

**Extract from draft minutes of meeting on
Panel on Constitutional Affairs on 25 July 2007**

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I. System of declaration of investments and interests by Principal Officials under the Accountability System

(LC Paper No. CB(2)2462/01-02(01) - Code for Principal Officials under the Accountability System published in the Gazette on 28 June 2002 (G.N. 3845)

LC Paper No. CB(2)2498/06-07(01) - Declarations of Interests of 15 Executive Council Members who are Principal Officials

LC Paper No. CB(2)2537/06-07(01) - 16 forms on Registration of Interests and Affiliation with Political Parties for Public Inspection completed by 15 Principal Officials under the Accountability System and the Director of the Chief Executive's Office

LC Paper No. CB(2)2537/06-07(02) - Guidance notes for completing the form on Registration of Interests and Affiliation with Political Parties for Public Inspection

LC Paper No. CB(2)2548/06-07(01) - Administration's paper on "System of Declaration of Investments and Interests by Principal Officials under the Accountability System")

Declaration of interests by family members

14. Mr LEE Wing-tat expressed concern that immediate family members of a PO might hold job position that would arouse potential conflict of interest. He pointed out that Professor CHAN Ka-keung, Secretary for Financial Services and the Treasury (SFST), should have declared that his wife was the executive director of Morgan Stanley before such information was revealed by the media, in order to avoid any suspicion of conflict of interest. Mr LEE said that the Administration should amend the Code to the effect that POs, where appropriate, should declare all matters which might arouse any potential or suspicion of conflict of interest.

15. Ms Margaret NG said that the system of declaration of investments and interests sought to protect the creditability of the Government. The more stringent the system was, the more confidence people had in the operation of the Accountability System. She urged the Administration to review whether or not a PO should make declaration on his spouse's occupation, investments, interests, etc. under the declaration system.

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16. SCMA said that Hong Kong was run by a clean Government. An effective legal system was in place to regulate the conduct of POs. POs, being defined as "public servants" under the relevant ordinances, were subject to the relevant provisions of the Prevention of Bribery Ordinance (Cap. 201) (POBO) and the Independent Commission Against Corruption Ordinance (Cap. 204). If their income and asset were found to be incommensurate with their position, they would be subject to the investigation of the Independent Commission Against Corruption (ICAC). In addition, Hong Kong was a transparent society; any improper conduct by a PO could easily be made public.

17. SCMA further said that the principles which POs should follow in ensuring that no actual or potential conflict of interest arose between their official duties and private interests were set out in Chapter 5 of the Code. The interests which should be declared by POs in the declaration forms were comprehensive. POs were required to declare their investments and properties, and joint investments and properties with their spouse and other persons if the PO had a beneficial interest. If a PO considered that the job position held by his/her spouse would give rise to potential conflict of interest, he should report to the CE. In the case of SFST, he had already done so. SCMA stressed that the Code was meant to apply to POs and not their spouses. The spouse of a PO had the right to choose his/her job, develop his/her career and decide on his/her investment portfolio. When the Code was drafted, consideration had been given to strike a right balance on the information to be declared by POs. SCMA said that, similar to other POs, SFST had set out the job and employer of his spouse in his internal declaration to the CE.

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18. Ms Emily LAU suggested that the Research and Library Services Division be requested to provide information on overseas practices relating to declaration of interests by spouses and close relatives of senior members of the Government. The Panel would then decide whether to follow up the matter.

19. Mr Albert HO said that according to the guidance notes for POs to complete the declaration forms, POs were required to declare any gifts received by him or his spouse which in any way related to his office as PO. As it was difficult to tell whether the gifts received by a PO were related to his office as PO, he suggested that family members of a PO, including his spouse and children, should be required to make full disclosure of the gifts received, if the value of the gifts exceeded a specified amount.

20. SCMA said that clause 5.14 of the Code dealt with acceptance and retention of gifts by POs. POs were required to declare gifts received by them and their relatives during official and public functions. Under the POBO, public officers were prohibited from receiving gifts exceeding certain specified amounts. POs and their family members would be subject to the investigation of the ICAC if they accepted valuable gifts in their official capacity without making any declaration.

21. Mr Martin LEE expressed disappointment that the Administration was complacent and did not intend to consider any of the suggestions made by members

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to improve the existing declaration system. He asked whether the Administration was worried about the difficulty in recruiting qualified persons to take up the office of POs if a stringent declaration system was in place.

22. SCMA responded that it was a question of where to draw the line. The Administration had to strike a balance between maintaining a system to prevent conflict of interest and respecting the privacy of POs and their family members. The declaration system was drawn up in 2002 after thorough consideration. It covered a wide range of areas including declaration of investments, interests, acceptance of gifts, political affiliation and disclosure of information. While he noted the concerns raised by members about potential or suspicion of conflict of interest, there was no substantive evidence indicating that the system was at stake. In fact, the declaration system had proven to be effective in the past five years and the Administration did not see the need to change it.

23. Dr YEUNG Sum said that while the existing declaration system had its merits, it should keep pace with social development. The existing system sought to address the general situation but not a specific situation. The close connection between the duties of SFST and those of his wife did arouse suspicion of conflict of interest. It was only fair for members to request the Administration to improve the existing declaration system with a view to safeguarding the integrity of the Government.

24. SCMA responded that a PO would exercise his judgment on whether or not any potential conflict of interest existed and if potential conflict of interest existed, he should declare such an interest to the CE. Each PO was cautious about his action and there was nothing to hide from the public. The Administration would review the declaration system from time to time and if there was a need to make any changes, it would take into account the views given by members.

25. Mr Albert HO questioned whether it was appropriate for SFST to remain as a director/member of a number of public organisations / advisory committees. He cited, for example, that SFST should withdraw from the chairmanship of the Insurance Advisory Committee and the membership of the Banking Advisory Committee.

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26. SCMA responded that the Administration would give a written response after the meeting. To his understanding, SFST had resigned as the Chairman of the Consumer Council when he assumed the office of PO. It was his statutory duties to be a member/director of some of these organisations (e.g. Mass Transit Railway Corporation) in which the Government was the shareholder.

(Post-meeting note : The Administration's written response was issued to the Panel vide LC Paper No. CB(2)2666/06-07(01) on 4 September 2007)

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