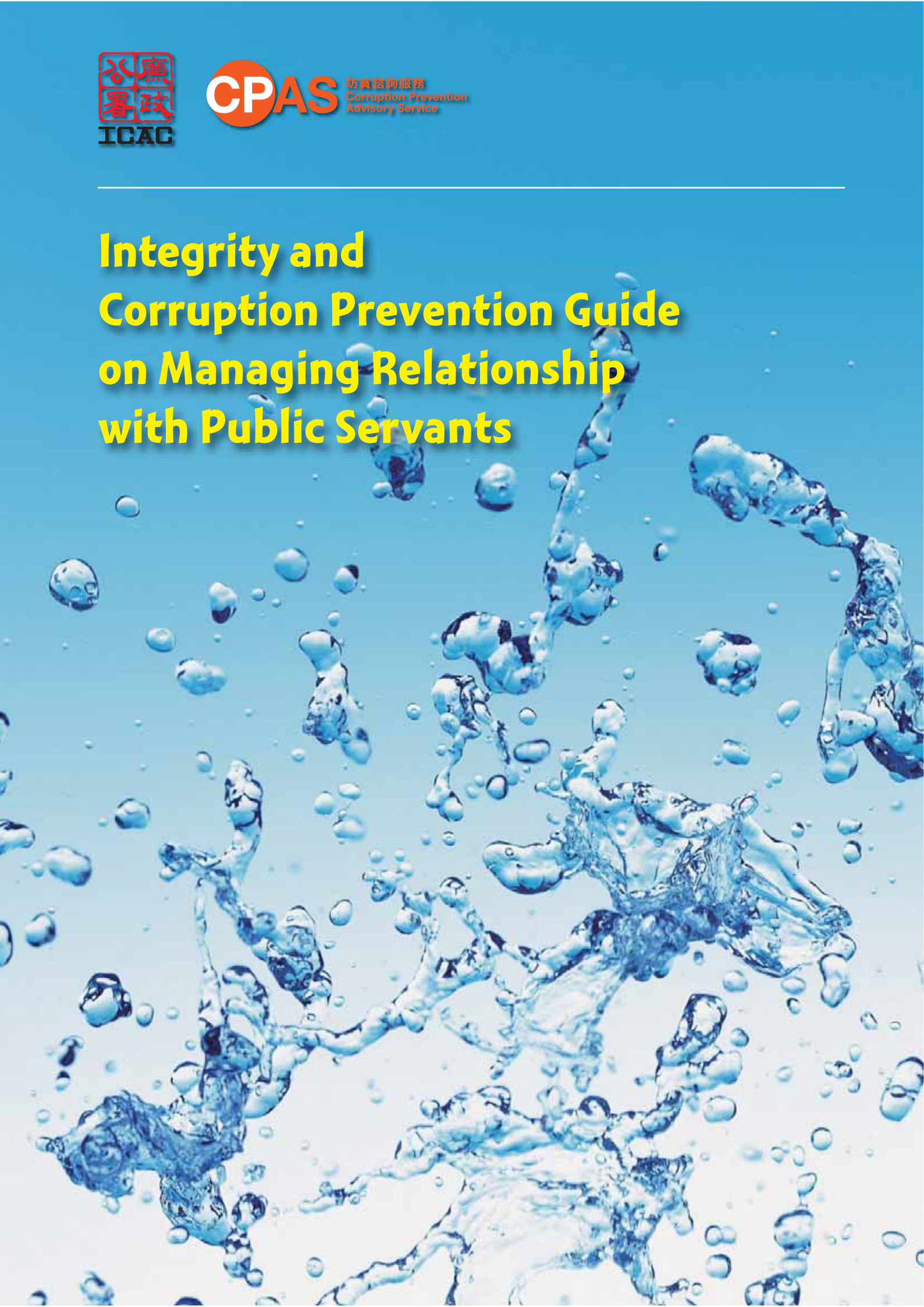
廉政公署 ICAC

CPAS 防貪諮詢服務 Corruption Prevention Advisory Service

Integrity and Corruption Prevention Guide on Managing Relationship with Public Servants



Addendum

Corruption Prevention Services for the Private Sector

Please note that with effect from 10 September 2026, the Corruption Prevention Advisory Service (CPAS) and the Hong Kong Business Ethics Development Centre (HKBEDC) of the Independent Commission Against Corruption (ICAC) have been restructured as the Private Sector Integrity Centre (PSIC).

Accordingly, any references to the CPAS and HKBEDC in this publication are to be read as referring to the PSIC from that date onwards.

As a one-stop service and knowledge hub, PSIC continues to provide free, confidential, and tailor-made corruption prevention and integrity services to private-sector organisations.

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Descriptions and explanations of the legal and regulatory requirements under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) and any other ordinances, subsidiary legislation, orders, rules, regulations and case law (collectively, "Laws and Regulations") in this publication are intended to be general and abbreviated for ease of understanding. Users of this publication are advised to refer to the original text of the Laws and Regulations if considered necessary. Case scenarios are used in this publication to illustrate the legal and regulatory requirements and corruption risks. These case scenarios should be taken as hypothetical and not referring to any particular real case or any particular organisation or person. Moreover, the advice and recommendations given in this publication are by no means prescriptive or exhaustive, and are not intended to substitute any legal, regulatory or contractual requirements. Users should refer to the relevant instructions, codes and guidelines issued by the relevant authorities, and adopt the appropriate measures that best suit their operational needs and risk exposure.

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Private Sector Integrity Centre
Independent Commission Against Corruption
10 September 2026

廉政公署 ICAC

PSIC 私營機構誠信建設中心 Private Sector Integrity Centre

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Descriptions and explanation of legal requirements under the Prevention of Bribery Ordinance and other relevant ordinances/laws in this Guide are necessarily general and abbreviated for ease of understanding. Users of the Guide are advised to refer to the original text of the relevant ordinances/laws or seek legal advice on particular issues where necessary. The ICAC will not accept any responsibility, legal or otherwise, for any loss occasioned to any person acting or refraining from action as a result of any material in this Guide.

Case scenarios are used in this Guide to illustrate the legal requirements and corruption risks and to highlight the lessons learnt. While they are drawn up based on actual corrupt practices, each case scenario is hypothetical and does not mean to refer to any particular case or relate to any particular company or person. The advice and tips given in the Guide are by no means prescriptive or exhaustive, and are not intended to substitute any legal, regulatory or contractual requirements. Users should refer to the relevant instructions, codes and guidelines issued by the relevant authorities as well as by their employers as appropriate, and apply appropriate practices that best suit the operational needs and risk exposures of their companies and business environment.

Throughout this Guide, the male pronoun is used to cover references to both the male and female. No gender preference is intended.

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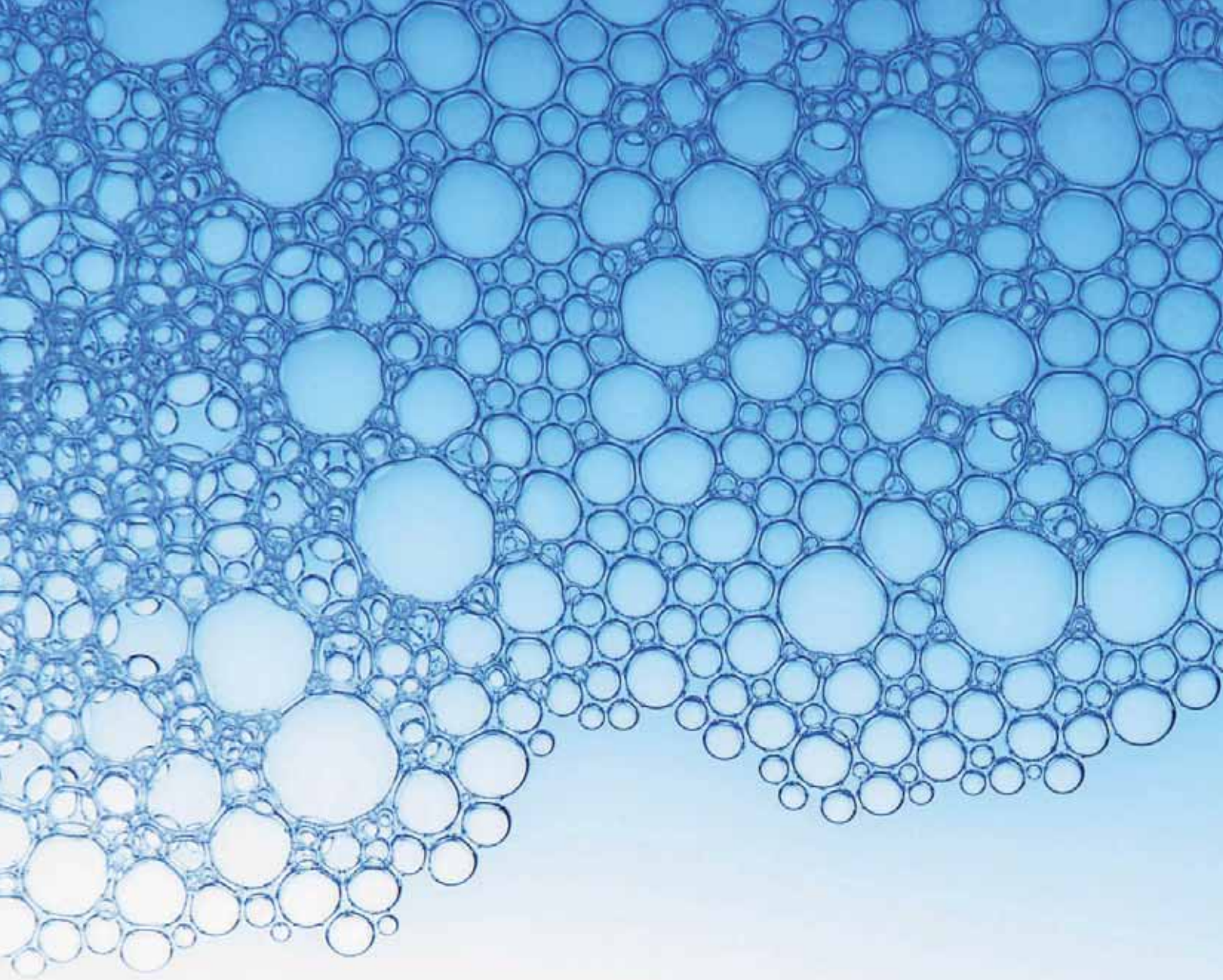


Foreword

Business operators and their employees may frequently come into contact or interaction with public servants (including government officers or members and staff of public bodies), through official dealings or private social activities. It is a common practice or custom in the business world for business operators and their employees to offer gifts and hospitality to their business contacts with a view to maintaining good business relationship and facilitating personal connections and relationship ("guan xi"). However, if their business contacts are government officers, they have to be particularly careful as government officers are governed by stringent legal provisions and administrative rules and regulations, restricting their acceptance of advantages from other persons and requiring them to maintain impartiality at all times and to avoid any conflict of interest in carrying out their public duties. The offer/acceptance of advantages (including gifts) to/by them may constitute a violation of the anti-bribery law in Hong Kong and may render both the recipient and offeror liable to other criminal offences.

Public servants who are members or employees of public bodies are also subject to similar legal provisions. Although they are governed by different sets of rules and guidelines laid down by the individual public bodies having regard to the nature and sensitivity of their businesses, these are normally drawn up with reference to the probity standards of the Government.

To maintain a high standard of integrity in the interactions between public servants and business operators, it is not sufficient only for the public servants to be wary of the legal and probity requirements governing them; but business operators should also be aware of the legal restrictions applicable to them. In particular, if a business operator frequently offers advantages and entertainment to a public servant, this might give rise to a temptation or feeling of obligation for the public servant to do the former some favour in return. Either with a corrupt or sweetening intent or simply due to a lack of awareness of the legal provisions, or however form an advantage with a sweetening motive might be in, the offeror may not only find himself committing an offence, but may also have the reputation of his business tarnished by being a party involved in the misconduct of the public servant.

It is therefore advisable for business operators and their employees or any individuals, in particular those who have business dealings with any government department or public body, to have a basic understanding of the relevant legal provisions and rules governing the integrity of

public servants, including the offer/acceptance of advantages to/by public servants and conflict of interest, and to adhere to a high ethical and probity standard in managing their relationship with public servants.

This Guide aims at enhancing the transparency and providing a basic understanding of the relevant legal provisions and administrative rules and regulations governing the integrity of interaction between public servants and persons having business dealings with them (e.g. offering/acceptance of advantages and entertainment, conflict of interest situations), and providing advice and guidance, as far as possible, to assist such persons in managing their relationship with public servants. This Guide does not set out any additional rules or restrictions other than those already laid down in the law or by the Government or public bodies.

The advice and recommended practices in this Guide are general in nature, and only aim at assisting the persons concerned to make their own assessment and judgement based on the details and merits of the situations they encounter. Every situation has its own merits, and must be assessed and judged by the persons concerned in accordance with the legal requirements. If in doubt, they may consult their legal advisors.

Chapter 1

Laws and Regulations Governing Public Service Integrity

Section 1.1 Prevention of Bribery Ordinance (Cap. 201)

The following provisions of the Prevention of Bribery Ordinance (POBO, Cap. 201) deal with acts of persons or public servants[1] that may result in either or both of the parties committing an offence under the POBO. Hence, any persons having business dealings with public servants should acquaint themselves with these provisions, so as to avoid exposing themselves to the risk of breaching the POBO and help maintain a high standard of integrity in our public service.

(a) Section 3 – Soliciting or accepting an advantage by government officer

- It is an offence for a **government officer**[2] to, without the general or special permission of the Chief Executive, solicit or accept any advantage.
- The maximum penalty is a fine of $100,000 and one year's imprisonment.

Advantage means (this applies to all sections in the POBO):

(i) any gift, loan, fee, reward or commission consisting of money or in kind;

(ii) any office, employment or contract;

(iii) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(iv) 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;

(v) the exercise or forbearance from the exercise of any right or any power or duty;

(vi) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of the above mentioned items.

[1] Public servants generally refer to any government officers, employees or members of public bodies as defined in the POBO.

[2] The term in the POBO is "prescribed officer". Generally speaking, this includes, among others, any person holding an office of emolument, whether permanent or temporary, under the Government.

Do you know?

- It is a misconception that there is a financial limit or threshold of the value of the advantage, below which acceptance is allowed under the POBO. In fact, the POBO has not specified any threshold or ceiling of allowable advantages for the purpose of corruption offences under the POBO. The receiver/offeror will commit an offence if he accepts/offers an advantage of ***any value*** in a corrupt dealing as set out in the relevant sections.

- It is a common practice for a private organisation to permit its employees to accept advantages from other persons related to the company's business up to a specified limit and under certain circumstances (e.g. customary gifts or "red packets" during festivals, or tips, from customers). This is the organisation's ***internal policy*** and must not be confused with the requirements of the POBO.

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.

Do you know?

- This should not be confused with the dictionary meaning of "entertainment", or "hospitality" in anti-bribery laws of some overseas jurisdictions. For example, tickets to a performance or sport event, hotel accommodation and flight tickets, which may be regarded as "hospitality" in other jurisdictions, are regarded as gifts and hence "advantages", ***not*** "entertainment", under the POBO (See also Section 1.3(d) of this Guide).

- Section 3 of the POBO does ***not*** require that the advantage be solicited or accepted for a corrupt purpose. The spirit behind Section 3 is to prevent government officers from falling into the "sweetening or softening up process" by accepting advantages and thereby rendering themselves vulnerable to subsequent corrupt approaches. On the other hand, the **Acceptance of Advantages (Chief Executive's Permission) Notice (AAN)** gives general permission to government officers to solicit and/or accept all advantages under Section 3 of the POBO, except four types of "restricted advantages", namely gifts (whether of money or otherwise), discounts, loans of money, and passages, and specifies the circumstances under which general permission is given for government officers to solicit and/or accept these four types of advantages. A government officer may solicit or accept the above advantages without seeking special permission under ***certain circumstances*** having regard to his relationship with the person/party offering the advantage; the occasion on which the advantage is offered; and the value of the advantage.

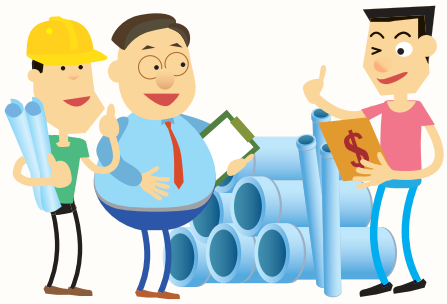
- Notwithstanding the general permission given under the AAN, all government officers must ensure that the solicitation or acceptance of such advantages will not give rise to conflict of interest with their official duties or bring the Government into disrepute. For circumstances not covered by the general permission under AAN (e.g. a wedding gift given by a subordinate, irrespective of the value), the government officer is required to seek special permission from the approving authority for accepting the advantage concerned.

Annex 1 *- Extracts from AAN*

Examples of an offence under Section 3 of POBO

- A government officer responsible for front-line public estate management and handling of related applications from tenants, without seeking special permission, solicited loans from two tenants, whose applications for re-allocation were handled by him. Since loan is a form of advantage as defined in the POBO, and no general permission is given under the AAN to solicit loan from a person having official dealings, the officer breached Section 3 of the POBO.

- A government officer, without seeking special permission, accepted a red packet containing a sum of money from one of the proprietors of a government subcontractor, which was under his supervision in government building maintenance projects, in a social gathering during the Chinese New Year. As there were business dealings between the officer and the subcontractor and no general permission was given under the AAN for the acceptance of the red packet, the officer breached Section 3 of the POBO.



(b) Section 4 – Bribery

- It is an offence for **any person** to, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offer any advantage to a public servant or the Chief Executive as an inducement to or reward for that public servant or the Chief Executive performing or abstaining from performing any act in his capacity as a public servant or the Chief Executive.

- It is also an offence for **any public servant** or the Chief Executive to, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicit or accept any advantage as an inducement to or reward for his performing or abstaining from performing any act in his capacity as a public servant or the Chief Executive.

- The maximum penalty for both of the above offences is a fine of $500,000 and seven years' imprisonment.

For the purpose of the POBO:

a person is regarded as ***offering*** an advantage if he, or any other person acting on his behalf, directly or indirectly gives, or agrees/promises to give, an advantage to or for the benefit of another;

a person is regarded as soliciting/accepting an advantage if he, or ***any other person*** acting on his behalf, directly or indirectly demands or asks for/receives or agrees to receive, an advantage, whether for himself or for another person;

as long as the offeror of bribes intends to induce the acceptor to extend his favour(s), both parties commit bribery even if the acceptor claims that he "did not actually have the power to do so", "did not intend to do so" or "did not, in fact, do so";

it shall not be a defence to claim that any advantage accepted or offered is customary in any profession, trade, vocation or calling.

- Neither the public servant (***other than government officer***) who solicits or accepts the advantage nor the person who offers the advantage shall be guilty of the offence if that public servant has his principal (i.e. the public body[3])'s permission, which shall be in writing and

  (i) be given before the advantage is offered, solicited or accepted; or

  (ii) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such acceptance.

*For more details about the relevant rules governing government officers, please refer to **Section 1.3 (a) & (b)** of this Guide.*

Do you know?

Like a private organisation, a public body (***not government department***) might permit its employees to accept advantages up to certain limits and under certain circumstances in relation to the public body's business. This should be set out in the public body's ***Code of Conduct*** or related guidelines. If such permission is not specified in the Code of Conduct or any guidelines, it should be assumed that there is no such general permission, and permission has to be obtained on a case by case basis.

[3] Under the POBO, public body means the Government, the Executive Council, the Legislative Council, any District Council, any board, commission, committee or other body appointed by or on behalf of the Chief Executive or the Chief Executive in Council, and any board, commission, committee or other body specified in Schedule 1 of the POBO.

But **caution**: even the law allows a public body to give permission to its employees (public servants) to accept advantages, one must ***not*** offer advantages to an employee of a public body ***while having business dealings*** with that public body without lawful authority or reasonable excuse (see Section 1.1(f) of this Guide).

Examples of an offence under Section 4 of POBO

- A supplier offered free accommodation to a public servant during his private overseas visit as a reward for that public servant's acceptance of substandard goods for the public body in which he was employed. As hotel accommodation falls under the definition of "advantage" in the POBO, and the offer was a reward for the public servant's act in relation to his duties, the supplier committed an offence under Section 4 of the POBO.

- A public servant responsible for the selection of service providers for his employer (i.e. the public body) solicited rebates from a tenderer as a reward for his favouring that tenderer in the selection process. The tenderer refused to concede to his request but reported the case to the ICAC. The public servant was found to have breached Section 4 of the POBO and sentenced to imprisonment.

- A licensed shop owner offered several bottles of expensive red wine to a public servant responsible for processing license applications as an inducement for that public servant's expediting the shop owner's licence application. Although the public servant did not actually give him any favour, the shop owner breached Section 4 of the POBO simply by making the offer with a corrupt request and was prosecuted and sentenced to imprisonment.

(c) Section 5 – Bribery in regard to public contracts

- It is an offence for **any person** to, without lawful authority or reasonable excuse, offer any advantage to a public servant or the Chief Executive as an inducement to or reward for that public servant or the Chief Executive's giving assistance or using influence in regard to contracts with the public body.

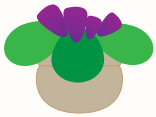
- It is also an offence for **any public servant** or the Chief Executive to, without lawful authority or reasonable excuse, solicit or accept any advantage as an inducement to or reward for his giving assistance or using influence in regard to contracts with the public body.

- The maximum penalty for both of the above offences is a fine of $500,000 and 10 years' imprisonment.

Examples of an offence under Section 5 of POBO

- Upon request from an employee of a public body, a plant supplier offered kick-backs to the employee as a reward for his assistance in securing contracts by only recommending the plant supplier to the public body for supplying plants and flowers, and in inflating the selling prices of the plants and flowers to deceive the public body. Both the plant supplier and the employee of the public body were found guilty of Section 5 of the POBO.

- A chinaware supplier offered commission to a manager of a public body as reward for that manager's assistance in securing purchase orders by splitting the contracts so as to circumvent the public body's internal guidelines on quotation procedures for procurement of chinaware, teapots and wineglasses. Both the chinaware supplier and the manager of the public body committed Section 5 of the POBO.



(d) Section 6 – Bribery for procuring withdrawal of tenders for public contracts

- It is an offence for **any person** to, without lawful authority or reasonable excuse, offer any advantage to any other person as an inducement to or reward for

withdrawal of a tender or refraining from making a tender for any contract with a public body.

- It is also an offence for **any person** to, without lawful authority or reasonable excuse, solicit or accept any advantage as an inducement to or reward for withdrawal of a tender or refraining from making a tender for any contract with a public body.

- The maximum penalty for both of the above offences is a fine of $500,000 and 10 years' imprisonment.

(e) Section 7 – Bribery in relation to auctions

- It is an offence for **any person** to, without lawful authority or reasonable excuse, offer any advantage to any other person as an inducement to or reward for that other person's refraining from bidding at any auction conducted by or on behalf of any public body.

- It is also an offence for **any person** to, without lawful authority or reasonable excuse, solicit or accept any advantage as an inducement to or reward for his refraining from bidding at any auction conducted by or on behalf of any public body.

- The maximum penalty for both of the above offences is a fine of $500,000 and seven years' imprisonment.

(f) Section 8 – Bribery of public servants by persons having dealings with public bodies or the Government

- It is an offence for **any person** to, without lawful authority or reasonable excuse, while ***having dealings of any kind*** with a government department/office or a public body, offer any advantage to any government officer employed in that department/office or public servant employed by that public body.

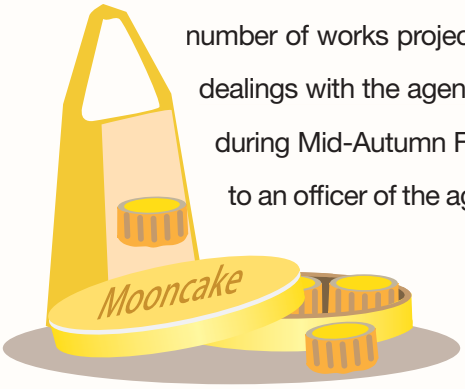
- The maximum penalty is a fine of $500,000 and seven years' imprisonment.

Do you know?

Note that the offer does ***not*** need to be a reward or an inducement for any reciprocal act by the public servant. Also, as mentioned in Section 1.1(b) of this Guide, even if the public body has given certain permission for its employees to accept certain advantages, the offeror would still commit an offence if he offers the advantage while having business dealing with the public body.

Examples of an offence under Section 8 of POBO

- A construction subcontractor was responsible for carrying out certain road works, which required the approval of a law enforcement agency prior to commencement of the works. Within a few months, the agency processed and approved a large number of works projects carried out by the subcontractor. While having dealings with the agency in the above works projects, the subcontractor, during Mid-Autumn Festival, offered over a dozen boxes of mooncakes to an officer of the agency, who refused to accept the mooncakes. The case was reported to the ICAC. The subcontractor was found guilty of Section 8 of the POBO and sentenced to imprisonment.



- A construction company was awarded a subcontract for a road maintenance project. During the project, the proprietor of the construction company lent his private car to an Inspector of Works of a government department, who was assigned to supervise his works, issue works orders and recommend interim and final payments, for private use over a period of time. The proprietor was found guilty of Section 8 of the POBO and sentenced to imprisonment.

Annex 2 *- Extracts from POBO*

Section 1.2 Misconduct in Public Office

Due to effective enforcement and increased public awareness of the POBO, corrupt activities in the public sector have over the years evolved from mainly straight bribery to various malpractices involving abuse of public authority or other misconduct, and sometimes involving business entities or other individuals. Such malpractice may amount to the Common Law offence of misconduct in public office (MIPO) by the public servants and associated offences by the connected individuals/entities. It is therefore important for business operators/managers or other individuals who have dealings with public servants to have understanding of this Common Law offence.

(a) MIPO

- The key elements of the offence of MIPO, which is a Common Law offence, were spelt out in two cases[4] before the Court of Final Appeal. It was held that the offence would be committed where:-

  (i) a **public official**[5];

  (ii) in the course of or in relation to his public office;

  (iii) wilfully misconducts himself; by act or omission (for example, by wilfully neglecting or failing to perform his duty);

  (iv) without reasonable excuse or justification; and

  (v) where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

[4] Sin Kam-wah and another v HKSAR (FACC 14/2004) and Shum Kwok-sher v HKSAR (FACC 1/2002)

[5] For the purpose of MIPO, public official is a person who is vested with powers, duties, responsibilities or discretions which he is obliged to exercise or discharge for the benefit of the general public. Such a person may or may not be employed by the Government, and he may or may not be paid. Notwithstanding the above, the definition of public official is an area where the Common Law is still evolving and developing to meet the changing and different forms of public responsibilities.

(b) Aiding and abetting[6] to commit MIPO

- **Any person** who aids or abets the commission by public official of the offence of MIPO shall be guilty of the like offence.

Examples of the offence of MIPO or aiding and abetting to commit MIPO

- A government officer, with the assistance of a manager of a government contractor which the officer was supervising, abused his authority to use, for private purpose, a vehicle, which was supplied under the contract for official use only, on more than a hundred occasions over a prolonged period. The officer also accepted lavish meals offered by the manager on many occasions, and assisted the manager to make false entries in claiming payment from his employer. The officer misused his office which amounted to serious misconduct, and the manager of the contractor was also found guilty of ***aiding and abetting*** the government officer in committing the misconduct offence.

- A government officer misused his office by exerting improper influence over the award of contracts amounting to over a hundred of million dollars to a company which was not qualified for tendering for the contracts and in which his relative had financial interest. Although he did not accept advantages from his relative, his act involved serious abuse of his authority and failure to perform his duty, amounting to serious misconduct. The name of his relative's company was disclosed in the press, which destroyed the company's reputation in the industry.

- A government officer assisted his friend in obtaining a government registration as a qualified fire safety service provider, by providing the latter with classified information for the qualifying examination and tampering with the latter's examination paper to help him secure a pass. Although there was no evidence that the officer received any advantage/bribe from his friend, his act involved misuse of his position and failure to

[6] Section 89 of the Criminal Procedure Ordinance (Cap. 221).

perform his duty amounting to serious misconduct, especially considering the threat to public safety resulting from registering an unqualified service provider. His friend was also charged with conspiracy to defraud in addition to having his registration revoked.

Section 1.3 Administrative Rules and Regulations

In addition to legal requirements, government officers are subject to stringent administrative rules and regulations on the probity standards expected of them by the Government. For public servants who are members or employees of public bodies, they are also governed by rules and guidelines laid down by the individual public bodies, normally with reference to the probity standards of the Government, having regard to the nature and sensitivity of their businesses. Any public servant, either government officers or members or employees of public bodies, who fails to comply with the relevant administrative rules and regulations may be liable to disciplinary action, and where criminal misconduct is involved, even prosecution under the POBO or MIPO.

This Section enables persons having dealings of any kind with public servants to acquaint themselves with the relevant rules and regulations. They should avoid any conduct which may put a public servant at risk of breaching the relevant rules and regulations. Any such conduct would cast doubt on their integrity and motive in the course of the dealings and seriously damage their companies' reputation. It is important to note that where there is an intention or motive to bribe or sweeten the public servant in return for favour in relation to the public servant's duties, the person involved may also be liable to criminal prosecution.

[7]

(a) Acceptance of advantage in private capacity

- The general rules and regulations governing acceptance of advantage by government officers in their private capacity are set out in AAN.

➔ ***Annex 1*** *– Extracts from AAN*

[7] For details of the relevant rules and regulations applicable to government officers who are Politically Appointed Officials, please refer to the "Code for Officials under the Political Appointment System", which is available for download at the following website: http://www.cmab.gov.hk/en/issues/PAO_Code_1.7.2012.pdf

(b) Acceptance of advantage in official capacity

- Advantages (such as gifts and sponsorships) offered to a government officer and/or his spouse because of his official position or on an occasion attended in his official capacity are regarded as advantages to the Government.

- In general, a government officer is required to:

  - as far as possible, decline the advantages presented or offered to him in his official capacity;

    where it is not appropriate to decline the advantages in order to avoid embarrassment, seek the approving authority's directive on how to dispose of the advantage so offered; and

    when attending in his official capacity a social or festive function which involves a session of free lucky draw[8], inform the organiser that he will not participate in it; if participation cannot be avoided, return the prizes for a re-draw.

(c) Acceptance of sponsored visits

Sponsored visits in official capacity

- For official visits, government officers are required, as a general rule, to decline sponsorship offered by:

  organisations or individuals under the regulation of or having current or prospective official dealings with their government bureau/department; or

  private commercial organisations;

  to avoid any actual, potential or perceived conflict of interest.

[8] On occasions where government officers buy raffle tickets out of their own pocket during such official functions, they may accept the prize won, if any, without having to seek special permission. Nevertheless, they should avoid taking part in dubious lucky draw which could compromise their integrity, e.g. where one pays a small sum of money for the raffle tickets in return for a chance for expensive prize.

Sponsored visits in private capacity

- Government officers are required to observe the rules and regulations set out in AAN on acceptance of advantages, including sponsored visits, in their private capacity.

- Government officers should not solicit or accept a sponsored private visit (like any other advantage) that has or could have given rise to a conflict between their private interests and official duties or position.

- During the private visits, government officers should not:

  accept lavish entertainment which is incommensurate with the occasion and purpose of the visit; and

  undertake activities which could be construed as being related to his official duties.

(d) Acceptance of entertainment

- Government officers should not accept lavish, or unreasonably generous or frequent entertainment, or indeed any entertainment that is likely to:

  give rise to any potential or real conflict of interest;

  put the officers in an obligatory position in the discharge of their duties;

  compromise their impartiality or judgement; or

  bring them or the public service into disrepute.

- Where a government officer visits a restaurant with which he has official dealings and at the end of the meal the restaurant owner waives the bill or gives a discount, he may be liable to prosecution under the POBO and/or MIPO.

(e) Conflict of interest

- For the guidance of government officers, a conflict of interest situation arises when the "private interests" of an officer compete or conflict with the interests of the Government or the officer's official duties, where "private interests" include the financial and other interests of the officer himself, his family or other relations, his personal friends, the clubs and associations to which he belongs, any other groups of people with whom he has personal or social ties, or any person to whom he owes a favour or is obligated in any way.

- Government officers are required at all times to avoid or declare, as appropriate, any conflict of interest that may arise or has arisen. When carrying out official duty or dealing with members of the public, a government officer:

  must avoid situations which might compromise (or be seen to compromise) his personal judgement or integrity at work or lead to conflict of interest;

  must not treat his official duty as less important than his private interests, nor put himself in a position where his official duty and private interests conflict;

  must not use his official position (or any privileged information made available to him in his official capacity as a government officer) to further his private interests or those of his family, friends or associates, nor put himself in a position which gives rise to suspicion that he has done so; and

  must not allow the pursuit of his private interests to interfere with the proper discharge of his official duty, such as engaging in an occupation, task or project which might conflict with the interests of the government department he works in.

(f) Outside work and activities

- All serving government officers are subject to outside work control. They must obtain prior permission before taking up any paid outside work, or any outside work during working hours. Unpaid outside work out of normal working hours which may constitute any conflict of interest also requires prior approval.

- The policy intention is to ensure that government officers will not engage in any work or activities outside his government service (whether paid or unpaid, during or outside working hours) which may affect the performance of or give rise to any conflict of interest with their official duties.

(g) Post-service employment

- Government directorate officers on final leave or having left the Government are subject to post-service outside work control. They must obtain permission before taking up any work during the prescribed restriction periods (final leave period, minimum sanitisation period and control period), unless the work is unpaid and taken up with specified non-commercial organisations, such as charitable, academic or other non-profit making organisations not primarily engaged in commercial operations.

- The policy objective of the control is to ensure that government directorate officers on final leave or having left the Government will not take up any outside work (whether paid or unpaid, full-time or part-time) which may constitute real or potential conflict of interest with their former government duties or cause negative public perception embarrassing the Government and undermining the image of the Civil Service.

- The taking up of any outside work by a government directorate officer during the prescribed restriction periods is subject to approval and standard restrictions, such as refraining from:

  being personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises;

  undertaking or representing any person in any work that are connected with the formulation of policy or decisions, sensitive information, contractual or legal dealings, assignments or projects, or enforcement or regulatory duties in which he was involved or to which he had access during his last three years of government service; or

- engaging in any activities which will cause embarrassment to the Government or bring disgrace to the Civil Service.

For more information on the rules and regulations governing civil servants, please refer to Civil Service Bureau's website:

http://www.csb.gov.hk/english/admin/conduct/134.html

In addition, individual government departments may have issued departmental Codes of Conduct or guidelines setting out additional restrictions as deemed necessary having regard to the work nature of the departments.

Public servants who are members or employees of public bodies are generally subject to a set of probity guidelines such as a Code of Conduct, laid down by the individual public bodies, normally with reference to the probity standards of the Government, but also having regard to the nature and sensitivity of their businesses. The Code of Conduct for members or employees of public bodies generally covers guidelines on, among other things:

- **solicitation and acceptance of advantage,** e.g. prohibiting members/employees from soliciting or accepting advantages from any persons or companies having official dealings with the organisation;

- **advantages offered to members/employees in their official capacity,** e.g. requiring members/employees to decline, as far as possible, advantages (e.g. gifts and souvenirs) offered/presented to them by virtue of their official position, and if this cannot be done, forward the advantages to the organisation for disposal;

- **acceptance of entertainment,** e.g. requiring members/employees not to accept entertainment which is likely to give rise to any potential or real conflict of interest, put the members/employees in an obligatory position in the discharge of their duties, compromise their impartiality or judgement, or bring them or the organisation into disrepute;

- **offering of advantages,** e.g. prohibiting members/employees from offering advantages to any director or staff of any organisation, for the purpose of

influencing such person or organisation in any dealings, or any public official, whether directly or indirectly through a third party, when conducting the business of the organisation; and

- **managing conflict of interest,** e.g. requiring members/employees to, as a fundamental integrity requirement, avoid situations which may compromise (or be seen to compromise) their personal judgement or integrity at work or lead to conflict of interest, and if it cannot be avoided, make full disclosure of all relevant interests which conflict, may conflict or may be seen to conflict with their official duties.

ICAC Sample Codes of Conduct for Members and Employees of Public Bodies are available for download at the following website:
http://www.icac.org.hk/en/corruption_prevention_department/pt/index.html

Section 1.4 Ethical Commitment of Suppliers/Contractors

To ensure that their business partners are also committed to ethical practice, the Government and some public bodies have set out in the tender documents and contract documents a set of probity requirements for compliance by contractors, suppliers or service providers when they conduct business with the Government or public bodies concerned. Any non-compliance with the probity requirements may lead to invalidation of the tenders submitted or termination of the contracts concerned, jeopardise their future standing as government contractors, suppliers or service providers, and subject to civil liabilities (e.g. indemnifying the Government against losses or costs arising from the non-compliance) and criminal offences (e.g. the POBO offences). Some government departments also require contractors, suppliers or service providers to issue a company code of ethics and/or Code of Conduct when they apply for admission to the approved lists of the departments concerned. This Section outlines the key probity requirements in the tender and contract documents for easy reference of government contractors, suppliers or service providers. Government contractors, suppliers or service providers are also advised to refer to the actual probity requirements set out in the tender and/or contract documents for individual contracts/projects.

(a) Probity Requirements in Tender Documents

- In bidding for government contracts, contractors, suppliers or service providers are prohibited from:

  offering any advantage to any government officer with a view to influencing the award of the contract;

  save with the prior written consent of the Government, communicating to any person other than the Government the amount of any price submitted in their tenders;

  fixing the amount of any price submitted in their tenders by arrangement with any person;

  making any arrangement with any person as to whether they or that other person will or will not submit a tender; and

  colluding with any person in any manner whatsoever in the tendering process.

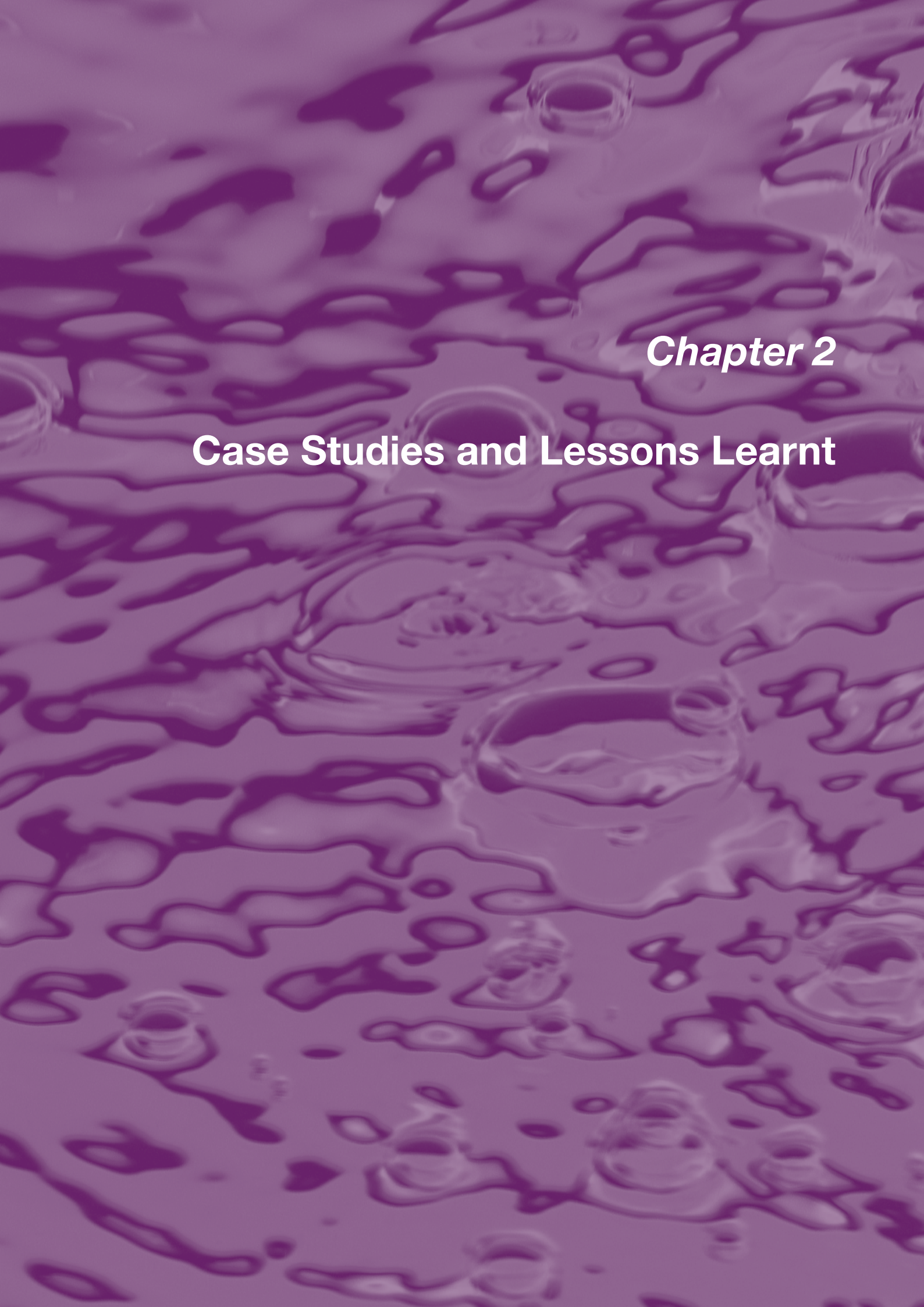
(b) Probity Requirement in Contract Documents

- When undertaking government contracts, contractors, suppliers or service providers are required to:

  prohibit their directors, employees (whether permanent or temporary), agents and subcontractors who are involved in the contracts from offering, soliciting or accepting any advantage;

  caution their directors, employees, agents and subcontractors against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the contracts;

  - take all necessary measures (including by way of a Code of Conduct or contractual provisions where appropriate) to ensure that their directors, employees, agents and subcontractors are aware of the above prohibition and will not solicit or accept any advantage, excessive hospitality, etc. when conducting business in connection with the contracts. ■



Chapter 2

Case Studies and Lessons Learnt

Section 2.1 Bribery and General Sweetening

Most bribery cases involve the exchange of "a favour for a favour", i.e. the offeror offers advantages to a public servant and makes a request for a favour from the latter in relation to a specific transaction or matter relating to the latter's official duties. Some corruption cases, however, involve "general sweetening", i.e. the offeror offers advantages ("sweetener") to a public servant in view of his official position, without making a request for any specific favour from the public servant at the time of the offer, but to keep him "sweetened" so that he would be favourably disposed to the offeror in his official capacity should there be any such need in the future. The following are case scenarios, drawn up based on corrupt practices/dealings in actual corruption cases, relating to common types of interaction between business operators and public servants.

(a) Licensing or other Regulatory Functions

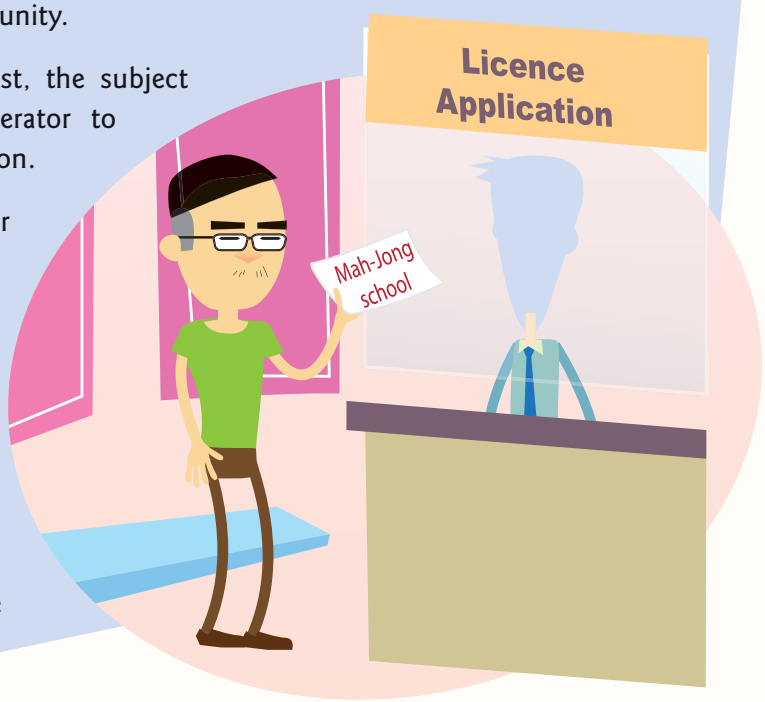
A mah-jong school operator submitted an application to a government department for a licence to establish a new mah-jong school.

The operator was informed that his application would likely be turned down as his proposed premises was close to a school and a church, and there were objections from local community.

Upon the operator's request, the subject officers met with the operator to discuss his licence application.

At the meeting, the operator offered an envelope of winning lottery tickets to the officers, and solicited the latter's assistance in his licence application.

The officers refused to accept the advantages and referred the incident to the ICAC.



Offences committed

- The mah-jong school operator offered bribe to the government officers as an inducement for the latter, in their official capacities, to assist him in the licence application. He contravened Section 4 of the POBO.

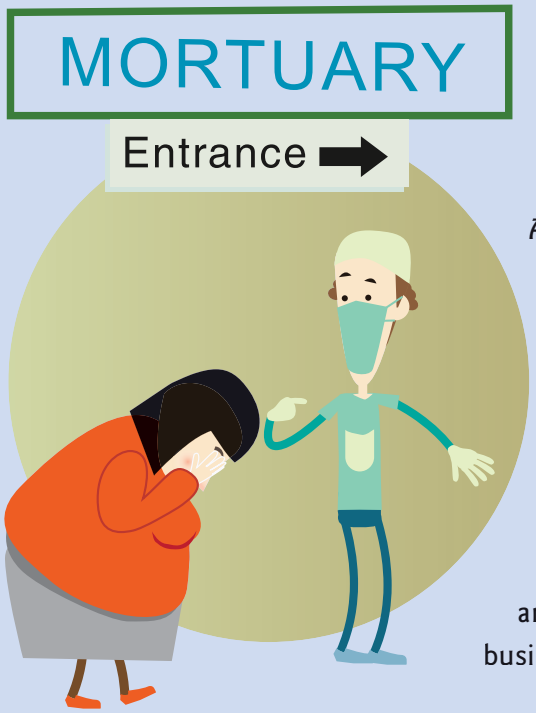
Section 1.1 (b) *- POBO Section 4*

Case in perspective

- In general, government and public service providers have laid down application guidelines and/or criteria for various kinds of licences and services which are available for reference by members of the public. Processing of applications follows laid down procedures, rules and criteria to ensure fairness to all applicants, and is subject to vigorous controls and supervision. Moreover, public servants are governed by stringent integrity rules, and in general have a high standard of integrity. Even if individual officers might be compromised, the irregularities have a good chance of being detected. Therefore, it is foolish for any person to attempt to bribe in order to obtain a licence or other public services. Not only will he face criminal sanction, but his act will also ruin his business's reputation.

- Business operators should adhere to the principles of fair play and honesty and follow proper procedures and requirements in applying for or obtaining all types of public services. If not satisfied with the result, they should follow proper channels for enquiry or appeal. They should never resort to bribery or other unethical/improper means to secure the services.

(b) Business Opportunity relating to Public Services



A mortuary officer of a public hospital assisted in managing the mortuary office of the hospital, including arranging relatives of deceased patients to enter the mortuary office.

A sales representative of a funeral parlour approached the mortuary officer, offered him red packets and asked for assistance in touting business.

The mortuary officer accepted the advantages and, in return, informed the sales representative when relatives of deceased patients turned up at the mortuary, although touting in the hospital area was not allowed.

The mortuary officer also allowed the sales representative to accompany relatives of deceased patients to enter the mortuary office, which was not allowed by the hospital.

Offences committed

- The sales representative offered advantages, i.e. red packets, to the mortuary officer, who was an employee of a public hospital under the Hospital Authority (a public body) and hence a public servant, as an inducement for the latter, in his official capacity, to show favour to the sale representative in relation to the mortuary's operation. The sales representative (and the mortuary officer as well) contravened Section 4 of POBO.

Section 1.1 (b) *- POBO Section 4*

Case in perspective

- In general, government and public bodies adopt the principle of transparency of their services, policies and procedures to facilitate public monitoring. Corrupt dealings inevitably result in deviations from normal practice or violation of rules, and cannot be hidden for long given today's vigorous public monitoring.

- The public hospital has a clear policy prohibiting touting activities in the hospital area, and signs are posted in the area to this effect. Relatives of deceased patients may also regard touting as a nuisance. They or competitors of the sales representative may complain about any touting activities, and any corrupt arrangement may thus be uncovered. It was therefore very foolish for the mortuary staff and the funeral parlour sales representative to engage in corrupt dealings. The corrupt practices may not only damage the reputation of individual companies, but the image of the trade as well, making it more difficult for smaller operators to secure business.

- Business operators should adopt legal and ethical practices in running their business and must not attempt to gain favour in the course of marketing or securing their business through offering advantages to public servants. Adopting illegal or unethical marketing or business practices will eventually only damage business.

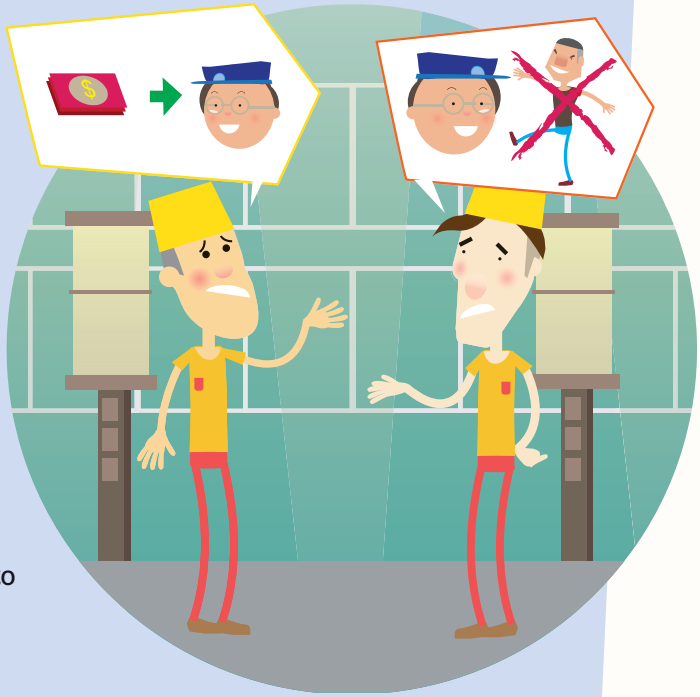
(c) Law Enforcement – Special Treatment

Two shareholders of a restaurant started a business in the New Territories.

A law enforcement officer attached to the district visited the restaurant shortly after its opening.

The officer told the restaurant shareholders that he could regularly visit the restaurant in the future, but that required a monthly "travelling expense" (「車馬費」).

Believing that the officer would protect the restaurant from triads, the shareholders agreed to pay the monthly payments.



Offences committed

- The restaurant shareholders agreed to offer monthly payments (which is a bribe) to a public servant, as an inducement or reward for the latter to perform an act (visiting the restaurant regularly) that was related to official duty. The restaurant shareholders (and the law enforcement officer as well) contravened Section 4 of POBO.

Section 1.1 (b) *- POBO Section 4*

Case in perspective

- If any business operator enjoys any special treatment by a law enforcement officer or public servant, this may be noted by other parties, e.g. competitors, the operator's own staff or customers, or parties from whom the operator is protected, who may raise a complaint. Moreover, any special treatment will also lead to irregularities in the officer's performance of duty, which can be spotted by his supervisors. Law enforcement agencies, in particular, exercise close monitoring over their officers' conduct. It is therefore very unwise for any business operator to concede to any request for bribe by any public servant for special treatment. Once engaged in such corrupt dealing, the business operator exposes himself to even increasing and endless demands and extortion.

- Any charges from government departments or public bodies (i.e. payments to public servants) are clearly laid down, widely known and with official receipt under proper payment procedures. Any payment to public servants which does not follow clear and proper procedures must be avoided.

- Business operators should decline any demand for bribe and report to the ICAC immediately.

(d) Law Enforcement – Avoidance of Enforcement Action

A law enforcement agency conducted blitz checks on trucks conveying textile imports and exports through the customs control points in the HKSAR-Shenzhen boundary area.

A garment factory operator asked an officer of the agency to provide restricted information about a number of textile companies under investigation by the agency.

The operator also asked the officer to provide the duty rosters of the inspection teams in the boundary area to facilitate his transporting of undeclared textile products across the border.

In return, the operator agreed to make weekly payments to the officer as a reward for the latter's assistance.

Within a few months, the operator offered tens of thousand dollars to the officer on several occasions, and was able to avoid enforcement until the case was detected.

Offences committed

- The garment factory operator offered bribe payments to a public servant, as a reward for the latter to perform an act in his official capacity (providing confidential information about the agency's operations).The garment factory operator (and the law enforcement officer as well) contravened, among others, Section 4 of the POBO.

Section 1.1 (b) *- POBO Section 4*

Case in perspective

- If any business operator consistently enjoys special treatment by a law enforcement officer or public servant, sooner or later the irregularity will be noted by other parties, e.g. a competitor who feels aggrieved, the operator's own staff or customers, or simply any person who has learnt about the dealing. The special treatment will also lead to irregularities in the enforcement agency's operations, which will be investigated. Any business operator bribing a law enforcement officer to evade enforcement action will only find himself facing heavier sanctions.

(e) Law Enforcement – Sweetening

A businessman had been arrested and charged, on serval occasions, by a law enforcement agency for a number of suspected criminal offences, such as criminal damage, unlawful assembly, etc.

A senior officer of the law enforcement agency, who was a friend of the businessman, was responsible for handling and investigating the cases concerning the businessman, who was aware of this.

While the investigation was ongoing, the businessman, in a social gathering, offered to provide free accommodation to the officer for a few months, i.e. paying the rent on behalf of the officer, and the officer accepted the offer.

Whilst offering the free accommodation to the officer, the businessman did not ask for a specific favour or help from the officer in return. The intention was to "sweeten" the officer in view of his official capacity.

The incident was reported to the ICAC. Both the businessman and the officer were arrested soon after the social gathering where the free accommodation was offered, prosecuted and sentenced to imprisonment.

Offences committed

- In this case, the businessman offered free accommodation (an advantage under POBO's definition) to a public servant so as to keep him sweetened with the expectation (albeit not expressed explicitly) that the latter would treat the businessman favourably in relation to the investigation. The businessman (and the law enforcement officer as well) thus contravened Section 4 of the POBO.

Section 1.1(b) *- POBO Section 4*

Case in perspective

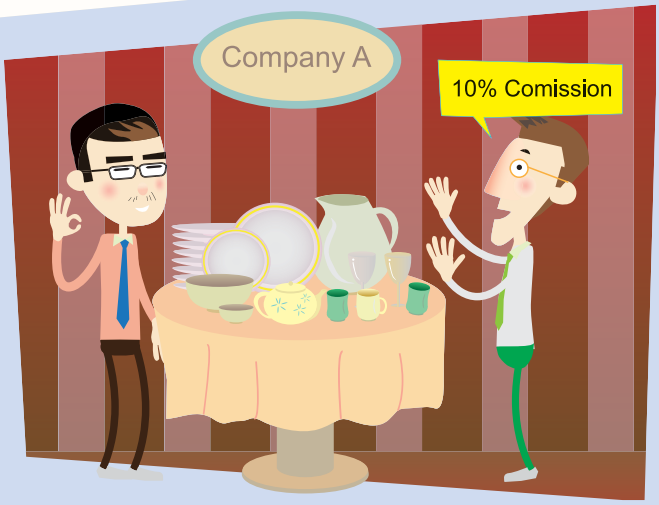
- Although the businessman had said nothing about what was expected of the officer or what the officer should do to help at the time when the free accommodation was offered or on any future day, the Judge stated that in view of the official dealings in the past between the businessman and the officer, the court had the reason to believe that the free accommodation was given to the officer as a "general sweetener" so that the officer would be more inclined in the future to favour the businessman in the transaction of any business that the businessman might have with the law enforcement agency.

- The Judge further elaborated the meaning of "general sweetener" as extracted below:

> *"By its very nature, a general sweetener offered to a government servant would not and could not envisage anything specific which the government servant would have to do in the future. A general sweetener means what those words say, in other words, that if the offerer should have any dealings with the government or with the department in which the offeree worked, then the offeree would favour the offerer in those future dealings."*

- Therefore, any person should not offer any advantage to a public servant, with a motive to sweeten the latter, whether or not an immediately return of favour is demanded, or when he has dealings of any kind with the latter's government department or public body (see also Section 1.1(f) of this Guide).

(f) Bidding for Public Contract

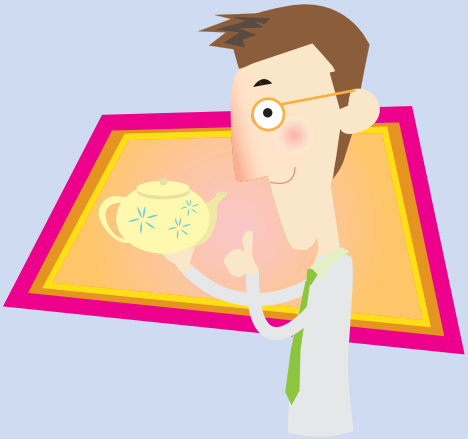


Company A was an approved supplier of chinaware, teapots and wineglasses of a public body, which provided catering services to its customers as part of its operations.

Through official contact, the proprietor of Company A came to know a manager of the public body responsible for selecting approved suppliers to bid for purchase orders.

The manager approached the proprietor of Company A and offered to assist Company A to obtain purchase orders for chinaware, teapots and wineglasses.

In return, the manager asked for 10% commission of the sales amount for every purchase order awarded to Company A.



Within the following year, Company A was awarded a number of purchase orders, and the proprietor of Company A paid the commission to the manager as agreed.

Offences committed

- The proprietor of Company A offered advantage, i.e. 10% commission, to a public servant, as a reward for the latter, in his official capacity, to give assistance in regard to the contracts/purchasing orders with the public body. He contravened Section 5 of the POBO.

Section 1.1 (c) *- POBO Section 5*

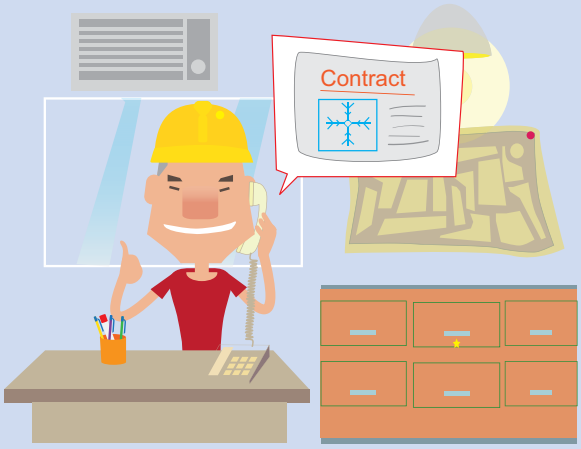
Case in perspective

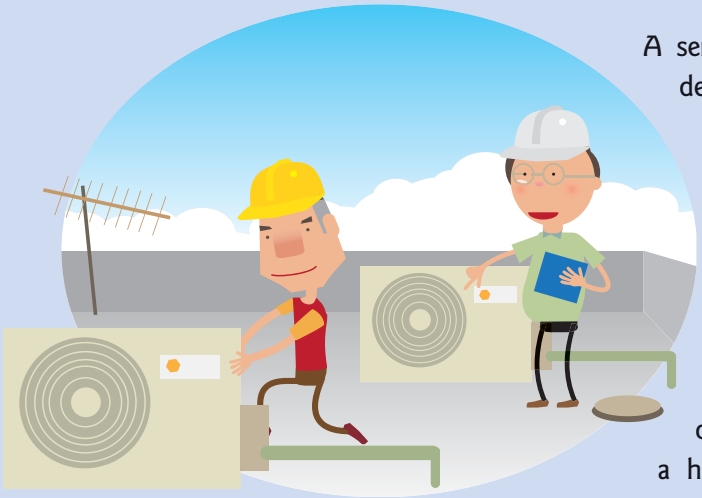
- In general, government departments and public bodies have well-established procurement procedures and related controls, given that the expenses involved are public funds. Purchases are subject to close supervision and audit checks, and external monitoring by the public and relevant stakeholders such as other bidders. Any public servant attempting to manipulate the procurement process for a corrupt purpose puts himself at great risk of being detected. It would be naïve to believe that the bribed public servant would exercise full control of all the processes and keep the corrupt dealing safe from detection.

- With both local and global business placing increasing importance on anti-bribery policies, many reputable companies have the policy of excluding suppliers with a track record of bribery from their suppliers list. Hence, adopting corrupt means to do business will have a dire impact on the business's sustainability, not only in relation to business with the public sector, but the business sector.

(g) Other Business Dealings with Government / Public Body

A contractor was awarded a multi-million dollar contract by a government department for the replacement and maintenance of the air-conditioning system at various government properties.





A senior officer of the government department was tasked to supervise and certify completion of the work of the contractor under the contract.

Assisted by a manager of the contractor, the senior officer used, for private purpose, a contract car, which was for official use only, on more than a hundred occasions over a long period.

The senior officer also accepted lavish meals and karaoke entertainment offered by the manager on many occasions, and assisted the manager to make false entries in claiming payment from his employer, i.e. the contractor.

Offences committed

- The senior government officer misused his office which amounted to serious misconduct. He was guilty of the offence of MIPO. The manager of the contractor was also found guilty of aiding and abetting the senior government officer in committing the offence of MIPO.

Section 1.2 (a) *- MIPO*

Section 1.2 (b) *- Aiding and Abetting to commit MIPO*

Case in perspective

- Public servants are usually vested with powers and responsibilities as well as public trust and confidence in discharging their official duties. They may be liable to the offence of MIPO if they abuse their authorities when discharging official duties. Any persons who are involved in the misconduct of the public servants may also put themselves at risk of being criminally implicated, e.g. committing the offence of aiding and abetting the public servants in committing the offence of MIPO, as shown in the above case.

Section 2.2 Offering Advantages to Public Servants While Having Business Dealing

Giving "business gifts" or other advantages (e.g. concert tickets, leisure trips) to business associates is a common business/trade practice in the business sector. Some business operators or employees may adopt the same or similar practice when dealing with public servants of government departments or public bodies with which they have business dealing, believing that this is allowable provided that they do not have a corrupt request or motive. However, they might put themselves at risk of contravening Section 8 of the POBO (see Section 1.1(f) of this Guide). The following are case scenarios, drawn up based on actual cases, relating to offering advantages to public servants while having business dealing with their government departments or public bodies.

(a) Customary Gifts – Mooncakes

A construction subcontractor was responsible for carrying out certain road repair and improvement works, including temporary traffic arrangements for the works, in the New Territories.

To ensure road safety, all temporary traffic arrangements for road repair and improvement works were subject to the approval of a law enforcement agency.

For a large scale road improvement project, the subcontractor sought the approval of the law enforcement agency for a number of temporary traffic arrangements.

While having dealing with the law enforcement agency, the proprietor of the subcontractor offered over a dozen boxes of mooncakes to an officer of the agency. Despite the officer's refusal to accept, he insisted and left the mooncakes behind.

The law enforcement officer, after consulting his supervisor, referred the case to the ICAC.

Offences committed

- The proprietor of the construction subcontractor, while having dealings (i.e. seeking approval for temporary traffic arrangements) with the law enforcement agency, offered advantages (i.e. the mooncakes) to an officer of the agency, who was a public servant. He contravened Section 8 of the POBO.

Section 1.1 (f) *- POBO Section 8*

Case in perspective

- Unlike bribery (Section 4 of the POBO) which often involves a reciprocal performance of duties (or refrain from performance of duties) by a public servant being offered an advantage, Section 8 of the POBO does not require the proof that the advantage is offered in return for any favour.

- While it is a custom for business companies or persons to offer gifts, e.g. mooncakes and/or hampers, to business associates in festivals or other special occasions, the POBO provides that for any POBO offence, it shall not be a defence that the gifts offered are customary in any profession, trade, vocation or calling.

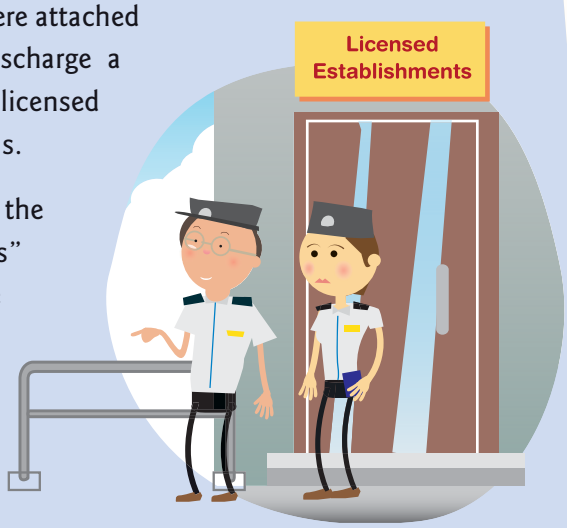
- If on any occasion a public servant declines to accept an advantage, he is not only trying to be polite, and the offeror should not insist.

- Legal implication aside, business companies or persons who, while having business dealings with any government department or public body, offer advantage to any public servant of the government department or the public body concerned, in particular those who are performing regulatory or supervisory duties, may attract criticisms or allegations of intention to secure unfair advantage through unethical means, which would adversely affect their business reputation in the long term.

(b) Customary Gifts – "Laisees"

Two officers of a law enforcement agency were attached to a district section of the agency to discharge a supervisory role on the conduct of certain licensed establishments in the district on a daily basis.

A number of licensees or operators of the licensed establishments offered "laisees" to the officers when they visited the establishments during the Lunar New Year.



The incidents were reported to the ICAC and the licensees or operators of the licensed establishment concerned were prosecuted and sentenced.

Offences committed

- The licensees or operators of the licensed establishments, while having dealing with the law enforcement agency (i.e. their conducts were subject to the supervision of the law enforcement agency), offered advantages (i.e. "laisees") to the officers, who were public servants. They contravened Section 8 of the POBO.

Section 1.1 (f) *- POBO Section 8*

Case in perspective

- While the offering of "laisees" during Lunar New Year is a custom in the Chinese community, the POBO provides that for any POBO offence, it will not be a defence to show that the "laisees" offered are customary in any profession, trade, vocation or calling. Moreover, the conflict of interest involved in this case is obvious.

(c) Intangible Advantage – Lending of Private Car

A construction and engineering company was awarded a subcontract for a multi-million public road maintenance project, which was under the supervision of a government department.

An inspector of works of the department was assigned to supervise the works of the construction and engineering company, issue works orders and recommend interim and final payments to the company.

During the project, the proprietor of the construction and engineering company lent his private car to the inspector of works for use over a long period of time.

The case was revealed by a traffic accident in which the inspector of works was arrested by the Police for contravening traffic offences by driving a car while his licence was suspended.

The case was referred to the ICAC and the proprietor of the construction and engineering company was arrested, prosecuted and sentenced.

Offences committed

- The proprietor of the construction and engineering company, while having dealings with a government department (i.e. undertaking road maintenance works under the supervision of the department), offered advantage (i.e. lending of his private car) to an inspector of works, who was a public servant. He contravened Section 8 of the POBO, while the inspector of works was subject to disciplinary action and dismissed.

Section 1.1 (f) *- POBO Section 8*

Case in perspective

- Under the POBO, advantages can be tangible (e.g. business gifts) or intangible (e.g. free services, favours). The proprietor of the construction and engineering company in the above case scenario lent a private car to a public servant, which would be regarded as offering an advantage to the public servant, even if the car was not given to the public servant.

- While most of the corruption cases are revealed as a result of complaints by the party involved in or affected by the corrupt practices, it is not uncommon for offences to be unearthed by unexpected or unrelated events or unrelated parties. Therefore, one should never believe that their corrupt dealings would be safe from disclosure no matter how secret he thinks his corrupt dealings are.

Section 2.3 Conflict of Interest or Misconduct by Public Servants

Public servants are subject to relevant regulations and guidelines on avoidance and handling of conflict of interest to ensure their impartiality and professionalism in discharging their public duties. Any breach of the relevant regulations and guidelines or abuse of office by the public servants may render themselves liable to disciplinary actions, or even criminal sanction if the abuse is serious or the officer has committed any fraudulent act (such as submitting false information to his organisation). The following are case scenarios, drawn up based on actual cases, relating to conflict of interest or MIPO by public servants, which show that persons or business operators connected with such misconduct could also be implicated.

(a) Favour to Personal Friend

A landscape architect of a government department was responsible for the design and supervision of the landscape work in public housing estates, including recommending relevant landscape materials.

The landscape architect introduced a close personal friend to set up a private company, which supplied certain brands of landscape materials as a sole supplier in Hong Kong, with a businessman.

The landscape architect recommended using the landscape materials solely supplied by his friend's company in a number of projects for improvement of landscape work in public housing estates.

The landscape architect failed to declare the conflict of interest arising from his personal connection.

The incident was revealed by the ICAC during an investigation into a corruption complaint and the landscape architect was prosecuted and convicted for MIPO.

Offences committed

- The landscape architect seriously breached the government regulations regarding the handling of conflict of interest. He abused his power to give his friend's company an unfair advantage over other competitors and concealed his close personal relationship with his friend from the government department, which amounted to a serious misconduct. He was found guilty of the offence of MIPO.

Section 1.2 (a) *– MIPO*

Case in perspective

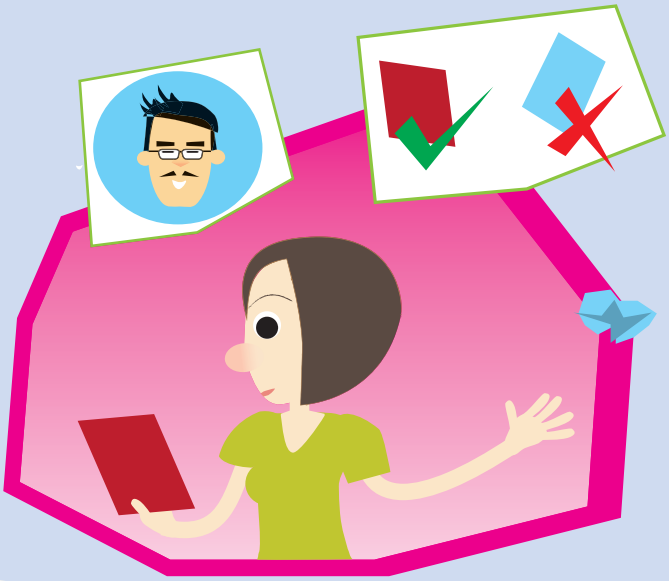
- In the above case scenario, although the director and shareholder of the landscape materials supplier was not subject to any civil or criminal liability, the reputation of the supplier, after its name was disclosed when the government officer was charged at court, was seriously damaged, and it was debarred from bidding contracts with any government department and public body. As mentioned in Section 2.1(f) of this Guide, reputable private corporations may have a policy to avoid doing business with suppliers involved in bribery.

(b) Favour to Spouse

A senior officer of a government department was assigned to, among other tasks, conduct tender exercises for the production of publication and self-learning packages for use by the civil servants.

The husband of the senior officer, who was a proprietor of a production house, also bid for the contracts for production of the publication and self-learning packages.

The senior officer concealed her marital relationship with the proprietor of the production house and misled her department that the bid from her husband's company was the lowest on several occasions.



To ensure that her husband's production house could win the contracts, the senior officer even discarded some of the tenders received, which were in fact the lowest bids.

A corruption complaint was made to the ICAC, and the senior officer who was in a late stage of her pregnancy, was sent to jail while pregnant.

Offences committed

- The senior officer took advantage of her official power to assist her husband's company in securing the contract with the government department by concealing her marital relationship with the bidder. She misled the department about the result of the tender exercise, which seriously departed from the government regulations mounting to a serious and culpable misconduct. She was convicted for MIPO and sentenced to imprisonment.

Section 1.2 (a) *- MIPO*

Case in perspective

- The conduct of the senior officer aside, the act of her husband, taking advantage of his wife's position in the government to help himself secure business orders, put the officer in a serious conflict of interest situation and exposed her to a high risk of breach of civil service regulations and criminal sanction, and in the end brought a tragic consequence to the family. Therefore, any person or business operator having a personal relationship with a public servant should avoid asking for or receiving any undue favour from the latter in relation to his public office, which would put him in a conflict of interest situation.

(c) Favour to Relative and Abuse of Official Position

A senior officer of a government department was tasked to oversee the launch of a new electronic communication system and the appointment of a public relations company to organise a ceremony to mark its launch.

The senior officer failed to declare a conflict of interest arising from his family relationship with the proprietor of a public relations firm and recommended the firm to be awarded the contract for the launching ceremony.

The senior officer even solicited and accepted from the contractor responsible for implementing the new electronic communication system an internship for his daughter at the contractor's overseas headquarters.

Investigation revealed that the internship included allowance, two round-trip air tickets, and hotel and apartment accommodation.

The incident was revealed by the ICAC during an investigation into a corruption complaint, and the senior officer was prosecuted and convicted of MIPO.

Offences committed

- The senior officer breached the government regulations on conflict of interest and abuses his official position to solicit internship for his daughter. His act amounted to a serious misconduct. He was prosecuted and found guilty of the offence of MIPO.

Section 1.2 (a) *- MIPO*

Case in perspective

- The senior officer, after being convicted, faced internal disciplinary inquiry and was dismissed, while the business reputations of the public relations company owned by his relative as well as the contractor were damaged after their names were disclosed to public. Any person or business operator should not receive, or concede to any request for, any undue favour by a public servant in relation to his public office, which would bring a damaging consequence for both.

(d) Soliciting Advantage for a Third Party

A senior officer of a works department was responsible for the administration of a large scale infrastructure project.

At the same time, the senior officer also served as a committee member of a professional institute and was tasked to organise social events for members of the professional institute.

In order to organise a social event, the senior officer solicited and accepted monetary sponsorship from a director of the contractor, who was under his supervision in the large scale infrastructure project.

The incident was referred to the ICAC, and the senior officer was prosecuted and convicted.

Offences committed

- The senior officer abused his official position and, without permission, solicited and accepted advantages, i.e. the monetary sponsorship. Even though the advantage was not for his direct personal benefit but for another party (the professional institute in which he was serving), he contravened Section 3 of the POBO.

Section 1.1 (a) *- POBO Section 3*

Case in perspective

- Under the POBO, a public servant/agent is regarded as soliciting/accepting an advantage, regardless of whether the advantage is for himself or for another. The director of the contractor also runs the risk of breaching the POBO and his intention of agreeing to offer the sponsorship is questioned by the Judge.

Chapter 3

Integrity and Prevention of Corruption in Dealing with Public Servants

Section 3.1 Anti-bribery and Ethical Practices

Business operators/managers or other individuals might have a business or personal relationship with a public servant, or have interaction with public servants on various occasions such as business/public functions, official dealings, or private social functions/activities. For various reasons such as business courtesy, business protocol or personal relationship, they might offer gifts, hospitality, entertainment, or other forms of advantages (including favour, services) to the public servants whom they know or are dealing with. However, they must bear in mind that public servants are governed by relevant legal provisions or administrative rules on acceptance of advantages and entertainment, and that under certain circumstances, the offering of gifts or other advantages to a public servant may even be prohibited. In particular, they should, as a general rule, avoid offering gifts or other advantages to a public servant if they have any dealing with the latter's government department or public body. In circumstances where an offer of advantage is considered appropriate and necessary, they should ensure that any such offers comply with the relevant legal requirements, as breaches may not only render the offeror (as well as the public servant) liable to criminal sanction, but may also tarnish the reputation of the offeror's company/organisation.

➔ ***Section 1.1*** *- POBO*
Section 1.2 *- MIPO*

To adopt a high standard of probity and business ethics in managing business relationships with public servants, it is also advisable to make reference to the relevant probity rules and restrictions applicable to the public servants concerned as far as possible, so as to avoid embarrassment, allegations or perception of corrupt intent or impropriety, which could also bring the company/organisation into disrepute.

➔ ***Section 1.3*** *- Administrative Rules and Regulations*

Even if there is no intention to bribe and the offer is not in breach of the law or any regulations, it is advisable to avoid offering advantages to a public servant which, having regard to the relationship between the offeror and the public servant, the value and nature of the advantage and the relevant circumstances, may give rise to a public perception or allegation of corrupt relationship or impropriety, or may be seen as inappropriate.

3.1.1 Don't Bribe

- The most fundamental, key principle of anti-bribery is that any organisation or person shall **NOT**:

  - ☒ offer advantage to a public servant with the intention to influence that public servant in the performance of his official duties;

  - ☒ offer advantage to a public servant with the intention to keep him "sweet", with a view to obtaining a favourable disposition in the future in relation to his official duties/capacity; and

  - ☒ offer advantage to a public servant while having dealings of any kind with the government department or public body in which he is employed.

3.1.2 Gifts

- Gifts without the intention to bribe and without violating the above principle may sometimes be offered to a public servant in his official capacity or in his private capacity. Business operators or individuals are advised to adopt the following best practices when intending to offer gifts to public servant.

(a) Gift offered in relation to public servant's official capacity

- As a basic principle, avoid offering gifts to a public servant on account of his official duties or official capacity.

- Sometimes, a gift or souvenir may be offered to a public servant in his official capacity. For example, a public servant may be invited to attend or perform a role (e.g. as an officiating guest or speaker) in a business/social activity in his official capacity, and it is customary or a common protocol for the host/organiser to offer a gift or souvenir to the participant in recognition or appreciation of his presence (or, more properly, his organisation's support). Business operators/managers or individuals are advised that there is in fact **no need** for them to, and it is the **best practice not** to, offer any gift, souvenir or item of appreciation to the public servant on such occasions. However, if it is considered a necessary protocol or part of the ceremony to do so, they are advised to:

- ☑ consult the public servant in advance whether he agrees to receive the gift (in fact, some public servants may notify the host/organiser in advance that he declines to accept any gift or souvenir);

- ☑ understand that the gift will be regarded as being offered to the government department or public body which the public servant is representing (see Section 1.3(b) of this Guide) and will be subject to the means of disposal directed by the organisation, hence avoid offering a gift targeted for the personal use of the public servant since he may not be allowed to retain it personally;

- ☑ offer only items of modest★ or nominal value, e.g. a certificate of appreciation, an inexpensive★ display item with the organiser's logo or name of the event.

★ *By the standard of the general public, not by that of the offeror.*

- It is also a common practice in the business sector for business operators to offer gifts such as hampers, wine, tickets to events/shows, or even red packets or buffet/cash coupons on special occasions to business contacts who may be employees in organisations they have business dealing with. Business operators/managers or individuals having business dealings with a government department or public body should however refrain from such a practice with public servants working in that organisation (see Section 1.1(f) and Section 2.2 of this Guide). Where it is appropriate to offer such gifts, these should be of modest value, preferably comprising inexpensive items that can be shared among or used in the office (e.g. non-alcoholic food or beverage items, calendar). If on any occasion a public servant declines to accept an advantage, he is not only trying to be polite, and the offeror should not insist.

- One may also wish to refer to the following where necessary:

  - ☑ the AAN and relevant rules (see Section 1.1(a) and Section 1.3(a) of this Guide) and any departmental Code of Conduct of the government department to understand the rules and restrictions applicable to the government officers;

  - ☑ the relevant public body's Code of Conduct (see Section 1.3 of this Guide) (which may be available on its corporate website) applicable to public servants other than government officers.

(b) Gift offered in relation to public servant's private capacity

- Business operators or individuals should refrain from offering gifts to a public servant if they are having business/official dealing or relationship with the government department or public body in which the public servant works.

- Even in the absence of official dealings with a target recipient who is a government officer, it is advisable to consult the government officer whether he is allowed to accept the gift and any restrictions he may be subject to (e.g. the value, the relationship and circumstances); and where considered necessary, refer to the AAN, relevant rules and regulations applicable to the intended recipient.

3.1.3 Sponsorships/Donations

(a) Sponsored Visits

- In the business sector, it is common for a company/organisation to sponsor overseas visits by employees of another company/organisation for official business purposes (e.g. a potential supplier sponsoring a site visit by an employee of a potential buyer).

- Public servants are however required, as a general rule, to decline sponsored visits which would give rise to actual, potential or perceived conflict of interest. Government departments and public bodies are advised to pay for their employees' duty visits as far as practicable where there is an operational need.

- Nevertheless, acceptance of sponsored visits in ***official capacity*** may be approved by the Government department or public body where justifiable. Organisations offering sponsored visits to public servants are advised to:

  - ☑ offer the sponsored visit to the government department or public body concerned for its internal disposal, not to or specifying a particular public servant as the recipient;

  - ☑ understand the relevant policy in respect of sponsored visits (see Section 1.3(c) of this Guide);

  - ☑ consult and comply with any conditions of acceptance set out by the government

department or public body, e.g. regarding the suitable level of the offer and arrangements (e.g. flight class, grade/cost of accommodation, provision of meals), and keep arrangements at a moderate level;

- ☑ set out the itinerary and arrangements for the government department's or public body's agreement and acceptance;

- ☒ do not offer excessive treatment such as lavish or overly generous meals/entertainment, or unnecessary activities not related to official business (e.g. sight-seeing tour) to the public servant, or any activities that would bring the Government or public body into disrepute (e.g. entertainment at night clubs, massage service), during the sponsored visit.

- There may be occasions where an organisation (e.g. a professional body, private club or commercial entity) may offer a sponsored visit to a public servant in the latter's ***private capacity*** (e.g. in view of his expert knowledge, membership in the organisation). Such sponsors are advised to:

  - ☒ avoid offering sponsored visit to a public servant where there exists an actual, potential or perceived conflict of interest between the sponsorship and his duties/ capacity in the government department or public body in which he works.

(b) Other Sponsorships or Donations

- In the business sector, it is not uncommon for a company/organisation (e.g. supplier) to sponsor special events (e.g. annual dinner, festival celebration) of a business partner (e.g. a major buyer), e.g. donating prizes for lucky draw, sponsoring the cost of a number of tables of the dinner. Some may be requested by staff of a business partner to make donations to charitable activities or events for which the latter is helping to organise or participating.

- Under the POBO, a public servant is regarded as soliciting/accepting an advantage even if he solicits/accepts the advantage for another person (see Section 1.1(b) of this Guide). Hence, a public servant may breach the POBO if he, without his government department's or public body's permission, makes use of his official position to solicit or accept advantages from another even if the advantages are for the benefit of other persons, and the offeror may also breach the POBO if he offers the advantages on account of the public servant's official duties/capacity.

- Hence, business operators/managers or individuals are advised to:

  - ☑ adhere to the key principles in Section 3.1.1 of this Guide, regardless of whether the advantage to be offered or being solicited is for the direct benefit of the public servant or for another person/organisation;

  - ☑ before offering or making such donations/sponsorships, confirm that the public servant has permission from his government department or public body to solicit/accept such advantages.

3.1.4 Discounts and Commercial Offers

- Public servants are, in general, allowed to solicit or accept, in their private capacity, discounts or other favourable commercial offers provided by merchants in the course of the latter's normal business, on terms and conditions equally available to other customers.

- Business operators, in offering discounts or other favourable commercial offers to public servants (special offers targeting civil servants), are advised to:

  - ☑ offer such discounts or favourable offers only for their normal business purpose (e.g. business promotion), not as a favour to any particular public servant;

  - ☑ ensure that the discounts/offers, terms and conditions offered to public servants are also available to other categories of customers in the course of their normal business.

3.1.5 Other Advantages

- Services (e.g. home renovation service), employment contract (e.g. offer of employment after the public servant retires from his current employer), favours, etc., are also defined as "advantages" in the POBO. Business operators/managers or other individuals intending to offer such advantages to public servants should also adhere to the above principles and guidelines, including:

  - ☑ adhere to the key principles in Section 3.1.1 of this Guide;

  - ☒ avoid offering if this would give rise to an actual, potential or perceived conflict of interest for the public servant or perception of undue influence on the public servant in the performance of his official duties;

- ☑ confirm whether the public servant is permitted to accept the advantages under the given circumstances; and where necessary, refer to the relevant legal requirements and applicable administrative rules.

3.1.6 Entertainment

- Entertainment is defined in the POBO 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 provision. Although entertainment is an acceptable form of business and social convention, business operators/managers or individuals who have business dealings with, or whose business/affair is under the regulation of, a government department or public body, should:

  - ☒ avoid offering entertainment which may be seen as excessive (frequent or lavish) or inappropriate (e.g. entertainment in a nightclub) to a public servant of the government department or public body;

  - ☒ avoid offering entertainment to the public servant that would give rise to a potential conflict of interest situation for him in relation to his duties/capacity or the perception, or allegations of an intention to "sweeten" the latter (e.g. a tenderer offering entertainment to members of the tender assessment panel, a contractor offering frequent entertainment to a public servant overseeing the contractor's performance);

  - ☒ not organise or invite the public servant to take part in any games of chance, especially those involving high stakes in money or money's worth on such occasions;

  - ☑ as far as possible, only offer entertainment to the public servant during normal liaison.

3.1.7 Conflict of Interest

- Public servants are required to avoid, or declare if unavoidable, any conflict of interest that may arise or has arisen in relation to their duties (see Section 1.3(e) of this Guide). The guidelines above (see Sections 3.1.2 – 3.1.6 of this Guide) have covered conflict of interest arising from the offering of advantages or entertainment to public servants, but conflict of interest is not limited to that or interests measurable in financial terms, and in particular often covers personal relationships. Examples of situations regarded as conflict of interest for a public servant include:

a public servant is responsible for the procurement of a service required by the public body and his spouse is one of the bidders;

a public servant is responsible for the regulation of a trade and his close personal friend is an operator/licensee of the trade subject to his unit's regulation and control or an applicant for such licence/registration;

a public servant is involved in a recruitment exercise or is a senior officer in a public body, and his relative is applying for the job;

a public servant, who is responsible for setting his public body's policy and the requirements standard in respect of a particular type of products or services, has been invited to be a council member or advisor of a trade association of suppliers of such products or services;

a public servant, who is responsible for approving proposals/plans submitted by business operators of a certain trade, is engaged as a consultant by one of the business operators to advise the latter in drawing up such proposals/plans.

- If the public servant concerned fails to avoid or declare the conflict, or even abuses his position in favour of his private interest, he may not only breach ethical conduct but, depending on the seriousness of the abuse or misconduct, commit MIPO (see Section 1.2(a), Section 2.3(a)-(c) of this Guide); and the other party involved could also be implicated (see Section 1.2(b), Section 2.1(g) of this Guide). In any case, if the public servant becomes the subject of investigation or allegation, the business organisation involved in giving rise to the conflict of interest might not only put itself at risk of being implicated, but also have its public image tarnished.

- Therefore, while it is a public servant's duty to avoid or declare to his organisation any conflict of interest in relation to his duties, business operators/managers or other individuals are advised not to:

  - ☒ make any undue requests to a public servant (e.g. request for favour or assistance that would give them an unfair advantage over other members of the public or users of the public service); or

  - ☒ engage a public servant to carry out any paid or unpaid work/services or investment that would put him in conflict with his official duties or position.

Section 3.2 Integrity Management and Preventive Controls

While operators, managers or staff of a business organisation are advised to follow the above guidelines (see Section 3.1 of this Guide) in managing their relationship with public servants, it is also advisable for business organisations to put in place appropriate measures and controls to ensure their directors, employees and agents adhere to a high standard of integrity in their dealings with public servants, and above all, foster an ethical business culture in the organisation.

3.2.1 Integrity Management

- An ethical corporate culture helps business companies, their directors and staff members make ethical decisions in all matters and aspects of business, including managing relationship and dealing with public servants.

(a) Ethical Commitment and Leadership

- ☑ Integrity, honesty, fairness, impartiality, and ethical business practices should be stated as one of the core values of the organisation.
- ☑ There should be loud and clear top-level commitment to ethical business practices, integrity and zero tolerance to bribery.
- ☑ Top and senior management should lead by example, by adopting ethical business practices in all aspects of business and a high standard of personal integrity in carrying out the organisation's business.

(b) Code of Conduct

- ☑ A Code of Conduct for directors and employees should set out the integrity and ethical standard and requirements, including the anti-bribery policy, policies and restrictions on acceptance and offering of gifts/advantages and entertainment, guidelines on handling conflict of interest and managing relationship with business partners and public servants (see Section 3.1 of this Guide).

- The Corruption Prevention Advisory Service of the ICAC can provide advice on the company's Code of Conduct (see Section 4.1 of this Guide).

(c) Education and Communication

- ☑ The company's ethical commitment, integrity requirements, anti-bribery policy and guidelines, etc. should be effectively communicated to all directors, staff and agents, including through the issue of Code of Conduct and probity guidelines, periodic messages/articles on business ethics and integrity, and education.

- ☑ Education and training on integrity, ethical practices, anti-bribery policy, etc. should be provided to all staff, including induction training for new recruits and regular refresher/advanced training on integrity issues and corruption prevention for existing staff and management.

  - The Hong Kong Business Ethics Development Centre of the ICAC offers training services on anti-bribery law and business ethics to business companies (see Section 4.2 of this Guide).

  - The Corruption Prevention Advisory Service of the ICAC provides training to managerial, supervisory or compliance/audit staff on corruption prevention measures and controls (see Section 4.1 of this Guide).

- ☑ Education and training on managing relationship with public servants should be provided to all senior staff and staff who may deal with or come into contact with public servants in carrying out the company's business.

- ☑ Business partners such as suppliers, contractors, agents, intermediaries should be informed of the company's anti-bribery policy, ethical commitment and integrity requirements, through probity clauses in contract agreement/ tender documents where appropriate, or other channels such as the corporate website, letters to suppliers, etc.

- ☑ Trustworthy channels should be established to receive enquiries or feedback on integrity/ethical issues from staff and business partners, and to provide advice and guidance to the enquirers.

(d) Compliance

- ☑ Compliance with the Code of Conduct, integrity and ethical requirements and anti-bribery policy should be ensured. Disciplinary measures should be in place, and appropriate disciplinary action or referral to law enforcement agency should be taken/made for serious breaches.

- ☑ Fair and appropriate disciplinary/enforcement action against integrity breaches is one of the most effective ways of communication of the company's commitment towards integrity and business ethics. On the other hand, tolerance sends the message to the staff that they can take a chance with little risk.

- ☑ Appropriate forms of recognition, appreciation or commendation may be considered to commend notable ethical behaviour, act or performance. This is also an effective way of communication of the company's commitment towards integrity and business ethics.

3.2.2 Control Measures

- Appropriate controls should be put in place to ensure compliance with, and prevent intentional or inadvertent breaches of, the organisation's integrity and anti-bribery policies and guidelines on managing relationship with business contacts, including:

  - ☑ Lay down policy, restrictions and guidelines governing the offering of advantages, gifts and entertainment to business contacts of the organisation, taking into consideration Section 3.1 of this Guide in respect of public servants.

  - ☑ Put in place a system and procedures for the control, approval, proper documentation, monitoring and review of offer of advantages/gifts or entertainment to business contacts of the organisation to ensure compliance with the above guidelines.

  - ☑ Conduct audit/review of the above activities to ensure compliance, and to take appropriate action in case of non-compliance.

  - ☑ Provide trustworthy channels to receive feedback or reports on suspected breaches.

- ☑ Lay down a mechanism, procedures and guidelines for handling reported/ suspected breaches, including the conduct of inquiry, reporting (to the senior/top management).
- ☑ Lay down the disciplinary or enforcement actions to be taken in the event of different types and seriousness of breaches, and make the staff aware of the policy.

Section 3.3 Self-Assessment Checklist

As a general rule, business operators/managers or other individuals should not offer advantages to a public servant of a government department or public body with which they have official dealing. There may however be other circumstances where they may consider offering gifts/souvenirs to a public servant, e.g. out of business courtesy, personal relationship, business protocol, or appreciation for attendance of an official function. The following is a self-assessment checklist for use by business operators/managers or other individuals when they are considering or intending to offer gifts/souvenirs, etc. (all grouped under the rules as advantages) or entertainment to a public servant (call him ***P***). It is a set of reference questions which one may go through as a "mind searching" exercise in assessing whether it is appropriate to offer the intended advantages or entertainment to the public servant. The list may not be exhaustive, and each situation has its own merits ("the devil is in the details") which must be assessed by the person concerned himself. The information, guidelines and advice in this Guide should in most cases be able to help him make an assessment and judgement.

Self-Assessment Checklist

1. Background, Relationship and Purpose

(a) How do I come to know ***P***? Is it due to his official position, through personal/social channels, or other private business channels (e.g. ***P***

(b) How do I define my current relationship with ***P***
(in respect of his public duties), business contact or client (other private business)?

*Note: If more than one relationship exist at the same time which include business relationship in respect of **P**'s public duties, priority/attention should be given to / focused on the latter.*

Section 3.1.7 *– Conflict of interest*

(c) Am I having any official dealing with the government department or public body in which ***P*** ***P***
duties; or can I foresee such official dealing/relationship in the near future?

(d) Due to what relationship am I intending to offer a gift or advantage to occasion – is it due to his official capacity / our working relationship in relation to his public duties, personal relationship, or other business relationship?

(e) What's my purpose of offering the gift/advantage to ***P*** courtesy protocol or maintaining good working relationship in relation to his public duties, in the course of normal business where ***P*** member, personal reasons such as special occasions where gifts are traditionally exchanged with or offered to relatives and personal friends?

2. Legal Considerations

(a) Do I have any motive to sweeten or influence ***P*** n to his public duties by the offer of the gift/advantage?

➔ ***Section 3.1.1*** *– Don't bribe*

(b) As far as I know, is ***P*** permitted under the law and public service rules governing him to accept the gift/advantage from me under the circumstances?

➔ ***Annex 1*** *– Extracts from AAN*
Section 1.3 *– Administrative rules and regulations*

(c) Taking into consideration the above factors, will I run the risk of breaching the law in Hong Kong, or any law in my or my company's country of origin, by offering him the gift/advantage under the circumstances?

➔ ***Section 1.1 (b) to (f)*** *– POBO*
Section 1.2 (b) *– Aiding and abetting to commit MIPO*

(d) As far as I know, would ***P*** circumstances?

➔ ***Section 1.1 (a) to (c)*** *– POBO*
Section 1.2 (a) *– MIPO*

Note: Consult your company's legal advisor or refer to the legal provisions if necessary and appropriate.

3. Integrity Considerations

(a) Is such offer in compliance with my company/organisation's internal rules or code of ethics, if applicable?

➔ ***Section 3.2.1*** *– Integrity management*

(b) Will such offer cause my company to breach any probity requirement under any contract agreement with or condition of tender issued by the government department or public body in which ***P*** is working, which I am carrying out for my company?

➔ ***Section 1.4*** *– Ethical commitment of suppliers/contractors*

(c) As far as I know, would ***P***'s acceptance cause him to breach any internal rules of his organisation?

➔ ***Section 1.3*** *– Administrative rules and regulations*

(d) Given ***P***'s position as a public servant, our relationship, the circumstances/occasion, nature and value of the gift/advantage or entertainment, etc., do I think that the offer/acceptance would be deemed appropriate, even if it does not break the law? E.g.:

i. Would ***P*** or any bystander reasonably form a suspicion or perception about my intention or our relationship?

ii. Would ***P***'s acceptance put him in a conflict of interest situation, embarrassment, or sense of obligation to reciprocate?

➔ ***Section 3.1.7*** *– Conflict of interest*

iii. Would ***P***'s acceptance give rise to a suspicion, perception or allegation that he would then be favourably disposed towards me in performing his public duties?

(e) Can my offer pass the "Sunshine Test", i.e. would I be concerned, or would my company's reputation be affected, if the offer/acceptance is disclosed to the media or public, or to my company's senior management?

Note: Consult your company's legal advisor or refer to the integrity rules applicable to ***P***

Chapter 4

Corruption Prevention Advisory and Education Services

Section 4.1 Advisory Services

- The Corruption Prevention Advisory Service (CPAS) of the Corruption Prevention Department of the ICAC provides the following free services:

  - ☑ confidential advisory services on corruption prevention practices and measures to private organisations and business companies on request;
  - ☑ advising private organisations and business companies in drawing up probity guidelines and Code of Conduct for their staff and members;
  - ☑ organising corruption prevention training and drawing up corruption prevention guides and training materials for trades/professions in collaboration with trade associations and professional bodies; and
  - ☑ answering any enquiries about this Guide.

  For further information, please contact CPAS through the following channels:

  Phone: 2526 6363

  Fax: 2522 0505

  E-mail: cpas@cpd.icac.org.hk

Section 4.2 Education Services

- The Hong Kong Business Ethics Development Centre of the ICAC aims to promote business and professional ethics in Hong Kong on a long-term basis. The Centre:

  - ☑ offers educational and training services to business organisations to promote ethical corporate culture and good governance;
  - ☑ organises seminars, workshops and continuing professional development (CPD) courses on business and professional ethics;
  - ☑ produces tailor-made practical guides and training packages on integrity management for different trades and professions; and
  - ☑ maintains a dedicated website (www.hkbedc.icac.hk) to provide ethics-related materials to the business community and the public.

For enquiries and access to materials, please contact the Centre or access its dedicated website as follows:

Phone: 2587 9812

Fax: 2519 7762

E-mail: hkbedc@crd.icac.org.hk

Website: www.hkbedc.icac.hk

Section 4.3 Reporting Corruption

- Any person encountering corruption should make a report to the ICAC through one of the following channels:

Phone: 25 266 366 (24-hour service)

Mail: G.P.O. Box 1000, Hong Kong

In person: ICAC Report Centre (24-hour service)
G/F, 303 Java Road, North Point
Hong Kong

ICAC Regional Offices[9]
(opening hours: 9:00 a.m. - 7:00 p.m. Monday to Friday; closed on Saturdays, Sundays and public holidays) ■

[9] Contact information of the ICAC Regional Offices are available at http://www.icac.org.hk/en/community_relations_department/o/ro/index.html

Annexes

Annex 1 Extracts from Acceptance of Advantages (Chief Executive's Permission) Notice 2010

Interpretation

1. In this notice, unless the context otherwise requires, "approving authority" means:

   (a) in relation to a prescribed officer who is a member of the Executive Council or the Chief Justice or the Director of the Chief Executive's Office or the Commissioner of the Independent Commission Against Corruption or the Director of Audit or an Under Secretary or a Political Assistant, the Chief Executive;

   (b) in relation to a prescribed officer who is the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Chapter 66), the Financial Secretary;

   (c) in relation to a prescribed officer who is a Permanent Secretary or the Head of a Department or holds a post of equivalent status as the Head of a Department other than those in (a) and (b) above, the Secretary for the Civil Service;

   (d) in relation to a prescribed officer who is a judicial officer other than the Chief Justice, the Chief Justice;

   (e) in relation to any other prescribed officer, the relevant Permanent Secretary of the Bureau or the Head of the Department or a person who holds a post of equivalent status as the Head of a Department in an organisation in which that prescribed officer is employed at the time when the advantage is offered to or solicited or accepted by the prescribed officer.

   "discount" includes vouchers or coupons expressed to have a monetary value in exchange for which goods to that value may be obtained and also includes goods so obtained.

General and special permission of the Chief Executive

2. For the purposes of section 3 of the Prevention of Bribery Ordinance (Chapter 201), by this notice:

   (a) the general permission of the Chief Executive is given to all prescribed officers in respect of any advantage, other than gifts, discounts, loans of money or passages not permitted by sections 3 to 7;

   (b) the special permission of the Chief Executive is given to any prescribed officer in respect of any advantage for the solicitation or acceptance of which that prescribed officer has been given the permission of the approving authority under section 8 or 9.

Advantages from relations

3. (1) A prescribed officer is permitted to solicit or accept from a relation any gift (whether of money or otherwise), any discount, any loan of money or any air, sea or overland passage.

   (2) In sub-section (1) "relation" means:

   (a) spouse (including a concubine);
   (b) any person with whom the prescribed officer is living in a regular union as if man and wife;
   (c) fiancé, fiancée;
   (d) parent, step-parent, lawful guardian;
   (e) spouse's parent, spouse's step-parent, spouse's lawful guardian;
   (f) grandparent, great-grandparent;
   (g) child, ward of court;
   (h) spouse's child, spouse's ward of court;
   (i) grandchild;
   (j) child's spouse;
   (k) brother, sister;
   (l) spouse's brother, spouse's sister;
   (m) half-brother, half-sister;

(n) step-brother, step-sister;

(o) brother's spouse, sister's spouse;

(p) brother's child, sister's child;

(q) parent's brother, parent's sister;

(r) parent's brother's spouse, parent's sister's spouse;

(s) parent's brother's child, parent's sister's child.

Advantages from tradesmen, etc.

4. (1) Subject to sub-section (2) a prescribed officer is permitted to solicit or accept any gift (whether of money or otherwise), any discount, any loan of money or any air, sea or overland passage given to or made available to a prescribed officer in his private capacity by a tradesman, firm, company, organisation or association:

(a) by virtue of the terms on which the prescribed officer's spouse, parent or child, is employed; or

(b) by virtue of the membership of any organisation or association of the prescribed officer or the prescribed officer's spouse, parent or child; or

(c) by virtue of the prescribed officer or the prescribed officer's spouse, parent or child being a regular customer; or

(d) in the course of normal business.

(2) The permission given under sub-section (1) shall only apply where:

(a) the advantage is equally available on equal terms to persons who are not prescribed officers; and

(b) the donor of the advantage has no official dealings with the prescribed officer.

Advantages from close personal friends

5. (1) Subject to sub-section (2) a prescribed officer is permitted to:

(a) solicit or accept a loan of money from a close personal friend so long as the loan does not exceed $3,000 on any one occasion and is repaid within 30 days;

(b) accept, but not solicit, a gift or gifts (whether of money or otherwise) or any air, sea or overland passage from a close personal friend given on an occasion such as the prescribed officer's birthday, wedding, wedding anniversary, engagement, baptism, retirement or on any other occasion when gifts are traditionally given or exchanged, so long as the value or apparent value in total of the gift, gifts and/or passage does not exceed $3,000 from any one person on any one occasion;

(c) accept, but not solicit, a gift or gifts (whether of money or otherwise) or any air, sea or overland passage from a close personal friend on any occasion other than one referred to in sub-sub-section (b), so long as the value or apparent value in total of the gift, gifts and/or passage does not exceed $500 from any one person on any one occasion.

(2) The permission under sub-section (1) shall only apply so long as:

(a) the close personal friend has no official dealings with the department or organisation in which the prescribed officer works;

(b) in the case of a close personal friend working in the same department or organisation as the prescribed officer, the close personal friend is not subordinate to the prescribed officer;

(c) in the case of a gift or passage to which sub-sub-section (b) or (c) of sub-section (1) applies, the prescribed officer does not attend the occasion on which the gift or passage is given in his official capacity or by virtue of the official position he holds at the time he attends the occasion.

Advantages from other persons

6. (1) A prescribed officer is permitted to:

(a) solicit or accept a loan of money from any person (not being a loan to which section 4 or 5 applies) so long as the loan does not exceed $1,500 on any one occasion and is repaid within 30 days;

(b) accept, but not solicit, a gift or gifts (whether of money or otherwise) or any air,

sea or overland passage from any person (not being a gift or passage to which section 4 or 5 applies) given on an occasion such as the prescribed officer's birthday, wedding, wedding anniversary, engagement, baptism, retirement or on any other occasion when gifts are traditionally given or exchanged, so long as the value or apparent value in total of the gift, gifts and/or passage does not exceed $1,500 from any one person on any one occasion.

(c) accept, but not solicit, a gift or gifts (whether of money or otherwise) or any air, sea or overland passage from any person (not being a gift or passage to which section 4 or 5 applies) on any occasion other than one referred to in sub-sub-section (b), so long as the value or apparent value in total of the gift, gifts and/or passage does not exceed $250 from any one person on any one occasion.

(2) The permission under sub-section (1) shall apply so long as:

(a) the person offering the loan, gift or passage has no official dealings with the department or organisation in which the prescribed officer works;

(b) in the case of such a person working in the same department or organisation as the prescribed officer, that person is not subordinate to the prescribed officer;

(c) in the case of a gift or passage to which sub-sub-section (b) or (c) of sub-section (1) applies, the prescribed officer does not attend the occasion on which the gift or passage is given in his official capacity or by virtue of the official position he holds at the time he attends the occasion.

Advantages from the Government

7. A prescribed officer is permitted to:

(a) accept, but not solicit, a gift (other than a gift of money) or an air, sea or overland passage given on the prescribed officer's retirement, or on other occasions, which the prescribed officer has been permitted to accept under any Government regulations or permitted to accept in accordance with the prescribed officer's terms and conditions of employment or appointment;

(b) solicit or accept any gift of money or loan of money or other allowance or advance made or given out of any Government staff welfare fund or permitted by the Government under any Government regulations or permitted in accordance with the prescribed officer's terms and conditions of employment or appointment;

(c) solicit or accept any air, sea or overland passage provided in accordance with any Government regulations or provided in accordance with the prescribed officer's terms and conditions of employment or appointment.

Permission in respect of advantages other than passages

8. (1) (a) If a prescribed officer wishes to accept any gift (whether of money or otherwise), discount or loan of money which he does not have permission to accept under sections 3 to 7, he must, before or as soon as is reasonably possible after being offered or presented with the gift, discount, or loan of money, seek the permission of the approving authority to accept it.

(b) If a prescribed officer wishes to solicit any gift (whether of money or otherwise), discount or loan of money which he does not have permission to solicit under sections 3 to 7, he must, before soliciting the gift, discount or loan of money, seek the permission of the approving authority to solicit it.

(2) In the case of gifts other than money, the approving authority may:

(a) permit the prescribed officer to solicit or accept the gift either unconditionally or subject to such conditions as the approving authority may specify; or

(b) refuse him permission to solicit or accept the gift and, if the gift is already in his possession,

(i) require him to return it to the donor; or

(ii) require the gift to be handed to a charitable organisation nominated by the prescribed officer and approved by the approving authority; or

(iii) require him to dispose of the gift in such other manner as the approving authority may direct.

(3) In the case of discounts, the approving authority may:

(a) permit the prescribed officer to solicit or accept or take the benefit of the discount either unconditionally or subject to such conditions as the approving authority may specify; or

(b) refuse him permission to solicit or accept or take the benefit of the discount and, if he has already accepted or taken the benefit of the discount, require him to pay to the donor of the discount an amount equal to the value of the discount.

(4) In the case of gifts of money or loans of money, the approving authority may:

(a) permit the prescribed officer to solicit or accept the gift of money or loan of money either unconditionally or subject to such conditions as the approving authority may specify; or

(b) refuse him permission to solicit or accept the money and, if the money is already in his possession,

(i) require him to return the money to the donor or lender; or

(ii) require him to dispose of the money in such other manner as the approving authority may direct.

(5) The prescribed officer may, if he has complied with sub-section (1)(a), retain the gift or loan in his possession or take the benefit of the discount until a decision under sub-sections (2), (3) or (4) has been notified to him.

Permission in respect of passages

9. (1) (a) If a prescribed officer wishes to accept any air, sea or overland passage which he does not have permission to accept under sections 3 to 7, he must, before or as soon as is reasonably possible after being offered the passage or presented with the tickets or vouchers to which the passage relates, seek the permission of:

(i) the Chief Executive; or

(ii) the Financial Secretary; or

(iii) the Secretary for the Civil Service; or

(iv) the Chief Justice; or

(v) the relevant Permanent Secretary of the Bureau or the Head of the Department or a person who holds a post of equivalent status as the Head of a Department in an organisation in which that prescribed officer is employed at the time to accept the passage.

(b) If a prescribed officer wishes to solicit any air, sea or overland passage which he does not have permission to solicit under sections 3 to 7, he must, before soliciting the passage, seek the permission of:

(i) the Chief Executive; or

(ii) the Financial Secretary; or

(iii) the Secretary for the Civil Service; or

(iv) the Chief Justice; or

(v) the relevant Permanent Secretary of the Bureau or the Head of the Department or a person who holds a post of equivalent status as the Head of a Department in an organisation in which that prescribed officer is employed at the time to solicit the passage.

(2) The approving authority referred to in sub-section (4) below may:

(a) permit the prescribed officer to solicit or accept the passage either unconditionally or subject to such conditions as he may specify;

(b) refuse him permission to solicit or accept the passage, and if the tickets or vouchers to which the passage relates are already in his possession, require him to dispose of the passage in such other manner as he may direct.

(3) Where a prescribed officer has sought the permission of the approving authority referred to in sub-section (4) below to solicit or accept a passage and the decision has not been notified to him, he shall not solicit or make the passage or use the tickets or vouchers to which the passage relates.

(4) The approving authority for the purpose of section 9 means:

(a) in relation to a prescribed officer who is a member of the Executive Council or the Chief Justice or the Director of the Chief Executive's Office or the Commissioner of the Independent Commission Against Corruption or the Director of Audit or an Under Secretary or a Political Assistant, the Chief Executive;

(b) in relation to a prescribed officer who is the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Chapter 66), the Financial Secretary;

(c) in relation to a prescribed officer other than those in (a) above who is at the directorate level, the Secretary for the Civil Service;

(d) in relation to a prescribed officer who is a judicial officer other than the Chief Justice, the Chief Justice;

(e) in relation to any other prescribed officer, the relevant Permanent Secretary of the Bureau or the Head of the Department or a person who holds a post of equivalent status as the Head of a Department in an organisation in which that prescribed officer is employed at the time when the passage is solicited or accepted by the prescribed officer.

Annex 2 Extracts from Prevention of Bribery Ordinance

Section 2 Interpretation

"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.

"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.

"Prescribed Officer" means -

(a) any person holding an office of emolument, whether permanent or temporary, under the Government; and

(b) the following persons (to the extent that they are not persons included in paragraph (a)) -

(i) any principal official of the Government appointed in accordance with the Basic Law;

(ii) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66) and any person appointed under section 5A(3) of that Ordinance;

(iii) Chairman of the Public Service Commission;

(iv) any member of the staff of the Independent Commission Against Corruption;

(v) any judicial officer holding a judicial office specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap 92) and any judicial officer appointed by the Chief Justice, and any member of the staff of the Judiciary.

"Public Body" means -

(a) the Government;

(b) the Executive Council;

(c) the Legislative Council;

(d) any District Council;

(e) any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the Chief Executive or the Chief Executive in Council; and

(f) any board, commission, committee or other body specified in Schedule 1.

"Public Servant" means -

any prescribed officer and also any employee of a public body and -

(a) in the case of a public body other than a body referred to in paragraph (aa), (b) or (c) of this definition, any member of the public body;

(a) in the case of a public body specified in Schedule 2 -

(i) an office holder of the public body (other than an honorary office holder);

(ii) any member of any council, board, committee or other body of the public body which is vested with any responsibility for the conduct or management of the affairs of the public body;

(b) in the case of a public body which is a club or association, any member of the public body who -

(i) is an office holder of the body (other than an honorary office holder); or

(ii) is vested with any responsibility for the conduct or management of its affairs;

(c) in the case of a public body which is an educational institution established or continued in being by an Ordinance, any officer of the institution and, subject to subsection (3), any member of any council, board, committee or other body of the institution, which is itself a public body, or which -

(i) is established by or under the Ordinance relating to the institution;

(ii) is vested with any responsibility for the conduct or management of the affairs of the institution (not being affairs of a purely social, recreational or cultural nature); and

(iii) is not excluded under subsection (3),

whether the employee, officer or member is temporary or permanent and whether paid or unpaid, but -

(A) the holding of a share by a person in a company which is a public body; or

(B) the entitlement of a person to vote at meetings of a club or association which is a public body,

shall not of itself constitute that person a public servant;

Section 3 Soliciting or accepting an advantage

Any prescribed officer who, without the general or special permission of the Chief Executive, solicits or accepts any advantage shall be guilty of an offence.

Section 4 Bribery

(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's -

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;

(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or

(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(2) Any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his –

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;

(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or

(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(2A) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to the Chief Executive as an inducement to or reward for or otherwise on account of the Chief Executive's –

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as the Chief Executive;

(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by the Chief Executive in his capacity as the Chief Executive or by any public servant in his capacity as a public servant; or

(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(2B) If the Chief Executive, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his –

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as the Chief Executive;

(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by the Chief Executive in his capacity as the Chief Executive or by any public servant in his capacity as a public servant; or

(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

he shall be guilty of an offence.

(3) If a public servant other than a prescribed officer solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section.

(4) For the purposes of subsection (3) permission shall be in writing and –

(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 reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (3), the public body shall, before giving such permission, have regard to the circumstances in which it is sought.

Section 5 Bribery for giving assistance, etc. in regard to contracts

(1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in -

(a) the promotion, execution, or procuring of –

(i) any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, or

(ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid,

shall be guilty of an offence.

(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in –

(a) the promotion, execution or procuring of, or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract as is referred to in subsection (1) shall be guilty of an offence.

(3) Any person who, without lawful authority or reasonable excuse, offers any advantage to the Chief Executive as an inducement to or reward for or otherwise on account of the Chief Executive's giving assistance or using influence in, or having given assistance or used influence in –

(a) the promotion, execution or procuring of –

(i) any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance; or

(ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as is referred to in paragraph (a),

shall be guilty of an offence.

(4) If the Chief Executive, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in –

(a) the promotion, execution or procuring of; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract as is referred to in subsection (3)(a), he shall be guilty of an offence.

Section 6 Bribery for procuring withdrawal of tenders

(1) Any person who, without lawful authority or reasonable excuse, offers any advantage

to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

Section 7 Bribery in relation to auctions

(1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

Section 8 Bribery of public servants by persons having dealings with public bodies

(1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any prescribed officer employed in that department, office or establishment of the Government, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.

Section 11 Giver and acceptor of bribe to be guilty notwithstanding that purpose not carried out, etc.

(1) If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that -

(a) he did not actually have the power, right or opportunity so to do or forbear;

(b) he accepted the advantage without intending so to do or forbear; or

(c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

Section 19 Custom not to be a defence

In any proceedings for an offence under this Ordinance, it shall not be a defence to show that any such advantage as is mentioned in this Ordinance is customary in any profession, trade, vocation or calling.

Annex 3 Frequently Asked Questions

1. How can I know whether or not the person/organisation that I am dealing with is a public servant/public body?

   The definitions of public servant and public body are provided in the Prevention of Bribery Ordinance (POBO). In short, public servant means any government officer, member or employee of public body. Public body means the Government, the Executive Council, the Legislative Council, any District Council, any board, commission, committee or other body appointed by or on behalf of the Chief Executive or the Chief Executive in Council, and any board, commission, committee or one of the over a hundred bodies in Schedule 1 and Schedule 2 of the POBO, such as the MTR Corporation Limited, the Airport Authority, the Ocean Park Corporation, Hong Kong Exchanges and Clearing Ltd, and Television Broadcasts Ltd.

   For the actual provisions in the POBO, please refer to Annex 2 of this Guide, or the Bilingual Laws Information System at http://www.legislation.gov.hk/eng/home.htm.

2. Is there a threshold value of advantage, e.g. $500, below which both offering to and acceptance by public servants are permitted under the POBO?

   The POBO has not specified any threshold or ceiling of allowable advantages for the purpose of corruption offences under the POBO. The receiver/offeror will commit an offence if he accepts/offers an advantage of any value if it falls into any of the corrupt dealings as specified in the relevant sections of the POBO (see Section 1.1 of this Guide). Hence, the key factors are the purpose/motive and the circumstances of the acceptance/offer, not the value.

   For the actual provisions in the POBO, please refer to Annex 2 of this Guide, or the Bilingual Laws Information System at http://www.legislation.gov.hk/eng/home.htm.

   For corruption prevention advice on offering advantages to public servants, please refer to Section 3.1 Anti-bribery and Ethical Practices of this Guide.

3. How can I know whether or not the public servant that I am dealing with has already obtained his principal (i.e. the public body)'s permission to accept advantage?

   For dealing with government officers, one can refer to the Acceptance of Advantages (Chief Executive's Permission) Notice (see Annex 1 of this Guide) or the relevant internal rules and regulations (see Section 1.3 of this Guide) for information about the circumstances under which general permission has been given for government officers to accept advantages.

   For dealing with public servants other than government officers, some public bodies may post on their websites or through other means a code of conduct which sets out the public bodies' policies and guidelines on solicitation and acceptance of advantage by their staff, including the circumstances under which advantages with value below a specified amount are acceptable.

   In case of doubt and where appropriate and practicable, one can check with the public bodies concerned and adopt corruption prevention measures (see Section 3.1 of this Guide) before deciding whether or not to offer advantages to the public servants.

4. Would voluntary services be considered as advantage?

   Under the POBO, advantage include, among other things, service and favour. Therefore, voluntary services may in general be regarded as advantage (see Section 1.1 of this Guide).

   For the actual provisions in the POBO, please refer to Annex 2 of this Guide, or the Bilingual Laws Information System at http://www.legislation.gov.hk/eng/home.htm.

5. Will I commit an offence under the POBO if I have my boss' permission to offer advantages to an employee of a public body with which my company has an official dealing?

   Yes, one may commit an offence of Section 8 of the POBO if he, while having dealing with a public body, offers any advantage to any public servant employed by that public body (see Section 1.1 (f) of this Guide). Whether or not the offeror has his employer's permission to offer advantage is irrelevant.

For the actual provision of Section 8 of the POBO, please refer to Annex 2 of this Guide, or the Bilingual Laws Information System at http://www.legislation.gov.hk/eng/home.htm.

6. Will I commit an offence if I offer an advantage to a third party as requested by a public servant, instead of the public servant himself?

   Under the POBO, a person offers an advantage if he or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in the trust of any other person. Similarly, a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

   Therefore, one may commit an offence of Section 4 of the POBO if he offers an advantage to a third party as requested by a public servant as an inducement for that public servant to show favour in relation to his public duties (see Section 1.1 (b) of this Guide). One may also commit an offence of Section 8 of the POBO if he, while having dealing with a public body, offers an advantage to a third party as requested by a public servant employed by that public body (see Section 1.1 (f) of this Guide).

   For the actual provisions of Sections 4 & 8 of the POBO, please refer to Annex 2 of this Guide, or the Bilingual Laws Information System at http://www.legislation.gov.hk/eng/home.htm.

7. What should I do if I plan to send business gifts, e.g. hampers, wines, to the public servants with whom my company has official dealings in festivals in order to maintain a good business relationship and improve my company's business image?

   Under Section 8 of the POBO, it is an offence for any person to, without lawful authority or reasonable excuse, while having dealings of any kind with a government department/office or a public body, offer any advantage to any government officer employed in that department/office or public servant employed by that public body (see Section 1.1 (f) of this Guide).

It is advisable for business operators to make reference to the anti-bribery and ethical practices recommended in this Guide before deciding on whether or not to offer any advantage to public servants to avoid breaches of the law (see Section 3.1.2 of this Guide).

In addition to the ethical practices and preventive measures suggested in this Guide, one can also conduct a self-assessment, making reference to the self-assessment checklist provided in this Guide, to assess and judge whether or not the offering of the advantage to the public servant is acceptable and appropriate from the legal and ethical perspectives.

For details of the self-assessment checklist, please refer to Section 3.3 of this Guide.

8. Is the adoption of the ethical practices/advice suggested in this Guide compulsory for business operators or individuals who have dealings with public servants?

Except those which are legal and/or contractual requirements, the advice and measures suggested in this Guide are best practices for adoption on a voluntary basis. In case of doubt, one should seek legal advice.

9. If I seek the ICAC's assistance/advice in reviewing my company's system or drawing up a staff Code of Conduct, will my company's name be disclosed to any other third party?

The Corruption Prevention Advisory Service (CPAS) of the ICAC provides free, tailored and confidential corruption prevention services to all private sector companies or individuals upon request. The identity of any company or individual who seeks CPAS's assistance/advice will not be disclosed to any other party.

For details of CPAS's services, please refer to Section 4.1 of this Guide.