as a director or officer in a corporation or an organization, a paid consultant or an active partner in a partnership; and managing or operating a business or commercial activity. This information is not disclosed to the public.

6.2 Ministers, who are by convention Members of the House of Commons of the Parliament of Canada, are subject to the registration and disclosure requirements applicable to all Members. They are required to file with the Office of the Conflict of Interest and Ethics Commissioner the Disclosure Statement for Members and Their Family Members (the Disclosure Statement) in which the occupation of their spouses is a registrable interest. The Disclosure Statement is kept confidential. Under the Conflict of Interest Code for Members of the House of Commons, which is appended to the House's Standing Orders, the Conflict of Interest and Ethics Commissioner may prepare a disclosure summary based on each Member's Disclosure Statement filed. It is not necessary for the disclosure summary, which is made available for public inspection, to include the interests of Members' spouses.¹⁵

¹³ The Conflict of Interest and Ethics Commissioner was established in 2006 under the Federal Accountability Act. The Commissioner is mainly responsible for administering the Conflict of Interest and Post-Employment Code for Public Office Holders, which is incorporated in the Conflict of Interest Act, and the Conflict of Interest Code for Members of the House of Commons. The Commissioner is empowered to conduct inquiries into cases relating to conflicts of interests involving public office holders and Members, and impose administrative monetary penalties.

¹⁴ Sections 15(1), 22(2) and (3), Conflict of Interest Act.

¹⁵ Sections 20-24, Conflict of Interest Code for Members of the House of Commons.

Appendix

Registration and disclosure of the occupation of the spouses of principal officials in Hong Kong and selected places

Selected places	Whether the occupation of the spouses of principal officials is a registrable interest	Whether information disclosed by principal officials to the government about the occupation of their spouses is disclosed to the public
Hong Kong	<p>The occupation of the spouses of Principal Officials is not a registrable interest in the Register of Interests of Members of the Executive Council. Nonetheless, each Principal Official is required to register in the Registration of Interests and Affiliation with Political Parties for Public Inspection his or her interests, including those interests (such as partnerships or directorships) held in the name of the Principal Official's spouse, in which the Principal Official has a beneficial interest.</p> <p>Principal officials are also required to disclose such information to the Chief Executive, if it might influence or appear to influence their judgement in the performance of their duties.</p>	The information disclosed by Principal Officials to the Chief Executive about the occupation of their spouses is not disclosed to the public.
The United States	The occupation of the spouses of Secretaries is a registrable interest that Secretaries must indicate in the Public Financial Disclosure Report (PFDR) provided to the government.	The occupation of Secretaries' spouses registered in PFDR is disclosed to the public.
Australia	The occupation of Ministers' spouses is a registrable interest that Ministers, who are also Members of Parliament, must indicate in the Register of Members' Interests (RMI) or the Register of Senators' Interests (RSI) maintained by the Parliament of Australia, and in their supplementary statements provided to the Prime Minister.	<p>The information about the occupation of Ministers' spouses in RMI is disclosed to the public, while that in RSI is kept confidential unless a conflict of interest arises.</p> <p>The supplementary statements provided to the Prime Minister, which may include more detailed information about the occupation of Ministers' spouses, is not disclosed to the public.</p>
The United Kingdom	The occupation of Ministers' spouses is not a registrable interest, but Ministers are required to register such information, if it might be thought to give rise to a conflict of interest.	The occupation of Ministers' spouses could be disclosed to the public, if it might be thought to give rise to a conflict of interest.
New Zealand	The occupation of Ministers' spouses is not a registrable interest, but Ministers are required to disclose such information to the Prime Minister, if a conflict of interest arises.	The information provided by Ministers to the Prime Minister about their spouses' interests, including their occupation, is not disclosed to the public.
Canada	The occupation of Ministers' spouses is not a registrable interest, but Ministers are required to make reasonable efforts to disclose, in confidence, the private interests (such as the occupation) of their spouses to the statutory Conflict of Interest and Ethics Commissioner.	The Conflict of Interest and Ethics Commissioner is not required to disclose the interests (such as the occupation) of Ministers' spouses to the public.

References

1. Cabinet Office. (2007) *Ministerial Code*. July. London.
2. *Conflict of Interest Act*. (2005) Office of the Ethics Commissioner. Canada.
3. Conflict of Interest Code for Members of the House of Commons. (2006) September.
4. *Code for Principal Officials under the Accountability System* (2002). Hong Kong Government Gazette, 28 June.
5. *Points to Note when Completing the Form on Registration of Interests and Affiliation with Political Parties for Public Inspection*. Paper submitted to the Panel on Constitutional Affairs of the Legislative Council for discussion on 25 July 2007. LC Paper No. CB(2)1024/06-07(03).
6. Department of the Prime Minister and Cabinet. (1998) *A Guide on Key Elements of Ministerial Responsibility*. December. Canberra.
7. Department of the Prime Minister and Cabinet. (2007) *The Cabinet Manual*. Available from <http://www.dpmc.govt.nz/cabinet/manual/2.html> [Accessed 18 October 2007].
8. Gay, O. (2007) *The Ministerial Code*. 17 July. Standard Note. SN/PC/3750. Parliament and Constitution Centre, Library of the House of Commons of the United Kingdom Parliament.
9. House of Commons. (2005) *The Code of Conduct: The Guide to the Rules relating to the Conduct of Members*. 14 May. London.
10. Office of the Ethics Commissioner, Parliament of Canada. (2005) *Disclosure Statement for members and their Family Members*. Canada.
11. Office of the Ethics Commissioner. (2006) *Conflict of Interests and Post-Employment Code for Public Office Holders*. Parliament of Canada.
12. Parliament of Australia. (2007) *Registration of Members' Interests*. Available from <http://www.aph.gov.au/house/pubs/standos/resolutions.htm> [Accessed 19 September 2007].
13. Parliament of Australia. (2007) *Resolutions Relating to Senators' Interest*. Available from http://wopared.parl.net/senate/committee/interests_ctte/index.htm [Accessed 28 October 2007].
14. Standard Form 278 Executive Branch Personnel Public Financial Disclosure Report. The Federal Government of the United States.

15. Standing Orders of the House of Representatives. (2005) Parliament of New Zealand.
16. The Department of the Prime Minister and Cabinet. (2004) *Cabinet Handbook*. 5th ed. March. Commonwealth of Australia.

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