

**Replies to supplementary questions raised by Finance Committee Members
in examining the Estimates of Expenditure 2012-13**

Controlling Officer : Permanent Secretary, Chief Executive's Office

Session No. : 8

Reply Serial No.	Question Serial No.	Name of Member	Head	Programme
S-CEO01	SV006	EU Yuet-mee, Audrey	21	Chief Executive's Office
S-CEO02	SV026	LAU Wai-hing, Emily	21	Chief Executive's Office
S-CEO03	SV007	TO Kun-sun, James	21	Chief Executive's Office
S-CEO04	SV025	TO Kun-sun, James	21	Chief Executive's Office

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

S-CEO01

Question Serial No.

SV006

Head: 21 Chief Executive's Office Subhead (No. & title):

Programme: (1) Chief Executive's Office

Controlling Officer: Permanent Secretary, Chief Executive's Office

Director of Bureau: Director of the Chief Executive's Office

Question:

Report on whether there had been any cases of non-compliance with the "Code of Officials under the Political Appointment System" and if so, provide the relevant details.

Asked by: Hon. EU Yuet-mee, Audrey

Reply:

The Chief Secretary for the Administration already replied to the Legislative Council at the sitting of 29 February. According to the Government's record, in the past 10 years, there was one case of omission by a Principal Official in declaring interests under the "Code for Officials under the Political Appointment System" on matters relating to public interests.

2. In 2003, Mr Antony Leung, the then Financial Secretary, proposed to increase the First Registration Tax for motor vehicles in formulating the 2003-04 Budget. When Mr Leung presented the Budget to the ExCo on 5 March 2003, he did not declare that he had purchased a new car. The case was investigated by the Independent Commission Against Corruption and examined by the Department of Justice. It was considered that no prosecution should be instituted.

Signature: _____

Name in block letters: Kenneth Mak

Post Title: Permanent Secretary, Chief Executive's Office

Date: 22 March 2012

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

S-CEO02

Question Serial No.

SV026

Head: 21 Chief Executive's Office Subhead (No. & title):

Programme: (1) Chief Executive's Office

Controlling Officer: Permanent Secretary, Chief Executive's Office

Director of Bureau: Director of the Chief Executive's Office

Question:

The Permanent Secretary of the Chief Executive's Office was requested to provide relevant guidelines/documents issued by the Government setting out details regarding acceptance of sponsorship by a public officer on duty outside Hong Kong offered by individuals or organizations, in cash or in kind to cover passage, accommodation, meals or other expenses incurred by the officer during the duty trip.

Asked by: Hon. LAU Wai-hing, Emily

Reply:

Civil servants are required to obtain prior approval for accepting sponsorship on duty outside Hong Kong. In examining an application, the approving authority will consider a host of factors including the identity, status and nature of business of the sponsor; the type of sponsorship and amount involved; whether there would be any actual, potential or perceived conflict of interest or any possibility of the bureau, department or Government being placed in an obligatory position towards the sponsor if the sponsorship is accepted; and whether it is in the interest of the bureau, department or Government, etc. As a general rule, sponsorship offered by entities under the regulation of a bureau or department or by private commercial organizations should be declined. If hotel accommodation and/or allowance for travel costs are covered by the sponsorship, the amount of subsistence allowance payable to the civil servant concerned will be reduced.

2. During a duty visit outside Hong Kong, a civil servant should not accept lavish or unreasonably generous entertainment, or any entertainment that is likely to embarrass him in his subsequent discharge of official duties, or bring him or the Government into disrepute, or lead to any actual, potential or perceived conflict of interest.

3. Any advantages made available to a civil servant during a duty visit outside Hong Kong (e.g. gifts, honorarium to the civil servant as a guest speaker or other kinds of benefits) shall be regarded as advantages offered to the Government. The civil servant is not allowed to retain such advantages for personal use unless permission is given.

4. As regards politically appointed officials, under the "Code for Officials under the Political Appointment System", the official who wishes to accept an invitation to make a sponsored visit in his official capacity shall seek permission from the Chief Executive. He shall also pay due regard to relevant principles and practices applicable to civil servants, as enshrined in Civil Service Regulations and related guidelines.

Signature: _____

Name in block letters: Kenneth Mak

Post Title: Permanent Secretary, Chief Executive's Office

Date: 22 March 2012

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

S-CEO03

Question Serial No.

SV007

Head: 21 Chief Executive's Office Subhead (No. & title):

Programme: (1) Chief Executive's Office

Controlling Officer: Permanent Secretary, Chief Executive's Office

Director of Bureau: Director of the Chief Executive's Office

Question:

The Administration was requested to take the following actions –

Provide, with the help from the Administration Wing, Chief Secretary for Administration's Office, information on the special arrangements, if any, that would be made to avoid conflict of interest in the nomination of the next Commissioner, Independent Commission Against Corruption (ICAC), considering that the incumbent Chief Executive, who has the power to nominate the Commissioner, had himself become a subject of ICAC's investigation. In particular, the Administration Wing should confirm in writing that the incumbent Chief Executive would not play any role in identifying and appraising the nominee.

Asked by: Hon. TO Kun-sun, James

Reply:

Article 48(5) of the Basic Law provides that the powers and functions of the Chief Executive (CE) include nominating and reporting to the Central People's Government (CPG) for appointment of the Commissioner Against Corruption. Same as that of the incumbent CE, the term of office of the incumbent Commissioner of the Independent Commission Against Corruption (C, ICAC) will end on 30 June 2012. The next term CE will nominate the next term C, ICAC and will report to the Central People's Government for appointment.

2. Between now and 30 June 2012, in the hypothetical situation where the C, ICAC post becomes vacant, the incumbent CE may consider nominating a new C, ICAC and reporting to CPG for appointment, with his or her term of office ending on 30 June 2012, or arranging an acting appointment to fill the temporary vacancy.

3. Although the C, ICAC is nominated by CE, the independence of C, ICAC and ICAC is protected by law and is indisputable. The legal provisions and relevant measures are as follows:

- (a) Article 57 of the Basic Law stipulates that ICAC shall function independently and be accountable to CE. Similar stipulation is also found in section 5(2) of the Independent Commission Against Corruption Ordinance (ICACO). These provisions ensure the independent operation of ICAC.
- (b) Section 12(b)(ii) of ICACO stipulates that it shall be the duty of C, ICAC to investigate any alleged or suspected offence under the Prevention of Bribery Ordinance (POBO). Therefore, C, ICAC is responsible for and has the duty to perform the statutory function of investigating bribery offences suspected to have been committed by any person including the person holding the office of CE.

- (c) If a person holding the office of CE requests C, ICAC to disclose whether he is being investigated by ICAC or any details about the investigation, this act may amount to an abuse of the power of the office of CE, and may constitute the common law offence of misconduct in public office. Depending upon the circumstances, this conduct may also constitute the offence of perverting the course of public justice or the offence of obstructing or resisting ICAC officers in executing their duties under section 13A of ICACO, which is an offence of less serious nature.

If C, ICAC complies with CE's above instruction, he may have committed an offence under section 30 of POBO, i.e. disclosing without lawful authority or reasonable excuse to the person who is the subject of the investigation the fact that he is so subject or any details of such investigation; and/or an offence under section 17 of the Official Secrets Ordinance, i.e. a public servant disclosing without lawful authority information, document or other article that is or has been in his possession by virtue of his position as such. In relation to the above unlawful disclosure, it is unlikely that C, ICAC may invoke the defence of "lawful authority" or "reasonable excuse" as he must have known that the CE's instruction was unlawful in the first place.

- (d) Besides, similar to all ICAC investigation results, the investigation results in relation to a complaint of suspected corruption against the person holding the office of CE must be reported to and monitored by the independent Operations Review Committee (ORC). The ORC comprises distinguished persons who are not public officers and is tasked to ensure that all corruption complaints will be handled properly.

Signature: _____
Name in block letters: Kenneth Mak
Post Title: Permanent Secretary, Chief Executive's Office
Date: 22 March 2012

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

S-CEO04

Question Serial No.

SV025

Head: 21 Chief Executive's Office Subhead (No. & title):

Programme: (1) Chief Executive's Office

Controlling Officer: Permanent Secretary, Chief Executive's Office

Director of Bureau: Director of the Chief Executive's Office

Question:

The Permanent Secretary of the Chief Executive's Office was requested to confirm whether the Chief Executive ("CE") would exercise his power to make nomination to the Central People's Government for appointment of the ICAC Commissioner when CE was under investigation by the ICAC.

Asked by: Hon. TO Kun-sun, James

Reply:

Article 48(5) of the Basic Law provides that the powers and functions of the Chief Executive (CE) include nominating and reporting to the Central People's Government (CPG) for appointment of the Commissioner Against Corruption. Same as that of the incumbent CE, the term of office of the incumbent Commissioner of the Independent Commission Against Corruption (C, ICAC) will end on 30 June 2012. The next term CE will nominate the next term C, ICAC and will report to the Central People's Government for appointment.

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- (c) If a person holding the office of CE requests C, ICAC to disclose whether he is being investigated by ICAC or any details about the investigation, this act may amount to an abuse of the power of the office of CE, and may constitute the common law offence of misconduct in public office. Depending upon the circumstances, this conduct may also constitute the offence of perverting the course of public justice or the offence of obstructing or resisting ICAC officers in executing their duties under section 13A of ICACO, which is an offence of less serious nature.

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Name in block letters: Kenneth Mak

Post Title: Permanent Secretary, Chief Executive's Office

Date: 22 March 2012