

**The Environment and Conservation Fund Committee - Terms of Reference,
Standing Orders and Code of Conduct**

Purpose

The purpose of this paper is to inform Members of the terms of reference and standing orders of the Environment and Conservation Fund (ECF) Committee, and the Code of Conduct for compliance by Members.

Background

2. The ECF was established in 1994 under the Environment and Conservation Fund Ordinance (the Ordinance) (Cap. 450). Secretary for the Environment is the trustee of the ECF. The Ordinance provides for the establishment of the ECF Committee (the Committee) which shall consist of -

- (a) a Chairman, who shall be appointed by the Chief Executive for a term of two years, but who shall be eligible for reappointment;
- (b) not more than eight other members who shall be appointed by the Chief Executive for a term of two years, but who shall be eligible for reappointment;
- (c) Secretary for Environment as ex-officio member or his representative;
- (d) Permanent Secretary for Education as ex-officio member or his representative;
- (e) Director of Environmental Protection as ex-officio member or his representative; and
- (f) Director of Agriculture, Fisheries and Conservation as ex-officio member or his representative.

The quorum necessary for the transaction of business by the Committee at a meeting of the Committee shall be seven Members. Section 4 of the Ordinance provides that the trustee of the fund shall hold and stand possessed of the fund upon trust to

apply the same in such manner and to such extent as the Committee may advise for the purposes of funding educational, research and other projects and activities in relation to environmental and conservation matters.

Terms of reference of ECF Committee

3. The terms of reference of the ECF Committee are as follows -
- (a) to vet applications seeking funding support from local non-profit making organisations to undertake educational, research and other projects and activities in relation to environmental and conservation matters, as well as community waste reduction projects and to advise on their relative priorities for funding support; and
 - (b) to advise the trustee on the exact amount of fund to be allocated for each project supported.

Standing Orders of ECF Committee

4. Under Section 7(5) of the Ordinance, the Committee may make standing orders for the maintenance of good order at meetings. The following standing orders have been adopted by the Committee since 1994 -

- (a) Meetings

The Committee shall meet as frequently as necessary to discharge its duties prescribed under the Ordinance and any other related business.

- (b) Presiding at Meetings

- (i) The Chairman of the Committee shall preside at all meetings of the Committee.
- (ii) In the absence of the Chairman from a meeting or part of a meeting, Members present shall elect among themselves a Member to preside.

(c) Quorum

The quorum necessary for the transaction of business at any meeting of the Committee shall be seven Members.

(d) Voting

(i) All questions put to the Committee shall be decided by a majority of the votes of the Members present and voting.

(ii) The Chairman or a Member presiding shall, if the votes be equally divided, have a casting vote in addition to his original vote.

(e) Vetting Subcommittees

(i) There shall be such number of Vetting Subcommittees as the ECF Committee considers appropriate.

(ii) The terms of reference of a Vetting Subcommittee shall be determined by the ECF Committee.

(iii) Membership of a Vetting Subcommittee shall include those Members who have signified interest and any other personalities who have been co-opted by the Committee.

(iv) The Chairpersons of the Vetting Subcommittees shall be decided by the Committee.

Code of Conduct

5. As government funds are public money, it is imperative for all parties involved, including Members of the ECF Committee and its various Vetting Subcommittees who are responsible for the vetting and approval of funding applications, to commit to ethical practices in the allocation and uses of the funds. Co-opted Members of the Vetting Subcommittees should also be subject to the same

integrity requirements. A Code of Conduct setting out the guidelines and standards of integrity expected for Members and co-opted Members is at Appendix.

Advice Sought

6. Members are invited to note the terms of reference and the standing orders of the Committee and to observe the Code of Conduct.

**Secretariat, Environment and Conservation Fund Committee
October 2016**

Appendix

Code of Conduct for Members and Co-opted Members of the Environment and Conservation Fund Committee and its Vetting Subcommittees

I. Preamble

The Environment and Conservation Fund (ECF) is fully committed to the principle of honesty, integrity and fair play in the conduct of its business. To uphold public trust and protect public interest, it is important for all Committee Members to handle the Committee's business in a just and impartial manner so that the Committee's reputation will not be tarnished by dishonesty, impropriety or corruption. To this end, this Code of Conduct sets out the standard of behaviour expected from all Committee Members.

II. General Standards

1. A Committee Member shall ensure that his conduct would not bring the Committee into disrepute.
2. A Committee Member shall not at any time or in any respect do anything which may compromise or impair his integrity, impartiality, objectivity or ability to perform Committee duties.
3. A Committee Member shall adhere to the spirit and the letter of any rules or orders made for the Committee's practices and procedures or for Committee Members' behaviour in relation to the business of the Committee.

III. Specific Standards

1. Prevention of Bribery Ordinance

Members of the Committee are governed by Section 9 of the Prevention of Bribery Ordinance (POBO, Cap. 201) (and other provisions where appropriate). A Committee Member commits an offence under POBO if he, without the Committee's permission, solicits or accepts any advantage in connection with the Committee's business. The full text of POBO Section 9 and the legal definition of an advantage are at Annex 1.

2. Acceptance of Advantages

- 2.1 Gift / souvenir presented to a Committee Member in his capacity as such
 - (a) a gift / souvenir presented to a Committee Member in his capacity as

such should be regarded as a gift / souvenir to the Committee (e.g. a gift / souvenir presented by a grantee to a Committee Member invited in his capacity as such or representing the Committee to officiate at a ceremony). Gifts / souvenirs presented by the event organisers should be declined in the first place in accordance with the 'use less, waste less' principle.

- (b) If acceptance of a gift / souvenir is unavoidable, a Committee Member shall follow the procedures set out in Annex 2 for the disposal of gifts / souvenirs received in the above circumstances.

2.2 Sponsorship offered to a Committee Member in his capacity as such

- (a) Committee Member may be offered sponsorship in his capacity as such by a person / grantee other than the Committee itself for official purposes such as attending local / overseas conference, convention, produce trial activity, etc. Such sponsorship should be regarded as sponsorship offered to the Committee and referred to the Committee for consideration of acceptance.
- (b) The Committee should consider whether it is appropriate to accept the offer based on the following general criteria:
 - (i) Acceptance of the sponsorship will benefit the Committee as a whole and not bring the Committee into any disrepute;
 - (ii) The Committee will not feel obliged to do something in return for the offeror; and
 - (iii) Acceptance will not give rise to any actual or perceived conflict of interest (e.g. possible conflict of interest if the offeror is a supplier / contractor bidding for the grantee's contracts.)
- (c) If the Committee decides to accept the sponsorship, it should then select a suitable Member to attend the sponsored activity on its behalf.

2.3 Advantage offered to a Committee Member in his private capacity

- (a) Where a Committee Member is offered an advantage in his private capacity, he may accept it if –
 - (i) the acceptance will not affect the performance of his duties as a Committee Member; and
 - (ii) he will not feel obliged to do something in return in connection with Committee business for the offeror.
- (b) If a Committee Member feels that he would be obliged to reciprocate an advantage by returning to the offeror a favour connected with any Committee business, he should decline the offer.
- (c) When a Committee Member is in doubt as to whether he should accept an offer of advantage, it is advisable for him to apply the "sunshine

test"[#] and consult the Committee Chairman or the Secretariat.

[#] *In the sunshine test, the person should ask himself if he would be happy to openly discuss with the general public what he is doing. If he feels uncomfortable about that, what he is doing is probably conflicting with the ethical standard generally accepted.*

3. Acceptance of Entertainment

A Committee Member should not accept entertainment from persons / organisations who / which have an interest in any matters under consideration by the Committee or with whom / which he has official dealings, in order to avoid embarrassment or give the perception of the loss of objectivity when considering or giving his views on matters concerning these persons / organisations.

4. Conflict of Interest

4.1 Definition

A conflict of interest situation arises when the private interest of a Committee Member competes or conflicts with the interest of the Committee. "Private interest" includes both the financial and other interests of Members and those of their connections, including family members, relatives, friends, clubs and societies to which they belong, as well as people to whom they owe a favour or are obliged in any way.

4.2 Managing Conflict of Interest

Committee Members should avoid any conflict of interest situation (i.e. situation where their private interest conflicts with the interest of the Committee) or the perception of such conflicts. Members should not use their official position or any information made available to them in the course of their duties to benefit themselves, their relatives and any other persons with whom they have personal or social ties. They should avoid putting themselves in a position that may lead to an actual or perceived conflict of interest. Failure to avoid or declare such conflict may give rise to criticisms of favouritism, abuse of authority or even allegations of corruption. In this connection, Committee Members shall comply with the guidelines on declaration of interests at Annex 3.

4.3 Committee Members Applying for the ECF

As a matter of principle, Committee Members should avoid applying for the ECF in their private capacity to prevent the public perception of Committee Members using their capacity to obtain funding support from the Committee as far as practicable. When this is unavoidable, Committee Members shall adhere to the guidelines on managing possible conflict of interest in applying for the funds as set out at Annex 4.

5. Use of Confidential or Privileged Information

- (a) A Committee Member shall not take advantage of, or let any person or organization benefit from, the confidential or privileged information obtained in his capacity as a Committee Member.
- (b) A Committee Member shall not disclose any confidential or privileged information of the Committee to any party unless he is authorized to do so.

6. Allocation of Funds

- (a) Committee Members shall ensure that all the funds are allocated in a prudent and responsible manner to safeguard public interest. Only funding applications which fall within the objective of the ECF and meet the eligibility and assessment criteria should be approved.
- (b) Committee Members shall particularly ensure that an open, fair and competitive mechanism is adopted for the assessment of funding applications and selection of grantees.

7. Misuse of Capacity as a Committee Member

Committee Members shall not misuse their official capacity as such to gain benefit for themselves or others, or render favour to any person / organization.

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Annex 1

**Extracts from the Prevention of Bribery Ordinance
(Cap. 201, Laws of Hong Kong)**

Section 9 – Corrupt transaction with agents

1. Any agent who, without lawful authority or reasonable excuse, solicit or accepts any advantage as an inducement to or reward for or otherwise on account of his –
 - (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
 - (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavor to any person in relation to his principal's affairs or business,shall be guilty of an offence.
2. Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's –
 - (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
 - (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavor to any person in relation to his principal's affairs or business,shall be guilty of an offence.
3. Any person who, intent to deceive his principal, uses any receipt, account or other document –
 - (a) in respect of which the principal is interested; and
 - (b) which contains any statement which is false or erroneous or defective in any material particular; and
 - (c) which to his knowledge is intended to mislead the principal,shall be guilty of an offence.
4. If an agent solicits or accepts an advantage with the permission of his principal, being permission which compiles with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2).
5. For the purpose of subsection (4) permission shall –
 - (a) be given before the advantage is offered, solicited or accepted; or
 - (b) in any case where an advantage has been offered or accepted without

prior permission, be applied for and given as soon as reasonable possible after such offer or acceptance, and for such permission to be effective for the purposes of subsection (4), the principal shall, before giving such permission, having regard to the circumstances in which it is sought.

Definition of an Advantage (Section 2)

“**Advantage**” 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.

Definition of Entertainment (Section 2)

The provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provisions.

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Annex 2

**Procedures for Handling Gifts / Souvenirs
Received by Committee Members in their Official Capacity**

All gifts / souvenirs received by Members of the ECF Committee in their official capacity should be forwarded to the Secretariat of the Committee for disposal in the following manner:

- (a) If the gift / souvenir is of a perishable nature (e.g. food or drink, etc.), it may be shared among Committee Members and Secretariat staff on a suitable occasion, or donated to charitable organizations.
- (b) If the gift / souvenir is a useful item, it may be retained and used by the Committee, or donated to charitable organizations.
- (c) If the gift / souvenir is suitable for display (e.g. a painting, vase, etc.), it may be displayed at appropriate locations of the Secretariat's office.
- (d) If the gift / souvenir is a personal item with a value below \$1,000, such as a plaque or pen inscribed with the name of the recipient, it may be retained by the recipient.
- (e) If the gift / souvenir is distributed to all participants in public activities, such as a ball pen, file folder or key folder, etc, it may be retained by the recipient.

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Annex 3

Guidelines on Declaration of Interests by Committee Members

General Principles

In view of the importance of the role of ECF Committee Members, a two-tier reporting system is adopted. The first tier is to require a Member to register his interests upon appointment in a prescribed form (Attachment). The second tier is when a Committee Member has an actual or potential conflict of interest in any matter under consideration by the Committee, he should, as soon as practicable after he has become aware of it, make a declaration to the Committee. The basic principle to be observed is that Members' advice should be disinterested and impartial and it is the responsibility of each Member to judge and decide if the situation warrants a declaration, and to seek a ruling from the Committee in case of doubt.

It is impossible to define or describe all the situations that would call for such a declaration, because each individual case differs, and because of the difficulty of catering for unusual and unforeseen circumstances. On the other hand, it is not intended that a Member should make a declaration of interest simply because the Committee is considering a matter in which he has knowledge or experience.

Potential Conflict of Interest Situations

The following are potential conflict of interest situations -

- (1) Pecuniary interests in a matter under consideration by the Committee, held either by the Member or by any close relative of his. The Member himself is the best judge of who, in particular circumstances, is a “close relative”.
- (2) A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or organization which is connected with, or the subject of, a matter under consideration by the Committee.
- (3) Some friendships which might be so close as to warrant declaration in order to avoid the situations where an objective observer may believe that a Member's advice has been influenced by the closeness of the association.
- (4) A Member who, as a barrister, solicitor, accountant or other professional

adviser, has personally or as a member of a company, advised or represented or had frequent dealings with any person or body connected with a matter being considered by the Committee.

- (5) Any interest likely to lead an objective observer to believe that the Member's advice may have been motivated by personal interest rather than a duty to give impartial advice.
- (6) A Member is an applicant of the funding scheme.
- (7) A Member is a service provider or contractor of the recipient organization.

Register of Members' Interests

- (1) Members shall register in writing their personal interests, direct or indirect, pecuniary or otherwise, when they first join the Committee, and annually thereafter, to the Secretariat.
- (2) The types of interests required for registration shall include -
 - (a) Proprietorships, partnerships or directorships of companies;
 - (b) Remunerated employment, offices, trades, professions or vocations;
 - (c) Shareholdings in a publicly listed or private company (e.g. 1% or more of the company's issued share capital); and / or
 - (d) Other declarable interests, taking into consideration the nature of work of the Committee.
- (3) A register of Members' interests shall be kept by the Secretariat which should be made available for inspection on request by the public.

Declaration of Interests at Meetings

- (1) If a Member (including the Chairman) has any direct personal or pecuniary interest in any matter under consideration by the Committee, he must, as soon as practicable after he has become aware of it, disclose to the Committee prior to the discussion of the item.
- (2) If a Member who is directly or indirectly related to a project or to the applicant/sponsoring/co-organising organisations or who belong to the same institution (including from departments of a university/company/organisation), he shall disclose it to the Committee.

**ECF Paper 28/2016-17
For Information**

- (3) The Chairman shall decide whether the Member disclosing an interest may speak or vote on the matter, may remain in the meeting as an observer, or should withdraw from the meeting.
- (4) If the Chairman declares an interest in a matter under consideration, the chairmanship may be temporarily taken over by a Member appointed by a majority of votes.
- (5) When a known direct pecuniary interest exists, the Secretariat may withhold circulation of relevant papers to the Member concerned. Where a Member is in receipt of a paper for discussion which he knows presents a direct conflict of interest, he should immediately inform the Secretariat and return the papers.
- (6) All cases of declaration of interests shall be recorded in the minutes of meeting.

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Annex 4

**Guidelines for Managing Possible Conflict of Interest Arising from
a ECF Committee Member's Application for Funding Support**

1. If a Committee Member receives his own application for assessment, he should declare an interest and return relevant papers to the Secretariat.
2. The Committee Member who has filed an application for funding support should not take part or be present at any subsequent discussions concerning the assessment, and should be prohibited from access to any information in relation to his application.
3. If a Committee Member has failed to declare an interest on his application but is subsequently revealed by other Members of his having done so, his application would be disqualified.

* * *

Attachment

RESTRICTED

Fax: 2827 8138

To: Secretary, Environment and Conservation Fund Committee

Return on or before [date]

Register of Interests

I, (Name) _____ request that the interests listed below should be included in the Register of Members' Interests.

- A. Proprietorships; partnerships or directorships of companies, public or private:

- B. Remunerated employment, offices, trades, professions or vocations:

- C. Shareholdings in companies, public or private (1% or more of the company's issued share capital):

- D. Other declarable interests (to be specified):

Signature: _____
Name: _____
Date: _____

(Please provide the information on a separate sheet, if needed)