

# Major Provisions

## Prevention of Bribery Ordinance - Section 4

- Any public servant (including any employee of a public body)
- whether in Hong Kong or elsewhere
- without written permission from the public body or reasonable excuse
- solicits or accepts any advantage
- in relation to his official capacity
- shall be guilty of an offence
- The offeror shall also be guilty of an offence

## Prevention of Bribery Ordinance - Section 9(3)

- Any agent (including any employee)
- uses any receipt, account or other document which is false, erroneous or defective
- with intent to deceive his principal (including his employer)
- shall be guilty of an offence



### Advantage

Includes almost anything which is of value, such as any gift (both of money and in kind), loan, fee, reward, commission, office, employment, contract, service and favour, etc., but excludes entertainment.



### Entertainment

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.



### Maximum penalty

**a fine of \$500,000 and 7 years' imprisonment**

## Misconduct in Public Office

The Court of Final Appeal has in previous court cases spelt out the key elements of the offence of Misconduct in Public Office. 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.

### Maximum penalty:

7 years' imprisonment and a fine



# Gist of Anti-corruption Laws



Integrity Promotion  
Campaign for Public Bodies  
Thematic Website

As public servants, employees of public bodies should have a clear understanding of the legal requirements and safeguard the public interest while serving the public in a professional and ethical manner.

## 1 Who are public servants?

- According to 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.



## 2 Is an employee of a public body permitted to accept red packets during New Year or festive gifts offered by service users or business partners voluntarily?



- Red packets and gifts are regarded as advantages under the POBO. If the advantages are accepted by the employee in connection with his capacity as a public servant and without any written permission from the public body, both the employee and the offeror will commit an offence under Section 4 of the POBO. It shall not be a defence that the gifts offered are customary in any profession, trade, vocation or calling.
- Even if the red packets or gifts are not offered in exchange for any abuse of official power or position, employees should handle them in accordance with the policy of the public body.

## 3 Is an employee of a public body permitted to solicit a loan from colleagues or business partners?

- Loan is defined as an advantage under the POBO. If the loan is offered to the employee for his abuse of official capacity or power, both the offeror and the acceptor of the loan will commit a corruption offence.
- Even if no abuse of official power or position is involved, employees should not obtain loans from their subordinates or business partners, in order to maintain objectivity at work and avoid conflict of interest.
- Employees should comply with the organisation's regulations on loan matters and consult the management when in doubt.



## 4 What should a public servant be aware of when attending business dinner?

- 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.



## 5 Is it an offence for an employee to exaggerate the duty hours in an overtime allowance claim form or assist a colleague who is late at work to sign in?

- 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 POBO. Assisting colleagues to commit such crime will also be liable to an offence of conspiracy.



## 6 If a relative of a public servant would like to bid for a procurement contract of his public body and seek his advice in that regard, what should the public servant do?

- If the public servant accepts advantages from his relative and discloses restricted information of the organisation or, through any other means, assists his relative in obtaining the contract, both the public servant and his relative will breach Section 4 of the POBO.
- Even no acceptance of advantages is involved, if the public servant assists his relative by providing internal information obtained in his official position, he may violate the organisation's code of conduct, or even commit the common law offence of Misconduct in Public Office if the misconduct is serious.
- Even if the public servant has not offered any assistance to his relative, he should still declare the conflict of interest situation arising from his relationship with the relative who is one of the bidders.
- All public servants should, as far as possible, avoid any actual and perceived conflict of interest. When a situation of conflict of interest cannot be avoided, public servants should as soon as possible declare all relevant details of such situation to their organisations.



## 7 If there is suspected corruption in the organisation, but no full evidence is obtained, what should be done?

- If public servants suspect any corruption in their organisations, including an attempt to offer bribes to a public servant, they should immediately make a report to ICAC Regional Office or the 24-hour report corruption hotline 25 266 366.
- Full evidence is not required when lodging a complaint. Complainants only need to state what they know about the suspected corruption and ICAC officers will follow up, based on the information provided, in accordance with the law.

