

LEGISLATIVE COUNCIL BRIEF

DECLARATION OF REGISTRABLE INTERESTS BY MEMBERS OF THE EXECUTIVE COUNCIL

INTRODUCTION

At the meeting of the Executive Council on 12 June 2012, the Council ADVISED and the Chief Executive ORDERED that the proposed amendments to the annual declaration of registrable interests by Members of the Executive Council, as set out in paragraphs 5 and 10 below, should be adopted.

JUSTIFICATIONS

2. The Administration has undertaken to conduct a review of the requirements of declaration of registrable interests by Members of the Executive Council (ExCo) in the light of an earlier incident in which a Member had misunderstood the requirements concerned.

Relevant Factors Considered

3. The community holds high expectation towards the conduct and performance of ExCo Members. To maintain public confidence in the integrity of the declaration system, in deliberating any proposed change to the system, the following factors, *inter alia*, have been taken into account -

- (a) no relaxation in the current registration requirements should be instigated and any perceived relaxation should be forestalled;
- (b) any change to the requirements for registration of interests must be reasonable and practicable. No unduly onerous burden is to be put on ExCo Members; and
- (c) clear guidance should be provided to ExCo Members to facilitate their compliance with the revised requirements.

Amendments to Notification Requirement

4. Under the original declaration requirement, on first appointment and annually thereafter, ExCo Members should declare their registrable interests, by completing the “Annual Declaration of Registrable Interests” (the Register). ExCo Members should notify the Clerk to ExCo of changes to any items of interest declared, within 14 days of their occurrence. The declarations are uploaded to the ExCo website for public inspection.

5. This requirement has now been revised to put it beyond doubt that **new interests acquired, not just changes to interests already declared**, will have to be notified. For **land and property outside Hong Kong, such changes should be notified within 28 days of their occurrence** so as to provide a more reasonable time for ExCo Members to make the notifications.

New Footnotes to Section 4 of the Register

Declaration requirements relating to land and property interests

6. The original section 4 of the Register set out the registrable interests in respect of land and property as follows -

“Land and property owned in Hong Kong or outside Hong Kong, including those for self-occupation. Land or property which are held in the name of Members’ spouses, children or other persons or companies, but are actually owned by Members; or land or property which are not owned by Members, but in which Members have a beneficial interest (e.g. rental income), are all registrable. It is not necessary to provide detailed addresses of the land or property.”

Land or property interests held through companies

7. Although not specified in section 4 of the Register, in practice ExCo Members holding land or property interests through a company generally register such interests because Members have a beneficial interest in the land or property concerned through their shareholding in the company. To spell out this requirement in the Register would provide certainty. On the other hand, it may not be practicable or meaningful for an ExCo Member who owns a relatively insignificant amount of shares in a company, say, a listed company which holds land or property either directly or through subsidiary companies, to register those land or property interests,

particularly when those companies engage in frequent transactions in land or property as their normal business.

8. As a reference, in the declaration system for Legislative Council members, it is specified that interest in land or property held through a company is registrable where a member has control of the company or has more than 50% shareholding in it.

Land or property interests held through trusts

9. Under section 4 of the Register, beneficial interests in land or property held through a trust are registrable. However, in a so-called “blind trust” where settlors leave all matters concerning investment, management and disposal of trust assets entirely in the hands of the trustee (and have no right to be informed of the particulars of such assets), who acts in accordance with the terms of the Trust Deed, it may not be practicable or necessary for an ExCo Member who is a beneficiary of this trust to register the land or property assets held by the trust. In such a case, a declaration by the Member of the existence of the trust should be adequate.

New footnotes to Section 4 of the Register

10. To address the issues set out in paragraphs 7 and 9 above, the requirements have been clarified and refined through the addition of the following **footnotes to the term “beneficial interest”** in section 4 of the Register -

“Footnotes

- (1) Interest in land or property held in the name of a company that is used solely for the purpose of holding an interest or interests in land or property (“property holding vehicle”) is registrable where a Member -
 - (a) controls the property holding vehicle (including where he controls the composition of the board of directors); or
 - (b) directly holds shares in the property holding vehicle, or indirectly holds shares in the property holding vehicle through a company or companies

(“intermediary company”) all of which are used solely for the purpose of holding shares directly or indirectly in a property holding vehicle and an interest or interests in land or property, if any, irrespective of the percentage of shares held by the Member.

- (2) Interest in land or property held by a company other than a company mentioned in footnote (1) above or any other body including a Real Estate Investment Trust (REIT) or a Business Trust (collectively referred to in this footnote as “body”) is registrable where a Member directly or indirectly -
- (a) controls such a body (including where he controls the composition of the board of directors or the trustees);
 - (b) is entitled to 33% or more of the voting power of such a body at general meetings; or
 - (c) owns 33% or more of the issued share capital or units of such a body.
- (3) To avoid doubt, where an interest in land or property is held by a property holding vehicle, and where any intermediary company involved is not used solely for the holding of an interest or interests in land or property, a Member still has to register his interest in the land or property if his control or interest in the intermediary company concerned meets the conditions set out in footnote (2) above.
- (4) Where a Member’s interest in land or property is that of a beneficiary under a trust other than a REIT or Business Trust, the interest as well as the land or property held by the trust are registrable where the Member has right or control over the trustee’s decision with regard to the acquisition or

disposition of the said land or property or where the Member has the right to be informed of the particulars of land or property owned by the trust. In other cases, a Member is required only to register the existence of the trust.

(5) Interests in land or property held through companies or trusts other than those specified in footnotes (1) to (4) above are not registrable.

(6) A Member should consult the Secretariat of the Executive Council if he is in doubt as to whether an interest is registrable.”

11. Footnote (1) specifies the circumstances in which land or property interests held through a company which is a property holding vehicle are registrable. In practical terms, an ExCo Member who holds land or property interests through a so-called “shelf company” or a series of such companies will be required to register those interests irrespective of the amount of the Member’s shareholding in the company.

12. Footnotes (2) and (3) specify the circumstances in which land or property interests held through a company which is not a property holding vehicle (e.g. a listed company) or any other body (e.g. REIT or a Business Trust) are registrable. Essentially, an ExCo Member is required to register land or property interests held through such a company or body if the Member controls the company or body or has 33% or more of the voting power or the shares/units of the company or body. The “33% or more” threshold is used in the Securities and Futures Ordinance. It is one of the determining factors whereby a member of the Securities and Futures Commission has to declare interest in relation to an “associate”. The Ordinance also refers to “voting power”^{*}. The reference to holding of land or property “directly or indirectly” is also used in the definition of “associate” in Schedule 1 to the Ordinance.

^{*} There is no express provision in the Securities and Futures Ordinance on how the percentage of the voting power is to be calculated where there is a multiple layer of companies. It would be reasonable to determine indirect holding based on a simple mathematical rule where land or property is held by a company in which an ExCo Member may have indirect voting power. For example, if an ExCo Member has 50% voting power in Company A and Company A has 70% voting power in Company B, land or property transactions entered into by Company B will have to be declared (50% x 70% = 35%).

13. Footnote (4) specifies that, where the land or property interests held by an ExCo Member are those of a beneficiary under a trust, the Member should register those interests only if the Member has right or control over the trustee's decision with regard to the acquisition or disposition of the said land or property, or the Member has the right to be informed of the particulars of the said land or property.

14. Footnote (5) clarifies that interests in land or property held through companies or trusts other than those specified in footnotes (1) to (4) are not registrable.

15. Footnote (6) suggests that ExCo Members should seek clarification from the Executive Council Secretariat if in doubt.

16. The revised Register is at the Annex.

PUBLICITY

17. A press release was issued on 12 June 2012. A spokesperson is available to answer enquiries.

18. Any enquiry on this brief can be addressed to Ms Doris Ho, Senior Executive Officer, at telephone number 2810 2796.

The Chief Executive's Office
12 June 2012

**Annual Declaration of Registrable Interests of
Members of the Executive Council**

Name of Member : _____

Registrable Interests

Contents

1. Remunerated directorships in any public or private company

[Notes:

- (a) “Remunerated directorships” include all directorships for which a fee, honorarium, allowance or other material benefit is payable.
- (b) Please give the name of the company, briefly stating the nature of the business of the company in each case.
- (c) Remunerated directorships of both Hong Kong companies and those outside Hong Kong are registrable.
- (d) Remunerated directorships through corporate directors are also registrable.
- (e) Where you are a remunerated director of a company, all subsidiary or associated directorships which you hold within the same group, whether remunerated or not, should also be registered.]

* Please provide information on separate sheets if necessary. Please sign on every such separate sheet.

Registrable Interests

Contents

2. Remunerated Employments, Offices, Trades, Profession, etc.

[Notes:

- (a) Indicate the name of the employment, office, trade, or profession.
 - (b) An employment, office, trade or profession is “remunerated” where a salary, honorarium, allowance or other material benefit is payable.
 - (c) “Remunerated offices” should include all “remunerated” public offices.
 - (d) Members who have paid posts as consultants or advisers should indicate the nature of the consultancy in the register; for example, “management consultant”, “legal adviser”, etc.
 - (e) All remunerated employments in Hong Kong and outside Hong Kong are registrable.]
- ### 3. Please indicate the names of clients if any of the above registrable interests includes provision to clients of personal services which arise out of or relate in any manner to your position as a Member of the Executive Council.

Registrable Interests

Contents

4. Land and property owned in Hong Kong or outside Hong Kong, including those for self-occupation. Land or property which are held in the name of Members' spouses, children or other persons or companies, but are actually owned by Members; or land or property which are not owned by Members, but in which Members have a beneficial interest ^[see footnotes (1) to (6)] (e.g. rental income), are all registrable. It is not necessary to provide detailed addresses of the land or property.

5. Name of Companies (both listed and unlisted ones) or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or children, a beneficial interest in shareholdings of a nominal value greater than 1% of the issued share capital.

6. Membership of Boards, Committees and other organisations which might be construed by members of the public as a declaratory interest -
e.g. Hong Kong General Chamber of Commerce, Real Estate Developers Association, etc.

Date : _____

Signature : _____

Footnotes :

- (1) Interest in land or property held in the name of a company that is used solely for the purpose of holding an interest or interests in land or property (“property holding vehicle”) is registrable where a Member -
 - (a) controls the property holding vehicle (including where he controls the composition of the board of directors); or
 - (b) directly holds shares in the property holding vehicle, or indirectly holds shares in the property holding vehicle through a company or companies (“intermediary company”) all of which are used solely for the purpose of holding shares directly or indirectly in a property holding vehicle and an interest or interests in land or property, if any, irrespective of the percentage of shares held by the Member.
- (2) Interest in land or property held by a company other than a company mentioned in footnote (1) above or any other body including a Real Estate Investment Trust (REIT) or a Business Trust (collectively referred to in this footnote as “body”) is registrable where a Member directly or indirectly –
 - (a) controls such a body (including where he controls the composition of the board of directors or the trustees);
 - (b) is entitled to 33% or more of the voting power of such a body at general meetings; or
 - (c) owns 33% or more of the issued share capital or units of such a body.
- (3) To avoid doubt, where an interest in land or property is held by a property holding vehicle, and where any intermediary company involved is not used solely for the holding of an interest or interests in land or property, a Member still has to register his interest in the land or property if his control or interest in the intermediary company concerned meets the conditions set out in footnote (2) above.
- (4) Where a Member’s interest in land or property is that of a beneficiary under a trust other than a REIT or Business Trust, the interest as well as the land or property held by the trust are registrable where the Member has right or control over the trustee’s decision with regard to the acquisition or disposition of the said land or property or where the Member has the right to be informed of the particulars of land or property owned by the trust. In other cases, a Member is required only to register the existence of the trust.
- (5) Interests in land or property held through companies or trusts other than those specified in footnotes (1) to (4) above are not registrable.
- (6) A Member should consult the Secretariat of the Executive Council if he is in doubt as to whether an interest is registrable.