

Summary of the Regulatory Regime on Acceptance of Advantages and Entertainment by Civil Servants

I. Introduction

The Administration adopts a multi-pronged approach in the management of conduct of civil servants¹ in respect of acceptance of advantages and entertainment. On the legal front, the Prevention of Bribery Ordinance (Cap. 201) (“POBO”) imposes specific restrictions on the solicitation or acceptance of advantages by civil servants. Apart from the statutory offences under the POBO, civil servants are also subject to the common law offences such as misconduct in the public office (“MIPO”).

2. In addition to legal requirements, civil servants must comply with government regulations, rules and guidelines on conduct, including acceptance of advantages and entertainment. Individual bureaux/ departments (“B/Ds”) may issue specific requirements in addition to service-wide regulations for compliance by their staff having regard to the operational needs.

3. The following paragraphs provide a brief summary of the regulatory regime governing acceptance of advantages and entertainment by civil servants.

II. Acceptance of Advantages

4. [Prevention of Bribery Ordinance](#) (Cap. 201) governs both the public and private sectors. Civil servants, like other “prescribed officers” as defined by the law, are subject to the most stringent provisions under the POBO.

5. “Advantage” is defined in section 2(1) of the POBO to mean almost anything which is of value, except entertainment which will be covered under a separate heading below. Common examples of advantage include any gift (both of money and in kind), loan, fee, reward, commission, office, employment and contract, etc.

(a) Acceptance of advantages in private capacity

6. Under section 3 of the POBO, any civil servant who, without the general or special permission of the Chief Executive, solicits or accepts

¹ Including those employed on non-civil service terms.

any advantage is guilty of an offence. Section 3 does not require that the advantage be solicited or accepted for a corrupt purpose. This is a stringent preventive measure against potential risk of corruption. It is intended to avoid civil servants being placed in an obligatory position towards the offerors of advantages.

7. To help cushion the impact of section 3 on the private lives of civil servants as ordinary citizens, the [Acceptance of Advantages \(Chief Executive's Permission\) Notice](#) (“AAN”) has been put in place. The AAN specifies the circumstances under which general permission is given for civil servants to solicit and/or accept four types of “restricted” advantages, namely –

- gifts (whether of money or otherwise)
- discounts
- loans of money
- passages

For instance, a civil servant may, without seeking separate approval, solicit and/or accept a gift up to the specified monetary limits in the AAN provided that the offeror has no official dealings with the department in which he works or is not his subordinate. The AAN also gives general permission for a civil servant to solicit and accept advantages other than these four types.

8. Notwithstanding the general permission given under the AAN, all civil servants 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.

9. For circumstances not covered by the general permission under AAN (e.g. a wedding gift given by a subordinate, irrespective of the value), the civil servant should seek special permission from his B/D for accepting the advantage concerned.

10. B/Ds may take into account, but not limited to, the following factors when considering an application for special permission to solicit or accept an advantage by a civil servant -

- (a) the value of the advantage;
- (b) the reputation and status of the donor, and his relationship

with the officer;

- (c) whether the donor of the advantage has any official dealings with the officer;
- (d) whether the officer's acceptance of the advantage in his private capacity will adversely affect the image of the B/D or the Government or invite public criticism or give rise to a conflict of interest;
- (e) whether the acceptance of the advantage would place the officer in an obligatory position towards the donor and would therefore compromise the officer's position in his official dealings with the donor;
- (f) whether the advantage is also available on equal terms to persons who are not Government servants;
- (g) the frequency of similar permission being sought by the same officer; and
- (h) the status, rank and post of the officer.

(b) Acceptance of advantages in official capacity

11. Advantages offered to a civil servant and/or his spouse by virtue of his official position or on an occasion attended in his official capacity (including those offered/presented by another government department), whether in Hong Kong or elsewhere, are regarded as advantages to the B/D in which he works.

12. As a general rule, a civil servant should as far as possible decline the advantages presented or offered to him in his official capacity. If a civil servant is invited to officiate at an official event, he should notify the organiser in advance that he will not accept gifts or souvenirs. If a civil servant attends in his official capacity a social or festive function which involves a session of free lucky draw, he should inform the organiser that he will not take part in it². If participation cannot be avoided (e.g. free lucky draw ticket is given to the civil servant on the spot or his name has been put in the draw box without his prior notice), prizes won should be returned to the organiser for a re-draw.

² On occasions where civil servants buy raffle tickets out of his 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 draws which may compromise their integrity (e.g. where one pays a small sum of money for the raffle tickets in return of a chance for expensive prize).

13. Where the effort of declining the advantages cannot be done owing to protocol reasons (e.g. declining the offer at the spot may cause great offence or embarrassment), the civil servant should take the advantage back to his B/D and seek the approving authority's directive on how to dispose of the advantage so offered. B/Ds will then decide whether the advantage should be accepted having regard to the following factors -

- (a) the nature and the value of the gifts;
- (b) the status and reputation of the donor;
- (c) whether there is any conflict of interest or the extent of official dealings, if any, between the donor and the officer concerned;
- (d) whether the acceptance of the gifts will place the officer, the B/D or the Government in an obligatory position towards the donor or cause embarrassment to them or invite criticism;
- (e) whether it is inappropriate to accept the gifts in view of prevailing Government policy (e.g. tobacco and product from endangered species);
- (f) whether the offer is also available on equal terms to persons who are not government officers on the same occasion;
- (g) the number of occasions that gifts/advantages have been offered by the same donor previously;
- (h) whether the officer has regulatory responsibility over the offeror (e.g. contractors) and whether such gifts should be disposed of in ways other than personal retention by the officer to avoid actual or perceived conflict of interest; and
- (i) the public perception angle.

14. If it is considered that the advantage could be accepted, the B/Ds will then decide how it should be disposed of. Some common disposal methods include displaying in office, donation to the charity, sharing among office for perishable food, etc. For an advantage with an estimated value below HK\$50 or 0.1% of the civil servant's substantive salary (whichever is the higher) (e.g. a ball pen, memo pad or complimentary ticket) or a gift item below HK\$400 which is personally inscribed with the civil servant's name or received by him at official functions as the guest of honour/officiating guest (e.g. a commemorative souvenir inscribed with the organiser's name and of limited commercial

value), the civil servant may choose to retain the advantage under the general permission. All disposal methods should be properly documented.

(c) Solicitation and acceptance of advantages on behalf of staff associations or other organisations

15. Civil servants soliciting or accepting advantages on behalf of their staff associations or clubs, or other non-civil service associations (e.g. professional institutions, sports clubs) in their capacity as members or office-bearers of the associations or clubs are required to ensure that they have the necessary permission (either general or special permission) to do so in accordance with the AAN in a similar way as if they are soliciting or accepting the advantages for their own benefit.

16. Civil servants, as members of a staff association or club, or other non-civil service association, soliciting or accepting a “restricted” advantage from a tradesman or company provided to the association or club are not required to seek special permission in accordance with section 4 of the AAN, provided that the advantage is available on equal terms to non-government officers (e.g. retired civil servants) of the same staff association or other organisations (e.g. staff clubs of other private companies), and they do not have official dealings with the entity offering the advantage.

III. Acceptance of Entertainment

17. As defined in section 2 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 (e.g. attendance at a cinema, theatre or other public entertainment before or after a meal).

18. Civil servants 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 bearing in mind public perception. When offered entertainment, an officer should consider carefully whether the entertainment offered could be regarded as –

- excessive – taking into account its value, substance, frequency

and nature;

- inappropriate – taking into account the relationship between the officer and the donor (e.g. whether they have any direct official dealings); or
- undesirable – taking into account the character or reputation of the host or known attendees.

19. In certain circumstances, a free entertainment may amount to “a discharge of an obligation to pay” which is an advantage under section 2 of POBO. For example, where a civil servant visits a restaurant with which he has official dealings and at the end of the meal the restaurant owner waives the bill, he may be liable to criminal prosecution under POBO or MIPO.

20. Civil servants who have doubts about accepting an offer of entertainment are advised to seek guidance from their supervisors before they accept the entertainment.

IV. Sanction

21. A civil servant may be subject to criminal prosecution if he fails to obtain permission (either general or special permission) for solicitation or acceptance of an advantage pursuant to section 3 of POBO. It should be noted that compliance with section 3 of POBO does not necessarily exempt a civil servant from other criminal liability. Civil servants may be subject to criminal prosecution under section 4 of POBO or MIPO if they solicit or accept any advantage or entertainment for abusing his official power or position.

22. A civil servant may also be liable to disciplinary action if the solicitation or acceptance of the advantage (including those covered by general permission) or entertainment has led, or could have led, to an actual or perceived conflict between his private interests and official duties or bring the Government into disrepute.