

The Hong Kong Mortgage Corporation Limited

Corporate Governance Code



INTRODUCTION

Broadly speaking, the term “**corporate governance**” refers to the processes, and the related organisational structures, by which organisations are directed, controlled and held to account. It “*involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined*”¹.

Good corporate governance is a key contributing factor to corporate success. The Corporation’s Board has consistently practised strong governance for the Corporation in the pursuit of its core missions and business objectives. This Code was formulated in 2004 and underwent revisions in 2010 and 2015.

In ensuring this Code provide the appropriate governance framework, the Corporation takes reference from the relevant documentation issued by (i) the Insurance Authority (and previously its predecessor, the Office of the Commissioner of Insurance), (ii) the Companies Registry, (iii) The Stock Exchange of Hong Kong Limited, (iv) the Hong Kong Institute of Certified Public Accountants, and (v) the Independent Commission Against Corruption (**ICAC**), and other relevant international codes of corporate governance.

Self-Assessment Form

This Code sets out the principles of good governance and the Code provisions are concerned with the general management of the Corporation and the responsibilities of the Board of Directors. Compliance with the Code provisions is monitored by way of a self-assessment form for completion by the respective departments. An annual compliance report will be submitted for review by the Board. The Board is empowered to seek an explanation for non-compliance, and to require that appropriate action be taken to remedy the non-compliance.

This Code and the self-assessment form provide the platform for the continuous monitoring and implementing good corporate governance practices in terms of fairness, transparency, accountability and responsibility in the course of the Corporation’s pursuit of its business objectives and policy roles.

¹ Preamble to the OECD Principles of Corporate Governance (2004).

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THE HONG KONG MORTGAGE CORPORATION LIMITED
CORPORATE GOVERNANCE CODE

Part A – Board Structure and Processes

A.1 The Board

Principle

The Board is ultimately accountable and responsible for the performance and affairs of the Corporation. The Board is responsible for the effective leadership and control of the Corporation and is collectively responsible for promoting the success of the Corporation by directing and supervising the Corporation's affairs. Directors should act in good faith and take decisions objectively in the best interests of the Corporation.

Code

A.1.1 The Board should meet regularly and Board meetings should be held at least four times a year.

It is expected that Board meetings will involve active participation by Directors, either in person or through electronic means of communication. For urgent matters requiring the attention of the Board before the next scheduled Board meeting, Board approval may be obtained through circulation of written resolutions.

A.1.2 Arrangements should be in place to enable Directors to include matters in the agenda for a Board meeting.

A.1.3 Regular Board meetings should be scheduled before the start of each calendar year with a view to facilitating attendance by Directors. Prior notice of such Board meetings should be given to all Directors well in advance (generally at least seven days' prior notice). For all other Board meetings, reasonable notice should be given.

A.1.4 Conflict of interests arises when the "private interests" of a Director compete with the interests of the Corporation or the Director's duties owed to the Corporation. Private interests include financial and other interests of the Director himself/herself, and those of his/her connections (including family and other relations, personal friends, clubs and societies to which he/she belongs, and any person to whom he/she owes a favour or to whom he/she may be obligated in any way).

- A.1.5 A fundamental integrity requirement is that Directors should avoid situations which may compromise (or be seen to compromise) their personal judgement or integrity in the performance of their duties or lead to conflict of interests.
- A.1.6 If a Director has a conflict of interests (whether by virtue of the interest of his/her own or any of his/her connected entities¹) in a matter to be considered by the Board, that Director should:
- declare his/her material interest or, as the case may be, that of his/her connected entity in such matter;
 - abstain from voting on any Board resolution in which he/she or any of his/her connected entities has a material interest; and
 - not be counted in the quorum present at the Board meeting at the relevant time when the matter is put to vote.
- A.1.7 It is the responsibility of each Director to judge and decide if the situation warrants a declaration, and to seek a ruling from the Chairman or the Company Secretary in case of doubt.
- A.1.8 There are always circumstances in which certain relationship (e.g. a tie of kinship or friendship) does not give rise to financial interests but can influence or may reasonably be perceived to influence the judgement of a Director in discharging his/her director's duties. As such, a Director's duty to avoid or declare conflict of interests goes beyond the disclosure of interests that are definable in pecuniary terms.
- A.1.9 Board committees should adopt, so far as practicable, the principles, procedures and arrangements set out in A.1.2 to A.1.8 above.
- A.1.10 Minutes of meetings of the Board and Board committees should be kept by the Company Secretary, and should record in sufficient detail the matters considered and decisions reached, including any concerns raised by Directors and dissenting views expressed.

Minutes of meetings of the Board and Board committee should be sent to all Directors as soon as practicable (and generally within 14 days after the meeting is held), and available for inspection on reasonable notice by any Director.

¹ For purposes of this Code, “**connected entity**” of a Director has the meaning ascribed to it under section 486 of the Companies Ordinance (Cap. 622), and is defined to cover a wide range of persons or entities, including but not limited to the Director's spouse, child, parent, cohabitee, associated body corporate, business partner and trustee of the Director's family trust.

However, a Director should have no access to the minutes of meetings of the Board and Board Committees to the extent that any such papers and related materials in respect of which a Director has a conflict of interests (whether by virtue of the interest of such Director or any of his/her connected entities).

- A.1.11 Appropriate directors' and officers' liability insurance cover should be maintained at all times in respect of legal actions against Directors and officers.

A.2 Chairman and Chief Executive Officer

Principle

There are two key aspects to the management of the Corporation – the running of the Board and the day-to-day management of the Corporation's business. There should be a clear division of responsibilities between the Chairman of the Board and the Chief Executive Officer (CEO) in order to ensure a balance of power and authority to avoid too much power being concentrated in any one individual.

Code

- A.2.1 The roles of the Chairman and CEO should not be performed by the same individual.
- A.2.2 The Chairman should be responsible for the leadership of the Board and ensuring its effectiveness in all aspects of its role.
- A.2.3 The Chairman should ensure that all key issues affecting the Corporation are discussed by the Board, and all Directors are properly briefed and provided with adequate and appropriate information in a timely manner on matters to be discussed at Board meetings. The Chairman should encourage Directors with different views to voice their concerns, allow sufficient time for discussion of issues. The Chairman should promote a culture of openness and debate by facilitating the effective contribution of non-Executive Directors in particular.
- A.2.4 The Chairman should take primary responsibility for promoting the establishment and implementation of good corporate governance practices and procedures.

A.2.5 The executive responsibility for the running of the Corporation's business vests in the CEO. His/her duties include:

- providing leadership to Management;
- reporting to the Board on the implementation of the Corporation's strategy and its business operations;
- overseeing the realisation by the Corporation of the objectives set by the Board;
- providing all such information to the Board as is necessary to enable the Board to monitor the performance of Management;
- establishing and maintaining proper internal controls and systems, as well as disclosure controls and procedures; and
- discharging such duties and authority as may be delegated by the Board.

A.3 Board Composition

Principle

The Board should have a balance of skills, experience and diversity of perspectives appropriate for the business requirements of the Corporation. The Board should include a sufficient number of non-Executive Directors to ensure the objective and critical review and control of the management process, and the presence of a wide range of expertise on the Board for the effective leadership of the Corporation. The Board should also ensure that changes to its composition can be managed without undue disruption.

Code

- A.3.1 The Board should be of sufficient size so that the balance of skills, experience and diversity of perspectives are appropriate for the requirements of the Corporation's business.
- A.3.2 The Corporation should maintain on its website an updated list of its Directors, identifying whether they are Executive Directors or non-Executive Directors.

A.4 Appointment of Directors

Principle

There should be a formal and transparent procedure for the appointment of new Directors to the Board.

Code

- A.4.1 All Directors should be appointed by the shareholders of the Corporation who may designate one or more of them to be Executive Directors.
- A.4.2 All Directors, other than Executive Directors, should be appointed for a specific term. All non-Executive Directors should retire at the next annual general meeting of the Corporation following their appointment but should be eligible for re-election.
- A.4.3 Executive Directors need not be subject to re-election whilst holding office.

A.5 Responsibilities of Directors

Principle

Every Director should be aware of his/her responsibilities as a director of the Corporation and of its conduct, business activities and development. Non-Executive Directors are subject to the same duties of care, skill and diligence, and owe the Corporation the same fiduciary duties, as those of Executive Directors.

Code

- A.5.1 Every Director should ensure that he/she can give sufficient time and attention to the affairs of the Corporation and should not accept the appointment if he/she cannot do so.
- A.5.2 Every newly appointed Director should receive a comprehensive induction on joining the Board. Subsequently, he/she should receive any briefing necessary to ensure that he/she has a proper understanding of the operations and business of the Corporation, and his/her responsibilities and liabilities as a director under the statutes, common law, regulations, and the Corporation's business and governance policies.
- A.5.3 If any Director is at all in doubt about the nature of his/her responsibilities and liabilities, he/she should have ready access to the Company Secretary of the Corporation for advice and guidance.

- A.5.4 There should be a procedure agreed by the Board to enable Directors, on reasonable request, to seek independent professional advice which will be at the Corporation's expense, if considered appropriate.
- A.5.5 All Directors are encouraged to participate in continuous professional development² to keep abreast of the legal, regulatory commercial and other developments which are relevant to the performance of the duties by the Directors. This is to ensure that their contributions to the Board are up to date and relevant.
- A.5.6 Non-Executive Directors should contribute appropriately to the Board and any committees on which they serve by utilising their skills, expertise, backgrounds and experiences through regular attendance at Board meetings and active participation in Board discussions.
- A.5.7 Non-Executive Directors should make positive contributions to the development of the Corporation's strategy and policies through independent, constructive and informed comments.

A.6 Supply of and Access to Information

Principle

Directors should be provided in a timely manner with appropriate information in such form and of such quality as will enable them to make an informed decision and to perform their duties and responsibilities as Directors of the Corporation.

Code

- A.6.1 Except under exceptional circumstances, an agenda and accompanying Board papers should be sent in full to all Directors in a timely manner (and generally at least seven days before the intended date of a meeting of the Board), except that where a Director has a conflict of interests with respect to a particular agenda item, the relevant Board paper should not be distributed to that Director.

² Continuous professional development includes participating as speakers, members or attendees in conferences, seminars, briefings, tutorials, meetings and workshops on any topics which are relevant to legal, regulatory, financial, economic and market developments. For Directors who are members of professional bodies, the training they received in fulfilling membership requirements would also be considered as continuous professional development.

A.6.2 Directors should be mindful of keeping Board papers and other confidential information pertaining to the Corporation strictly confidential and not taking advantage of, or letting any person or other organisation benefit from, the confidential or privileged information so obtained.

A.6.3 All Directors are entitled to have access to Board papers and related materials (except where a Director may have a conflict of interests). Where queries are raised by Directors, steps must be taken to respond as promptly and fully as possible.

A.7 Remuneration of Directors

Principle

To the extent applicable, the Corporation should disclose information relating to its Directors' remuneration policy and other remuneration related matters. There should be a formal and transparent procedure for setting policy on Directors' remuneration.

A.8 Delegation by the Board

Principle

The Board should have consistent policies governing delegation by the Board to Executive Directors of such powers and responsibilities on the day-to-day operations of the Corporation.

Code

A.8.1 When the Board delegates aspects of its management and administration functions to Executive Directors, it must at the same time give clear directions as to the scope of power so delegated, in particular, with respect to the circumstances where Executive Directors should report to and obtain prior approval from the Board before making decisions or entering into any commitments on behalf of the Corporation.

A.9 Board Committees

Principle

Board committees should be formed with specific written terms of reference which set out clearly the committees' authority and duties. Board committee is an aid to assist the Board in discharging its duties. However, the Board still bears the ultimate responsibility for the conduct and affairs of the Corporation.

Code

- A.9.1 The Board should establish an Audit Committee and other Board committees, as appropriate, as and when the business and structure of the Corporation develop to a stage that requires the establishment of such Board committees for more efficient decision-making.
- A.9.2 The terms of reference of each Board committee should clearly set out how it is to be formed and its scope of authority, and require regular reporting to the Board on its decisions or recommendations.
- A.9.3 All Board committees should preferably be chaired by a non-Executive Director.
- A.9.4 The composition of each Board committee, a brief description of its remit, the number of meetings held and other relevant information should be disclosed in the Annual Report.

Part B – Corporate Reporting, External Auditors and Disclosure

B.1 Financial Reporting

Principle

The Board should present a balanced, clear and comprehensible assessment of the Corporation's performance, position and prospects.

To maintain transparency and enhance financial accountability, it is important that accounting policies and standards adopted by the Corporation are clear and consistent and, as far as possible, follow generally accepted accounting practice.

Code

- B.1.1 Directors should acknowledge their responsibility for preparing financial statements which give a true and fair view of the financial status of the Corporation. There should be a statement by the auditors about their responsibility to form an independent opinion, based on their audit, on the financial statements and to report their opinion. Directors should prepare the financial statements on a going-concern basis, with such supporting assumptions or qualifications as necessary. When Directors are aware of material uncertainties relating to events or conditions that may cast significant doubt upon the Corporation's ability to continue as a going concern, such uncertainties should be clearly disclosed.
- B.1.2 The Board's responsibility to present a balanced, clear and understandable assessment extends to annual and where applicable, interim reports, reports to regulators and to information required to be disclosed pursuant to statutory requirements.
- B.1.3 Management should provide all necessary explanation and material to the Board for it to make an informed assessment of financial and other information put before it for consideration.
- B.1.4 Management should provide all members of the Board with regular updates giving a balanced assessment of the Corporation's performance, position and prospects in sufficient detail to enable the Board as a whole and each Director to discharge their duties.

B.2 External Auditors

Principle

The appointment of external auditors is a matter for the Audit Committee, subject to endorsement by the Board and final approval by the shareholders in general meeting. The appointed external auditors are to form an independent opinion, based on their audit, on the annual financial statements of the Corporation and report their opinion to the shareholders in accordance with the requirements under the Companies Ordinance.

Code

- B.2.1 The Audit Committee should make recommendations to the Board on the appointment of external auditors.
- B.2.2 The external auditors should be allowed to communicate freely with the internal audit function and the Audit Committee.
- B.2.3 The external auditors should not have any conflict of interests in relation to the Corporation's business or arising from their relationship with any Board members or Management.
- B.2.4 The external auditors should report to the Audit Committee on Management's response to their audit findings and recommendations.

B.3 Internal Reporting

Principle

Reporting by Board Committees: Regular and informative reporting to the Board is a prerequisite for the effectiveness of Board committees. Lines of reporting between the Board and Board committees should be formalised and set out in the terms of reference of the relevant Board committees. Reports to the Board and minutes of Board committee meetings should be formally approved by the relevant Board committee before submission to the Board.

Reporting by Management: Management has the responsibility to support the Board by, among other things, ensuring that major issues are brought to the attention of the Board in a timely manner and that all relevant information is presented in a clear and concise way. Financial and non-financial performance and other accountability information should also be reported to the Board on a regular basis.

B.4 External Reporting

Principle

The Board should present a balanced and understandable assessment of the Corporation's position in reporting to the shareholders and stakeholders (e.g. creditors and debenture-holders). The quality of the information should be based on the principles of openness and substance over form. Reporting should address material matters of significant interest and concern to the shareholders and stakeholders.

Code

- B.4.1 External reporting should not be restricted to financial matters but should also include significant non-financial matters with a view to enhancing the transparency and accountability required for good corporate governance.
- B.4.2 The Annual Report should provide a clear and objective account and assessment of the Corporation's structure, activities, achievements, financial position and performance prospects.
- B.4.3 It is good practice for the Annual Report to be made publicly available as part of the process of transparency and accountability.

B.5 Corporate Governance Disclosure

Principle

The Board is responsible for corporate governance disclosure which should be by way of including a corporate governance section in the Annual Report containing the following information:

- corporate governance practice: a narrative statement of how the principles in this Code have been applied and a statement on whether the Corporation has complied with the Code provisions;
- Board of Directors: the composition of the Board, by category of Directors, including the names of the Chairman, the Executive Directors and non-Executive Directors; number of Board meetings held during the year; a statement of how the Board operates and any delegation of responsibilities to Board committees; and any relationships, or financial, business, or other material/relevant relationships, among members of the Board;
- Chairman and CEO: the identity of the Chairman and Chief Executive Officer and whether the roles are segregated;

- auditors' remuneration: an analysis of remuneration in respect of the audit, audit-related and non-audit services provided by the auditors to the Corporation;
- internal control practice and procedure: an explanation of how the system of internal controls has been defined; whether there is an internal audit department; how often internal controls are reviewed; and a narrative statement of how the Corporation has complied with the Code provisions on internal controls; and
- Board committees: in relation to each Board committee, the role, function and composition of the committee members (including their names and identifying the Chairman); number of committee meetings held during the year; and a report on the work performed by the committee during the year (including its findings on review of the financial results and its other duties as set out in its terms of reference).

Part C – Internal Controls and Risk Management

C.1 Internal Controls and Risk Management Process

Principle

The system of internal controls has a key role in the management of risks and fulfillment of the Corporation's business objectives. A sound system of internal controls contributes to safeguarding shareholders' investment and the Corporation's assets.

“**Internal controls**” refers broadly to a process effected by the Board, Management and other relevant personnel and designed to provide a reasonable assurance regarding the achievement of the following:

- safeguarding shareholders' investment and the Corporation's assets;
- effectiveness and efficiency of operations;
- reliability of internal and external reporting;
- compliance with applicable laws, regulations and internal policies, including corporate governance policies; and
- proper utilisation of the Corporation's resources.

The system of internal controls should:

- be embedded in the operations of the Corporation and form part of its culture;
- be capable of responding quickly to evolving risks impacting on the business, whether arising from factors within the Corporation or from changes in the business environment; and
- include procedures for immediate reporting to the appropriate level of management any significant control failings or weaknesses, together with details of corrective action being undertaken.

The Board is responsible for the total process of risk management, as well as for forming its own opinion on the Corporation's appetite or tolerance for risk and the effectiveness of the risk management process.

Management is accountable to the Board for designing, implementing and monitoring the process of risk management and internal control systems and integrating them into the day-to-day activities of the Corporation.

The Board has the responsibility to ensure that the Corporation has implemented an effective ongoing process to identify risks, to measure their potential impact against a broad set of assumptions, and then to activate what is necessary to manage those risks proactively.

Code

- C.1.1 The Board should undertake a systematic, documented assessment of the processes and outcomes surrounding key risks, at least annually. The Board's annual review should consider the sufficiency of the resources, staff expertise and experience, training programmes and budget for achieving the goals of the Corporation. Management should conduct regular risk assessment reviews and address the Corporation's risk exposure. The Board should, at appropriate intervals, receive and review reports from the Audit Committee or Management on the risk management processes of the Corporation.
- C.1.2 In addition to the Corporation's other compliance and enforcement activities, the Board should consider the need for a confidential reporting process covering fraud and other risks.
- C.1.3 As a key element of a sound internal control system, responsibilities of staff at all levels should be clearly defined. Major duties and functions which are susceptible to abuse or corruption should be executed by different persons to ensure sufficient checks and balances.
- C.1.4 Any deviation from the Corporation's guidelines or policies should be properly documented to ensure accountability and to provide an audit trail.
- C.1.5 There should be clear definition, ownership and delegation of management responsibilities in the risk governance framework for managing different types of risks.
- C.1.6 The Board is responsible for disclosures on internal controls and risk management and should disclose in the Annual Report that:
- it is accountable for the system of internal controls and the process of risk management, which should be regularly reviewed for effectiveness and for establishing appropriate risk and control policies;
 - there is an ongoing process for identifying, evaluating and managing the significant risks faced by the Corporation that has been in place for the year under review;

- there is an adequate system of internal controls in place to mitigate the significant risks faced by the Corporation to an acceptable level. Although such a system can only provide reasonable assurance but not absolute guarantee that all risks are fully eliminated, the system should be designed to manage the risk of failure and maximise opportunities to achieve business objectives as far as possible; and
- there is a documented and tested process in place that will allow the Corporation to continue its critical business processes in the event of a disastrous incident impacting on its activities.

C.2 Internal Audit

Principle

Internal audit should be an independent and objective assurance and consulting activity to add value to and improve the Corporation's operations. It helps the Corporation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

An effective internal audit function should provide:

- assurance that the management processes are adequate to identify and monitor significant risks;
- confirmation of the effective operation of the established internal control systems;
- credible processes for feedback on risk management and assurance; and
- objective confirmation that the Board receives the appropriate quality of assurance and information from Management and that such information is reliable.

Code

C.2.1 The internal audit function should operate independently and objectively. The Chief Internal Auditor (**CIA**) reports directly to the Chairman of the Audit Committee on all internal audit matters. The CIA also reports to the CEO on daily administrative function and is entitled to communicate freely with the Chairman of the Audit Committee without the presence of Management.

- C.2.2 The annual internal audit plan should be based on risk assessment as well as on issues highlighted by the Audit Committee and Management. The risk assessment process should be of a continuous nature so as to identify existing, residual and emerging risks and should be conducted by the internal audit function at least annually. This risk assessment should be coordinated with the Board's own assessment of risks.
- C.2.3 The Audit Committee should approve the annual internal audit work plan.
- C.2.4 The internal audit function should coordinate with other internal and external parties to ensure proper coverage of financial, operational and compliance controls and to minimise duplication of effort.
- C.2.5 The internal audit function should adopt best practice in planning and conducting reviews, reporting on its findings and following up on the implementation of its recommendations. Its work should also be given sufficient weight within the Corporation so that any significant matters of concern discovered by the internal audit function are quickly brought to the attention of CEO and the Audit Committee.

C.3 Audit Committee

Principle

The Board should establish formal and transparent arrangements to consider how it will apply financial reporting and internal control principles and maintain an appropriate relationship with the Corporation's external auditors. The Audit Committee plays an important role in the internal controls and risk management framework of the Corporation.

Code

- C.3.1 The Audit Committee should make available its terms of reference setting out its role and the authority delegated to it by the Board.
- C.3.2 Where the Board disagrees with the Audit Committee's view on the selection, appointment, resignation or dismissal of external auditors, the Board should include in the corporate governance section of the Annual Report a detailed explanation of the Audit Committee's view and also the reasons why the Board has taken a different view.

C.4 Compliance with Statutory, Regulatory and Contractual Requirements

Principle

The Corporation should establish effective mechanisms to ensure that it complies with all applicable laws and regulations, and any non-statutory guidelines and codes. Individual departments are responsible for ensuring compliance with the statutory, regulatory and contractual requirements applicable to their daily business.

Code

C.4.1 The Board should ensure that the Corporation observes and performs its contractual obligations and complies with all applicable laws, regulations, guidelines, industry standards and codes of practice and procedures. Accordingly, all departments should identify and familiarise themselves with all applicable laws, regulations, guidelines, industry standards and codes of practice and procedures, and contractual obligations relevant to their respective businesses and keep abreast of any amendments and updates to them.

All staff should ensure that any deviation from the Corporation's guidelines or policies should be properly documented to ensure accountability and to provide an audit trail.

Code of Conduct

C.4.2 All staff members of the Corporation should have access to the Staff Handbook which contains the Code of Conduct and the Corporation's administration and corporate policies.

Staff Administration

C.4.3 The staff administration system of the Corporation should be equitable and transparent and lay down guidelines to ensure consistency in practices and to prevent allegation of favouritism or manipulations.

C.4.4 The recruitment selection panel should comprise both managerial staff from the user department and human resources function to conduct vetting and selection of candidates.

C.4.5 There should be a fair mechanism for determining the remuneration packages of staff, taking into account qualification, work experience, expertise and market rate.

C.4.6 There should be a fair mechanism for determining pay adjustment and performance bonus.

Document Retention

- C.4.7 The Corporation's Document Retention Policy lays down policies on the retention of documents by the Corporation and ensures that legal requirements and management needs are met.
- C.4.8 Special care should be taken when handling or retaining any personal data of the staff or service recipients to ensure compliance with the personal data privacy protection laws and the Corporation's Document Retention Policy.

Part D – Company Secretary

D.1 Role of the Company Secretary

Principle

The Company Secretary plays an important role in supporting the Board by ensuring good information flow within the Board and that Board procedures are followed. The Company Secretary is responsible for advising the Board on governance matters.

Code

- D.1.1 The Company Secretary should have sufficient knowledge of the Corporation's affairs to perform his/her duties.
- D.1.2 The Board should approve the selection, appointment or dismissal of the Company Secretary.
- D.1.3 The Company Secretary should report to the Board.
- D.1.4 All Directors should have access to the advice and services of the Company Secretary with a view to ensuring that Board procedures and all applicable laws, rules and regulations are followed.

Part E – Bribery, Illegal Advantages and Entertainment

E.1 Prevention of Bribery Ordinance (PBO)

Principle

The PBO prohibits, among other things, the abuse of entrusted powers or official position by public servants/agents through the solicitation or acceptance of advantages. The Corporation is designated as a public body under the PBO. For purposes of the PBO, Directors may be regarded as “**public servants**”³ and come within the definition of “**agents**”. Hence, Directors of the Corporation are subject to the prohibitions under the PBO and should take note of the provisions of the PBO on acceptance of advantages in particular.

Code

Summary of Certain Provisions of the PBO

- E.1.1 Section 4 of the PBO: In relation to public servants, it is an offence for any person to, without lawful authority or reasonable excuse, offer an advantage⁴ to a public servant for performing or not performing any act in his/her capacity as a public servant. It is also an offence for a public servant to solicit or accept advantages under similar circumstances.
- E.1.2 Section 5 of the PBO: In relation to contracts or subcontracts with public bodies, it is an offence for any person to, without lawful authority or reasonable excuse, offer an advantage to a public servant for giving assistance or using influence in connection with any contract or subcontract with such public body. It is also an offence for a public servant to solicit or accept advantages under similar circumstances.

³ Under the PBO, “**public servants**” of a public body are defined to include members and employees of a public body. However, “**members**” of a public body are not defined under the PBO, and could mean shareholders or directors of a public body. Hence, Directors of the Corporation may be regarded as public servants for purposes of the PBO.

⁴ “**Advantage**” is widely defined under section 2 of the PBO, and covers almost anything which is of value, e.g. any gift (both of money and in kind), employment, service, favour, except entertainment. “**Entertainment**” is defined under section 2 of the PBO as 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.

- E.1.3 Sections 6 and 7 of the PBO: In relation to any person, it is an offence for any person to, without lawful authority or reasonable excuse, offer an advantage to any other person for not tendering for any contract with, or refraining from bidding at any auction conducted by or on behalf of a public body. It is also an offence for a person to solicit or accept advantages under similar circumstances.
- E.1.4 Section 9 of the PBO: In relation to agents, it is an offence for any person to, without lawful authority or reasonable excuse, offer an advantage to an agent for doing or forbearing to do any act in relation to his/her principal's affairs or business. Likewise, it is also an offence for an agent to solicit or accept advantages under similar circumstances.

Directors' Compliance Obligations

- E.1.5 Directors should obtain a good understanding of the legal requirements of the PBO and be aware of the importance in complying with the PBO.
- E.1.6 The summary of certain provisions of the PBO provided in this Code is for reference only. It remains the responsibility of each Director to ensure that he/she complies with the letter and spirit of the PBO. For the avoidance of doubt, the Corporation does not, by virtue of issuing this Code or providing the summary of any statutory provisions in this Code, give any advice or assume any responsibility to any person for any proceedings that may be brought under the PBO or any other statute.

Reporting of Non-Compliance

- E.1.7 If a Director considers that he/she or any other Director or staff of the Corporation has contravened any provisions of the PBO or this Code in connection with the Corporation, he/she should report the same to the Company Secretary and, where appropriate, seek independent legal advice. The reporting Director is not precluded from reporting and is recommended to report such contravention directly to the ICAC. Upon receipt of such report, the Company Secretary will report the matter to the ICAC as soon as practicable unless there are clear facts available to the Company Secretary that demonstrate that there should be no suspected corruption under the PBO.

E.2 Solicitation and Acceptance of Advantages

Principle

The Corporation prohibits the Directors from soliciting or accepting any advantage from any persons or entities (e.g. customers, suppliers, contractors) in connection with the Corporation's business and affairs.

Code

- E.2.1 A Director should decline any offer of an advantage if the acceptance may cloud his/her objectivity in managing the Corporation's business, cause him/her to act against the Corporation's interest, place him/her under an improper obligation, or lead to the perception or allegation of impropriety.
- E.2.2 A Director should always consider the public perception when accepting an offer of advantage and ensure that the solicitation or acceptance of any advantages can stand up to public scrutiny and will not bring the Corporation to disrepute.
- E.2.3 For purposes of this Code, **advantage** refers to almost anything which is of value (except for entertainment which is not lavish or frequent) and may include a gift (both of money and in kind), souvenir, discounts (including shopping vouchers or coupons), commission, loan fee, reward, office, employment, contract, service, favour as well as air, sea and overland passages.
- E.2.4 Directors should not accept lavish, or unreasonably generous or frequent entertainment, or any entertainment which is likely to give rise to any potential or real conflict of interests, put the Directors under an obligation in the discharge of their duties, compromise their impartiality or judgement, or bring them or the Corporation into disrepute bearing in mind public perception.
- E.2.5 For purposes of this Code, **entertainment** means 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 (e.g. a dinner followed by a performance entertainment).

E.3 Offering of Advantages

Principle

Directors are prohibited from offering advantages to any director, staff or public official of any organisation, for the purpose of influencing such person or organisation in any of his/her/its dealings in relation to the Corporation, whether directly or indirectly through a third party, in the performance of their directors' duties.

Code

- E.3.1 Directors should so far as possible refrain from bestowing gifts/souvenirs to others in the performance of their directors' duties. Where it is necessary or unavoidable due to operational, protocol or other reasons, the number of gifts/souvenirs to be bestowed should be kept to a minimum and the exchange of gifts/souvenirs should be made from organisation to organisation.
- E.3.2 Gift/souvenir items should not be lavish or extravagant and standard souvenirs inscribed with the Corporation's logo are preferred.