

## **LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE**

### **Promotion of Integrity in the Civil Service**

#### **Purpose**

This paper presents for Members' information an overview of the work of the Civil Service Bureau ("CSB") in the promotion of integrity in the civil service.

#### **Overview of our integrity management efforts**

2. An honest and clean civil service is the cornerstone of effective governance. The Administration is committed to upholding high standards of integrity and probity in the civil service. Such a commitment is enshrined in the civil service rules and regulations governing conduct in the civil service, which lay down clear guidelines against malpractices.

3. Throughout the years, CSB and the Independent Commission Against Corruption ("ICAC") have been working closely with departments to promote and safeguard integrity in the civil service. We adopt a three-pronged approach in inculcating a culture of integrity amongst staff –

#### **(a) Prevention**

Clear policies, guidelines and procedures are available to provide guidance to individual officers. Proper checks and balances are built into various operational and service systems.

#### **(b) Education**

Sustained efforts are devoted to promoting good standards of conduct at all levels in the civil service, including induction, training or seminars, and the promulgation of rules or guidebooks designed to enhance understanding and awareness of the high standards of probity required of civil servants.

**(c) Sanction**

Disciplinary punishments will be imposed strictly on those who have been found guilty of misconduct.

4. As illustrated by the key indicators set out in **Annex A**, the overall ethical climate in the civil service has remained stable and steadily improved in the past five years.

5. This notwithstanding, we recognise that there is no room for complacency. We will remain vigilant in upholding an ethical culture within the civil service.

**Sanction**

6. The Administration takes a serious view of criminal offences or acts of misconduct which involve a breach of trust in the office held by civil servants or misuse of power. Any allegations of such misconduct would be promptly investigated. Where, following impartial proceedings, an officer is found guilty of misconduct, disciplinary sanctions would be strictly enforced. In the four years ending 2003/04, of the 169 officers who have been subject to disciplinary action for having committed offences/misconduct related to abuse of official position<sup>(Note)</sup>, 48 or about 28% have been awarded terminatory punishments (i.e. compulsory retirement from the service or dismissal).

**Prevention and education**

7. On the prevention and education front, the efforts that we are spending on integrity management in the past few years are summarised below.

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<sup>(Note)</sup> Acts of misconduct classified as cases of abuse of official position include –

- (a) Conviction under the Prevention of Bribery Ordinance (Cap.201);
- (b) Unauthorised acceptance of advantages/entertainment from persons with official dealings;
- (c) Unauthorised outside work for persons with official dealings;
- (d) Unauthorised disclosure of government information;
- (e) Abuse of government properties; and
- (f) Use of official information/authority for personal gains.

### *Service-wide guidelines*

8. Service-wide guidelines on conduct matters are kept under constant review to ensure that they remain clear and adequate in present-day circumstances. In this regard, two revised circulars which give clearer guidelines on (a) acceptance of advantages by civil servants in their personal capacities; and (b) how to deal with gifts or entertainment offered to an officer in his official capacity, were issued in 2002. In 2004, we issued a revised circular on conflict of interest. The updated circular provides more detailed guidelines, including the common areas in which conflict of interest may arise. It is supplemented by an annex containing examples of conflict of interest situations to help enhance staff awareness of the situations that they should avoid. We have also encouraged departments to develop their own departmental guidelines highlighting, where appropriate, the more prevalent form of conflict of interest situations to which their staff are exposed, by virtue of the nature of their work.

### *Civil Service Integrity Entrenchment Programme*

9. As part of our efforts to promote and entrench an ethical culture in the civil service, CSB and ICAC have jointly launched the “Civil Service Integrity Entrenchment Programme” (CSIEP) in early 2004. Under the programme, an out-reach team comprising directorate officers from CSB/ICAC calls on bureaux/departments to discuss practical issues in relation to integrity management. The programme aims at engaging bureaux/departments to take stock of the progress made against the objective of inculcating an ethical culture in the civil service and to examine and identify areas that need to be focused on in the near future. Up to March 2005, we have visited 30 departments (with a combined workforce of some 104 000 staff) under this programme.

10. Departments are generally conscious of the need for vigilance in upholding staff integrity in their organisations and have taken proactive promotional efforts. Such measures include issue of departmental guidelines on conduct-related matters, promulgation/updating of departmental codes on conduct and discipline, undertaking of assignment studies by the Corruption Prevention Department of ICAC to plug loopholes in departmental systems and processes, organisation of seminars and talks on integrity-related matters, publication of newsletters, production of audio-visual training materials and development of dedicated webpages on conduct and discipline. In individual departments, large-scale promotional campaigns and on-going strategies to advocate healthy lifestyle and integrity are also launched/adopted.

### ***Resource Centre on Civil Service Integrity Management***

11. The electronic “Resource Centre on Civil Service Integrity Management” (“RCIM”), jointly developed by CSB and ICAC, was launched in 2001. It puts in one place materials relating to integrity management to facilitate the work of departmental managers responsible for embedding an ethical culture within their organisations. This resource centre on the intranet provides handy reference materials such as service-wide regulations on conduct matters, publications on subjects related to the integrity of civil servants, sample departmental guides or codes of conduct, as well as answers to some frequently asked questions on conduct matters.

12. We have been constantly updating and enhancing the content of the RCIM since its launch. In 2003, we incorporated into the website a more comprehensive list of frequently asked questions on subjects such as acceptance of advantages, declaration of investments, and outside work. To remind civil servants of the dire consequences of misconduct, we have started in 2004 to upload onto the RCIM examples of acts of misconduct that staff are advised to avoid. The cases that have been uploaded so far cover subjects including unauthorised absence from duty; falsification of attendance records; and supervisory responsibility etc.

### ***Civil Servants’ Guide to Good Practices***

13. The “Civil Servants’ Guide to Good Practices” was first published in 1999. It sets out in simple language the good behaviour expected of civil servants at all levels. To help fortify an ethical culture in the civil service, we have updated the Guide and distributed it to civil servants at all levels in April 2005, including non-civil service contract staff. Apart from bringing the content of the Guide up-to-date where appropriate, we have expanded the annexes to the Guide to give answers to a wider list of common questions on conduct matters.

14. We have also added a new chapter on the common law offence of misconduct in public office to raise staff awareness and to provide guidance on the subject. The chapter aims to remind civil servants that our society expects public officials to exercise their powers with integrity and fidelity and in an incorrupt manner. Corrupt conduct, contrary to the ethical standards that society expects a public official to apply when discharging his official duties, may not merely be dealt with as a disciplinary matter. It may be criminally actionable. To tie in with the issuance of the Guide with the new chapter,

sample cases based on precedents (of convictions under the common law offence of “Misconduct in Public Office”) have been compiled and uploaded onto the RCIM for easy reference of staff.

15. A copy of the updated Guide is enclosed at **Annex B**.

### ***Management of staff indebtedness***

16. On the management of staff indebtedness in the civil service, CSB has been monitoring the situation closely, including the calling of regular returns from departments with a higher number of indebted staff. We have earlier issued service-wide guidelines reminding civil servants of the importance of prudent financial management. Proactive measures are also implemented at departmental level to ensure that personal financial difficulties, if any, of individual officers would not impair operational efficiency or the integrity of the civil service as a whole. For example, the Police Force launched an on-going healthy life-style campaign to promote the physical and mental well-being of its staff. The Correctional Services Department and the Food and Environmental Hygiene Department promote the value of a healthy life-style through talks and publicity on departmental web-pages.

17. Thanks to the sustained efforts of departments in managing the situation coupled with the territory-wide trend driven largely by the economic recovery, we see a consistent decline in the number of insolvency or bankruptcy cases in the civil service from 997 in 2002 to 185 in 2004.

### ***Training and induction***

18. Training is an important measure for continually upholding civil service integrity. Corruption prevention courses are held on a regular basis to enhance awareness of the high standards of conduct required of civil servants. In the three years ending 2004, 2 200 such training courses, including talks on corruption prevention and briefings on integrity and avoidance of conflict of interest, were organised for 57 000 officers at various ranks. We are encouraged by the strong support given by departments in providing integrity training to their staff.

### **Future endeavours**

19. As a testimony of the Administration’s commitment in entrenching an ethical culture in the workplace, CSB and ICAC are jointly organising a forum on 16 June 2005, bearing the theme of “Successes through Ethical

Governance”. It aims to provide an opportunity for leaders in the public and business sectors to examine new ethical challenges on the horizon and share experience in ethical leadership. Some 800 participants are expected to join the Forum.

20. As a sequel to the CSIEP (please see para. 9 and 10 above), CSB and ICAC are planning to organise theme-based workshops for middle managers covering a number of topics that are of particular interest to departments. These include avoidance of conflict of interest in procurement and tendering; and supervision of outsourced activities. Related to this, we are working together with the Works Branch of the Environment, Transport and Works Bureau in drawing up an updated integrity management guide for the staff of works departments.

21. Much as we are encouraged by the positive feedback about the usefulness of the reference materials available on the Resource Centre on Integrity Management, CSB will continue to enrich its content from time to time. At the same time, to ensure that our service-wide guidelines remain clear and relevant in present-day circumstances, we will keep them under regular review.

22. Overall, CSB will maintain close partnership with ICAC and departments to further embed a culture of integrity in the civil service.

**Annex A**

	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	
Number of corruption reports against civil servants received by ICAC	1 732	1 587	1 638	1 541	1 286	This represents a drop of 17% relative to 2003; and 26% relative to 2000.
Number of civil servants prosecuted for corruption and related offences	59	61	51	50	38	This represents a drop of 24% relative to 2003; and 36% relative to 2000.
Number of civil servants convicted	33	43	25	30	16	This represents a drop of 47% relative to 2003; and 52% relative to 2000.
Number of civil servants named in cases that are referred by ICAC to bureaux/departments for consideration of disciplinary/administrative action  (See note below)	295	188	165	234	161	This represents a drop of 31% relative to 2003; and 45% relative to 2000.

Source : ICAC

Note : For cases where no prosecution is made against individual officers but possible misconduct/malpractice has been revealed during the ICAC investigation, ICAC may, on the advice of the Operations Review Committee, refer them to the bureau/department concerned for consideration of disciplinary/administrative action.

Civil Servants' Guide  
to  
Good Practices



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# FOREWORD



Dear Colleagues,

We are privileged to have in Hong Kong a civil service that is acclaimed for its efficiency and honesty.

The way our civil service conducts itself is guided by a set of core values that have endured the test of time. These core values have shaped the culture and character of the civil service as we know it today, namely, a clean, professional and meritocratic body of public servants.

The qualities of our civil service have taken many years to build and to sustain. Both the Administration and the community recognise that the preservation of these qualities is an essential pillar for effective governance.

The publication of this "Guide to Good Practices" underlines our commitment to uphold the fine culture and character of our civil service. In simple language, it sets out the good behaviour expected of civil servants at all levels, including those appointed on non-civil service terms.

I hope colleagues will find this a handy guide to the core values and good practices that all civil servants are expected to share and uphold.

A handwritten signature in black ink, appearing to read 'Wong'.

Joseph W P Wong  
Secretary for the Civil Service





# 1. Core Values of the Civil Service

The Hong Kong Civil Service is part of the Government of the Hong Kong Special Administrative Region. The Chief Executive leads the HKSAR Government. Civil servants are required by the Basic Law to be dedicated to their duties and to be responsible to the HKSAR Government.

Certain values have endured the test of good governance and shaped the present culture of our civil service. These can be summed up in six key principles:

- (a) commitment to the rule of law;
- (b) honesty and integrity;
- (c) accountability for decisions and actions;
- (d) political neutrality;
- (e) impartiality in the execution of public functions; and
- (f) dedication, professionalism and diligence in serving the community.

The above core values express the important characteristics of the way we work. They provide the basis for the standards of conduct expected of civil servants.





## 2. Attendance and Diligence at Work

All civil servants should:

- (a) comply strictly with applicable laws;
- (b) carry out lawful instructions from supervisors and comply with government regulations and procedures;
- (c) work with colleagues in cooperative team spirit to deliver effective and efficient service;
- (d) attend to work punctually;
- (e) work with care and diligence, and strive for excellence;
- (f) strive to achieve set performance targets; and
- (g) be courteous at all times.



### 3. Supervisory Responsibilities

As supervisors, we should:

- (a) delineate and communicate clearly and properly the lines of responsibilities of our staff;
- (b) provide adequate guidance, advice, counselling and training for staff;
- (c) monitor the conduct and performance of staff to ensure that they meet the standards required;
- (d) be alert to signs of malpractice in the work place, such as heavy gambling or frequent cash transactions among staff members and staff indebtedness;
- (e) take prompt and decisive action to handle misconduct and poor performance;
- (f) not ask for or accept any personal favours from subordinates or ask subordinates to perform personal errands; and
- (g) not borrow money from subordinates or use subordinates as guarantors for loans.



## 4. Probity

We need to maintain high standards of probity and should:

- (a) be honest and impartial in all dealings, whether with members of the public or other civil servants;
- (b) discharge official duties in an accountable and fair manner;
- (c) restrict access to information on an official need basis;
- (d) not use official information for private purposes;
- (e) take good care of government properties;
- (f) exercise economy in the use of government materials or services;
- (g) report any act of dishonesty, corruption, or attempted corruption (including the offer of a bribe), or other crime that comes to our knowledge;
- (h) avoid getting into a position where debts may become unmanageable; and
- (i) avoid committing acts which may be construed as acts of discrimination or sexual harassment.



## 5. Acceptance of Advantages and Entertainment

We must comply strictly with the rules on acceptance of advantages and entertainment. The following summarises the key principles:

- (a) do not solicit or accept any advantage in circumstances where to do so may be a criminal offence under section 3 or 4 of the Prevention of Bribery Ordinance;
- (b) do not accept gifts, discounts, loans of money or passages from contacts with whom you have official dealings. Subject to this, you may accept:
  - gifts, discounts, loans of money or passages from tradesmen, companies or other organisations which are equally available on equal terms to non-civil servants;
  - gifts, discounts, loans of money or passages from a relation;
  - gifts and/or passages not exceeding in total \$2,000 from a close personal friend or \$1,000 from any other person on each occasion when gifts are traditionally given or exchanged, and not exceeding \$400 in total from a close personal friend on each other occasion; and
  - loans of money from a close personal friend or any other person not exceeding \$2,000 and \$1,000 respectively, provided it is repaid within 14 days.
- (c) refuse any lavish or unreasonably generous or frequent entertainment that may lead to embarrassment in performing official duties or bring the public service into disrepute.

Annex I sets out answers to some common questions on acceptance of advantages and entertainment.





## 6. Conflict of Interest

A fundamental rule for maintaining civil servants' integrity is to avoid situations which may give rise to a conflict of interest. The following guidelines are relevant:

- (a) never use your position in the civil service to benefit yourself or your family, relations or friends, or any other group of people with whom you have personal or social ties;
- (b) avoid being placed in a position of obligation to anyone by accepting excessive entertainment or favours such as free service, or indulging in games of chance with subordinates or other people with whom you have official dealings; and
- (c) avoid putting yourself in a position that may arouse any suspicion of dishonesty, or of using your official position to benefit yourself, your family, relations or friends. For example, do not provide advice to any executive search firm if your official duties involve appointment and promotion. In procuring services or goods for your office, do not negotiate with a company in which you or your relations hold shares. Follow prescribed tender procedures and declare an interest if necessary in the process.





## 7. Declaration of Investments

As a measure to uphold civil servants' impartiality and accountability, civil servants are required to declare their investments in and outside Hong Kong when they are posted to designated posts, and to avoid making investments which may give rise to real or apparent conflict of interest with their official duties. The following rules are useful:

- (a) do not invest or become involved in any business in or outside Hong Kong with your official contacts;
- (b) do not invest or get involved in any business which may bring the civil service into disrepute;
- (c) do not use information obtained in your official capacity to profit yourself, your family, friends or associates financially;
- (d) follow prevailing regulations and departmental instructions on the declaration of your personal investments; and
- (e) declare and seek guidance from your supervisor if you are asked to work in a post or area where a conflict of interest situation may arise between your personal investments and official duties.



## 8. Outside Work and Post-Service Employment

Government has a prior call at all times on the service of all its employees. You should:

- (a) avoid outside work, whether paid or unpaid, which may affect the performance of your official duties or lead to a conflict of interest; and
- (b) apply for permission before taking up any paid outside work during or outside working hours, or unpaid work during working hours.

To maintain the standing and integrity of the civil service, it is important that civil servants, even after they have left the service, should continue to conduct themselves in an appropriate manner as the activities which they take up would continue to be seen by the public as a reflection of the culture and character of the civil service. Retired civil servants should act with good sense and propriety in pursuing post-service employment or business and avoid engaging themselves in activities which could be construed as being in conflict with their previous duties in the Government, or might bring the civil service into disrepute, or expose them or the Government to public controversy.



## 9. Upholding the Integrity of the Civil Service

The Government takes a serious view in upholding the integrity and high standards of conduct of the civil service. Misconduct will be addressed by disciplinary action.

Punishment in the form of a warning, reprimand, demotion, financial penalty, compulsory retirement or dismissal may be imposed having regard to the severity of the misconduct.

Non-civil service contract staff, by virtue of their terms of employment, are subject to the same Government rules and regulations on conduct and related matters as applied to civil servants. They are expected to uphold the same high standards of probity.



## *M* 10. Misconduct in Public Office

Persons occupying public offices are entrusted by the public with powers and discretions which affect the lives and activities of the citizen. Our society expects public officials in such a position to exercise the powers with integrity and fidelity, and in an incorrupt manner.

The common law has long recognised this expectation. Corrupt conduct contrary to the ethical standards that society expects a public official to apply when discharging his official duties may not merely be dealt with as a disciplinary matter. It may be criminally actionable.

The common law offence of misconduct in public office extends the reach of criminal law beyond bribery into corrupt conduct that does not involve the acceptance of an advantage offered by another person.

In a judgment handed down in 2002, the Court of Final Appeal described the following as the elements constituting the offence of misconduct in public office:

- (a) a public official;
- (b) in the course of or in relation to the public office;
- (c) wilfully and intentionally;
- (d) culpably misconducts himself and the misconduct is serious.

As holders of public office, we must always remember the privileged position that we are in. Such a position brings with it the responsibility to exercise our official powers with due care and for the public good.

Annex II sets out answers to some common questions on misconduct in public office.



## 11. Sources of Advice and Information

Departmental Secretaries are the first point of contact for advice on issues relating to conduct and discipline. In addition, colleagues in the Civil Service Bureau stand ready to offer information. Please feel free to contact us at **2810 3178** or write to us at :

**Civil Service Bureau (Attn : Conduct and Discipline Division)**  
**11/F, Central Government Offices (West Wing)**  
**11 Ice House Street**  
**Central**  
**Hong Kong**

Fax: **2530 0986**

E-mail: **csbcd@csb.gov.hk**

### **Resource Centre on Civil Service Integrity Management (RCIM)**

Should you wish to read up reference materials on matters related to integrity management, please visit the RCIM (<http://host1.cngo.hksarg/rcim/>) on the Central Cyber Government Office intranet.



## Annex I

# Answers to Some Common Questions asked on Acceptance of Advantages and Entertainment

### Discount and Special Offer

**Q1 Can an officer accept from a bank a privileged current account which provides unsecured overdraft facilities?**

**A1** By virtue of the Acceptance of Advantages (Chief Executive's Permission) Notice (the "AAN"), an officer is permitted to accept such an advantage provided that this credit device is equally available on equal terms to customers who are not civil servants and further provided that there is no official dealing between the bank and the officer.

**Q2 Can an officer ask his friend to purchase goods (e.g. electrical appliances) for him from his friend's company at staff price?**

**A2** Such assistance amounts to a favour, and thus would constitute an advantage under the Prevention of Bribery Ordinance (the "POBO"). However under the AAN, general permission has been given, for the purposes of section 3 of the POBO, for officers to solicit or accept a favour provided that there is no official dealing between the officer and his friend. That said, the officer should make sure that he will not be obliged to abuse his official power and position in return. Otherwise, it may lead to a section 4 offence.

**Q3 Can an officer accept a special discount from a shop because he or his friend is its regular customer?**

**A3** Yes, if it is a normal trade practice of the shop to do so and provided that there is no official dealing between the officer and his friend or the shop.

**Q4 Can an officer accept a waiver of solicitor's fees for handling a mortgage or assignment during the purchase of a property?**

**A4** It will be alright if the solicitor's firm has no official dealing with him and provided that the waiver that is offered to him in his private capacity is equally available on equal terms to persons who are not civil servants. The waiver is a service or favour and thus would constitute an advantage under the Prevention of Bribery Ordinance. However under the AAN, general permission has been given, for the purposes of section 3 of the POBO, for officers to solicit or accept services and favours. The officer should nevertheless declare to his Head of Department if official dealings with the solicitor's firm arise in future.



## Customary Gifts

**Q5 Can an officer accept red packets during Chinese New Year? What if the red packet is offered to his children by an official contact?**

**A5** The red packet is a gift of money and therefore an advantage. Under section 4 of the Prevention of Bribery Ordinance, an officer who accepts a red packet as an inducement to or as a reward for or on account of his abusing his position is in breach of the law. This would include accepting the red packet from a person whom the officer knew had an interest in ensuring that he, the officer, remained favourably disposed to the offeror of the red packet because of the possibility that the offeror might have future dealings with the officer or his department.

Even if the red packet is offered unconditionally, it is a "restricted advantage" for the purpose of the AAN. As such, the provisions in the AAN should be followed. For example, except for relations, the offeror must not have any official dealings with the officer concerned and must not be his subordinate. Otherwise, the officer has to seek special permission from his Head of Department before he can accept the red packet.

If the red packet to an officer's children is a bribe in disguise, it is immaterial whether the advantage is offered to him or through a third party related to him. However, if the red packet offered to his children does not carry with it any ulterior motive, section 4 will not apply. The amount involved may shed light on whether the red packet offered stems from genuine goodwill during festive time. When in doubt, the officer should consult his supervisor.

**Q6 Why is special permission required for accepting gifts from subordinates?**

**A6** The overriding principle is to avoid possible conflict of interest in any supervisor/subordinate relationship and to prevent exploitation of subordinates.

A supervisor should at all times ensure that his dealings with subordinates do not place him in a position of obligation that may lead to a conflict of interest. For example, he should not accept excessive entertainment from or indulge in games of chance for money or money's worth with subordinates. A supervisor is required to apply for approval to accept gifts and loans of money from subordinates. Under CSR 483, a supervisor may be liable to disciplinary action if he does not obtain prior permission to use a subordinate as a guarantor for a loan or a hire and purchase agreement.

**Q7 Civil servants have been given general permission to accept gifts, discounts, loans of money or passages from a relation. Who will be included as a "relation"?**

**A7** The term "relation" is defined in paragraph 3 of the Acceptance of Advantages (Chief Executive's Permission) Notice.



## Gifts Presented to an Officer in His Official Capacity

**Q8 What is the rationale for requiring officers to report gifts presented to them in their official capacity?**

**A8** Gifts presented to officers in their official capacity are gifts to the department. All such gifts should be declined as far as possible. When it is considered inappropriate to decline or return the gifts to the donor, the officer should report and hand over the gifts received to the department for disposal in accordance with the relevant CSB Circular. Only under very restricted circumstances would permission be given for such gifts to be retained personally by the officers.

## Lucky Draw and the Prizes Won

**Q9 What should an officer do if he wins a prize in a lucky draw when he is attending a function in his official capacity?**

**A9** If the lucky draw comes with the function the officer is officially attending, and none of his own money is involved, he may consider not taking part in the lucky draw or returning the prize for re-draw. If this may make him look impolite, he should take the prize back to his department for a decision by the Head of Department on how it should be disposed of in accordance with the relevant CSB Circular.

**Q10 When attending a function in his official capacity, an officer is invited to buy some raffle tickets and wins a prize in the draw. Is he required to seek any permission for retaining the prize?**

**A10** A raffle ticket bought by an officer while attending a function in his official capacity is not a gift, nor is the raffle prize which he may win as a result of its purchase. Special permission for retaining such raffle prizes is therefore not required. Nevertheless, officers should be cautious and avoid taking part in lucky draws the nature of which may compromise their integrity (e.g. where dubious or expensive prizes are given to all participants who only pay a small sum of money for the raffle tickets).

### **Sponsored Visits**

**Q11 Can an officer accept a sponsored visit offered by a professional body to attend a conference overseas because of his expertise in the subject?**

**A11** An officer may receive an invitation from a foreign government or an outside organisation to make a sponsored visit in his private capacity and this may include offer of free accommodation and/or passage. If he wishes to accept the invitation, he must seek permission to do so from his Head of Department or the Secretary for the Civil Service, as appropriate, in accordance with the AAN. He will be required to take his earned leave in order to attend.

During the private visit, he must not accept lavish entertainment incommensurate with the occasion and the purpose of the visit. He should also avoid undertaking activities which could be construed as being related to his official duties.



## Other Issues Relating to Acceptance of Advantages

**Q12 Is a loan of an object e.g. a car, an advantage?**

**A12** Under section 3 of the Prevention of Bribery Ordinance, a loan of an object is not a "restricted advantage" and therefore general permission has been given for it to be solicited or accepted. But the position will be entirely different if it is reciprocated by an abuse of office. It then constitutes a section 4 offence.

**Q13 With reference to section 10 of the Prevention of Bribery Ordinance, is it necessary for an officer to report to the ICAC a substantial gain from winning in games of chance?**

**A13** No, but he may report it to his department to play safe.

**Q14 An officer, being an office-bearer of a staff association, wishes to collect donations for the family of an officer who has been imprisoned. Does he require any permission to do so?**

**A14** An officer who solicits and accepts advantages (which include gifts of cash or in kind, loan of money, discount and passage) in his capacity as a member or office-bearer of his staff association or club is required to apply for permission in accordance with the AAN in a similar way as if he is soliciting or accepting the advantages for his own benefit.

**Q15 An officer has taken part in an open competition in the name of his department. Does the prize belong to him or is special permission under the AAN required for him to accept the prize?**

**A15** If an officer has taken part in the competition in his private capacity and received a prize, general permission has been given under the AAN for him to accept it. On the other hand, if in taking part in the competition he is representing the department, then the acceptance of the prize and method of disposal would be a matter for the departmental management to decide.

**Q16 Can an officer solicit advertisements for publications such as staff association journals and brochures for departmental sports days, dinners, etc.?**

**A16** Prior permission from the Secretary for the Civil Service or the Head of Department (subject to compliance with conditions in the relevant CSB Circulars) is required before an officer involves himself in the production of any publication which contains paid advertisements.

The applicant(s) must ensure that the methods of canvassing will not bring the public service into disrepute.

It should be made clear to the advertisers that their purchase of advertising space will not provide any advantage in their dealings with the government.



### Answers to Some Common Questions asked on Misconduct in Public Office

**Q1** The term "misconduct in public office" is very broad. The misconduct may appear in many different forms and may vary greatly in terms of nature and severity. Under what circumstances would an act of misconduct in public office lead to criminal prosecution under the common law?

**A1** In a judgment handed down in July 2002, the Court of Final Appeal (CFA) observed, amongst other things, that -

- (a) the common law offence of misconduct in public office serves an important purpose in providing a criminal sanction against misconduct by public officers; and
- (b) the common law offence is necessarily cast in general terms because it is designed to cover many forms of misconduct on the part of public officers.

The CFA held that the broad terms in which the common law offence is cast are sufficient to enable a public officer to regulate his conduct. The elements of the offence, quite apart from its title or description, alert a public officer to the risk that he runs by engaging in misconduct. Those elements are -

- (a) a public official,
- (b) in the course of or in relation to the public office,
- (c) wilfully and intentionally,
- (d) culpably misconducts himself and the misconduct is serious.

## **Q2 Can the meaning of these elements be elaborated?**

**A2** The constituent elements (b), (c) and (d) are further elucidated below.

### **"In the course of or in relation to the public office"**

This element emphasises the fact that this offence is not to be used to punish public officers for what they do in their private lives. The offence is committed because of what he does, or fails to do, as a public officer.

### **"Wilfully and intentionally"**

"Intentionally" means voluntarily doing the acts amounting to misconduct. "Wilfully" carries with it the additional meaning of "knowledge of or advertence to the consequences".

### **"Culpably misconducts himself and the misconduct is serious"**

Culpable misconduct may be committed by acts of omission, that is neglecting or failing to do some act which the duties of one's public office require one to do. It may also come about through acts of commission, such as misusing the power conferred upon him by virtue of his title or position.

Whether the misconduct is serious or not is to be determined by the Court 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.



