

Bestowing and Receipt of Gifts

**Information provided by ICAC to the Public Accounts Committee
relating to Mr Timothy TONG's bestowing and receipt of gifts during his
tenure as ICAC Commissioner**

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This table of contents is prepared by the Legislative Council Secretariat

^{*} Report of the Independent Review Committee on ICAC's Regulatory Systems and Procedures for handling Official Entertainment, Gifts and Duty Visits

Item (b): What were the criteria for the ICAC to give and accept gifts/souvenirs respectively, prior to the recent implementation of an improved mechanism for granting official duty visits and incurring expenses on official entertainment and souvenirs; and whether such criteria also applied to the Commissioner, ICAC.

- The ICAC follows government rules and practices in giving and accepting gifts/souvenirs. Since the government does not have specific guidelines on the presentation of gifts/souvenirs, the ICAC gave out gifts/souvenirs taking into account the status of the recipients and the nature of the occasions prior to the recent introduction of an improved mechanism.
- As regards, the acceptance of gifts/souvenirs, the ICAC follows the requirements promulgated in Civil Service Bureau 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” (copy attached).
- The above also applies to the Commissioner, ICAC.

16 February 2007

CIVIL SERVICE BUREAU 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**

**To : Directors of Bureau
Permanent Secretaries
Heads of Department**

**c.c. Judiciary Administrator
Commissioner, Independent
Commission Against Corruption
Secretary, Public Service Commission**

*(Note : Distribution of this circular is **Scale A**, i.e. it should be
read by all officers. A Chinese version is attached.)*

Introduction

This circular gives guidance to officers and bureaux/departments on how the following should be handled –

- (a) advantages offered to an officer in his official capacity, including gifts presented on social/ceremonial/other occasions, complimentary tickets and free raffle tickets;
- (b) entertainment offered to an officer in his official capacity; and
- (c) gifts and donations offered to a department for the benefit of staff.

2. This circular should be read in conjunction with CSB Circulars No. 3/2007 on “Acceptance of advantages offered to an officer in his private capacity” and No. 2/2004 on “Conflict of Interest”. CSB Circular No. 16/2002 is hereby superseded.

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

3. Under section 3 of the Prevention of Bribery Ordinance, Cap. 201 (“POBO”), any prescribed officer⁽¹⁾ who, without the general or special permission

(1) As defined in section 2 of the POBO, a “prescribed officer” includes any person holding an office of emolument, whether permanent or temporary, under the Government. All Government officers, including civil servants and those employed on non-civil service terms in the Government, are prescribed officers.

of the Chief Executive, solicits or accepts any advantage shall be guilty of an offence. The Acceptance of Advantages (Chief Executive's Permission) Notice ("AAN") sets out the circumstances under which general permission has been given for prescribed officers to solicit or accept certain advantages in their private capacity. Outside of these prescribed circumstances, they have to seek special permission for their solicitation/acceptance of the advantage. Relevant guidelines are set out in CSB Circular No. 3/2007 on "Acceptance of advantages offered to an officer in his private capacity".

Gifts/Advantages offered/presented to an officer in his official capacity

4. Officers should note that under CSR 444(2), advantages offered to an officer and/or the officer's spouse by virtue of the officer's official position or on an occasion attended in the officer's official capacity (including those offered/presented by another government department), whether in Hong Kong or elsewhere, are regarded as advantages to the bureau/department in which the officer works. They should be disposed of in accordance with the guidelines set out hereunder.

Official capacity

5. An occasion which an officer attends in his official capacity would usually be considered to be one that the officer attends on duty, whether within or out of working hours, and as a result of the duties of his office or an instruction by his superior officers. An occasion which an officer attends by virtue of his official position would usually be considered to be one to which he would not have been invited had he not held the post that he held in the Government at the time.

General principle

6. Officers should as far as possible decline to accept gifts offered/presented to them by virtue of their official position. Where this cannot be done owing to protocol reasons or the need to avoid causing great offence or embarrassment, such as where a gift is offered/presented to an officer when attending a social/ceremonial occasion in his official capacity, he should take it back to his bureau/department and report to the approving authority for a decision on how to dispose of the gift. A sample form for seeking approval to dispose of the gift is at **Annex I**.

Approving authority

7. Gifts offered/presented to an officer in his official capacity should be dealt with in accordance with paragraphs 9 to 13 below. Permanent Secretaries/Heads of Department have been given the authority to decide how gifts offered/presented to other officers in their bureaux/departments should be dealt with. In the case of gifts that are presented to Permanent Secretaries/Heads of Department personally, they may also decide on the method for disposing of the gifts, other than approving personal retention of the gifts by themselves. The authority to approve personal retention of such gifts by a Head of Department has been delegated to the respective Permanent Secretary, whereas the authority to approve personal retention

of gifts by a Permanent Secretary remains with the Secretary for the Civil Service.

8. The approving authority (as shown in **Annex II**) may authorise officers in his bureau/department to deal with such applications on his behalf. Such authorisation is subject to the conditions set out in paragraph 2 of CSB Circular No. 11/94 on “Delegations Relating to Conduct Matters”, except that the authority should not be exercised by officers below the rank of Chief Executive Officer or equivalent.

Factors for consideration

9. The approving authority should first determine if it is in the public interest to accept the gifts. In so doing, he may take the following factors into consideration –

- (a) whether it is appropriate to decline the offer and return the gifts to the donor;
- (b) the nature and the value of the gifts;
- (c) the status and reputation of the donor;
- (d) whether there is any conflict of interest or the extent of official dealings, if any, between the donor and the officer concerned;
- (e) whether the acceptance of the gifts will place the officer, the department or the Government in an obligatory position towards the donor or cause embarrassment to them or invite criticism;
- (f) whether it is inappropriate to accept the gifts in view of prevailing Government policy (e.g. tobacco and product from endangered species);
- (g) whether the offer is also available on equal terms to persons who are not government officers on the same occasion;
- (h) the number of occasions that gifts/advantages have been offered by the same donor previously;
- (i) 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
- (j) the public perception angle.

Methods of disposal

10. At the discretion of the approving authority and where this can be done

without causing great offence or embarrassment, the gift should be returned to the donor with a carefully worded explanation that Government regulations do not permit the acceptance of gifts and a polite word of gratitude for the thought behind the gift.

11. In circumstances where it is not considered that the gift should be returned, then the following alternatives may be adopted –

- (a) if the gift falls into one of the categories described in paragraph 13 below, and subject to compliance with the conditions set out in the table therein, it may be retained by the officer;
- (b) if the gift is of perishable nature, e.g. food, drink or flower, it may be shared among the office or displayed in the office where the recipient works or donated to charity;
- (c) if the gift is a useful item, it may be sent to a charitable organisation, or, if of historical or other interest, to a school, library or museum. It may also be retained for use in the office;
- (d) if the gift is suitable for display (e.g. a painting or a vase), it may be retained for display in the office of the recipient or elsewhere in the department; or
- (e) if it is suitable and the value of the gift does not exceed \$1,000, the gift may be donated to the department's social functions as a lucky draw prize.

12. In each case, the decision should be recorded on the form at Annex I. Separately, all gifts that are retained for use or display in the office are the property of the office and must be placed on the office's inventory record.

Personal retention of gifts

13. Officers may be presented with souvenir plaques, shields, banners or other gift items when attending official functions as an officiating guest or the principal representative of their bureau/department at the event. Some of these items may be personally inscribed. At some official events such as conferences and seminars, officers may receive souvenir items which are widely distributed to participants. Sometimes, officers may also receive by virtue of their official position seasonal gifts sent to them by working contacts. Examples of such gift/souvenir items include ball pen, memo pad, calendar, desk diary, etc. These items may also be inscribed with the names of the organisation/donor and may be of limited commercial value. In the interest of administrative convenience, **blanket permission** is given by the Secretary for the Civil Service for Permanent Secretaries to personally retain items in categories (a) and (b)(i) of the table below and subject to a report by the officer (a sample form for the purpose is at **Annex III**) -

Category	Value of the item	Arrangement
(a)	Not exceeding \$50 or 0.1% of substantive salary , whichever is the higher	Blanket permission is given for personal retention*.
(b)	Above \$50 or 0.1% of substantive salary , whichever is the higher, to \$400	<p>(i) Blanket permission is given for personal retention* of a gift/souvenir that is <i>personally inscribed</i> with the officer's name or received by the officer at official functions as <i>the Guest of Honour or an officiating guest</i>.</p> <p>(ii) Special permission is required for personal retention of a gift/souvenir other than that at (i) above. Permission may be given having regard to the factors listed in paragraph 9.</p>
(c)	Above \$400 to \$1,000	Special permission is required for personal retention. Permission may be given if the gift/souvenir is <i>personally inscribed</i> with the officer's name or received by the officer at official functions as <i>the Guest of Honour or an officiating guest</i> , and having regard to the factors listed in paragraph 9.
(d)	Above \$1,000	No personal retention should be permitted unless in very exceptional circumstances.

* *Despite the blanket permission, the officer is still required to report the retention of the gift(s)/souvenir(s) by using the form at Annex III.*

Bearing in mind that gifts/souvenirs from official contacts may be received by staff from junior level to very senior level, the setting of a specified amount as the threshold for personal retention of such gifts/souvenirs is considered too rigid. To balance the risks of officers being "sweetened" by such gifts/souvenirs and the administrative workload, the threshold for blanket permission for gift item under category (a) of the table above is set at \$50 or 0.1% of the officer's substantive salary, whichever is the higher. The financial limits for gift/souvenir items in other categories are determined having regard to policy objective and operational experience over the years. Permanent Secretaries and Head of Departments may consider giving similar blanket permission for officers under them to personally retain such items, but the overall regime should strictly adhere to the table above.

14. By virtue of CSR 444(2) read in conjunction with section 7(a) of the AAN, an officer may personally retain a gift/souvenir received in his official capacity in accordance with the directive issued by the Secretary for the Civil Service as in the context of this circular. Under section 7(a) of the AAN, a prescribed officer may accept a gift/souvenir that he is permitted to accept under any Government regulations.

Acceptance of complimentary tickets

15. Complimentary tickets to functions and performances (e.g. movie, show, sports event, conference, seminar, etc.) are gifts. Where they are offered to an officer by virtue of his official position, they should be handled in accordance with the guidelines outlined in paragraphs 9 to 12 above. Only where it is in the interest of the bureau/department or serves an operational need for an officer to attend the function/performance, the approving authority may approve acceptance of the complimentary tickets by the officer concerned.

16. Invitations to entertainment extended to an officer by virtue of his official position should be dealt with in accordance with CSRs 431 – 435 (see paragraphs 20 – 29 below).

Acceptance of raffle tickets and participation in lucky draws

17. Officers may be presented with free raffle tickets or invited to take part in free lucky draws when attending social or festive functions in their official capacity. They should decline to accept such tickets or to participate in such free lucky draws. If participation cannot be avoided, prizes won should be returned to the organiser for a re-draw. If this may cause great offence or embarrassment, the officer should take the prize back to his bureau/department for a decision by the Permanent Secretary/Head of Department on its disposal in accordance with paragraphs 4 to 13 above, as prizes won under such circumstances are gifts to the bureau/department.

18. On occasions where officers are invited to buy raffle tickets during such official functions, they may accept the prize won, if any, without having to seek special permission. Nevertheless, they should be mindful to avoid taking part in dubious lucky draws which could compromise their integrity (e.g. where one only needs to pay a small sum of money for the raffle tickets but expensive prizes are given to all participants).

Sponsored visits

19. Sponsored visits undertaken by an officer in his official capacity as a representative of a department are not regarded as an advantage to the officer and should be dealt with in accordance with CSB Circular No. 7/94 on “Sponsored Visits”.

Acceptance of entertainment

20. Entertainment when offered by way of a favour is not of itself an advantage as defined in section 2 of the POBO. However, the acceptance of free food, drink, show, etc. may, by reason of its nature and the circumstances in which it is given, go beyond just being a favour (i.e. a gratuitous service or courtesy, free of obligation to, or by, both the giver and the receiver) and becomes an advantage if it falls within one of the other categories that make up the definition of advantage in section 2 of the POBO, such as “a discharge of an obligation to pay”. In other words, the acceptance of free food, drink, show, etc. is capable of becoming an advantage the acceptance of which renders the officer liable to prosecution under the POBO.

21. Officers who have doubts about accepting an offer of entertainment are strongly advised to seek guidance from their Permanent Secretaries/Heads of Department before they accept the entertainment.

22. Officers should not accept lavish, or unreasonably generous or frequent entertainment, or indeed any entertainment that is likely to –

- (a) put the officers in an obligatory position in the discharge of their duties;
- (b) bring the officers or the public service into disrepute; or
- (c) give rise to any potential or real conflict of interest.

23. Accepting free meal, drink or other related entertainment may in some circumstances give negative connotations such as creating a sense of obligation or a perception that an officer’s impartiality has been compromised. When offered entertainment, an officer should consider carefully, in the light of the guidelines mentioned above, whether the entertainment offered could be regarded as –

- (a) excessive – taking into account its value, substance, frequency and nature;
- (b) inappropriate – taking into account the relationship between the officer and the donor (e.g. whether they have any direct official dealings); or
- (c) undesirable – taking into account the character of the host, etc.

24. An officer who accepts entertainment other than in accordance with CSRs 431 – 435 or any relevant departmental guidelines issued by his Permanent Secretary/Head of Department (see paragraph 28 below) renders himself liable to disciplinary action. The opportunity is taken to bring the content of CSRs 431 – 435 up-to-date. An up-dated version of the relevant CSRs is at **Annex IV** in the form of amendment sheets. They replace the relevant pages of the Civil Service Regulations with effect from the date of this circular.

Departmental instructions on entertainment

25. In dealing with cases of entertainment, Permanent Secretaries/Heads of Department should have regard to the circumstances surrounding its provision, the value, substance, frequency and nature of the entertainment offered (whether it gives the officer something which he might not have access to or be able to afford), the relationship between the officer and the donor, and whether or not an obligation or conflict of interest might be created, etc.

26. Where it is considered not appropriate to decline an invitation to entertainment which may contravene the guidelines in paragraphs 22 and 23 above for reasons of courtesy or special circumstances, the officer should seek prior approval from his Permanent Secretary/Head of Department as necessary. If it is impractical for prior approval to be obtained (e.g. where an official contact paid the bill for a meal for an officer or his family or friends without informing the officer in advance), the officer should make an effort to effect the repayment. If this is unsuccessful, he should seek covering approval to accept the entertainment.

27. In circumstances where acceptance of entertainment in an official capacity is considered necessary in the interest of the bureau/department (e.g. for liaison, information gathering and public relations purposes), the number of representatives from the bureau/department should be kept to the minimum.

28. Permanent Secretaries/Heads of Department are reminded that under CSR 435, they may issue directions to their staff to supplement the rules in CSR 434. They are strongly advised to do so where their staff, because of their job nature, are often invited to meals or entertainment by their working contacts or the public. The supplementary guidelines may provide guidance, with illustrative examples where practicable, on –

- (a) the types of entertainment officers are prohibited from accepting or from accepting without permission;
- (b) how to avoid and handle offers of entertainment which are inappropriate (e.g. from persons with whom they have direct official dealings) or undesirable (e.g. taking into account the character of the host); and
- (c) the departmental procedures for approving acceptance of entertainment.

29. Where operational circumstances so warrant, a Permanent Secretary/Head of Department may consider encouraging/requiring his staff to report acceptance of entertainment/hospitality offered to them in their official capacities. This will be conducive to embedding a culture of probity within the bureau/department.

Gifts and donations to a department as a whole for the benefit of staff

30. Gifts and donations which are offered or presented to a bureau/department as a whole for the benefit of staff, rather than presented to an individual officer, should not be accepted without the proper approval.

31. Permanent Secretaries have been delegated with the authority to approve the acceptance of such donations by a department under their respective schedule, where –

- (a) for a donation from one single person or organisation on any one occasion, the value does not exceed \$10,000; and
- (b) for donations to one single social or recreation function, the cumulative value does not exceed \$30,000.

32. Approval may be given subject to the following criteria being met –

- (a) the circumstances leading to the donation should be above board and not open to misconstruction;
- (b) acceptance of the donation must not embarrass the bureau/department or Government (e.g. donations from a tobacco company should be avoided in view of the anti-smoking policy) or cause a conflict of interest or put the bureau/department or Government in an obligatory position towards the donor;
- (c) the donation must be voluntary and not solicited and there is no undue pressure or compulsion whatsoever on the donor by the bureau/department;
- (d) neither the bureau/department nor the Government is involved in advertising or promoting the donor or any commercial products;
- (e) acceptance of the donation will not bring into question the impartiality of the bureau/department or Government and there is no undue publicity associated with the acceptance;
- (f) the value of the donation should not be excessive or disproportionately high;
- (g) for departmental social or recreation functions, donations should preferably be accepted in kind;
- (h) where gifts are donated, departments should record the estimated value of the items;
- (i) where recurrent costs (e.g. in fuel or maintenance) are involved, the advice of the Secretary for Financial Services and the Treasury should

be sought before acceptance; and

- (j) the officer authorised to take day-to-day decision on behalf of the Permanent Secretary should be at directorate level.

33. The approval of the Secretary for the Civil Service must be sought in the following cases –

- (a) acceptance of donations by bureaux for the benefit of staff; and
- (b) acceptance of such donations offered to departments of values exceeding the limits as specified in paragraph 31 above.

Departments should also seek the support from their policy bureau when submitting such cases to the Secretary for the Civil Service for consideration.

Submission of half-yearly returns on donations accepted

34. To enable the Civil Service Bureau to monitor the overall situation, bureaux/departments are requested to make half-yearly returns (ending June and December) to the Civil Service Bureau showing gifts and donations for the benefit of staff accepted, on or before the 15th of January and July. A sample proforma is attached at **Annex V**.

Acceptance of donations to staff welfare funds

35. Cases involving acceptance of donations to staff welfare funds should be processed in accordance with CSB Circular No. 11/2003.

The Prevention of Bribery Ordinance

36. All officers should familiarize themselves with the main provisions in the POBO which are applicable to the acceptance of advantages in their official capacity -

- (a) Section 3 : it is an offence for a prescribed officer to solicit or accept any advantage without the Chief Executive's general or special permission; and
- (b) Section 4 : it is an offence for a public servant to solicit or accept any advantage in Hong Kong or elsewhere as an inducement to or reward for or otherwise on account of his performing or abstaining from performing any act in his capacity as a public servant.

An extract of sections 3 and 4 of the POBO and the AAN (with particular attention drawn to sections 2 and 7 therein) are at **Annex VI**.

37. Officer should note that they will be guilty of an offence under section

4 of the POBO if they solicit or accept any advantage (even one permitted under the AAN) for abusing his official power or position.

Distribution

38. Bureaux/departments are requested to provide a copy of this circular to all newly appointed officers as soon as possible after appointment and to re-circulate this circular to their staff every six months.

Enquiries

39. Any enquiry about the content of this circular should first be addressed to Departmental Secretaries who, if in doubt, may contact Chief Executive Officer (Conduct & Discipline) at 2810 3493 or Senior Executive Officer (Conduct & Discipline)¹ at 2810 3185 of the Civil Service Bureau.



(Mrs Rosanna URE)
for Secretary for the Civil Service

Application for approval to dispose of gift(s) presented to an officer in his official capacity

To : _____ (Permanent Secretary/HoD) (Attn. : _____)
 via _____ (Division/Branch Head)

Part I (To be completed by the recipient)

I wish to report the following gift(s) presented to me in my official capacity on the following occasion (please specify the event and date) -

Details of gift(s) presented –

Gift	Estimated value (\$)	Offeror
(a)		
(b)		
(c)		

Please tick the appropriate box below-

- ☐ The item is personally inscribed.
- ☐ The item was received at an official function where I was the Guest of Honour/an officiating guest.
- ☐ The item does not fall under the above two categories and my substantive salary is \$_____.

Additional information (if any)

The following disposal method(s) is/are recommended –

- ☐ Gift item(s) _____ to be returned to the offeror.
- ☐ Gift item(s) _____ to be retained personally by the recipient.
- ☐ Gift item(s) _____ to be shared among staff in the recipient's office or _____. *
- ☐ Gift item(s) _____ to be displayed in the recipient's office or _____. *
- ☐ Gift item(s) _____ to be donated to an outside organisation (name : _____).
- ☐ Gift item(s) _____ to be donated to the department's social functions as lucky draw prize.

Name of recipient _____ Signature _____
 Rank/Post _____ Date _____

Part II (To be completed by the authorised officer)

☐ The recommendation is approved.

☐ The recommendation is not approved. The gift should be _____.

Name of officer _____ Signature _____

Rank/Post _____ Date _____

* delete whichever is inapplicable

**Approving authority for handling gifts
offered/presented to an officer in his official capacity**

	Gifts received by Permanent Secretaries	Gifts received by Heads of Department	Gifts received by other officers in bureaux/departments
(a) for personal retention	Secretary for the Civil Service	Permanent Secretaries	Permanent Secretaries/ Heads of Department respectively
(b) for other disposal ways (as specified in para. 11(b) to (e) of CSB Circular No. 4/2007)	Permanent Secretaries	Heads of Department	Permanent Secretaries/ Heads of Department respectively

**Report on gifts retained by an officer received in his official capacity
covered by the blanket permission in para. 13 of CSB Circular No. 4/2007**

To : _____ (Permanent Secretary/HoD) (Attn. : _____)
via _____ (Division/Branch Head)

I wish to report the following gift presented to me in my official capacity on the following occasion. The gift is retained by me under the blanket permission given in para. 13(a) & (b)(i) of CSB Circular No. 4/2007.

Name of donor	
Event/Occasion	
Date	
Description of gift	
Estimated value (\$)	

Please tick the appropriate box below-

- ☐ The gift is personally inscribed and the cost of the gift is \$400 or below.
- ☐ The gift was received by me as the Guest of Honour or one of the officiating guests at the official function stated above and the cost of the gift is \$400 or below.
- ☐ The gift does not exceed \$50 or 0.1% of my substantive salary (my substantive salary is \$_____).

Additional information (if any) –

Name of recipient _____ Signature _____
Rank/Post _____ Date _____

**Civil Service Regulations 431 – 435
Acceptance of Entertainment**

- 431**
Dec 92
- (1) Entertainment is not of itself an advantage as defined by section 2 of the Prevention of Bribery Ordinance (Cap. 201).
- Dec 92
- (2) An officer is permitted to accept any entertainment from any person except such entertainment as is prohibited by Regulation 434 or under Regulation 435.
- 432**
Dec 92
- (1) Entertainment is defined by section 2 of the Prevention of Bribery Ordinance to mean –
- “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 as, such provision.”
- For the purposes of Regulations 431 – 435, the same definition applies.
- (2) The following are examples of what constitutes entertainment –
- (a) a meal;
- (b) an occasion at which drinks of any kind are provided;
- (c) attendance at a cinema, theatre or other public entertainment before or after a meal;
- (d) dancing or other entertainment before, during or after a meal.
- Feb 2007
- (3) Officers are warned that notwithstanding Regulation 431(1) and paragraph (2) above, the acceptance of free food, drink, show, etc., may in certain circumstances be regarded as “an advantage”, which may constitute a criminal offence under the Prevention of Bribery Ordinance. For example, when an officer visits a restaurant with which he has official dealings and at the end of the meal the restaurant owner waives the bill, the free meal may amount to “a discharge of obligation” which is an advantage under the Prevention of Bribery Ordinance, in that the officer is discharged from the obligation to pay the bill. If in doubt about such provision, the officer should reject it, or seek advice from his Permanent Secretary/Head of Department.
- 433**
Feb 2007
- An officer who accepts entertainment other than in accordance with Regulations 431 – 435 may be subject to disciplinary proceedings.

- 434**
Feb 2007
- (1) An officer may not, without the permission of his Permanent Secretary/Head of Department, accept entertainment from any person if the entertainment is likely, for example by reason of its excessive nature or of the relationship between the officer and the other person or of the character of that person –
 - (a) to lead to the embarrassment of the officer in the discharge of his functions; or
 - (b) to bring the officer or the public service into disrepute.
- Feb 2007
- (2) In this regulation, reference to the Head of a Department means –
 - (a) in relation to a person who is himself the Permanent Secretary/Head of Department, the Secretary for the Civil Service;
 - (b) in relation to any other officer –
 - (i) the Permanent Secretary/Head of Department of the bureau/department in which that officer is serving at the time when the entertainment is offered to the officer;
 - (ii) any other officer of that bureau/department authorised in writing by the Permanent Secretary/Head of Department to act on his behalf for the purposes of this regulation.
- 435**
Feb 2007
- (1) A Permanent Secretary/Head of Department may, with the approval of the Secretary for the Civil Service, issue directions to the officers serving in that bureau/department.
- Feb 2007
- (2) Such directions may prohibit an officer serving in that bureau/department from accepting, or from accepting without the permission of the Permanent Secretary/Head of Department or another officer of the bureau/department authorised by the Permanent Secretary/Head of Department for this purpose, any entertainment which such officer would, but for such prohibition, be permitted to accept, or to accept with permission.
 - (3) An officer who contravenes any direction applicable to him issued under this regulation shall be deemed to have accepted entertainment other than in accordance with these regulations.
- Dec 92
- (4) Any directions issued under this regulation shall be supplementary to Regulation 434.

Amendment No. 5(b) /2007

(SAMPLE PROFORMA)

Return on gifts and donations accepted by Bureaux/Departments for the benefit of staff
(for the period from _____ to _____)

To : Civil Service Bureau (Attn : S(CD)1)

From : _____ (Bureau/Department)

<u>Name of Donor</u>	<u>Amount of Donation/ Estimated Value of Gifts</u>	<u>Nature and Purpose of Donation</u>	<u>Details of Approval</u> (please state the approving authority, the date and file ref. of the approval)
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Name and post of
contact person : _____

Tel. No. : _____

Date : _____

PREVENTION OF BRIBERY ORDINANCE
(Chapter 201, Laws of Hong Kong)

Extract of sections 3 and 4

- | | |
|--------------------------------------|---|
| Soliciting or accepting an advantage | 3. Any prescribed officer who, without the general or special permission of the Chief Executive, solicits or accepts any advantage shall be guilty of an offence. |
| Bribery | <p>4. (1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's –</p> <ul style="list-style-type: none">(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, <p>shall be guilty of an offence.</p> <p>(2) Any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his –</p> <ul style="list-style-type: none">(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the |

transaction of any business with a public body,
shall be guilty of an offence.

(3) If a public servant other than a prescribed officer solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section.

(4) For the purposes of subsection (3) permission shall be in writing and -

- (a) be given before the advantage is offered, solicited or accepted; or
- (b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (3), the public body shall, before giving such permission, have regard to the circumstances in which it is sought.

PREVENTION OF BRIBERY ORDINANCE

(Chapter 201, Laws of Hong Kong)

**ACCEPTANCE OF ADVANTAGES (CHIEF EXECUTIVE'S PERMISSION)
NOTICE 2010**

Given by the Chief Executive for the purposes of
section 3 of the Prevention of Bribery Ordinance

[Commencement : 9 April 2010]

- Interpretation 1. In this notice, unless the context otherwise requires, “approving authority” means :—
- (a) in relation to a prescribed officer who is a member of the Executive Council or the Chief Justice or the Director of the Chief Executive's Office or the Commissioner of the Independent Commission Against Corruption or the Director of Audit or an Under Secretary or a Political Assistant, the Chief Executive;
 - (b) in relation to a prescribed officer who is the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Chapter 66), the Financial Secretary;
 - (c) in relation to a prescribed officer who is a Permanent Secretary or the Head of a Department or holds a post of equivalent status as the Head of a Department other than those in (a) and (b) above, the Secretary for the Civil Service;
 - (d) in relation to a prescribed officer who is a judicial officer other than the Chief Justice, the Chief Justice;
 - (e) in relation to any other prescribed officer, the relevant Permanent Secretary of the Bureau or the Head of the Department or a person who holds a post of equivalent status as the Head of a Department in an organisation in which that prescribed officer is employed at the time when the advantage is offered to or solicited or accepted by the prescribed officer.

“discount” includes vouchers or coupons expressed to have a monetary value in exchange for which goods to that value may be obtained and also includes goods so obtained.

General and
special
permission
of the Chief
Executive

2. For the purposes of section 3 of the Prevention of Bribery Ordinance (Chapter 201), by this notice :-

- (a) the general permission of the Chief Executive is given to all prescribed officers in respect of any advantage, other than gifts, discounts, loans of money or passages not permitted by sections 3 to 7;
- (b) the special permission of the Chief Executive is given to any prescribed officer in respect of any advantage for the solicitation or acceptance of which that prescribed officer has been given the permission of the approving authority under section 8 or 9.

Advantages
from relations

3. (1) A prescribed officer is permitted to solicit or accept from a relation any gift (whether of money or otherwise), any discount, any loan of money or any air, sea or overland passage.

(2) In sub-section (1) "relation" means :-

- (a) spouse (including a concubine);
- (b) any person with whom the prescribed officer is living in a regular union as if man and wife;
- (c) fiancé, fiancée;
- (d) parent, step-parent, lawful guardian;
- (e) spouse's parent, spouse's step-parent, spouse's lawful guardian;
- (f) grandparent, great-grandparent;
- (g) child, ward of court;
- (h) spouse's child, spouse's ward of court;
- (i) grandchild;
- (j) child's spouse;
- (k) brother, sister;
- (l) spouse's brother, spouse's sister;

- (m) half-brother, half-sister;
- (n) step-brother, step-sister;
- (o) brother's spouse, sister's spouse;
- (p) brother's child, sister's child;
- (q) parent's brother, parent's sister;
- (r) parent's brother's spouse, parent's sister's spouse;
- (s) parent's brother's child, parent's sister's child.

Advantages
from
tradesmen,
etc.

4. (1) Subject to sub-section (2) a prescribed officer is permitted to solicit or accept any gift (whether of money or otherwise), any discount, any loan of money or any air, sea or overland passage given to or made available to a prescribed officer in his private capacity by a tradesman, firm, company, organisation or association :-

- (a) by virtue of the terms on which the prescribed officer's spouse, parent or child, is employed; or
- (b) by virtue of the membership of any organisation or association of the prescribed officer or the prescribed officer's spouse, parent or child; or
- (c) by virtue of the prescribed officer or the prescribed officer's spouse, parent or child being a regular customer; or
- (d) in the course of normal business.

(2) The permission given under sub-section (1) shall only apply where :-

- (a) the advantage is equally available on equal terms to persons who are not prescribed officers; and
- (b) the donor of the advantage has no official dealings with the prescribed officer.

Advantages
from close
personal
friends

5. (1) Subject to sub-section (2) a prescribed officer is permitted to :-

- (a) solicit or accept a loan of money from a close personal friend so long as the loan does not exceed \$3,000 on any

one occasion and is repaid within 30 days;

- (b) accept, but not solicit, a gift or gifts (whether of money or otherwise) or any air, sea or overland passage from a close personal friend given on an occasion such as the prescribed officer's birthday, wedding, wedding anniversary, engagement, baptism, retirement or on any other occasion when gifts are traditionally given or exchanged, so long as the value or apparent value in total of the gift, gifts and/or passage does not exceed \$3,000 from any one person on any one occasion;
- (c) accept, but not solicit, a gift or gifts (whether of money or otherwise) or any air, sea or overland passage from a close personal friend on any occasion other than one referred to in sub-sub-section (b), so long as the value or apparent value in total of the gift, gifts and/or passage does not exceed \$500 from any one person on any one occasion.

(2) The permission under sub-section (1) shall only apply so long as :-

- (a) the close personal friend has no official dealings with the department or organisation in which the prescribed officer works;
- (b) in the case of a close personal friend working in the same department or organisation as the prescribed officer, the close personal friend is not subordinate to the prescribed officer;
- (c) in the case of a gift or passage to which sub-sub-section (b) or (c) of sub-section (1) applies, the prescribed officer does not attend the occasion on which the gift or passage is given in his official capacity or by virtue of the official position he holds at the time he attends the occasion.

Advantages
from other
persons

6. (1) A prescribed officer is permitted to :-

- (a) solicit or accept a loan of money from any person (not being a loan to which section 4 or 5 applies) so long as the loan does not exceed \$1,500 on any one occasion and is repaid within 30 days;
- (b) accept, but not solicit, a gift or gifts (whether of money

or otherwise) or any air, sea or overland passage from any person (not being a gift or passage to which section 4 or 5 applies) given on an occasion such as the prescribed officer's birthday, wedding, wedding anniversary, engagement, baptism, retirement or on any other occasion when gifts are traditionally given or exchanged, so long as the value or apparent value in total of the gift, gifts and/or passage does not exceed \$1,500 from any one person on any one occasion.

- (c) accept, but not solicit, a gift or gifts (whether of money or otherwise) or any air, sea or overland passage from any person (not being a gift or passage to which section 4 or 5 applies) on any occasion other than one referred to in sub-sub-section (b), so long as the value or apparent value in total of the gift, gifts and/or passage does not exceed \$250 from any one person on any one occasion.

(2) The permission under sub-section (1) shall apply so long as :-

- (a) the person offering the loan, gift or passage has no official dealings with the department or organisation in which the prescribed officer works;
- (b) in the case of such a person working in the same department or organisation as the prescribed officer, that person is not subordinate to the prescribed officer;
- (c) in the case of a gift or passage to which sub-sub-section (b) or (c) of sub-section (1) applies, the prescribed officer does not attend the occasion on which the gift or passage is given in his official capacity or by virtue of the official position he holds at the time he attends the occasion.

Advantages
from the
Government

7. A prescribed officer is permitted to :-

- (a) accept, but not solicit, a gift (other than a gift of money) or an air, sea or overland passage given on the prescribed officer's retirement, or on other occasions, which the prescribed officer has been permitted to accept under any Government regulations or permitted to accept in accordance with the prescribed officer's terms and conditions of employment or appointment;
- (b) solicit or accept any gift of money or loan of money or other allowance or advance made or given out of any Government

staff welfare fund or permitted by the Government under any Government regulations or permitted in accordance with the prescribed officer's terms and conditions of employment or appointment;

- (c) solicit or accept any air, sea or overland passage provided in accordance with any Government regulations or provided in accordance with the prescribed officer's terms and conditions of employment or appointment.

Permission in respect of advantages other than passages

- 8. (1)(a) If a prescribed officer wishes to accept any gift (whether of money or otherwise), discount or loan of money which he does not have permission to accept under sections 3 to 7, he must, before or as soon as is reasonably possible after being offered or presented with the gift, discount, or loan of money, seek the permission of the approving authority to accept it.

- (b) If a prescribed officer wishes to solicit any gift (whether of money or otherwise), discount or loan of money which he does not have permission to solicit under sections 3 to 7, he must, before soliciting the gift, discount or loan of money, seek the permission of the approving authority to solicit it.

- (2) In the case of gifts other than money, the approving authority may :-

- (a) permit the prescribed officer to solicit or accept the gift either unconditionally or subject to such conditions as the approving authority may specify; or

- (b) refuse him permission to solicit or accept the gift and, if the gift is already in his possession,

- (i) require him to return it to the donor; or

- (ii) require the gift to be handed to a charitable organisation nominated by the prescribed officer and approved by the approving authority; or

- (iii) require him to dispose of the gift in such other manner as the approving authority may direct.

- (3) In the case of discounts, the approving authority may :-

- (a) permit the prescribed officer to solicit or accept or take the benefit of the discount either unconditionally or subject to such conditions as the approving authority may specify; or

- (b) refuse him permission to solicit or accept or take the benefit of the discount and, if he has already accepted or taken the benefit of the discount, require him to pay to the donor of the discount an amount equal to the value of the discount.

(4) In the case of gifts of money or loans of money, the approving authority may :-

- (a) permit the prescribed officer to solicit or accept the gift of money or loan of money either unconditionally or subject to such conditions as the approving authority may specify; or
- (b) refuse him permission to solicit or accept the money and, if the money is already in his possession,
 - (i) require him to return the money to the donor or lender; or
 - (ii) require him to dispose of the money in such other manner as the approving authority may direct.

(5) The prescribed officer may, if he has complied with sub-section (1)(a), retain the gift or loan in his possession or take the benefit of the discount until a decision under sub-sections (2), (3) or (4) has been notified to him.

Permission in respect of passages

9. (1)(a) If a prescribed officer wishes to accept any air, sea or overland passage which he does not have permission to accept under sections 3 to 7, he must, before or as soon as is reasonably possible after being offered the passage or presented with the tickets or vouchers to which the passage relates, seek the permission of :-

- (i) the Chief Executive; or
- (ii) the Financial Secretary; or
- (iii) the Secretary for the Civil Service; or
- (iv) the Chief Justice; or
- (v) the relevant Permanent Secretary of the Bureau or the Head of the Department or a person who holds a post of equivalent status as the Head of a Department in an organisation in which that prescribed officer is employed at the time to accept the passage.

- (b) If a prescribed officer wishes to solicit any air, sea or overland passage which he does not have permission to solicit under sections 3 to 7, he must, before soliciting the passage, seek the permission of :-
 - (i) the Chief Executive; or
 - (ii) the Financial Secretary; or
 - (iii) the Secretary for the Civil Service; or
 - (iv) the Chief Justice; or
 - (v) the relevant Permanent Secretary of the Bureau or the Head of the Department or a person who holds a post of equivalent status as the Head of a Department in an organisation in which that prescribed officer is employed at the time to solicit the passage.

(2) The approving authority referred to in sub-section (4) below may :-

- (a) permit the prescribed officer to solicit or accept the passage either unconditionally or subject to such conditions as he may specify;
- (b) refuse him permission to solicit or accept the passage, and if the tickets or vouchers to which the passage relates are already in his possession, require him to dispose of the passage in such other manner as he may direct.

(3) Where a prescribed officer has sought the permission of the approving authority referred to in sub-section (4) below to solicit or accept a passage and the decision has not been notified to him, he shall not solicit or make the passage or use the tickets or vouchers to which the passage relates.

(4) The approving authority for the purpose of section 9 means :-

- (a) in relation to a prescribed officer who is a member of the Executive Council or the Chief Justice or the Director of the Chief Executive's Office or the Commissioner of the Independent Commission Against Corruption or the Director of Audit or an Under Secretary or a Political Assistant, the Chief Executive;

- (b) in relation to a prescribed officer who is the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Chapter 66), the Financial Secretary;
- (c) in relation to a prescribed officer other than those in (a) above who is at the directorate level, the Secretary for the Civil Service;
- (d) in relation to a prescribed officer who is a judicial officer other than the Chief Justice, the Chief Justice;
- (e) in relation to any other prescribed officer, the relevant Permanent Secretary of the Bureau or the Head of the Department or a person who holds a post of equivalent status as the Head of a Department in an organisation in which that prescribed officer is employed at the time when the passage is solicited or accepted by the prescribed officer.

Revocation

10. The Acceptance of Advantages (Chief Executive's Permission) Notice 2007 which was promulgated on 16 February 2007 is hereby cancelled.

PAC letter dd 26.9.13

Item (i) : Who approved the procurement of gifts during the term of the former ICAC Commissioner, Mr Timothy TONG Hin-ming, referred to in Annex 4 of the IRC Report, and the rank and post titles of the ICAC staff assigned to procure these gifts.

- The ICAC cannot provide the information as such information falls within the scope of investigation in relation to whether Mr TONG has committed the alleged offences under the Prevention of Bribery Ordinance and the common law offence of “Misconduct in Public Office” and the disclosure of which may affect the integrity of the investigation or jeopardise or prejudice the fairness and impartiality of the related investigation.

PAC letter dd 26.9.13

Item (j) : Information on the procurement of beef brisket and fish ball referred to in Annex 4 of the IRC Report, including the recipient and the relevant invoice.

- The ICAC cannot provide further details relating to the procurement of beef brisket and fish ball referred to in Annex 4 of the IRC Report as such information falls within the scope of investigation in relation to whether Mr TONG has committed the alleged offences under the Prevention of Bribery Ordinance and the common law offence of “Misconduct in Public Office” and the disclosure of which may affect the integrity of the investigation or jeopardise or prejudice the fairness and impartiality of the related investigation.