



Public Servant

In Hong Kong, who are “public servants”?
Which organisations are “public bodies”?

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- “Public servant” and “public body” are defined in the Prevention of Bribery Ordinance (POBO).
 - Public servant includes any government officer, employee of public body and member of its governing body (e.g. the council, board or committee), whether permanent or temporary, paid or unpaid.
 - Public body includes any board, commission, committee or other body specified in the Schedule of the POBO, such as public transport operators, public utility companies, tertiary education institutions, public hospitals, etc. It also includes 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.

Festive Gift

Can I accept red packets in New Year given by a supplier?

How about accepting those red packets given to my children by the supplier?

- Red packets are regarded as advantages under the Prevention of Bribery Ordinance (POBO). If the advantages are accepted in connection with his capacity as a public servant and without any written permission from the public body, both the public servant and the offeror will commit an offence under Section 4 of the POBO.
- It shall not be a defence that the advantage offered is customary in any profession, trade, vocation or calling. If anyone offers red packets to the children of a public servant to cover up the bribe, such an act makes no difference from offering a bribe to the public servant directly.
- If a public servant wishes to accept an advantage in connection with his official capacity, a written permission from his public body must be obtained. Hence, a public servant must understand and follow the organisation's policy to avoid contravention of its code of conduct and the law.



Official Entertainment

My old school friend often invites me to attend festive banquets of his company. As we have frequent contact at work, I think I shall show appreciation and attend these functions.



- According to the Prevention of Bribery Ordinance (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, such as live performance at a banquet.
- Although entertainment does not fall within the definition of advantage under the POBO, public servants should not accept any lavish, unreasonably generous or frequent entertainment, as it may put them in an obligatory position in the discharge of official duties and compromise their impartiality or judgement.
- In accepting entertainment provided by clients or suppliers, public servants should follow the guidelines of their public bodies on acceptance of entertainment.

Use of False Documents

I heard that some colleagues had conspired to exaggerate the duty hours in their overtime allowance claim forms. It is impossible that their supervisor knows nothing about it ...

- If an employee uses any false document, such as false attendance records, with an intent to deceive his employer, he will commit an offence under Section 9(3) of the Prevention of Bribery Ordinance.
- Assisting colleagues to commit such crime will also be liable to an offence of conspiracy.
- Supervisors should diligently carry out their supervisory duties. If the malpractices or omissions by his subordinates are serious, repeated or widespread, the supervisor will be asked to account for those malpractices or omissions given that he has failed to discharge his duties of leadership, management and supervision on his subordinates.



Conflict of Interest

I play mahjong and bet on horse-racing with my subordinates after work to maintain our relationship. What's wrong with it?

- When a public servant at supervisory level gambles with his subordinates and has his monetary interest involved, his objectivity at work may hence be affected, or an actual or perceived conflict of interest may arise.
- Public servants should pay attention to and follow the organisation's policy on managing conflict of interest and should, as far as possible, avoid or declare any interest which conflicts, may conflict or be seen to conflict with their official duties. Conflict of interest of a serious nature may constitute a common law offence of Misconduct in Public Office, or a corruption offence under the Prevention of Bribery Ordinance if acceptance of advantages is involved.



Misconduct in Public Office

Will I be liable to Misconduct in Public Office for an inadvertent mistake at work?

- Mistake which is trivial and resulted from inadvertence does not fall under Misconduct in Public Office (MIPO).
- The Court of Final Appeal has in previous court cases spelt out the key elements of the offence of MIPO. It was held that the offence would be committed where
 - a public official;
 - in the course of or in relation to his public office;
 - wilfully misconducts himself; by act or omission (for example, by wilfully neglecting or failing to perform his duty);
 - without reasonable excuse or justification; and
 - where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the office-holder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

