

Ethical Leadership in Action

Handbook for
Senior Managers in the Civil Service

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TO HELP YOUR STAFF STAY AWAY FROM CORRUPTION AND MALPRACTICE, SENIOR MANAGERS MUST HEIGHTEN THEIR AWARENESS OF

- ❖ statutory provisions relating to bribery offences
- ❖ instructions and guidelines on conduct and discipline
- ❖ vulnerability to corruption and malpractice

I. STATUTORY PROVISIONS RELATING TO BRIBERY OFFENCES

- The Prevention of Bribery Ordinance (PBO) prohibits bribery in the civil service and sets out the minimum standards of behaviour for a government officer.
- Sections 3, 4 and 10 of the PBO are the basics that every government officer must get to know.

Section 3

Accepting advantage in general without permission.

Section 4

Accepting advantage with abuse of office.

Section 10

Maintaining a standard of living beyond one's means.

It is also important to note that the ICAC Ordinance empowers the ICAC to investigate any alleged or suspected offence of blackmail committed by a government officer by or through the misuse of his office.

Advantage and Entertainment

Advantage refers to almost anything which is of value except **entertainment**. Common examples of advantages include any gift (both of money and in kind), commission, loan, employment, discount, service and favour, etc.

Entertainment refers to food or drink provided for immediate consumption and any other entertainment connected with and provided at the same time, for example, a performance linked to a dinner.

1. Section 3

It is a very important section backed up by the Acceptance of Advantages (Chief Executive's Permission) Notice (AAN).

The Gist	<ul style="list-style-type: none"> ▪ Government officer² ▪ Without the general or special permission of the Chief Executive ▪ Solicits or accepts any advantage
The Spirit	<ul style="list-style-type: none"> ▪ To prevent a government officer from falling into the "Sweetening Process". <i>From past experience, a government officer is not always offered a direct bribe at the outset. Corruption often starts with the government officer involved being offered small favours</i> ▪ To uphold an extremely high standard of integrity for the civil service. <i>This high standard is needed because a government officer has powers and influence which are not available to ordinary citizens</i>
The Penalty	<ul style="list-style-type: none"> ▪ A maximum fine of HK\$100,000 and imprisonment for 1 year ▪ To pay any part of the advantage received by the convicted as specified by the court
Points-to-note	<ul style="list-style-type: none"> ▪ It is important to realise that Section 3 disregards whether or not the advantage relates to a corrupt motive ▪ Section 3 is applicable irrespective of whether the advantage is solicited or accepted in one's official or private capacity ▪ To ensure that Section 3 does not unduly restrict a government officer's official and private life, the AAN is in place as a counter-balance ▪ The AAN is an important guide, particularly when supervisors need to advise staff what they can or cannot accept

² In Section 3 of the PBO, the term "prescribed officer" is used. As defined in section 2(1) of the PBO, a "prescribed officer" includes any person holding an office of emolument, whether permanent or temporary, under the Government. Please refer to the provisions for details.

Acceptance of Advantages (Chief Executive’s Permission) Notice (AAN)

- The AAN sets out the rules governing solicitation and acceptance of certain advantages under certain circumstances. Restricted advantages i.e. **gifts (both of money and in kind), discounts, loans of money and passages (air, sea and land)** can only be accepted under certain restricted circumstances as stated in the AAN.
- The circumstances in which an officer³ can accept a “restricted advantage” without seeking permission depend largely on the occasion on which the advantage is offered, value of the advantage and status of the offeror. Types of offerors under the AAN include: **relations** (there are 19 types as specified by the AAN), **close personal friends, other persons** and **tradesmen/commercial establishments/associations**. Details are as follows:

Gifts/Discounts/Passages

Status of Offeror	Relations*	Close Personal Friends	Other Persons	Tradesmen/ Commercial Establishments/ Associations
Restriction: Limit of Monetary Value	May solicit or accept any gift/ discount/ passage of any value	May only accept a gift/ passage of value not exceeding HK\$ 3,000 (on special occasion, e.g. birthday) and HK\$ 500 (on any other occasion)	May only accept a gift/ passage of value not exceeding HK\$ 1,500 (on special occasion, e.g. birthday) and HK\$ 250 (on any other occasion)	May solicit or accept any gift/ discount/ passage of any value
Other Conditions	- No other condition	- offeror not a subordinate of the prescribed officer concerned - offeror has no official dealings with the department in which the prescribed officer works - advantage offered to the prescribed officer in his private capacity	- offeror not a subordinate of the prescribed officer concerned - offeror has no official dealings with the department in which the prescribed officer works - advantage offered to the prescribed officer in his private capacity	- the offer is equally available to persons who are not prescribed officers - offeror has no official dealings with the prescribed officer concerned - advantage offered to the prescribed officer in his private capacity

³ In AAN, the term “prescribed officer” is used. As defined in section 2(1) of the PBO, a “prescribed officer” includes any person holding an office of emolument, whether permanent or temporary, under the Government. Please refer to the provisions for details.

Loans of Money

Status of Offeror or Lender	Relations*	Close Personal Friends	Other Persons	Tradesmen/ Commercial Establishments/ Associations
Restriction: Limit of Loans	No limit	Maximum HK\$ 3,000 per person per occasion	Maximum HK\$ 1,500 per person per occasion	No limit
Other Conditions	- No other condition	- repaid within 30 days - lender not a subordinate of the prescribed officer concerned - lender has no official dealings with the department in which the prescribed officer works		- loan conditions offered similar to persons who are not prescribed officers - in the course of normal business of the lender - lender has no official dealings with the prescribed officer concerned - loan offered to the prescribed officer in his private capacity

* "Relations" means:

- spouse (including a concubine)
- any person with whom the government officer is living in a regular union as if man and wife
- fiancé, fiancée
- parent, step-parent, lawful guardian
- spouse's parent, spouse's step-parent, spouse's lawful guardian
- grandparent, great-grandparent
- child, ward of court
- spouse's child, spouse's ward of court
- grandchild
- child's spouse
- brother, sister
- spouse's brother, spouse's sister
- half-brother, half-sister
- step-brother, step-sister
- brother's spouse, sister's spouse
- brother's child, sister's child
- parent's brother, parent's sister
- parent's brother's spouse, parent's sister's spouse
- parent's brother's child, parent's sister's child

- An officer must seek special permission if he wishes to solicit or accept a "restricted advantage" **other than** the circumstances described in the above two tables. For example, an officer has to seek permission to accept a wedding gift if the offeror is his subordinate. **Permission** has to be sought prior to or as soon as reasonably

possible after the acceptance of the advantage. The approving authorities for officers at different levels are defined in the AAN and individual departmental guidelines.

- As explained in paragraphs 3 and 4 of CSB Circular No. 4/2007 “Advantages/entertainment offered to an officer in his official capacity and gifts and donations to a department for the benefit of staff”, no permission is given under the AAN for the acceptance of advantages presented to an officer in his official capacity. All such gifts presented on social and ceremonial occasions which the government officer attended in his official capacity are to be regarded as gifts to the department in which the officer works. In circumstances where it is considered inappropriate to return the gifts to the donor, the officer should report and hand over to the department the gifts received for disposal in the following ways:

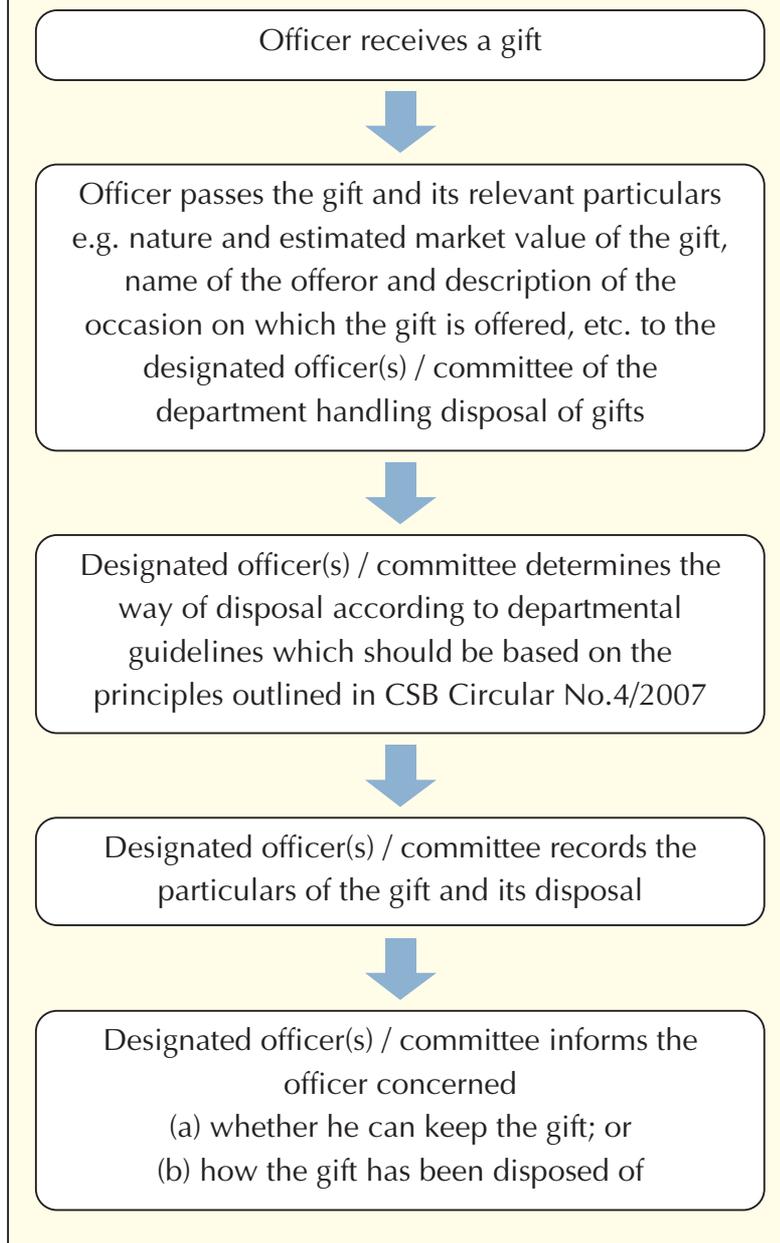
- ◆ To be shared among the office;
- ◆ To be retained by the recipient;
- ◆ To be donated to the department as lucky draw prize;
- ◆ To be donated to a charitable organisation, school, library or museum; or
- ◆ To be displayed in the office.

In any case, the department should act in accordance with paragraphs 10-14 of CSB Circular No.4/2007.

Suggestions on Disposal of Gifts

- **As a means to demonstrate ethical practice, an officer is advised to treat the gift as one received in his official capacity if he is unable to identify the offeror of the gift or is in doubt as to whether the gift is received in his official or private capacity**
- **To streamline the disposal procedure and to upkeep an ethical culture in departments, heads of department may consider designating officer(s) of senior rank or a committee to deal with the disposal of gifts. The mechanism should be transparent and there should be adequate checks and balances. Proper records on all cases should be maintained**

- **Listed below is the suggested procedure in handling gifts received in an officer's official capacity:**



- An officer who solicits or accepts advantages which are permitted under the AAN will not be liable to prosecution under Section 3 of the PBO. However, he may be liable to disciplinary action if he solicits or accepts any advantage which has led, or could have led, to a conflict between his private interests and his official duties, irrespective of whether the acceptance of the advantage is permitted under the AAN (Please make reference to P.19 on "Conflict of Interest").

2. Section 4

It is the section dealing with the crime of official corruption.

The Gist	<ul style="list-style-type: none">▪ Government officer⁴▪ In Hong Kong or elsewhere▪ Solicits or accepts any advantage▪ For abusing his official power or position
The Spirit	<ul style="list-style-type: none">▪ To prevent a government officer from abusing his authority for personal gain▪ To safeguard the interests of the government and the community at large
The Penalty	<ul style="list-style-type: none">▪ A maximum fine of HK\$500,000 and imprisonment for 7 years▪ To pay any part of the proceeds of corruption received by the convicted as specified by the court
Points-to-note	<ul style="list-style-type: none">▪ If a transaction amounts to a Section 4 offence, how the advantage is accepted is immaterial. Even if the advantage is accepted through a third party like spouse, the advantage may be regarded as received on the government officer's behalf▪ Parties offering or accepting a bribe are guilty even if the government officer has no real power to fulfil his promise or has not in fact fulfilled the promise

⁴ In Section 4 of the PBO, the term "public servant" is used. As defined in section 2(1) of the PBO, a "public servant" includes any prescribed officer and also any employee of a public body. Please refer to the provisions for details.

3. Section 10

It is the section dealing with a government officer maintaining a standard of living beyond one's means.

The Gist	<ul style="list-style-type: none"> ▪ Former or serving government officer⁵ ▪ Maintains a standard of living or possesses or controls assets which are not commensurate with his official emoluments ▪ Without any satisfactory explanation to the court
The Spirit	<ul style="list-style-type: none"> ▪ To bring to book a government officer who receives bribes over a period of time
The Penalty	<ul style="list-style-type: none"> ▪ A maximum fine of HK\$1,000,000 and imprisonment for 10 years ▪ To pay a sum not exceeding the amount of the pecuniary resources the convicted possesses, the acquisition of which cannot be explained to the satisfaction of the court
Points-to-note	<ul style="list-style-type: none"> ▪ There is no time limit for laying a charge of Section 10 ▪ The person involved need not be a government officer at the time the charge is laid against him

Checklist for Managers

- Are your staff fully conversant with the provisions stipulated in Sections 3, 4 and 10 of the PBO?
- Are there any briefing sessions on the PBO arranged in induction and refresher courses for your staff?

⁵ In Section 10 of the PBO, the term "prescribed officer" is used. As defined in section 2(1) of the PBO, a "prescribed officer" includes any person holding an office of emolument, whether permanent or temporary, under the Government. Please refer to the provisions for details.