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Panel on Public Service
Special meeting on 14 April 2012

Background brief on the
impact of Chief Executive's accepting hospitality
offered by tycoons on the morale of civil servants

Purpose

This paper sets out information relating to incidents of acceptance of hospitality by the Chief Executive ("CE") offered by tycoons and their impact on the morale of civil servants, as well as the concerns expressed by Members at meetings of the Council and House Committee.

Background

Media reports on acceptance of hospitality by CE

2. Over the past two months, there have been many media reports and commentaries on CE's acceptance of hospitality offered by tycoons. On 20 February 2012, it was reported that in the preceding weekend, CE attended a spring gathering banquet of a VIP club at the City of Dreams resort in Macau, and the banquet was also attended by "gambling club operators, members of loan-sharking syndicates, night-club personnel and many heavyweights of dubious background". According to press reports, remarks made by CE at the radio programme Talkabout of the Radio Television Hong Kong on 22 February 2012 and information provided to Members in replying to urgent questions at the Council meeting on 29 February 2012, CE accepted on several occasions passages by yachts and private jets owned by tycoons:

- (a) in a weekend in February 2012, CE and his wife stayed overnight on a yacht, owned by Mr Charles HO Tsu-kwok, in Macau with tycoon friends and returned to Hong Kong on the yacht;

- (b) CE and his wife travelled on a private jet of a friend to Phuket, Thailand on 9 February 2012 and back to Hong Kong on 12 February 2012, and they were accommodated at a private yacht of a friend during the three nights of the trip;
- (c) in April 2011, CE and his wife took a one-way yacht ride from Macau to Hong Kong and they were accommodated at a private yacht of a friend during the two nights of the trip; and
- (d) in October 2009, CE and his wife took a round-trip ride on a chartered jet from Hong Kong to Japan.

3. It was also reported that in renting a luxurious 630 m² apartment in East Pacific Garden at Futian District, Shenzhen, CE had obtained concessions such as a rental below the market rate and a waiver of the renovation expenses in excess of 10 million dollars. He was also alleged to have sold his wine collection to a businessman with whom the Government had official dealings.

Concerns about the propriety of CE's activities

4. The concerns raised by the media, members of the public and Members about the propriety of CE's activities, as well as information and explanations given by CE or the Administration are summarized in **Appendix I**.

Concerns of civil servants

5. Following the media reports on CE's acceptance of hospitality by tycoons, a number of serving or retired civil servants made telephone calls to radio programmes on current affairs, expressing the view that CE's acceptance of hospitality offered by tycoons not only had given rise to public query that transfer of benefits might have been involved but had also dealt a blow to the image of probity and prestige of the civil service, thus impacting on the morale of the civil servants. They said that should civil servants engage in activities similar to those of CE, they would have been subject to disciplinary proceedings and even criminal sanctions for accepting advantages. Some civil servants considered that the incidents revealed a double standard that while they were subject to stringent regulation on acceptance of advantage, CE was not subject to any such regulation. They considered that CE's acceptance of hospitality had dealt a blow to the morale of civil servants.

6. In an open letter to members of the civil service dated 28 February 2012, CE wrote, "I know that the recent media coverage of my travel and retirement plans must have been unsettling for the civil service that I lead and with which I work so closely. What I find especially hurtful are the criticisms that I have been tough on the civil service but lenient on myself."

7. The relevant regulations on the acceptance of advantages and guidelines on dealing with conflict of interest by civil servants and principal officials are outlined in the paragraphs 8 to 17 below for members' reference.

Regulation on acceptance of advantages by civil servants, principal officials etc.

8. Under section 3 of the Prevention of Bribery Ordinance (Cap. 201) (POBO), any prescribed officer¹ who, without the general or special permission of CE, solicits or accepts any advantage² is guilty of an offence. An offence under section 3 does not require that the prosecution to prove that the advantage was solicited or accepted for a corrupt purpose.³

9. To help cushion the impact of section 3 of POBO on the private lives of prescribed officers as ordinary citizens, the Acceptance of Advantages (Chief Executive's Permission) Notice (AAN) has been put in

¹ Prescribed officers include, amongst others, principal officials, judicial officers and civil servants.

² In POBO, unless the context otherwise requires –
"advantage" (利益) means –

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise or forbearance from the exercise of any right or any power or duty; and
- (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e),

but does not include an election donation within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), particulars of which are included in an election return in accordance with that Ordinance.

³ It is an offence under section 4 of POBO for CE or any public servant, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, to solicit or accept any advantage as an inducement to or reward for or otherwise on account of his acting in such capacity. It is an offence under section 5 of POBO for CE or any public servant, without lawful authority or reasonable excuse, to solicit or accept any advantage as an inducement to or reward for or otherwise on account of giving assistance in regard to public sector contracts. (Public servants include, amongst others, prescribed officers and employees of a public body.)

place. AAN gives general permission for prescribed officers to accept advantages that fall outside four restricted categories (i.e. gift, discount, loan of money and passage). For advantages which fall within the restricted categories, general permission has also been given in AAN for their acceptance in certain circumstances, and special permission has to be obtained in other circumstances. In respect of gifts and passages, general permission is given in AAN for acceptance, but not solicitation, of passages of values up to the following amounts –

	from close personal friends	from other persons
on a special occasion (such as the officer's wedding, birthday, retirement or any other occasion when gifts are traditionally given or exchanged):	\$3,000	\$500
on other occasion:	\$1,500	\$250

10. It is worth noting that one of the conditions for granting general permission in AAN for acceptance of advantages from close personal friends and other persons is that there should be no "official dealings" between the donor and the officer or the department in which the officer works.

Regulation on acceptance of advantages by CE

11. As CE is not a prescribed officer, section 3 of POBO is not applicable to CE. When the Prevention of Bribery (Amendment) Bill 2007 was introduced to make certain provisions in POBO applicable to CE, the Administration advised the relevant Bills Committee that there were serious practical constraints in applying section 3 of POBO to the acceptance and solicitation of advantages by CE. While prescribed officers could seek CE's permission under section 3 for the solicitation or acceptance of advantages, CE could not grant permission to himself, and this posed structural difficulties in fitting CE within the framework of the offence provisions of section 3. Moreover, section 3 was premised upon the existence of a principal-agent relationship. CE was however not an agent of the Government and had no equivalent principal within the Government.

12. Politically appointed officials are also subject to section 3 and other relevant provisions in POBO. In addition, under the Code for Officials under the Political Appointment System, politically appointed officials shall if necessary seek guidance from CE as to the acceptance and retention of gifts, advantages or other benefits. The Administration has advised that CE, though not a politically appointed official, voluntarily observes the Code (except in cases where there is no officer at a higher rank from whom he can seek approval).

13. In reply to the urgent questions on the subject matter raised by Members at the Council meeting on 29 February 2012, the Administration stated that "CE has drawn up internal rules governing his acceptance of travelling on a friend's private jet or yacht. According to these rules, the CE may consider accepting such an invitation on condition that there is no conflict of interest, but he has to pay the fares for the same journey on public transport to show that he has not saved any travelling expenses by accepting the invitation."

14. Under common law, CE could be prosecuted for the offence of misconduct in public office. The elements of the common law offence were enunciated by the Court of Final Appeal in *Sin Kam Wah v HKSAR* (2005). The offence was committed when a public official in the course of his public office wilfully committed misconduct and the misconduct in question was serious. Acts of misconduct included abuse of official position for personal gains.

Conflict of interest

15. According to Civil Service Bureau Circular No. 2/2004, civil servants are required to make a conscious effort at all times to avoid any real or apparent conflict of interest that may arise or has arisen. They should declare to their supervisors all relevant interests which may or may be seen to conflict with their official duties.

16. Chapter 5 of the Code for Officials under the Political Appointment System deals with the prevention of conflict of interest. Paragraphs 5.9 and 5.10 of the Code are reproduced below for easy reference:

"5.9 As a general rule, politically appointed 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, politically appointed 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 politically appointed 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 official and the other person, or of the character of that person:

- (a) to lead to embarrassment of the politically appointed official in the discharge of his functions; or
- (b) to bring the politically appointed official or the public service into disrepute."

17. In addition, according to paragraph 5.11 to 5.13 of the Code, if a political appointed official wishes to accept a sponsored visit in his official capacity or a sponsored visit for his spouse, he shall seek the permission from CE.

Concerns and views of Members and CE's responses

18. Since the media reported on CE's acceptance of hospitality offered by tycoons, Members have expressed grave concern over the propriety of such activities of CE. A special House Committee meeting was convened on 21 February 2012 to deliberate on Hon CHAN Wai-yip's proposal for him to raise an urgent oral question on the matter at Council meeting on 22 February 2012. While this proposal was not supported by the House Committee, the House Committee agreed at its meeting on 24 February 2012 to support six Members in seeking the President's permission to raise urgent oral questions at the Council meeting on 29 February 2012 and to invite CE to attend a Question and Answer (Q&A) Session to answer Members' questions in person in connection with his acceptance of hospitality.

19. Prior to the Council meeting on 29 February 2012, CE gave details of the trips he had taken on private yachts and private jets, as well as the agreement to rent the apartment in Shenzhen in an article in the South China Morning Post and at a radio programme of the Hong Kong Commercial Radio on 26 February 2012. CE also announced on that day that he had set up an Independent Review Committee on the Prevention and Handling of Potential Conflicts of Interests. The Committee was chaired by Mr Andrew LI Kwok-nang, former Chief Justice of the Court of Final Appeal, with the following terms of reference: (i) to review the existing regulatory frameworks and procedures for handling of potential conflicts of interests (including the arrangements for declaration of investment/interests and acceptance of advantages/ entertainment/hospitality) concerning CE, Non-Official Members of the Executive Council (ExCo), and Officials under the Political Appointment System, and (ii) to make recommendations on improvement measures. The Committee will submit a report with recommendations to CE in around three months' time.

20. At the Council meeting held on 29 February 2012, the Administration provided replies to eight urgent written questions raised on the matter. In the replies, the Administration stated that CE thanked the media for the reports and Members' questions, which shed light on and allow him to better understand that public servants must be "whiter than white". CE had reflected deeply over the recent events again and again, and come to the conclusion that there was a gap between the current rules, with which he had faithfully complied, and the expectations of Hong Kong people. In consequence, there had been disappointment from the community. CE realised from the events that there was room for greater vigilance and sensitivity in his handling of the relevant trips.

21. CE also attended a special Q&A Session on 1 March 2012 to answer Members' questions. He stated at the Q&A Session that in order to appease public doubt, he had decided to dissolve the rental agreement for the apartment in Shenzhen. He also made a solemn apology for the series of incidents causing concern among members of the public, the media, Members and civil servants, and undermining people's confidence in the system of Hong Kong. As CE declined to disclose the identities of the tycoons who offered him the hospitality and other relevant information, and 20 Members who wished to ask questions at the Q&A Session were unable to do so due to time constraint, some Members considered it necessary to probe further to ascertain whether any conflict of interest or transfer of benefits had been involved in the activities of CE.

22. At the House Committee meeting held on 2 March 2012, Hon LEE Wing-tat proposed that the Panel on Constitutional Affairs be authorized to exercise the powers conferred by section 9(1) of the Legislative Council

(Powers and Privileges) Ordinance (LCPPO) for the purpose of inquiring into the matter. Three other Members (Hon LEE Cheuk-yan, Hon Cyd HO and Hon CHEUNG Kwok-che) proposed a select committee be appointed to conduct the inquiry. Both proposals were not supported by the House Committee. Some Members also expressed at the meeting their intention to trigger off the mechanism to impeach CE under Article 73(9) of the Basic Law.

23. At the Council meeting on 22 March 2012, a resolution moved by Hon LEE Wing-tat to authorize the Panel on Constitutional Affairs to conduct the inquiry was debated and negatived.

Latest developments

24. On 1 March 2012, Hon LEE Cheuk-yan wrote to the Chairman of the Panel, proposing to hold a special meeting to discuss the impact of the CE's acceptance of hospitality offered by tycoons on the morale of civil servants. At the regular Panel meeting held on 19 March 2012, members agreed that a special meeting be held to receive views from civil service staff unions on the matter.

25. Hon Tanya CHAN would move a motion on "Vote of no confidence in the Chief Executive" at the Council meeting of 18 April 2012.

Relevant papers

26. A list of relevant papers and hyperlinks to useful websites is in **Appendix II**.

Appendix I

Summary of concerns raised about the propriety of CE's activities as well as information and explanations provided by CE and/or the Administration

Concern	Information and explanations provided by CE and/or the Administration
(a) It was inept for CE to attend a banquet which was also attended by people with dubious background.	CE and his wife were at the scene to watch a show by Taiwanese singer FEI Yu-ching and they had no idea of the presence of such types of people.
(b) As Mr Charles HO Tsu- kwok was a firm supporter for Mr Henry TANG, who was one of the candidates running for the Chief Executive office, CE's staying overnight on the yacht owned by Mr HO might give rise to the impression that CE favoured that candidate.	CE has known for years all the three candidates running for the Chief Executive office and he also has friends in all three camps. CE wishes that the public can understand he has to get a full picture of what is happening in the community. Hence, he has been maintaining contact with people from all walks of life, including the grassroots, the middle class and people from different economic sectors.
(c) By riding on super-yacht and private jets, CE accepted advantages, which were the differences between the full costs and the fares for the same journey on public transport that he had paid.	CE has drawn up internal rules governing his acceptance of travelling on a friend's private jet or yacht, under which he may consider accepting such an invitation on condition that there is no conflict of interest, but he has to pay the fares for the same journey on public transport to show that he has not saved any travelling expenses by accepting the invitation. In accordance with such rules, CE had paid – <ul style="list-style-type: none"> i) \$500 (the price of two one-way ferry tickets) for each of the two trips from Macau to Hong Kong; ii) \$5,900 (the price of two round-trip economy class flight tickets

Concern	Information and explanations provided by CE and/or the Administration
	<p>between Phuket and Hong Kong) for the rides on private jet between the two places; and</p> <p>iii) \$188,000 (the share of total costs including charter fees, fuel, parking etc. for two people) for the ride on chartered jet to Japan.</p>
<p>(d) The rental of the apartment in Shenzhen was below market rate and the developer, Mr WONG Cho-bau, spent millions of renovation expenses for CE.</p>	<p>A few years ago, CE started to look for a suitable short-term place of residence in Macau or the Mainland as his residence after departure from the office in July 2012. Knowing that Mr WONG intended to convert the unit from a club house into a residential penthouse, CE and his wife expressed interest in 2010 in renting it after the conversion. In February 2012, CE's wife signed a three-year tenancy agreement for renting the apartment for annual rental of RMB 800,000, which CE said was the market rate. The conversion of the unit is the sole responsibility of the owner, including the scope and costs of the alteration and fitting-out. While works were in progress, CE and his wife were invited to give their views on the alteration and fitting-out, on the premise that their views would not affect the progress of the works. (In a press advertisement on 26 February 2012, the developer stated that the total alteration and fitting costs were less than RMB 3 million.)</p>
<p>(e) As Mr WONG Cho-bau, developer of the apartment which CE had rented, is one of the shareholders of Digital Broadcasting Corporation (DBC), it is</p>	<p>Normal social contacts with friends, including the acceptance of entertainment from friends, are not required to be declared at ExCo. When ExCo discussed the issues of the licence of DBC, CE did not associate his future accommodation plan in Shenzhen</p>

Concern	Information and explanations provided by CE and/or the Administration
<p>questionable whether CE did declare interest when the issues of the licence of DBC were discussed at ExCo meetings.</p>	<p>with one of the shareholders of DBC, hence he did not make any declaration.</p>
<p>(f) The private jet on which CE and his wife took a ride to Phuket is owned by tycoon Mr CHEUNG Chung-kiu, who is the chairman of Cross-Harbour Holdings, which owned 50% of the Western Harbour Tunnel Company and 39.5% of the Tate's Cairn Tunnel Company, it is questionable whether CE did declare interest when the issues relating to these companies were discussed at ExCo meetings.</p>	<p>Some of the persons taking part in the four activities [see paragraph 3 above] with CE and the developer of CE's rented apartment in Shenzhen have official dealings with the Government to a different degree involving different nature of business. However, CE stressed that he had accepted the offer of private passages on the premise that the invitations involved no conflict of interest, and that he had calculated and paid the relevant costs in strict accordance with the internal rules. The rental of the property at Shenzhen was also at market rate without any concession.</p>
<p>(g) As it had been reported that the Independent Commission Against Corruption (ICAC) was investigating complaints against CE, there might be a conflict of role on the part of CE when he dealt with matters relating to the appointment of the Commissioner or Deputy Commissioners of ICAC.</p>	<p>The Administration announced on 28 March 2012 that to avoid any perception of conflict of interest, CE had delegated his authority under the ICAC Ordinance to appoint a Deputy Commissioner to the Chief Secretary for Administration (CS) and that CS had independently exercised this authority to extend the appointment of Mr Daniel LI until the end of July.</p>
<p>(h) It is inappropriate for CE to have private transaction with Mr Jim Thompson (i.e. selling his private wine</p>	<p>In 2010, CE sold his private collection to Mr Thompson at a price based on professional valuation and CE donated all the proceeds, totaling \$2 million, to the Red</p>

Concern	Information and explanations provided by CE and/or the Administration
<p>collection to him), with whom the Government had official dealings (in 2003, the Government leased the former Central Ordnance Munitions Depot, Shouson Hill to a wine cellar operated by Mr Thompson for a monthly rent \$2,700.) CE claimed tax deduction for the donations after donating all the sale proceeds to charitable organizations.</p>	<p>Cross, Community Chest, and Society for Promotion of Hospice Care.</p> <p>CE's Office did not recommend, whether verbally or in writing, to the department concerned that they lease the facility to that company when the lease was renewed after an open tender at the prevailing market rent in 2010. It is CE's rights to report his charitable donations for the purpose of tax deduction under the Inland Revenue Ordinance.</p>
<p>(i) No acting arrangement was made during CE's private visits to Macau in February 2012.</p>	<p>While CE is out of Hong Kong for duty visit or on vacation, so long as he is able to return to Hong Kong and perform his role within a short span of time when he situation so requires, it is not necessary to make any acting arrangement.</p>

Appendix II

Impact of Chief Executive accepting hospitality offered by tycoons on the morale of civil servants

List of relevant papers

Date	Meeting / Event	References
—	—	Code for Officials under the Political Appointment System http://www.cmab.gov.hk/doc/issues/code_en.pdf
26.2.2012	—	The Administration's press release on "Government sets up independent committee to review regulatory frameworks and procedures for prevention and handling of potential conflicts of interests" http://www.info.gov.hk/gia/general/201202/26/P201202260237.htm The Administration's press release on "CE provides detailed information in response to recent media report about him" http://www.info.gov.hk/gia/general/201202/26/P201202260288.htm
28.2.2012	—	The Administration's press release on a letter by the Chief Executive to members of the civil service http://www.info.gov.hk/gia/general/201202/28/P201202280592.htm

Date	Meeting / Event	References
29.2.2012	Council Meeting	<p>Council question raised by Hon Albert CHAN Wai-yip on acceptance of passage and discounts by public officers http://www.info.gov.hk/gia/general/201202/29/P201202290371.htm</p> <p>Council question raised by Hon Cyd HO Sau-lan on persons with official dealings with the Government providing advantages and discounts to public officers http://www.info.gov.hk/gia/general/201202/29/P201202290391.htm</p> <p>Council question raised by Hon CHEUNG Kwok-che on relevant codes and regulations governing the acceptance of entertainment by public officers http://www.info.gov.hk/gia/general/201202/29/P201202290411.htm</p> <p>Council question raised by Hon LEE Cheuk-yan on arrangements for public officers http://www.info.gov.hk/gia/general/201202/29/P201202290415.htm</p> <p>Council question raised by Hon Alan LEONG Kah-kit on acting arrangement for the Chief Executive during leave and related matters http://www.info.gov.hk/gia/general/201202/29/P201202290356.htm</p> <p>Council question raised by Hon Paul TSE Wai-chun on investigation of offences under the Prevention of Bribery Ordinance involving public officers http://www.info.gov.hk/gia/general/201202/29/P201202290363.htm</p>

Date	Meeting / Event	References
		<p>Council question raised by Hon LEE Wing-tat on persons with official dealings with the Government leasing flats to public officers http://www.info.gov.hk/gia/general/201202/29/P201202290366.htm</p> <p>Council question raised by Hon KAM Nai-wai on public officers engaging in private dealings http://www.info.gov.hk/gia/general/201202/29/P201202290370.htm</p>
1.3.2012	Council meeting (CE's Question and Answer session)	Hansard (Floor) http://www.legco.gov.hk/yr11-12/chinese/counmtg/floor/cm0301-confirm-ec.pdf

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