

Paper for LegCo

Circular setting out the Working Relationship between Civil Servants and Principal Officials under the Accountability System

Purpose

This paper presents, for Members' information, the content of the circular that has been issued by the Civil Service Bureau ("CSB") on the working relationship between civil servants and principal officials ("POs") under the accountability system.

Background

2. The purpose of issuing the circular is to ensure that all civil servants will clearly understand their role and responsibilities in relation to POs under the accountability system. The main provisions in the circular are the subject of a paper (Ref: LC Paper No. CB(2)2101/01-02(01)) presented on 28 May 2002 to the Sub-committee set up by the Legislative Council to study the proposed accountability system for principal officials and related issues. At the same time, the draft circular was circulated to the staff side representatives on the four central consultative councils for comments, in accordance with established procedures.

3. Since the CE made his address to LegCo on 17 April 2002 setting out the framework of the accountability system, the Secretary for the Civil Service ("SCS") had written on a number of occasions to all colleagues in the civil service for the purpose of keeping each and every one of them apprised of developments. SCS wrote to all colleagues in the civil service on 31 May 2002 to inform them of the main provisions in the proposed circular. In the letter, SCS stressed that under the accountability system, the civil service would remain a professional, permanent, meritocratic and politically neutral body of public servants. As in the case of the LegCo paper referred to in para. 2 above, a copy of the letter was also uploaded to the CSB website for public information. In addition, comments from the Administrative Officer Grade were invited.

Comments made by LegCo Members

4. Comments made by LegCo Members on the content of the draft circular are summarized hereunder.

5. Some members considered that the working relationship between civil servants and the new Director of the Chief Executive's Office should be covered in the circular as well. This point has now been spelt out clearly in the circular (please see para. 1 of the Appendix to this paper).

6. Some Members expressed concern about the way certain provisions in the circular had been worded. In particular, it was considered that the phrase "civil servants should conduct themselves in such a way as to win the confidence and trust of POs" might politicize and undermine the impartiality of the civil service. In the light of Members' comments, we have re-cast the relevant provisions (please see para. 12 of the Appendix to this paper).

7. Some Members had also asked to be briefed on feedback received from staff about the content of the draft circular.

Feedback received from staff

8. The main observations that have been received from staff are summarized in paragraphs 9 to 20 below.

Access to the Code for the POs

9. Some staff suggested that a copy of the Code for the POs should also be attached to the circular.

10. As the Code will be published in the gazette and accessible via the internet for public information, it is considered that reproduction of the Code in full as an attachment to the circular is not necessary. Instead, a reference to the website from which the Code could be downloaded has been inserted into the circular.

Boundaries between the political activities of POs and proper functions of the civil service

11. Some respondents observed that the proper functioning of the civil service should not be influenced by the political activities of the POs.

12. The Code has included provisions which set out the rules and principles governing the POs' involvement in political activities (e.g. the Government has a prior call at all times on the abilities, energies and attention of the POs). The same provisions prohibit the POs from using any

public resources for non-governmental purposes (including those relating to the political parties to which a PO is affiliated). It is believed that these provisions have adequately met the concerns expressed.

Staff working in the Private Office of the POs

13. Some staff enquired about the status of staff working in the private office of a PO.

14. The private office of each PO includes the PO's Administrative Assistant, Press Secretary, Personal Assistant and Driver. Appointed by the Government, they are required to follow the relevant rules and regulations on conduct and related matters as applied to civil servants. In other words, all the provisions in the circular which are applicable to civil servants will also apply to them. In terms of their working relationship with other civil servants, it is no different from that between civil servants.

Putting suitable emphasis on the importance of political neutrality

15. A good number of respondents stressed the need to put suitable emphasis, in the circular, on the importance of political neutrality. Some felt that political neutrality should be singled out, in the circular, as one of the more important core values.

16. It is agreed that the importance of a politically neutral civil service could not be over emphasized. Aside from restating political neutrality as a core value of the civil service (para. 3(d) in the Appendix to this paper), repeated reference to our commitment to uphold the political neutrality of the civil service has been made in the circular. These include reference to the importance of preserving a professional, permanent, meritocratic and politically neutral civil service (para. 7); the duties of the POs to actively uphold and promote these good qualities of the civil service (para. 9(b)(i)); how a civil servant should act to maintain political neutrality (paras. 14 to 15); and the procedures that a civil servant may follow to lodge a complaint if he believes he is being required to act in a way which would conflict with the principle of political neutrality (paras. 18 to 22).

17. It is considered that balanced treatment has been given in the circular to the importance of political neutrality.

Complaint procedures

18. Some respondents felt that an express reference should be included in the circular to the effect that staff who made a complaint in good faith would not be penalized.

19. Such an express reference has been included in the main text of the circular (para. 18 in the Appendix).

Others

20. In addition, some suggestions on improvement to the language in the circular have been received. These have been suitably incorporated in the current text.

Promulgation of the circular

21. The circular has been promulgated on 28 June 2002, for circulation to each and every member of the civil service. The content of the circular is enclosed herewith for Members' information.

Appendix

Civil Service Bureau
28 June 2002

Content of the Circular

Introduction

The accountability system for principal officials will be implemented with effect from 1 July 2002. The purpose of this Circular is to set out the principles and values which civil servants are expected to continue to uphold under the accountability system. It also explains the role and responsibilities of civil servants in relation to principal officials appointed under the accountability system as listed in **Annex A**. The provisions in this Circular governing the role and responsibilities of a principal official in relation to civil servants are applicable to the Director of the Chief Executive's Office. Also, although the Secretary for the Civil Service is one of the principal officials, he has a special role as explained in the Circular.

Core values guiding the conduct of civil servants

2. Certain values have endured the test of good governance and shaped the present culture of our civil service. Central to the integrity and probity of the civil service, they will continue to be preserved irrespective of the action taken to modernize the management of our civil service to meet the needs of changing times.

3. These values, which all civil servants are expected to share and uphold, include the following –

- (a) commitment to the rule of law;
- (b) honesty and integrity;
- (c) accountability for decisions and actions;
- (d) political neutrality;
- (e) impartiality in the execution of public functions; and
- (f) dedication, professionalism and diligence in serving the community.

4. At present, these values have been enshrined and elucidated in various civil service rules and guidelines governing the conduct of civil servants, covering such subjects as avoidance of conflict of interest; acceptance of advantages and entertainment; declaration of private investments; participation in political activities; use of information obtained in one's official capacity; and outside work, etc.

5. Apart from having to deliver results and to meet performance targets, civil servants must always act lawfully and are expected to attach the highest importance to due process, fairness and professionalism when serving the public. If a civil servant, in discharging his duties, comes across a corrupt or other criminal act, he is duty bound to report it to the relevant law enforcement agency.

6. Attached at **Annex B** is a list of the relevant Civil Service Regulations, circulars or circular memoranda that cover the subjects described in paragraphs 4 and 5 above and are for the time being in force. These specific rules and guidelines reflect the standards of probity which civil servants are required to uphold and the practices that they should follow when performing their official duties. In the interest of sustaining a culture of honesty, integrity and political neutrality in the civil service, the Secretary for the Civil Service may issue supplementary guidelines from time to time in the light of changing circumstances.

The Accountability System

7. Under the accountability system, the civil service will remain a professional, permanent, meritocratic, and politically neutral body of public servants. These are qualities which both the Administration and the community would wish to preserve. It has been widely recognized that public confidence in the integrity and probity of the civil service is essential to the good governance of the Hong Kong Special Administrative Region ("HKSAR").

8. Paragraphs 10 to 22 in this Circular set out the framework within which civil servants are to work to principal officials under the accountability system. They enunciate the values and high standards of probity that civil servants are expected to uphold when tendering advice to or implementing the policies made by principal officials, including their obligation to faithfully support the accountability system and to give of their best in serving the Chief Executive and principal officials of the day.

The role and responsibilities of Principal Officials in relation to civil servants

9. In drawing up the guidelines in paragraphs 10 to 22 below, we have taken into account –

- (a) the duties and responsibilities set out for principal officials, including their duties as the top echelon of Government to take the lead in and contribute towards building up an efficient, professional, fair and honest civil service; and
- (b) the requirement for principal officials under the accountability system, as part of their condition of employment, to abide by a Code ^(Note 1) which includes provisions setting out their relationship with the civil servants working under them, specifically covering –
 - (i) the duties of principal officials at all times to actively uphold and promote a permanent, honest, meritocratic, professional and politically neutral civil service; in particular, to actively uphold and promote the core values of the civil service as set out in paragraph 3 above;
 - (ii) the duties of principal officials to give fair consideration and due weight to honest, informed and impartial advice from civil servants and to give due regard to Government Regulations which are applicable to civil servants or otherwise regulate the operation of the Government;
 - (iii) the duties of principal officials not to require or influence civil servants directly or indirectly to act in any way which –
 - (1) is illegal, improper or in conflict with the core values of the civil service;
 - (2) is in breach of any Government Regulations including Civil Service Regulations;

^{Note 1} The Code was published in the gazette on 28 June 2002 (GN No. 3845). Readers could access gazette notices through the website of the HKSAR Government (<http://www.info.gov.hk/pd/egazette>).

- (3) may involve possible maladministration;
 - (4) would conflict with their role as civil servants; or
 - (5) would conflict with the principle of political neutrality;
- (iv) provisions which stress that the Secretary for the Civil Service is responsible to the Chief Executive for civil service policy and the management of the civil service; and that one of the major tasks of the Secretary for the Civil Service is to safeguard the core values of the civil service;
 - (v) provisions which stress that civil servants are appointed, managed and promoted on the basis of merit and in accordance with the principles of openness and fairness and with the prevailing rules and regulations applicable to the civil service; and that they are subject to the prevailing civil service disciplinary system, under which allegations of misconduct against individual civil servants are determined through an impartial process based on consideration of factual evidence;
 - (vi) provisions which stress the independent role of the Public Service Commission in advising the Government on the appointment, promotion and discipline of civil servants; and
 - (vii) the duty of principal officials to cooperate fully with the Secretary for the Civil Service to follow up on complaints from civil servants that they have been asked to act in a manner which conflicts with their role as civil servants or with the core values of the civil service.

The role and responsibilities of civil servants in relation to the Principal Officials

Allegiance

10. Civil servants must be dedicated to their duties and be

responsible to the HKSAR Government headed by the Chief Executive of the day.

11. Civil servants have a responsibility to support the implementation of the accountability system, and to give of their best in serving the Chief Executive and principal officials of the day. It is the role of the civil service to assist, with integrity, honesty, impartiality and objectivity, principal officials under the accountability system, in formulating their policies, in carrying out their decisions and in administering public services for which they are responsible.

Professionalism

12. Civil servants should conduct themselves in a professional manner at all times. They should comply with the rules governing the participation of civil servants in political activities. The conduct of members of the civil service should be such as to instil confidence in the principal officials that the civil service will faithfully fulfil its duties and obligation to, and impartially assist, advise and carry out the policies of the HKSAR Government headed by the Chief Executive of the day.

13. Civil servants should give advice to principal officials based on intellectual rigour, objective research, professional knowledge and acquired expertise. They should make available to the principal officials all information relevant to a decision, including the possible consequences of following particular policies; and not to deceive, withhold information from or knowingly mislead them.

Neutrality

14. The civil service's valued principle of political neutrality is built on our allegiance to the Government. It is every civil servant's duty to be loyal to the Chief Executive and the principal officials of the day. It is the role of civil servants to evaluate the implications of policy options and to tender clear and honest advice in the process of policy formulation. Once a decision has been taken by the Administration, civil servants should support and implement the decision fully and faithfully irrespective of their personal preferences and should not make known their own views in public. They should assist the principal officials in explaining policy decisions and in gaining support of the Legislative Council and the public.

15. Civil servants should ensure that their contribution to any public debate or discussion on public matters is appropriate to the positions they hold and is compatible with the need to maintain a politically neutral civil service. They should not seek to frustrate or influence the policies, decisions or actions of principal officials by unauthorised, improper or premature disclosure outside the Administration of any information to which they have had access as civil servants. In general, comments made by civil servants in public on matters of public policy would be regarded as unacceptable if such comments reveal advice given to a principal official including their own views; or offer alternatives to a policy proposed by a principal official.

Duty to report corrupt or other criminal act

16. Where a civil servant in discharging his duties comes across an instance or allegation of a corrupt or other criminal act, he is duty bound to report it to the relevant law enforcement agency.

Open communication

17. There may be occasions where a civil servant feels that he has been directed to act in a way over which he has concerns. In such circumstances, the civil servant is encouraged to first discuss it with his immediate supervisor. He must not do anything to circumvent or undermine the policy which the direction flows from. It is important to cultivate and nurture a culture of open communication so that issues and concerns can be readily dealt with in the normal interaction between supervisors and subordinates. Open communication works positively towards building trust and loyalty. It is expected that most situations which may lead to misunderstanding will be addressed by discussing the matter with the officer who gives the direction in the first place.

Procedure for handling complaints

18. If following a candid airing of his concerns before his immediate supervisor or the officer giving the direction, the civil servant remains concerned that he is required to act in a way which –

- (a) is illegal, improper or in conflict with the core values of the civil service;
- (b) is in breach of any Government Regulation including Civil Service Regulations;

- (c) may involve possible maladministration;
- (d) would conflict with his role as a civil servant; or
- (e) would conflict with the principle of political neutrality,

he should report the matter in accordance with the procedures laid down by his department, in the context of CSB Circular No. 20/91 ^(Note 2), to handle complaints and/or staff grievance. An officer will not be penalized for lodging a complaint which is made in good faith.

19. If the direction giving rise to the complaint is made by a principal official other than the Secretary for the Civil Service, the matter will be brought to the personal attention of the Secretary for the Civil Service. As in other complaint cases involving supervisors and subordinates, the Secretary for the Civil Service may interview the complainant and other persons and obtain comments from the principal official concerned. Having considered all the relevant information and if after discussing with the complainant and the principal official concerned the issue remains unresolved, the Secretary for the Civil Service will put the case together with his advice before the Chief Executive for a ruling.

20. For a complaint against the direction made by the Secretary for the Civil Service, the case should be put to the Chief Executive's Office direct.

21. If, pursuant to the procedures described above, the Chief Executive upholds the complaint, the principal official concerned is subject to such appropriate measures as the Chief Executive may determine.

22. If, on the other hand, the Chief Executive is satisfied that there is no question of impropriety and upholds the direction made by the principal official, the civil servant who raises the matter in the first place must faithfully carry out the instruction as directed. Under existing civil service rules, an officer who, without a reasonable cause, fails to obey a lawful order

Note 2

Under the current central guidelines, whilst each bureau/department is given discretion to draw up procedures that best suit its operational requirements, it is expected to observe certain key rules: a civil servant may lodge his complaint orally or in written form to the Head of Bureau/Department; the complaint will be dealt with in confidence; the identity of the complainant will not be revealed, without his consent, to anyone other than those involved in investigating the complaint; and an officer will not be penalized for a complaint made in good faith. On receipt of a complaint, the Head of Bureau/Department will conduct an investigation which may include interviewing the complainant and other persons. The process must be completed and a reply issued to the complainant normally within three months after receipt of the complaint.

of his official superior renders himself liable to disciplinary action on grounds of insubordination.

Compliance with the principles of conduct laid down in this Circular

23. The principles of conduct contained in this Circular form part of the terms and condition of employment of every civil servant. Failure to comply with any of the principles laid down renders an officer liable to disciplinary action.

Principal officials under the accountability system

Chief Secretary for Administration
Financial Secretary
Secretary for Justice

Secretary for the Civil Service
Secretary for Commerce, Industry and Technology
Secretary for Constitutional Affairs
Secretary for Economic Development and Labour
Secretary for Education and Manpower
Secretary for the Environment, Transport and Works
Secretary for Financial Services and the Treasury
Secretary for Health, Welfare and Food
Secretary for Home Affairs
Secretary for Housing, Planning and Lands
Secretary for Security

**Civil Service Regulations, Circulars and Circular Memoranda
Relating to Conduct and Integrity**

Conflict of interest

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| (1) CSB Circular No. 19/92 on “Conflict of Interest” | It sets out the common areas in which a conflict may arise between an officer’s official duties and his private interests and gives guidance on the avoidance of conflict of interests. |
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Acceptance of Advantages and Entertainment

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| (2) CSB Circular No.17/92 on “The Acceptance of Advantages (Chief Executive’s Permission) Notice 1992 and Related Matters” | It provides guidance on acceptance of advantages and entertainment by civil servants in their private and official capacities and related matters including acceptance of donations by departments. |
| (3) CSB Circular No. 18/92 on “The Acceptance of Advantages and Entertainment” | It gives guidelines on acceptance of advantages and entertainment by civil servants. |
| (4) CSB Circular No. 7/94(C) on “Sponsored Visit” | It provides guidance on acceptance of sponsored visits on the invitation of a foreign government or an outside organization. |
| (5) CSB Circular Memorandum dated 12.12.1985 on “Acceptance of Complimentary Tickets” | |
| (6) CSB Circular Memorandum dated 11.4.1986 on “Acceptance of Complimentary Tickets” | |

- (7) CSB Circular Memorandum No. 19/94 on “Acceptance of Advantages – Free Raffle Tickets”
- (8) CSRs 431-435 on “Acceptance of Entertainment”
- (9) CSR 444 on “Acceptance of Advantages”
- (10) CSR 448 on “Retirement Gifts”

Investments

- (11) CSB Circular No. 9/2001 on “Declaration of Investments by Civil Servants”
It gives guidelines for civil servants to declare their private investments in and outside Hong Kong
- (12) CSB Circular Memorandum No. 19/99 on “Tracker Fund of Hong Kong”
It announces the requirement for civil servants to declare investments in the Tracker Fund of Hong Kong.
- (13) CSB Circular Memorandum dated 21.9.2000 on “Mass Transit Railway Corporation Limited (MTRCL) Shares”
It reminds civil servants that transactions in MTRCL shares fall within the type of investment which must be declared and reported.
- (14) CSRs 461-466 on “Investments”

Outside Work

- (15) CSB Circular No. 13/95 on “Acceptance of Outside Appointments after Retirement”
- (16) CSB Circular Memorandum No. 50/96 on “Outside Appointments during Pre-retirement Leave and after Retirement”

(17) CSB Circular No. 3/97 on
“Permission to Take Up Outside
Appointment on Completion of
Agreement”

(18) CSR 326 on “Acceptance of
Outside Appointments after
Retirement”

(19) CSRs 550-564 on “Outside Work”

Civil servants are required to apply for permission before taking up any paid outside work during or outside working hours, or unpaid outside work during working hours.

Indebtedness

(20) CSB Circular No. 4/2002 on
“Managing Personal Finance and
Management Measures on Staff
Indebtedness in the Civil Service”

It reminds civil servants of the importance of prudent management of personal finance and sets out guidelines on the management actions to be taken in dealing with staff indebtedness

(21) CSRs 455-459 on “Insolvency and
Bankruptcy”

(22) CSRs 480-482 on “Lending
Money and Borrowing Money at
Interest”

(23) CSR 483 on “Use of Subordinates
as Guarantors”

Reporting Crime and Corruption

(24) CSB Circular No. 20/79 on
“Reporting of Criminal Offences”

It reminds officers of their obligation to report to the appropriate authority all instances of crime or alleged crime which they may come across in either their official or personal capacities.

- (25) CSB Circular No. 10/80 on
“Reporting of Attempted Bribes”
- It reminds officers that all attempts to bribe a public servant is a criminal offence under the Prevention of Bribery Ordinance and such attempts should be reported to the ICAC.
- (26) CSB Circular No. 9/94 on
“Allegations of Corruption Against Civil Servants”
- It sets out the procedures to be followed by departments when allegations of corruption are received. Confidentiality and prompt action are paramount in referring corruption allegations to ICAC.

***Production by Government
Officers of Publications
Containing Paid Advertisements***

- (27) CSB Circular No. 6/77 on
“Production by Government
Officers of Publications
Containing Paid Advertisements –
CSR 530”
- It sets out guidelines for civil servants to obtain permission to be involved in the production of publications which contain paid advertisements.
- (28) CSB Circular No. 23/77 on
“Production by Government
Officers of Publications
Containing Paid Advertisements –
CSR 530”

- (29) CSRs 530 on “Publications”

***Public Communications by
Officers***

- (30) CSRs 520-525 on “Public
Communications by Officers”
- It reminds civil servants to discuss issues of public interest in public in a constructive way and not to publish or communicate to unauthorized persons documents or information obtained in his official capacity without approval.

Public Donations

- (31) CSR 531 on “Public Donations”
- It requires civil servants not to involve themselves in the collection of money other than those covered in the CSR (e.g. for charitable purposes) unless they have obtained approval.

Participation in Political Activities by Civil Servants

- (32) CSB Circular No. 26/90 on “Civil servants joining political organisations and participating in political activities”
- It provides that, except for certain categories of officers, civil servants are not prohibited from joining political organizations or participating in political activities provided that the involvement does not give rise to conflict of interest with their official duties and that the civil service rules governing outside activities are complied with.

- (33) CSB Circular No. 15/97 on “Civil servants standing for elections and participating in electioneering activities”

- (34) CSB Circular No. 8/2000 on “Civil servants standing for elections and participating in electioneering activities for the Legislative Council Elections and the Election Committee Subsector Elections”

Avenues for complaint/seeking redress

- (35) CSB Circular No. 20/91 on “Staff Complaints Procedure”
- It provides guidelines on how to deal with complaints from staff.

(36) Section 20 of the Public Service
(Administration) Order and CSR
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It provides that every officer can
make representations of a public or
private nature to the CE.