

立法會 *Legislative Council*

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Panel on Constitutional Affairs

Background brief for meeting on 20 June 2005

Accountability of Government officials in answering Members' questions at meetings of the Legislative Council and its committees

Purpose

This paper sets out the provisions of the Basic Law, Rules of Procedure and House Rules relating to Government officials answering Members' questions at meetings of the Legislative Council (LegCo) and its committees.

Background

2. In his letter dated 6 May 2005 to the Chairman of the Panel, Hon TONG Ka-wah pointed out that Government officials sometimes evaded or refused to answer questions raised by Members at Council meetings. Mr TONG considered that the conduct of these Government officials contravened Article 64 of the Basic Law, which provides that the Government of the Hong Kong Special Administrative Region (the Government) must answer questions raised by LegCo Members. A copy of Mr TONG's letter is in **Appendix I**.

3. At the Panel meeting on 30 May 2005, members agreed to discuss the item at the meeting on 20 June 2005.

Relevant provisions of the Basic Law

4. Article 64 of the Basic Law (BL) stipulates that the Government is accountable to LegCo in that it shall, among other things, answer questions raised by Members. BL 62(6) stipulates that the Government shall designate officials to sit in on the meetings of LegCo and to speak on behalf of the Government. BL 73(5) stipulates that one of powers and functions of LegCo is to raise questions on the work of the Government.

5. The requirement under the Basic Law for public officers to attend meetings of LegCo and its committees and to answer questions raised by Members on the work of the Government is reflected in both the Code for Principal Officials (POs) and the Rules of Procedure of LegCo (RoP).

Code for Principal Officials under the Accountability System

6. On 17 April 2002, the Chief Executive addressed the Council on the framework of the accountability system for principal officials (POs). According to the LegCo Paper on "Accountability System for Principal Officials" presented to the Council by the Constitutional Affairs Bureau on the same day, POs are accountable to CE for the success or failure of matters falling within their respective portfolios. The role and responsibility of POs include, among others, to attend full sessions of LegCo to initiate bills or motions, respond to motions and answer questions from LegCo Members.

7. Under the Code of POs published in the Government Gazette on 28 June 2002 (**Appendix II**), POs are expected to "be as open as possible about their decisions", "act in order to uphold the highest standards", "be responsible for explaining and defending government policies and canvassing support from LegCo", "answer questions raised by Members" and "give accurate and truthful information to LegCo". The specific provisions are as follows –

- (a) POs shall be as open as possible about the decisions that they make and the actions that they take. They are accountable for their decisions (clause 1.2(5));
- (b) The Code does not specify every type of potential act or behaviour expected of POs. Where circumstances are not prescribed, it is the responsibility of POs to judge, in accordance with the principles set out in the Code, how to act in order to uphold the highest standards (clause 1.3);
- (c) POs are responsible for formulating, explaining and defending government policies as well as canvassing support from the public and LegCo (clause 2.2);
- (d) POs shall note that under BL 64, the Government must be accountable to LegCo and shall, among others, answer questions raised by Members (clause 2.7);
- (e) POs will be designated under BL 62(6) to attend meetings of LegCo, its committees, subcommittees and Panels and to speak on behalf of the Government (clause 2.8);

- (f) POs have a duty to represent the Government and to transact business at meetings of LegCo, and as necessary its committees, subcommittees and panels, e.g. to introduce bills or motions, address LegCo, present papers, make statements, answer questions and to take part in debates in respect of matters relating to their respective portfolios (clause 2.9); and
- (g) POs shall give accurate and truthful information to LegCo and correct any error at the earliest opportunity (clause 2.11).

Stand-in arrangements for POs

8. When civil servants are designated to attend meetings of LegCo to speak on behalf of the Government during the temporary absence of POs, they are, however, required to limit themselves to established policy (clause 2.6).

9. The stand-in arrangements during the temporary absence of POs, as provided in clauses 2.4 and 2.5 of the Code, are as follows –

- (a) during the temporary absence of a PO, another PO may be directed to exercise the powers or perform the duties of the absent PO, including the duty to attend meetings of LegCo, its committees, subcommittees and Panels and to speak on behalf of the Government;
- (b) during the temporary absence of the Secretary for Justice, relevant Law Officers will exercise the powers and perform the duties of Secretary for Justice, including the duty to attend meetings of LegCo, its committees, subcommittees and Panels and to speak on behalf of the Government; and
- (c) during the temporary absence of the Secretary for the Civil Service, the Permanent Secretary in the Civil Service will exercise the powers and perform the duties of the Secretary for the Civil Service, including the duty to attend meetings of LegCo, its committees, subcommittees and Panels and to speak on behalf of the Government.

Rules of Procedure (RoP) and House Rules (HR)

10. Although there are rules governing the attendance of public officers at meetings of the Council and its committees and the contents of Members' questions and speeches, there are no principles or guidelines governing how public officers should answer Members' questions.

Attendance of public officers

11. Under RoP 9(1), designated public officers may attend meetings of the Council, committees of the whole Council, the Finance Committee or subcommittees of the Finance Committee and to speak on behalf of the Government.

12. Under RoP 9(4), a public officer may be invited by any other committee or subcommittee of the Council to attend the meeting of the committee or the subcommittee if circumstances so require.

Rules relating to Members' questions and speeches

13. The following Rules shall apply to Members' questions and speeches raised/made at the Council meetings –

- (a) the contents of questions raised by Members to the Government on the work of the Government shall conform to the rules set out in RoP 25;
- (b) the contents of speeches made by Members should not infringe the provisions of RoP 41 (the rule also applies to proceedings in a committee);
- (c) a supplementary question to an answer given to a question for the purpose of elucidating the answer shall be refused by the President under RoP 26(4), if the President is in the opinion that it introduces matter which is not related to the original question or answer or which infringes any of the provisions of RoP 22 (Nature of Questions) or RoP 25 (Contents of Questions); and
- (d) a Member who feels that his question has not been fully answered should rise on a point of order and say "Follow-up, President". It is for the President to rule whether a follow-up question should be allowed (HR 9).

立法會
政制事務委員會主席
呂明華議員：

有關政府官員拒絕回答立法會議員的質詢

《香港特別行政區基本法》第六十四條訂明：「香港特別行政區政府……對香港特別行政區立法會負責：……答覆立法會議員的質詢……。」該法第七十三條第五款亦訂明立法會行使的職權包括：「對政府的工作提出質詢」。

在立法會的會議上，代表政府出席會議的官員卻不時對議員所提出的質詢避而不答，更甚者拒絕回答議員的問題。本人認為有關行為違反了《基本法》第六十四條規定政府須向立法會負責及回答議員質詢的憲制責任。

本人要求就有關做法是否合憲的問題，於政制事務委員會作出討論。

頌安

湯家驊

謹啓

二零零五年五月六日

**CODE FOR PRINCIPAL OFFICIALS
UNDER THE ACCOUNTABILITY SYSTEM**

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CHAPTER 1: INTRODUCTION

- 1.1. This Code applies to the Secretaries of Department and Directors of Bureau, i.e., principal officials under the accountability system (hereinafter referred to as "principal officials").
- 1.2. The basic principles which principal officials shall follow in the performance of their duties include the following:
 - (1) Principal officials shall swear to uphold the Basic Law and swear allegiance to the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China.
 - (2) Principal officials shall be dedicated to their duties and be responsible to the Government of the HKSAR.
 - (3) Principal officials shall uphold the rule of law, abide by the law, and protect the integrity of public office.

- (4) Principal officials shall act in the best interests of the HKSAR as a whole.
 - (5) Principal officials shall be as open as possible about the decisions that they make and the actions that they take. They shall be accountable for their decisions.
 - (6) Principal officials shall observe the highest standards of personal conduct and integrity at all times.
 - (7) Principal officials shall ensure that no actual or potential conflict arises between their public duties and their private interests.
 - (8) Principal officials shall at all times actively uphold and promote a permanent, honest, meritocratic, professional and politically neutral civil service.
 - (9) Principal officials shall not use any public resources for non-government purposes (including purposes relating to any political party).
 - (10) Principal officials shall promote and support the above principles by leadership and example.
- 1.3. This Code does not specify every type of potential act or behaviour expected of principal officials. Rather, it provides rules and principles for appropriate conduct under certain circumstances. Where the circumstances are not prescribed, it is the responsibility of principal officials to judge in accordance with the principles set out in this Code, how best to act in order to uphold the highest standards. In case of doubt, principal officials shall seek the advice of the Chief Executive.
- 1.4. This Code shall be read in conjunction with legislation applicable to principal officials. These include the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).

CHAPTER 2: RESPONSIBILITIES

- 2.1. Principal officials shall devote the whole of their time and attention to the discharge of their duties as principal officials of the Government, and shall use their best endeavours to promote the interests of the Government.
- 2.2. Principal officials are responsible for their respective portfolios designated to them by the Chief Executive and lead the executive departments within their respective portfolios. Principal officials are responsible for formulating, explaining and defending government policies as well as canvassing support from the public and the Legislative Council. They are accountable to the Chief Executive for the success or failure of their policies.
- 2.3. Principal officials shall be bound by and collectively responsible for the decisions taken by the Chief Executive in Council.
- 2.4. Principal officials shall note that they may be directed as necessary by the Chief Executive, during the temporary absence of other principal officials, to exercise the powers or perform the duties of the absent principal officials, including the duty to attend meetings of the Legislative Council, its committees, subcommittees and panels and to speak on behalf of the government.
- 2.5. Principal officials shall note that given the special role and responsibility of the positions of the Secretary for Justice and Secretary for the Civil Service, special arrangements are made during their temporary absence. During the temporary absence of the Secretary for Justice, relevant Law Officers will exercise the powers and perform the duties of the Secretary for Justice, including the duty to attend meetings of the Legislative Council, its committees, subcommittees and panels and to speak on behalf of the government. During the temporary absence of the Secretary for the Civil Service, the Permanent Secretary in the Civil Service Bureau will exercise the powers and perform the duties of the Secretary for the Civil Service, including the duty to attend meetings of the Legislative Council, its committees, subcommittees and panels and to speak on behalf of the government.

- 2.6. Principal officials shall note that the civil servants designated to attend meetings of the Legislative Council, its committees, subcommittees or panels and speak on behalf of the Government are required to limit themselves to established policy.

Responsibility in relation to the Legislative Council

- 2.7. Principal officials shall note that under Article 64 of the Basic Law, the Government must abide by the law and be accountable to the Legislative Council: it shall implement laws passed by the Legislative Council and already in force; it shall present regular policy addresses to the Legislative Council; it shall answer questions raised by members of the Legislative Council; and it shall obtain approval from the Legislative Council for taxation and public expenditure.
- 2.8. Principal officials will be designated under Article 62(6) of the Basic Law to attend meetings of the Legislative Council, its committees, subcommittees and panels and to speak on behalf of the Government. The immunities and privileges provided for in sections 3, 4, 5 and 6(2) of the Legislative Council (Powers and Privileges) Ordinance (Chapter 382 of the Laws of Hong Kong) are extended to principal officials when they attend meetings of the Legislative Council, its committees, subcommittees and panels.
- 2.9. Principal officials have a duty to represent the Government and to transact business at meetings of the Legislative Council, and as necessary its committees, subcommittees and panels, e.g. to introduce bills or motions, address the Legislative Council, present papers, make statements, answer questions and take part in debates in respect of matters relating to their respective portfolios.
- 2.10. Principal officials shall endeavour to ensure that they would be available to attend meetings of the Legislative Council when matters relating to their respective portfolios are discussed.
- 2.11. Principal officials shall give accurate and truthful information to the Legislative Council and correct any error at the earliest opportunity.

Responsibility in relation to civil servants

- 2.12. Principal officials shall at all times actively uphold and promote a permanent, honest, meritocratic, professional and politically neutral civil service. In particular, principal officials shall actively uphold and promote the core values of the civil service:
- (a) commitment to the rule of law;
 - (b) honesty and integrity;
 - (c) accountability for decisions and actions;
 - (d) political neutrality;
 - (e) impartiality in the execution of public functions; and
 - (f) dedication, professionalism and diligence in serving the community.
- 2.13. Principal officials shall give fair consideration and due weight to honest, informed and impartial advice from civil servants and shall have due regard to Government Regulations which are applicable to civil servants or otherwise regulate the operation of the Government.
- 2.14. Principal officials shall not require or influence civil servants directly or indirectly to act in any way which:
- (a) is illegal, improper or in conflict with the core values of the civil service;
 - (b) is in breach of any Government Regulations including Civil Service Regulations;
 - (c) may involve possible maladministration;
 - (d) would conflict with their role as civil servants; or
 - (e) would conflict with the principle of political neutrality.

- 2.15. Principal officials shall note that the Secretary for the Civil Service is responsible to the Chief Executive for civil service policy and the management of the civil service. Principal officials shall also note that one of the major tasks of the Secretary for the Civil Service is to safeguard the core values of the civil service.
- 2.16. Principal officials shall note that civil servants are appointed, managed and promoted on the basis of merit and in accordance with the principles of openness and fairness and with the prevailing rules and regulations applicable to the civil service.
- 2.17. Principal officials shall note that civil servants are subject to the prevailing civil service disciplinary system, under which allegations of misconduct against individual civil servants are determined through an impartial process based on consideration of factual evidence.
- 2.18. Principal officials shall note the independent role of the Public Service Commission in advising the Government on the appointment, promotion and discipline of civil servants.
- 2.19. Principal officials shall cooperate fully with the Secretary for the Civil Service to follow up on complaints from civil servants that they have been asked to act in a manner which conflicts with their role as civil servants or with the core values of the civil service.

The role of the Controlling Officer

- 2.20. Principal officials shall note that, subject to the regulations made and directions or instructions given by the Financial Secretary, controlling officers designated under the Public Finance Ordinance (Chapter 2 of the Laws of Hong Kong) are responsible and accountable for all expenditure of the bureaux and departments falling within their purview.
- 2.21. Principal officials shall note that controlling officers are required to obey all regulations made and directions or instructions given by the Financial Secretary for the safety, economy and advantage of public moneys and Government property. Principal officials have a duty to give fair consideration and due weight to honest, informed and impartial advice from the controlling officers.

CHAPTER 3: OFFICIAL SECRETS AND SECURITY

- 3.1. Principal officials shall note that they fall within the definition of "public servant" in the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) and must therefore abide by the provisions therein applicable to a "public servant".
- 3.2. Principal officials shall not reveal the agenda, papers or proceedings of the Executive Council, or any document communicated to them or any matter coming to their knowledge in their capacity as members of the Executive Council. Discussion and deliberation at the Executive Council shall be kept in strict confidence. The internal process through which a decision has been made shall not be disclosed.
- 3.3. Principal officials are required to take due care in the safe keeping of classified information entrusted to them. They shall bear in mind the general principle that dissemination of classified information shall be no wider than is required for the efficient conduct of the business at hand and shall be restricted to those who are authorised to have access to such information.

On stepping down from office

- 3.4. On stepping down from office, principal officials shall hand over government documents in their possession and ensure that all drafts and personal copies of such documents have been properly disposed of.

- 3.5. Principal officials shall note that all classified information, documents or other articles protected against disclosure by the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) which has come into their possession as a result of their appointment in the Government, remain covered by the Ordinance after their stepping down from office and may not be disclosed.
- 3.6. Principal officials shall note that they are liable to be prosecuted under the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) if, either in Hong Kong or abroad, they communicate, either orally or in writing, including publication in a speech, lecture, radio or television broadcast or in the press or in book form or otherwise, to any unauthorised person any information falling within the purview of the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) unless prior written approval has been obtained from the Chief Executive. The relevant provisions of the Official Secrets Ordinance continue to apply to principal officials after they have stepped down from office.

Evidence in court

- 3.7. Principal officials may be called upon to answer to subpoenas to give oral evidence and/or to produce official documents in Court relating to their official duties. In cases where oral evidence or the production of official documents is involved, the principal official concerned shall assess whether there are any grounds for suggesting that the giving of such evidence or the production of such documents would cause damage to the proper functioning of the public service or would in any way be contrary to the public interest. The principal official concerned shall seek advice from the Secretary for Justice in all such cases.

CHAPTER 4: INVOLVEMENT IN POLITICAL ACTIVITIES

- 4.1. Principal officials shall note that as prescribed public officers defined in the Chief Executive Election Ordinance (Chapter 569 of the Laws of Hong Kong), the Legislative Council Ordinance (Chapter 542 of the Laws of Hong Kong) and District Councils Ordinance (Chapter 547 of the Laws of Hong Kong), they are disqualified from being nominated as a candidate at an election of the Chief Executive, of the Legislative Council or of a District Council. They are also disqualified from being elected as an elected member of the Legislative Council or a District Council.
- 4.2. Principal officials shall declare to the Chief Executive whether they are in any way affiliated with any political party, whether they are members of any political party and whether they hold any office in any political party. Principal officials shall declare to the Chief Executive if there is any change in their status in relation to any political party. The declaration will be made available for public inspection on request.
- 4.3. For the purposes of this Code, "political party" has the same meaning as that provided for under section 31(2) of the Chief Executive Election Ordinance (Chapter 569 of the Laws of Hong Kong).
- 4.4. Principal officials shall note that while their freedom of association is protected by law, they are required to ensure that when taking part in activities organised by political parties, they shall observe the following rules and principles:
- (a) no actual or potential conflict of interest with the business of the Government and/or the official duties of the principal officials shall arise in their participation in such activities;
 - (b) the principal official's participation in such activities shall not cause any embarrassment to the Government, the Chief Executive or other principal officials;
 - (c) since the Government has a prior call at all times on the abilities, energies and attention of principal officials, any activities which may impair the performance of their official duties as principal officials or distract their attention must be avoided; and
 - (d) principal officials shall not sign or procure signatures to any public petition regarding the actions or proposals of the Government.

- 4.5. Principal officials, when considering to become a member of any political party or taking part in activities organised by political parties, shall ensure that no conflict shall arise with their oaths to uphold the Basic Law and their oaths of allegiance to the HKSAR.
- 4.6. In case of doubt, principal officials shall seek advice from the Chief Executive.

CHAPTER 5: PREVENTION OF CONFLICT OF INTEREST

- 5.1. Principal officials shall avoid putting themselves in a position where they might arouse any suspicion of dishonesty, unfairness or conflict of interest.
- 5.2. Principal officials shall observe the principles of fairness and impartiality in discharging their duties and in their dealings with members of the public and with their staff.
- 5.3. Principal officials shall refrain from handling cases with actual or potential conflict of interest.
- 5.4. Principal officials shall report to the Chief Executive any private interests that might influence, or appear to influence, their judgement in the performance of their duties.
- 5.5. During the term of office, principal officials shall not, without the consent in writing 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. The consent of the Chief Executive is likely to be given where a principal official is appointed to the relevant board of directors in his official capacity or in connection with his private family estate. A principal official may retain or accept honorary posts in non-profit making organisations or charitable bodies. In all these cases, the principal official shall ensure that there is no actual or apparent conflict of interest between his interests in such organisations or bodies and his official duties and that his interests in such organisations or bodies would not cause embarrassment to the Government, the Chief Executive or other principal officials of the Government.

Declaration and handling of investments/interests

- 5.6. Given that the principal officials will have access to highly sensitive information including commercially sensitive information, they shall declare their investments and interests for the purpose of securing public trust and confidence. The declaration will be made available for public inspection on request.
- 5.7. If it appears to the Chief Executive at any time that there is or may be a conflict of interest between a principal official's investments or interests and his official duties, the Chief Executive may require the principal official 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 Chief Executive.

Acceptance of advantages

- 5.8. Principal officials shall note that as public servants employed by the Government, they 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), and shall if necessary seek guidance from the Chief Executive as to the acceptance and retention of gifts, advantages or other benefits.

- 5.9. As a general rule, principal officials shall avoid accepting any gift or hospitality which might or might reasonably appear to compromise their judgement or place them under an improper obligation. Although the acceptance of hospitality or free service is not prohibited, principal officials shall take note of the relevant provisions in law and the following before accepting any such offer:
- (a) whether the acceptance of the hospitality or free service will lead to a conflict of interest with their official duties or place them in a position of obligation to the donor;
 - (b) whether the acceptance of the hospitality or free service will lead to embarrassment in the discharge of their functions; and
 - (c) whether the acceptance of the hospitality or free service will bring them or the public service into disrepute.
- 5.10. A principal official shall not accept entertainment from any person if the entertainment is likely, for example by reason of its excessive nature, or of the relationship between the principal official and the other person, or of the character of that person:
- (a) to lead to embarrassment of the principal official in the discharge of his functions; or
 - (b) to bring the principal official or the public service into disrepute.

Sponsored visits

- 5.11. A principal official may receive an invitation from a foreign government to make a sponsored visit in his official capacity. If the principal official wishes to accept the sponsorship in relation to the visit, he shall seek permission from the Chief Executive.
- 5.12. A principal official may receive an invitation from an outside organization to make a sponsored visit in his official capacity. If the principal official wishes to accept the sponsorship in relation to the visit, he shall seek permission from the Chief Executive.
- 5.13. If a principal official wishes to accept a sponsored visit for his spouse, he shall seek permission from the Chief Executive.

Register of gifts etc.

- 5.14. Principal officials shall note that they are subject to the provisions of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) and shall if necessary seek guidance from the Chief Executive as to the acceptance and retention of gifts, advantages or other benefits. In addition, principal officials 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 principal officials. The register will be made available for public inspection on request.

On stepping down from office

- 5.15. Within one year after stepping down from office, principal officials shall seek the advice of a committee appointed for this purpose by the Chief Executive 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. The proceedings of the committee shall be kept confidential but the advice given shall be made public.
- 5.16. Within one year after stepping down from office, principal officials shall not represent any person in connection with any claim, action, demand, proceedings, transaction or negotiation against or with the Government.
- 5.17. Within one year after stepping down from office, principal officials shall not engage in any lobbying activities on matters relating to the Government.

CHAPTER 6: TRAVEL**Travel in Hong Kong**

- 6.1. Each principal official shall be provided with the free use at his discretion of a car and driver in Hong Kong.

Travel outside Hong Kong

- 6.2. When travelling on duty outside Hong Kong, principal officials shall travel on first class at government expense. Where protocol requires the presence of the spouse, their spouses shall also travel on first class at government expense.
- 6.3. Principal officials (and their spouses) who are on duty outside Hong Kong shall be granted a subsistence allowance at the same rate and manner as those applicable to the highest-ranking civil servants. Principal officials are subject to the same rules and regulations in relation to subsistence allowance applicable to the highest-ranking civil servants.

Use of flight awards from government passages

- 6.4. There is no obligation on principal officials who travel on duty to claim flight awards from airlines. However, if and when such awards are claimed and credited to a principal official's mileage account, the principal official should report the awards to his bureau/department to facilitate planning for possible use of the awards for subsequent duty travel.
- 6.5. For flight awards earned from government passages, the first call on the use of such awards shall be for subsequent duty travel.
- 6.6. If an award is not expected to be used for subsequent duty travel before the expiry date of the award, the principal official may seek approval from the Chief Executive to use the award for private purposes.

CHAPTER 7: OTHERS**Reporting of criminal offences and attempted bribes**

- 7.1. Principal officials shall report to the appropriate authority all instances of crime, alleged crime including attempted bribery which they may come across in either their official or personal capacities. The appropriate authority is the Commissioner Against Corruption in the case of offences or alleged offences under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), the Independent Commission Against Corruption Ordinance (Chapter 204 of the Laws of Hong Kong) and the Elections (Corrupt and Illegal Conduct) Ordinance (Chapter 554 of the Laws of Hong Kong), and the Commissioner of Police in the case of other criminal offences.

- 7.2. Principal officials shall note that they have no discretion in deciding which cases to report.

Legal proceedings

- 7.3. Principal officials may institute legal proceedings for defamation in connection with matters arising out of their official duties. But before doing so, they shall notify the Chief Executive and seek prior permission from the Chief Executive for the use of any Government information and the involvement of other officers to give evidence in the legal proceedings. Principal officials instituting legal proceedings for defamation shall observe that the proposed legal action shall not bring the Government into disrepute.

- 7.4. When a principal official is served with a writ, or receives a letter threatening civil proceedings in which he or she may be named as a party in relation to any matters arising out of his employment or official duties, he shall immediately inform the Chief Executive and the Secretary for Justice.
- 7.5. When a principal official is involved in any criminal proceedings (whether arising out of his employment or official duties or otherwise), he shall immediately inform the Chief Executive.
- 7.6. It is open to a principal official injured by the wrongful act of a third party to institute proceedings against the third party.
- 7.7. In certain circumstances, the Government may provide legal representation to principal officials. Each case will be considered on its merits by the Chief Executive but in general, assistance will be provided only if the matter arises out of or in the course of the performance by the principal official of his official duties.
- 7.8. A principal official who has been granted legal assistance and has subsequently been awarded costs is required to refund to the Government all or part of the costs awarded to offset the legal expenses incurred by the Government.

28 June 2002

Richard M. F. YUEN *Private Secretary to Chief Executive*