

**Recommendations of the Independent Review Committee for the
Prevention and Handling of Potential Conflicts of Interests**

Recommendation 1: The IRC **recommends** that, in deciding on conflict of interest questions concerning PAOs, the CE should adopt an approach which should be at least as stringent as that applicable in the Civil Service.

Recommendation 2: The IRC **recommends** that the CE should formulate, adopt and publish the guidelines applicable to his consideration and handling of conflict of interest questions concerning PAOs.

Recommendation 3: The IRC **recommends** that, where any PAO has withdrawn from the decision-making process in relation to any matter due to conflict of interest, this fact should be stated as and when the decision concerning that matter is publicly announced by the Administration, identifying the PAO in question and the nature of the interest involved.

Recommendation 4: The IRC **recommends** that the PAO Code should be amended to make clear that in the event of any allegation of breach of the PAO Code relating to conflicts of interests by PAOs, the CE after due process would decide on whether breach is established and if so, on the applicable sanctions, including warning, public reprimand, suspension or dismissal; or in the case of Principal Officials, recommendation to the Central People's Government for their suspension or dismissal. The relevant contracts of employment involving PAOs should enable such sanctions to be imposed.

Recommendation 5: The IRC **recommends** that the CE should formulate, adopt and publish guidelines for considering applications by PAOs for special permission to solicit or accept advantages, which should be at least as stringent as those applicable in the Civil Service.

Recommendation 6: The IRC **recommends** that the section in the PAO Code concerning the acceptance of advantages should be re-formulated to have a separate and specific provision reminding PAOs of –

- (a) the POBO and the Independent Commission Against Corruption Ordinance (Cap.204), including in particular section 3 of the POBO which provides that solicitation or acceptance of advantages without permission is a criminal offence;
- (b) section 2(2) of POBO which provides that an official solicits or accepts an advantage if he or any other person on the his behalf, directly or indirectly, solicits or accepts any advantages, whether for himself or any other person; and
- (c) the requirement to seek special permission from the CE to solicit or accept advantages

in circumstances other than those for which general permission has been given by the AAN [Acceptance of Advantages (Chief Executive's Permission) Notice].

Recommendation 7: The IRC **recommends** that the section in the PAO Code concerning the acceptance of advantages should be re-formulated to have a separate and specific provision giving guidance for PAOs on the acceptance of advantages. This provision should only deal with advantages and should not be confused with matters which may amount to entertainment.

The provision should be amended to make clear that in deciding whether to accept any advantage, apart from observing the relevant legal provisions, the PAO shall consider whether, having regard to matters such as the frequent or excessive nature of the advantage, the relationship between the official and the offeror, and the character or reputation of the offeror, acceptance of the advantage by the PAO is likely –

- (a) to lead to a conflict of interest with the PAO's official duties;
 - (b) to place the PAO in a position of obligation to the offeror or under any improper obligation;
 - (c) to compromise the judgement of the PAO or to lead to a reasonable perception of such compromise;
 - (d) to lead to embarrassment of the PAO or the Government; or
 - (e) to bring the PAO or the Government into disrepute bearing in mind public perception.
- (Underlined parts indicate additions to existing guidelines.)*

The provision should make clear that, when in doubt, the PAO shall seek guidance from the CE on the acceptance of any advantage, irrespective of whether special permission is required. The CE should in giving guidance adopt an approach which is at least as stringent as that in the Civil Service.

Recommendation 8: The IRC **recommends** that the section in the PAO Code concerning the acceptance of advantages should be re-formulated to include a provision which makes clear that any advantage received by a PAO or his spouse from any organization, person or government (other than the HKSAR Government) which in any way relates to his office as PAO, i.e. in his official capacity, belongs to the Government, unless permission is given for the PAO to accept or retain the advantage personally.

Recommendation 9: The IRC **recommends** that any blanket permission given by the CE for PAOs to accept advantages, received in official capacity or otherwise, should be published to enhance transparency.

Recommendation 10: The IRC **recommends** that the PAO Register of Gifts etc. should be renamed the PAO Register of Advantages and should cover –

- (a) All advantages (gifts, passages and other advantages) of an estimated value of over \$400 received by a PAO or his spouse in official capacity, indicating –
 - (i) that they are not accepted or retained personally by the PAO and thus belong to and would be dealt with or disposed of by the Government; or
 - (ii) that they are accepted or retained personally by the PAO in accordance with any general or special permission given by the CE, indicating their estimated values.
- (b) All advantages received by a PAO in his private capacity and accepted in accordance with any special permission given by the CE (or under his delegated authority), indicating their estimated values.

Recommendation 11: The IRC **recommends** that the section in the PAO Code concerning the acceptance of entertainment should be re-formulated to have a separate and specific provision under the heading “Acceptance of entertainment” providing guidance for PAOs on the acceptance of entertainment.

The provision should be amended to make clear that in deciding on the acceptance of entertainment (that is, lunches, dinners and the like and any accompanying performance), the PAO shall consider whether, having regard to matters such as the lavish or excessive nature of the entertainment, the relationship between the official and his host, and the character or reputation of his host or known attendees, attendance by the PAO is likely –

- (a) to lead to a conflict of interest with the PAO’s official duties;
 - (b) to place the PAO in a position of obligation to the host or under any improper obligation;
 - (c) to compromise the judgement of the PAO or to lead to a reasonable perception of such compromise;
 - (d) to lead to embarrassment of the PAO or the Government; or
 - (e) to bring the PAO or the Government into disrepute bearing in mind public perception.
- (Underlined parts indicate additions to existing guidelines.)*

The provision should also make clear that, when in doubt, the PAO shall seek guidance from the CE on the acceptance of any entertainment. The CE should in giving guidance adopt an approach which is at least as stringent as that in the Civil Service.

Recommendation 12: The IRC **recommends** that the section in the PAO Code concerning the acceptance of advantages and entertainment should include an additional provision reminding that a PAO should exercise his best endeavours to ensure that his spouse and/or children do not accept any advantage or entertainment where it is likely to lead to the PAO being placed in a position referred to in the guidelines set out above for the acceptance of advantages and entertainment. (Recommendations 7 and 11)

Recommendation 13: The IRC **recommends** that the Administration should conduct a review of the control regime for post-office outside work of PAOs, seeking such advice as it considers appropriate from the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials.

Recommendation 14: The IRC **recommends** that the differences in the nature of employment of PAOs and civil servants should be recognized and taken into account in considering whether and if so, how the control arrangements for PAOs should be revised in the Administration's review.

Recommendation 15: The IRC **recommends** that, in the review of the control regime for post-office outside work of PAOs, the following possibilities may be considered:

- (a) whether to provide for different control periods for PAOs of different ranks with different lengths of service; and
- (b) whether to make the control restriction on the advice of the Advisory Committee legally binding.

Recommendation 16: The IRC **recommends** that legislation should be enacted to render it a criminal offence for the CE to solicit or accept any advantage without the general or special permission of a statutory Independent Committee. This would in effect apply to the office of the CE the regime of section 3 of the POBO applicable to PAOs and civil servants. The penalties should be the same as those for an offence under section 3 of the POBO, i.e. a maximum of one year's imprisonment and a fine of \$100,000.

Recommendation 17: The IRC **recommends** that the legislation in establishing the Independent Committee should provide for the followings:

- (a) The Independent Committee should consist of three members, including a Chairman, appointed jointly by the Chief Justice and the President of LegCo.
- (b) The Chairman and the other two members of the Independent Committee should be permanent residents of the HKSAR and should be persons of high standing in the community. Serving ExCo Members, LegCo Members, District Council Members, PAOs, civil servants, judges and other prescribed officers should be ineligible for appointment. They should be appointed for a renewable fixed term of, say not more than three years. Decisions of the Independent Committee should be made by majority.
- (c) The Independent Committee's statutory terms of reference should be –
 - (i) to give general permission to the CE to solicit or accept advantages in certain defined circumstances; and
 - (ii) to give special permission to the CE to solicit or accept advantages in particular cases upon application by the CE.
- (d) The Independent Committee should be served by a secretariat which is independent of the CE's Office. It may be an existing independent secretariat serving various

independent bodies.

Recommendation 18: The IRC **recommends** that the Independent Committee should publish a Notice setting out the scope of general permission and the procedure for the application for special permission.

Recommendation 19: The IRC **recommends** that the Independent Committee should adopt and publish guidelines for giving special permission, which generally should be at least as stringent as those applicable to PAOs and in the Civil Service.

Recommendation 20: The IRC **recommends** that the Independent Committee should consider –

- (a) giving general permission to the CE to accept the following advantages offered to him (or his spouse) in his official capacity:
 - (i) gifts up to \$400 from any person;
 - (ii) gifts above \$400 up to \$1,000 from any person if the gift is inscribed with the CE's name or is received by the CE (or his spouse) as the guest of honour or an officiating guest; and
 - (iii) invitations to functions or performances for the CE and his spouse at value up to \$2,000 per head.
- (b) giving general permission to the CE to accept advantages offered to him (or his spouse) for personal use or retention as a matter of protocol by government authorities including on the Mainland.

Recommendation 21: The IRC **recommends** that the CE Register of Gifts should be renamed the CE Register of Advantages and should cover –

- (a) All advantages (gifts, passages, and other advantages) of an estimated value of over \$400 received by the CE or his spouse in official capacity, indicating –
 - (i) that they are not accepted or retained personally by the CE and thus belong to and would be dealt with or disposed of by the Government; or
 - (ii) that they are accepted or retained personally by the CE in accordance with any general or special permission given by the Independent Committee, indicating their estimated values.
- (b) All advantages received by the CE in his private capacity and accepted with the special permission of the Independent Committee, indicating their estimated values.

Recommendation 22: The IRC **recommends** that legislation should be enacted to make it a criminal offence for any person to offer any advantage to the CE, without lawful authority or reasonable excuse, where the person has any dealings with the Government. Such legislation would broadly be along the lines of the present section 8 of the POBO, and should make clear that offers of advantages by persons having “any dealings with the Government” would not be caught where

the acceptance of advantages by the CE is covered by general permission.

Recommendation 23: The IRC **recommends** that the CE in Council should decide as a matter of policy that the CE has the duty to observe the PAO Code, including Chapter 5 relating to conflicts of interest.

Recommendation 24: The IRC **recommends** that –

- (a) in observing the PAO Code, where the CE has to handle and make decisions for himself, he should adopt standards which are at least as stringent as those he would apply in deciding similar matters for PAOs; and
- (b) in particular, in deciding on conflict of interest questions concerning himself, the CE should adopt an approach which is at least as stringent as that applied by him on such questions concerning PAOs, following his published guidelines for handling of conflict of interest questions concerning PAOs, and that he may seek the advice of ExCo, if and as he considers appropriate.

Recommendation 25: The IRC **recommends** that, where the CE has withdrawn from the decision-making process in relation to any matter due to conflict of interest, this fact should be stated as and when the decision concerning the matter is publicly announced by the Administration, identifying the nature of the interests involved and stating who handled the matter with the CE's withdrawal.

Recommendation 26: The IRC **recommends** that, in accordance with his duty to observe the PAO Code, the CE should lodge the regular declaration of investments and interests, and also declare any private interest that might influence or appear to influence his judgement in the performance of his duties, as required by the PAO Code, to be deposited with the Permanent Secretary of the CE's Office.

Recommendation 27: The IRC **recommends** that the CE in Council should decide as a matter of policy that the CE as the President of ExCo should observe the declaration system applicable to ExCo Members, including both the regular declaration of interests (including registrable interests subject to public inspection and financial interests to be kept confidential, and notification of any change to declared interests) and ad hoc declaration of interest in specific matters put before ExCo.

Recommendation 28: Bearing in mind the matters discussed above, the IRC **recommends** that the CE should exercise great vigilance and adopt a cautious approach in deciding on the acceptance of entertainment in accordance with the guidance laid down in the PAO Code to be revised as recommended. That approach should be at least as stringent as that which is expected of PAOs and in the Civil Service. It is appropriate for the CE to follow the maxim: "if in doubt, don't".

Recommendation 29: The IRC **recommends** that if, following review of the post-office outside work regime for PAOs, the advice of the Advisory Committee is made legally binding on a former PAO, the Administration should then consider a similar change for a former CE.

Recommendation 30: The IRC **recommends** that the CE in Council should publish a document setting out the system it has adopted for dealing with conflict of interest. This would include the declaration system, the procedure for ascertaining whether possible conflicts of interest may have arisen and the approach and guidelines for their consideration and resolution. It should also include the procedure for the investigation of alleged breaches of the declaration requirements and the available sanctions such as warning, public reprimand or removal.

Recommendation 31: The IRC **recommends** that the CE in Council should publish annual statistics of the number of occasions on which one or more Members withdrew from its decision-making process due to conflict of interest.

Recommendation 32: The IRC **recommends** that the documents relating to the regulatory regime for prevention and handling of conflict of interests concerning the CE, PAOs and ExCo Members should be made accessible on the relevant websites, in so far as they are not at present.

Recommendation 33: The IRC **recommends** that the CE's, PAOs' and ExCo Members' open declarations of investments and interests subject to public inspection should be made accessible on the relevant websites, in so far as they are not at present.

Recommendation 34: The IRC **recommends** that the CE Register of Advantages, the PAOs' Registers of Advantages, and ExCo Members' declarations of gifts and sponsorships should be made accessible on the relevant websites, in so far as they are not at present.

Recommendation 35: The IRC **recommends** that the system for the prevention and handling of potential conflicts of interests concerning the CE, ExCo Members and PAOs should be subject to review at least once every five years in the light of experience to ensure that it meets the expectations of the public in rapidly changing times.

Recommendation 36: The IRC **recommends** that consideration should be given to reviewing the general permission given for the solicitation and acceptance of advantages under the POBO, including the permissible circumstances and the associated monetary limits, from time to time, having regard not only to inflation but also evolving social conventions, bearing in mind that the AAN is applicable to the entire Civil Service.