

For information on  
16 April 2012

## **LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE**

### **Mechanism and Regulations Obliging Politically Appointed Officials and Members of the Executive Council to Protect Confidential Information**

#### **Purpose**

This paper sets out for Members' information the mechanism and regulations obliging politically appointed officials (PAOs) and Members of the Executive Council (ExCo) to protect confidential information.

#### **Politically Appointed Officials**

2. PAOs (including Secretaries of Departments, Directors of Bureaux, Director of Chief Executive's Office, Under Secretaries and Political Assistants) are obliged to protect confidential and sensitive information. Apart from abiding by statutory and common law rules on confidentiality<sup>1</sup>, PAOs are required under their terms of appointment and the Code for Officials under the Political Appointment System, *inter alia*, to refrain from disclosing confidential or sensitive information unless with the prior written consent of the Chief Executive (CE), observe the Security Regulations, and have due regard to other Government Regulations. The terms of appointment of PAOs also provide that the prohibition against unauthorized disclosure of confidential or sensitive information shall continue to apply after they step down from office.

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<sup>1</sup> For example, the Official Secrets Ordinance (Cap. 521), the common law offence of misconduct in public office, and the common law duty of confidentiality.

3. In general, PAOs, as Government Servants, are subject to the specific control arrangements governing disclosure of confidential information set out in the various Government Regulations mentioned in LC Paper No. CB(1)1498/11-12(07) jointly issued by the Security Bureau and Civil Service Bureau.

### **Members of Executive Council**

4. ExCo Members have a duty to maintain the confidentiality of ExCo agenda and proceedings. This confidentiality principle underscores the policy-making and effective operation of the Government. It ensures that ExCo Members can, without any pressure, speak freely and honestly in giving advice to CE. Confidentiality is also vital to upholding the principle of collective responsibility, which provides the basis on which the integrity of the ExCo system depends. Protecting the integrity of the system is a matter of great public interest.

5. Under section 18 of the Oaths and Declarations Ordinance (Cap. 11), an ExCo Member shall take the Oath of Fidelity after his or her appointment, pledging that “I will not, except with the authority of the CE, reveal the agenda or proceedings of the Executive Council, or any document communicated to me or any matter coming to my knowledge in my capacity as a Member of the Executive Council; that I will not seek to make or assist others to make any personal gain through the exercise of my official duties and I will be bound by and be collectively accountable for the decisions of the Executive Council.”

6. ExCo members are also subject to the common law duty of confidentiality<sup>2</sup> and the common law offence of misconduct in public office and, with regard to disclosure of specified information, to relevant

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<sup>2</sup> A person is liable for breach of confidence in tort if the information disclosed is confidential, the person has a duty of confidentiality and the disclosure is unauthorized.

provisions in the Official Secrets Ordinance.

7. In the event of an ExCo Member violating the principle of confidentiality, CE may, depending on the circumstances, take appropriate actions including issuing an advice or a warning, removing him or her from office, or taking legal actions. The Government takes seriously any suspected breach of the principle of confidentiality of ExCo. The Government will ensure that the principle is sternly upheld and respected.

Chief Executive's Office

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