

**Financial Services and the Treasury Bureau refusing to provide
information on allocations of Hong Kong Growth Portfolio of Future Fund
(related to the Code on Access to Information)
Investigation Report**

On 11 August 2022, a complainant complained to this Office against the Financial Services and the Treasury Bureau (“FSTB”). On 2 September 2022, he provided his signed reply form.

The Complaint

2. On 14 February 2022, the complainant made a request to the Financial Secretary under the Code on Access to Information (“the Code”) for information regarding the Hong Kong Growth Portfolio (“HKGP”) of the Future Fund as follows:

- (1) the full name and place of incorporation of each General Partner (“GP”) appointed (“Information (1)”); and
- (2) the HKD amount or percentage of HKGP allocated to that GP (“Information (2)”).

3. The information request was referred to FSTB for handling. On 24 March 2022, FSTB refused the request pursuant to paragraphs 2.8¹, 2.9(a)², 2.9(b)³ and 2.16⁴ of the Code and with the following reasons:

- (1) any disclosure that can identify each GP may undermine their effective performance of contractual obligations owed to the Government in sourcing projects and making investments for HKGP under commercial principles;
- (2) any disclosure that can identify each GP may also trigger some to associate

¹ Paragraph 2.8 of the Code stipulates that information the disclosure of which would harm or prejudice the conduct of monetary policy, the maintenance of stability in financial markets, or the ability of the Government to manage the economy may be refused.

² Paragraph 2.9(a) of the Code stipulates that information the disclosure of which would harm or prejudice negotiations, commercial or contractual activities, or the awarding of discretionary grants and ex-gratia payments by a department may be refused.

³ Paragraph 2.9(b) of the Code stipulates that information the disclosure of which would harm or prejudice the competitive or financial position or the property interests of the Government may be refused.

⁴ Paragraph 2.16 of the Code stipulates that information including commercial, financial, scientific or technical confidences, trade secrets or intellectual property the disclosure of which would harm the competitive or financial position of any person may be refused.

their operations and investments regardless of their relevancy to HKGP with the Government, thereby making unwarranted speculations on Government's formulation and execution of financial and monetary policies, causing market confusion and possible unwarranted price fluctuations;

- (3) disclosing the mandate size (whether in absolute amount or percentage of the overall HKGP portfolio size) of each GP may harm their competitive position in negotiating with project holders or obtaining a fair value for portfolio investments; and
- (4) such disclosure does not sit well with the existing consensus or agreement reached between the Government and the GPs appointed, which may harm the Government's competitive position in engaging other GPs in future.

4. On the same day, the complainant emailed FSTB seeking a review of its decision. He opined that the appointment of GPs is no different in principle from any other tender exercise conducted by the Government, which would usually announce the names of successful tenderers. He also considered that the fear of a service provider being associated with the Government is not a valid reason for withholding its identity; otherwise no successful tenderers would ever be announced.

5. On 13 May 2022, FSTB decided to uphold its decision citing the same paragraphs 2.8, 2.9(a), 2.9(b) and 2.16 of the Code as the reasons for refusal. FSTB further explained that having regard to the particular context of HKGP and prevailing circumstances, there is a genuine risk that the proposed disclosure could cause harm or prejudice to HKGP as aforementioned. The overall impact of such harm or prejudice could be substantial and outweighs the public interest in disclosure of the information. Notwithstanding, FSTB had attempted to provide additional information as far as possible without prejudice to the above considerations. For example, FSTB had disclosed a general description of the appointed GPs including their relevance to Hong Kong and key considerations of their appointment, as well as confirming that the mandate size awarded to each appointed GP is different.

6. In response to the complainant's arguments in **paragraph 4** above, FSTB explained that it is not the "fear" of a GP being associated with the Government that forms the basis of refusal; instead, it is the implications of such association, i.e. making unwarranted speculations on the Government's formulation of policies, causing market confusion and possible unwarranted price fluctuations, that are of relevance to Part 2 of the Code and form one of the grounds for refusal. Separately, the appointment of GPs is unique in nature and governed by the HKGP's own governance framework and guidelines. FSTB considered it not appropriate to apply the disclosure arrangements of other tender exercises administered by the Government to the selection of GPs.

7. On 11 August 2022, the complainant complained to this Office against FSTB for

refusing his request for information. He considered FSTB's decision unreasonable and against the public interest based on the following grounds:

- (1) It is impossible that the disclosure of the requested information would cause price fluctuations when the projects in HKGP will be largely unlisted; there is no public market for the shares and therefore no price to fluctuate. Even if listed investments are involved, there is no evidence that Government involvement causes price fluctuations;
- (2) The disclosure of the requested information would not cause unwarranted speculations on the Government's formulation of policies when the policies of operating HKGP and its terms of reference have already been announced. There is no reason to think that investments made within that mandate would be inconsistent with those policies;
- (3) The disclosure of the requested information would not undermine GP's effective performance of contractual obligations owed to the Government in sourcing projects and making investments for HKGP under commercial principles. Any company seeking investors has a "KYC" duty to know where the money is coming from and to comply with anti-money laundering laws. Therefore, the investee would be told who the beneficial owner of the proposed investor is (i.e. the Government, via HKGP);
- (4) The public has a right to know who is managing such substantial amounts of public money in the form of HKGP;
- (5) Transparency in tenders is important and Hong Kong must not descend into a state where parties dealing with the Government in any tender can insist on non-disclosure because it may cause them some kind of reputational damage. The fact that disclosure would make it harder for the Government to attract GPs is not a good reason for non-disclosure; and
- (6) Whether or not the appointed GPs are within the scope of the World Trade Organization Agreement on Government Procurement, to which Hong Kong is a signatory, the best practice on post-tender disclosure therein should be followed.

Our Findings

8. We commenced a full investigation with FSTB on 9 September 2022. Having examined FSTB's information and response of 7 October 2022, we completed this investigation report on 25 November 2022.

The Code

9. The Code obliges Government departments to make available as much Government-held information as possible to the public to keep them well informed about the Government and its services, unless the information falls into the categories which may be withheld under Part 2 of the Code, including paragraphs 2.8, 2.9(a), 2.9(b) and 2.16 (see **Note 1 – 4**).

10. According to paragraph 2.8.1 of the Code's Guidelines on Interpretation and Application ("the Guidelines"), the provision in paragraph 2.8 of the Code is intended to protect information the disclosure of which could lead to speculation, instability in the financial markets, services and industries, improper gain by those who obtain access to such information, or a compromising of the Government's ability to manage the economy.

11. According to paragraph 2.9.2 of the Guidelines, information which is relevant to negotiations – e.g. negotiating and fallback positions – may be withheld if its disclosure would hamper a department's negotiating position. Departments may also withhold information related to commercial or contractual activities where disclosure could harm the commercial confidences of tenderers or of the Government. Information relating to the award of discretionary grants or ex-gratia payments may be withheld if disclosure would prejudice the operation of such schemes.

12. According to paragraph 2.9.3 of the Guidelines, where a department operates in a commercial environment in competition with the private sector, it must be able to protect commercially sensitive information in the same way as its competitors.

13. According to paragraph 2.16.1 of the Guidelines, the provision in paragraph 2.16 of the Code provides protection for the commercial, etc. interests of parties other than the Government, whose interests in this area are covered by paragraph 2.9 of the Code. It addresses the need to protect sensitive commercial information the disclosure of which would adversely affect those to whom the information relates. This applies regardless of whether the information was provided under a statutory obligation or voluntarily. The business community needs to be confident that the Government will apply its general commitment to greater openness in a way which does not damage its legitimate interests or undermine the trust placed in the Government.

Background of HKGP

14. HKGP was set up by the Government to strategically invest in projects with a "Hong Kong nexus" that could consolidate Hong Kong's status as a financial, commercial and innovation centre, and raise its productivity and competitiveness in the long-run. Under the prevailing governance structure, the Government would engage GPs to make investments in accordance with the predetermined terms and Investment

Policy of HKGP, and serve as a limited partner in the private equity fund(s) to be formed with GPs. The Government would not be involved in the day-to-day investment decision making for HKGP. The investments to be made by GPs could be in various forms, such as venture capital, growth investment, private equity, funds, and other financial instruments or mandates.

15. The overall design of HKGP, including the disclosure arrangements, is devised based on the thorough discussion among the Expert Group⁵ and recommendations put forward by them to the Government. Notably, it was considered that the Government should disclose general information such as governance arrangements (e.g. committee setup, measures to avoid conflict of interest, etc.), investment objectives and initial allocation at the outset. However, due to commercial and market sensitivities, the specific investment mandates to individual GPs, details of individual transactions and the list of GPs appointed by the Government should not be disclosed. The Government made a public statement in February 2020 that it has accepted the recommendations tendered by the Expert Group. The disclosure arrangements recommended above were also adopted.

Response from FSTB

Information (1)

Name of each GP appointed

16. The GPs appointed so far are private equity firms with extensive investment capabilities that have formed partnership with a spectrum of partners to manage different funds and investments according to different objectives. FSTB opined that identifying a GP appointed for HKGP publicly may inadvertently trigger some members of the public to associate the GP's operations and investments, even though some are outside the context of HKGP, to the Government.

17. For instance, in case an appointed GP exits from a particular investment (using investments in an airline as a hypothetical example), it may stir up unwarranted speculations that the Government is pessimistic about the overall market or industry outlook, or is contemplating a change in a particular policy (such as tightening quarantine or immigration requirements) that could affect the industry. It is possible to create a spillover effect to related sectors (such as the tourism sector) and the financial market as well as heighten investor anxiety. There is also a genuine risk that such incident would create room for unnecessary interpretations and speculations on the Government's formulation and execution of financial and monetary policies (such as speculating a fiscal deficit which triggers the encashment and predicting a conservative

⁵ In 2019-20 Budget Speech, the Financial Secretary announced that he would invite several leaders from the financial services and business sectors to make recommendations on the investment strategies and portfolios of the Future Fund.

budget in the coming financial year), thereby causing market confusion and volatility (in Government bond prices and associated yield expectation).

18. Given the dynamic nature of the financial market, FSTB considered that such messages could do much damage to investors and the market regardless of how swiftly the Government clarifies its non-involvement or dismisses the allegation. It is important for the Government not to invite such speculations which could undermine financial stability. Paragraph 2.8 of the Code is applicable.

19. As a related issue, such unwanted association of all the GP's activities with the Government may bring inconvenience to the GP's own operations or commercial activities with other existing and potential partners. It is also not an industry practice for a GP to disclose the identity of every limited partner it has engaged to make investments. Mandating a full disclosure of GPs would be a deviation from such practice, which could undermine the attractiveness to partner with the Government, weaken the Government's bargaining position and result in less favourable terms and conditions offered by GPs to other limited partner(s) entering into similar investment partnerships. Paragraph 2.9(a) of the Code is applicable.

20. FSTB further explained that their primary duties are safeguarding financial security and financial interest of public funds. Adopting a bottom-line mentality in assessing relevant risks is crucial in the development of Hong Kong from the holistic view of national security. Having considered the factors set out in **paragraphs 16 to 19** above, FSTB decided that on balance the names of appointed GPs should not be disclosed, while a general description on the GPs would be provided through press releases. The arrangement was well communicated with and agreed by the appointed GPs before the announcements on the appointments were made. If the Government now deviates from such agreement, it could pose a reputation risk to the Government within the private equity industry and harm its competitive position in working with appointed GPs and engaging new GPs in future. Paragraph 2.9(b) of the Code is applicable.

Place of Incorporation of each GP appointed

21. As regards the place of incorporation of each GP appointed, FSTB observed that appointed GPs have different corporate structures, and some vehicles acting as counterparties to the contractual agreement with the Government may have a different place of incorporation as the controlling entities of appointed GPs. To avoid dwelling into such technicalities and causing more confusions, and without prejudice to the above considerations, FSTB had provided the most relevant information to the complainant that all eight GPs appointed so far have their headquarters based in Hong Kong or have substantial offices established in Hong Kong. The same information was disclosed in FSTB's earlier press releases in 2021.

Information (2)

22. FSTB explained that valuations of private equity investments are inherently subjective and hinge heavily on the relative bargaining power between parties. Disclosing the mandate size of each appointed GP, whether in absolute terms or percentage of the overall HKGP portfolio size (such that the exact amount could be computed) in effect reveals the financial resources allocated to the GPs by the Government. With such information, the investment targets may exercise price discrimination to the appointed GPs, for example, “marking up” the price of deals compared to other competitors whose availability of financial resources was not made known to the public. Conversely, where certain project valuations might exceed the mandate size disclosed, it may invite unnecessary queries from investment targets on the affordability of GPs and complicate the negotiation process, even if additional resources could be met by GPs through channels outside HKGP. Both scenarios would not be conducive for GPs to conduct negotiations on behalf of the Government and would indeed prejudice their competitive position in obtaining a fair value for HKGP’s investments. Paragraph 2.16 of the Code is applicable.

23. FSTB also mentioned that the mandate size of each appointed GP was decided by the Investment Committee (“IC”) of HKGP having regard to a spectrum of factors including their strengths and expertise, understanding of policy objectives and priorities of HKGP. In other words, the mandate size should not be taken as the Government’s verdict of their reputation and capability. However, disclosure of such information would naturally induce the GP to compare its allocation with its counterparts. This would inevitably upset those appointed GPs who were accorded a relatively smaller mandate, triggering some to query IC’s judgement and souring the partnership with the Government. As there is a likelihood that such disclosure would harm or prejudice the competitive position of the Government, paragraph 2.9(b) of the Code is applicable.

Benchmarking with Other Sovereign Wealth Funds

24. FSTB added that while it would not be appropriate to categorise HKGP as a sovereign wealth fund (“SWF”) given Hong Kong’s unique status and HKGP’s specified governance structure and policy objectives, disclosure arrangements of global SWFs which share certain similarities with HKGP could serve as a useful reference in benchmarking where HKGP stands. Notably, major SWFs like Temasek and GIC (i.e. SWFs of Singapore) made no disclosure on the identity of GPs and the mandate size accorded to each GP. Although the Government Pension Fund of Norway has published a list of external managers, it may not be an appropriate benchmark for HKGP as it does not invest in private equity. The existing disclosure arrangements and transparency level of HKGP in terms of the information requested are on par with the international peers.

Specific Responses to Complainant's Arguments

25. FSTB's specific responses to the complainant's arguments in **paragraph 7** above are as follows:

- (1) HKGP's investments cover a wide spectrum of forms and industries. FSTB is referring to the possible spillover effect to the wider market. In light of the unwarranted association of all the GP's activities to the Government, it could give rise to market speculations and cause price volatility;
- (2) The speculations on the Government's formulation of policies are not the policies of operating HKGP *per se*. Instead, it is the disclosure of the requested information that would cause unwarranted speculations on Government's views on the market outlook and conduct of financial and monetary policies, which may also undermine the Government's ability to maintain financial stability;
- (3) While the information to be exchanged between investee companies and GPs would vary, FSTB understands that it is not a mandatory requirement or an industry practice for GPs to disclose the identity of the limited partner involved (i.e. the Government under the exiting framework of HKGP);
- (4) FSTB fully appreciates that HKGP should make reasonable disclosure in the interest of public accountability. However, FSTB is mindful that the right of access to information is not absolute. Having regard to the particular context of HKGP and prevailing circumstances, the proposed disclosure could cause harm or prejudice to HKGP as set out above. The overall impact of such harm or prejudice could be substantial and outweighs the public interest in disclosure of the information. That notwithstanding, FSTB has attempted to provide relevant information on the appointed GPs and mandate size in its replies to the complainant (see **paragraph 5** above);
- (5) The implications that could be brought about by the proposed disclosure are of concern, including the Government's ability to manage the economy, management of contractual activities and financial interest of the Government, as well as GPs' ability to deal with business affairs, and collectively form the grounds for refusal; and
- (6) The appointment of GPs is unique in nature and governed by the HKGP's own governance framework and guidelines. It would therefore not be appropriate to equate selection of GPs to any other

tender exercises administered by the Government and request the same level of disclosure.

Our Comments

26. We have examined all information pertinent to this case, including the complainant's arguments against FSTB's decision, FSTB's responses and earlier press releases on HKGP, the Code and the Guidelines, etc.

27. For Information (1), FSTB explained that the disclosure of the name of each GP appointed may lead to unwarranted association of all the GP's operations and investments with the Government, thereby inviting market speculations, causing price volatility and in turn undermining financial stability (see **paragraphs 16 to 18, 25(1) and 25(2)** above). The Bureau also explained why the proposed disclosure may weaken the Government's bargaining position and competitive position in working with appointed GPs and engaging new GPs in future (see **paragraphs 19 to 20** above).

28. As regards the place of incorporation of each GP appointed, without prejudice to the above considerations, FSTB has provided information that all eight GPs appointed so far have their headquarters based in Hong Kong or have substantial offices established in Hong Kong (see **paragraph 21** above).

29. For Information (2), FSTB explained that the disclosure of the mandate size of each GP may harm or prejudice its negotiations with investment targets on behalf of the Government, and trigger queries from those GPs accorded a relatively smaller mandate thereby harming or prejudicing the competitive position of the Government (see **paragraphs 22 and 23** above).

30. Regarding the public interest in disclosure, we consider that HKGP involves substantial public funds and hence the public interest. Yet, given the dynamic and sensitive nature of the financial market, it is understandable that FSTB adopts a bottom-line mentality in assessing relevant risks for safeguarding financial security and financial interest of public funds (see **paragraph 20** above). In this light, we accept FSTB's view that the overall impact of the harm or prejudice brought about by the disclosure of the requested information could be substantial and outweighs the public interest in disclosure.

31. As for the complainant's argument that FSTB's decision was not in line with the disclosure arrangements for other tender exercises administered by the Government, we accept FSTB's explanation that it is not appropriate to apply the same disclosure arrangements to the appointment of GPs which is unique in nature and governed by the HKGP's own governance framework and guidelines (see **paragraph 25(6)** above).

32. Summarising our analysis above, we find that it is not unreasonable for FSTB to

refuse the complainant's information request by citing paragraphs 2.8, 2.9(a), 2.9(b) and 2.16 of the Code.

Conclusion

33. Based on the analysis in **paragraphs 26 to 32** above, The Ombudsman considers this complaint **unsubstantiated**.

Office of The Ombudsman
November 2022

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