

PART II – DECLARATION OF INTERESTS

Preamble

2.1 The guidelines for declaration of interest are drawn up to protect the integrity and reputation of the Board as a whole. Since the Board deals with matters that may have wide and far-reaching implications on the environment and economy of Hong Kong as well as the well-being of the community, it is necessary to ensure that the Board acts fairly and impartially in making its decision. This is particularly important as the Board's decision might affect development projects of high financial value. It will be in the interest of the Board for Members to declare their interests to the best of their knowledge.

Introduction

2.2 It is inevitable that from time to time Members of the Board may have interests (personal, family, or business; direct or indirect; pecuniary or otherwise) in matters that come before the Board. Under the rule against bias, an administrative decision may be quashed if the facts give rise to a real likelihood of bias or it might reasonably be thought that the decision-maker ought not to act because of some personal interests. It is therefore necessary for Members to disclose their interests when there is a real or potential conflict of interests in a matter placed before the Board.

2.3 A two-tier declaration system is adopted. Members should register their pecuniary interests in writing on a regular basis and, when circumstances change, should register the changes. Furthermore, Members should also declare, to the best of their knowledge, their interests (pecuniary or otherwise) in any matters to be transacted by the Board before or at the relevant meeting.

Registration of Pecuniary Interests

2.4 The Chairman, Vice-chairman and Members should register in writing their pecuniary interests upon commencement of a new term of appointment, and update the information once every year. The registration should be made on a standard form (**Appendix III**). Members should complete and return the registration form within one month to the Secy/Board. Besides, any change of Members' interests should be registered within 14 days of any such change. A register of Members' pecuniary interests will be kept by the Secy/Board and will be made available for inspection on request by members of the public.

2.5 The registrable interests are the pecuniary interests Members hold and those of their spouses and children under the age of 18 including: -

- (i) directorships or partnerships in companies;
- (ii) direct or indirect substantial shareholdings (1% or more of the issued share capital);
- (iii) holdings in land and properties; and

(iv) remunerated employment, offices, trades, professions or vocations.

2.6 Where practicable, Members should also give a brief description of the lines of business of companies in which they are involved.

2.7 Guidelines for completing the registration form on Members' pecuniary interests are at **Appendix IV**. Members should register their interests and those of their spouses and children under the age of 18 to the best of their knowledge.

Declaration of Interests before or at meeting

2.8 If Members or their spouses have any interest (pecuniary or otherwise) in any matter under consideration by the full Board/PC/RHC, the Members should as soon as practicable disclose to the Chairman of the Board or the chairman of the relevant PC/RHC or Secy/Board prior to the meeting or at the meeting prior to the discussion of the concerned item.

2.9 Where a substantial direct conflict of interest is known to the Secy/Board, the Secy/Board would alert the Member before the meeting. In case where the Member believes that he/she has a direct conflict of interest in a particular matter when he/she receives the agenda and/or papers, he/she should declare before the meeting.

2.10 All cases of declaration of interests shall be recorded in the minutes of meeting.

General Principles

2.11 It is difficult to set a hard and fast rule on what constitutes a conflict of interest. The following are some general guiding principles that Members are recommended to follow in identifying potential conflicts of interests which should be declared at or before the meeting:-

- (a) Pecuniary interests in a matter under consideration, interests held either by a Member or by his/her spouse, children under 18, or by the Member's close relative;
- (b) A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organisation which is concerned with, or the subject of, the matter under consideration;
- (c) A Member or his/her spouse who, as a professional adviser, has personally or as a member of a company, advised or represented any person or body on the matter under consideration, or has business dealings with any person or body connected with the matter under consideration;
- (d) Some friendships which might be so close as to warrant declaration in order to avoid situations where an objective observer might believe the Member's advice to have been influenced by the closeness of the association; and
- (e) Any interest likely to lead an objective observer to believe that the Member's decision might have been motivated by personal interest rather than a duty to

give impartial advice.

2.12 The Guidelines set out below should be followed by Members, irrespective of whether the Members are official or non-official Members.

Guidelines for Declaration of Interests

2.13 All interests of Members and their spouses in any matter under consideration need to be declared. The onus of making a declaration rests with individual Members who are in the best position to judge what constitutes an interest warranting a declaration. In this respect, Members are required to declare their spouses' interests to their best of their knowledge. In exercising their judgement, Members must take into account the sunshine test, that is, should their interest become public knowledge, whether it would give rise to a public perception that their advice tendered to the Board might have been biased or influenced by that interest.

2.14 If the interest is direct and substantial, the Member would have to withdraw from the meeting. If the interest is direct but not substantial or indirect/insubstantial, the Member would be allowed to continue to participate in the discussion and determination of the matter.

2.15 It would be difficult to set out categorically all situations under which a Member has to declare interest and whether an interest is direct and substantial or otherwise depends very much on the circumstances of the case. It is intended to set out below some common situations for Members' reference.

Direct and Substantial Interest

2.16 The following situations usually constitute direct and substantial interest: -

- (a) **The subject matter involves a landed interest held by the Member or his/her spouse.**

This applies to the situation where the application/representation/further representation/amendment to statutory plans covers land which is owned by the Member or his/her spouse. This also covers the situation where the Member or his/her spouse is the applicant/representer/further representer² of a case.

- (b) **The subject matter involves a company or organisation of which the Member or his/her spouse holds a proprietorship, partnership, directorship or substantial shareholdings (i.e. 1% or more of the issued share capital), advisory or client relationship, employment or other significant connection.**

This applies to the situation where the Member or his/her spouse's company or organisation is involved directly in the matter under consideration, either as applicant/representer/further representer or the company/ organisation has tendered professional advice (e.g. being the consultant acting for the applicant/representer/further representer) on the matter under consideration.

² A further representer means a person who makes a further representation under section 6D(1) of the Ordinance.

This also applies to the situation where the Member or his/her spouse is a staff member of a company or organisation (including a Government department) which is the applicant/representer/further representer of the matter under consideration.

- (c) **The subject matter involves a statutory/public body, club, association, union or other bodies of which the Member or his/her spouse holds a chairmanship or, in some cases, membership, or is the office bearer of an executive board, a board of directors or a management committee.**

This includes the situation where the Member or his/her spouse is a member of a statutory/public body (and its sub-committee) such as the Hong Kong Housing Authority (HKHA), the Hong Kong Housing Society (HKHS), the Urban Renewal Authority (URA) and the District Council, which is the applicant/representer/further representer of the matter under consideration. The fact that the Member or his/her spouse is an ordinary/corporate member of a club, association, union or other bodies would not constitute direct interest if the Member or his/her spouse were not directly involved in the matter under consideration.

- (d) **The Member or his/her spouse has current business dealings or potential future business dealings with the applicant/representer/further representer of the matter under consideration.**

This applies to the situation where the Member or his/her spouse has current business dealings or business dealings under negotiation with the applicant/representer/further representer. The business dealings may not necessarily be related to the matter under consideration.

[Current business dealings include, but not limited to, the following:

- Member or his/her spouse works for and receives remuneration from the applicant/representer/further representer/his agent;
- The applicant/representer/further representer/his agent works for and receives remuneration from Member or his/her spouse; and
- Member or his/her spouse works with the applicant/representer/further representer/his agent in a project consultancy team not related to the subject matter under consideration.

For the first scenario above, the Member should declare his/her interest and withdraw from the meeting. For the second and third scenarios, the Member should declare his/her interest and it would be up to the Board or the relevant PC/RHC to decide whether the interest is so direct and substantial that the Member should withdraw from the meeting. Normally, for the latter two scenarios, there should be no need for the concerned Member to withdraw from the meeting.]

- (e) **The Member who is also a member of the HKHA/HKHS/URA or other public bodies and the subject of a representation/further representation**

involves a project of such public bodies

This does not apply to the situation where a HKHA/HKHS/URA project is the subject of an amendment to a statutory plan proposed by the Planning Department or where HKHA/HKHS/URA sites are proposed in a new plan.

Other Interests which may be Direct and Substantial

2.17 There are other situations of potential conflict of interest. Whether these situations would constitute direct and substantial interest would depend on the substance, scope and nature of the interest, and have to be considered on a case-by-case basis. As a general rule, the Member shall declare any interest, which may likely lead the public to believe that the Member's advice might have been influenced by his/her relationship with the applicant/representer/further representer. It would be up to the Board or the relevant PC/RHC to decide whether the interest is so direct and substantial that the Member should withdraw from the meeting. For example:

- (a) The subject matter affects a landed interest held by the Member, his/her spouse, and his/her close relative or close friend.
- (b) The subject matter affects (or in the case of the Members' close relative or close friend, involves) the interest of a company or organisation of which the Member, his/her spouse, his/her close relative or close friend holds a proprietorship, partnership, directorship or substantial shareholdings, advisory or client relationship, employment or other significant connection.
- (c) The Member or his/her spouse has past business dealings with the applicant/representer/further representer.

[If the Member's or his/her spouse's past business dealings with the applicant/representer/further representer are related to the site under consideration, all such past business dealings should be declared. If the matter involves a completed project, the Member should be allowed to continue to participate in the discussion. However, if the matter involves an on-going project, the Member should be required to withdraw from the meeting.]

If only general business dealings are involved between the Member or his/her spouse and the applicant/representer/further representer, and the dealings are not related to the site under consideration, only past dealings within three years should be declared, and the Member should be allowed to continue to participate in the discussion.]

[Past business dealings include, but not limited to, the following:

- Member or his/her spouse once worked for and received remuneration from the applicant/representer/further representer/his agent;
- The applicant/representer/further representer/his agent once worked for and received remuneration from Member or his/her spouse; and

– Member or his/her spouse once worked with the applicant/representer/further representer/his agent in a project consultancy team not related to the subject matter under consideration.]

- (d) The Member or his/her spouse has given personal advice or opinion to an applicant/representer/further representer on any occasions on the matter under consideration.

[The situation of Government departments tendering professional advice or stating Government policies to the applicant/representer/further representer, however, should not fall within this category as it is incumbent upon the official Member to tender advice, which is consistent with the official views of the Government departments or Government policy.]

2.18 Two common situations are illustrated in Tables 1 and 2 below for Members’ reference and some further examples of the circumstances constituting potential conflict of interest are given in **Appendix V**.

2.19 There are situations in which the Member is a member of an advisory body which has expressed views on the matter under consideration. For these cases, if the advisory body to which the concerned Member belongs has only expressed views without passing a motion which represents the collective views of the body or submitting any comment/representation to the Board on the subject matter, the concerned Member should only be requested to declare interest but does not have to withdraw from the meeting.

Table 1

Business Dealings		Declare	Withdraw from meeting
Current/ Under Negotiation	General (not relating to the site)	✓	✓
	Specific (relating to the site)	✓	✓
Past	Past dealings not relating to the site		
	- more than three years	x	x
	- within three years	✓	x
	All past dealings relating to the site		
	- project completed	✓	x
	- project on-going	✓	✓

Table 2

Matter Involving HKHA, HKHS, URA or Other Organization	Declare	Withdraw from meeting
As Applicant/Representer/Further Representer	✓	✓
As Proposal on New Plans or Amendments to Plans	✓	x
As Subject of Application/Representation/Further Representation	✓	✓

Application of the Guidelines to Chairman and Vice-chairman/Deputy Chairman

2.20 The general guidelines on declaration of interest are applicable to the Chairman and Vice-chairman/Deputy Chairman of the Board /PC/RHC.

2.21 If the Chairman or Vice-chairman/Deputy Chairman needs to declare an interest and there is nobody to take up the chairmanship, the matter should normally be adjourned to the next meeting. However, if the matter is subject to a statutory time limit, then as a matter of necessity, the Chairman or Vice-chairman/Deputy Chairman should continue to assume the chairmanship but a conscious effort should be made to contain his/her scope of involvement in an administrative role to minimise any risk that he/she may be challenged.

2.22 In case both the Chairman and Vice-chairman/Deputy Chairman of the relevant PC/RHC need to declare an interest, then the matter should be referred to the Board for a decision. However, if both the Chairman and Vice-chairman of the Board need to declare interest, as a matter of necessity, the Chairman should continue to assume the chairmanship.

Probity Requirements

2.23 To protect the integrity and uphold public trust of the Board and to protect the public interest, Members should observe the following principles³ on solicitation and acceptance of advantages and entertainment, and use of public assets and capacity as a Board/PC member.

Solicitation and Acceptance of Advantage

2.24 Members should refrain from soliciting or accepting any advantage from any persons or companies having business dealings with the Board (e.g. applicants, representers, and their representatives/consultants).

Gifts/souvenirs

2.25 Any gift/souvenir given to Members in their capacity as such should be regarded as a gift/souvenir to the Board. The handling procedures of gifts and/or souvenirs are set out at **Appendix VI**.

³ The principles are based on the “Sample Code of Conduct for Members of Public Councils” prepared by the Corruption Prevention Department of the Independent Commission Against Corruption

Sponsorship

2.26 Members being offered with sponsorships in their capacity for official purposes such as attending any local/overseas conferences, conventions, product trial activities, etc. should refer such to the Board for consideration of acceptance of the sponsorship and selection of suitable person for the sponsorship where appropriate.

Advantages offered to Members in their private capacity

2.27 Members may accept advantage in their private capacity only if such will not affect the performance of their duties as Members and will not make Members feel obliged to do something in return in connection with the Board's business for the offeror. In such case, Members should follow the guidelines for declaration of interests in paragraphs 2.13 to 2.19 above.

Entertainment

2.28 Although entertainment is an acceptable form of business and social behaviour, Members must not accept lavish or frequent entertainment from any persons with whom the Board has business dealings (e.g. applicants, representers and their representatives/consultants) to avoid placing themselves in a position of obligation to the offeror.

Offer of Advantage

2.29 Members should refrain from offering advantages to any directors, or staff of any companies or organizations, for the purpose of influencing such person or company in any dealings in connection with the business of the Board.

Records, Accounts and Other Documents

2.30 Members should ensure that any records, receipts, accounts or other documents submitted to the Board is a true representation of the events or transactions reported in the submission.

Use of Board Assets

2.31 Members should refrain from any unauthorized uses of the Board's assets, including information and intellectual property, to make personal gains.

Misuse of Capacity as a Member

2.32 Members shall not misuse their official capacity to gain benefits for themselves or others.