

Competition Commission

Code of Conduct for Commission/Committee Members

1 Introduction

1.1 The Competition Commission (the Commission) is an independent body established under the Competition Ordinance (the Ordinance), Cap. 619. Members of the Commission including the Chairperson are appointed and may be removed from office by the Chief Executive, in accordance with Sections 2 and 5 of Schedule 5 to the Ordinance. The Commission may establish committees which may consist of such persons, whether members of the Commission or not. The funds of the Commission include money paid by the Government and appropriated for that purpose by the Legislative Council.

1.2 This Code applies to members of the Commission and members of committees established by the Commission.

2. General Standards

2.1 The Commission is fully committed to the following principles –

- (a) Public interest and accountability - A member shall conduct themselves in ways that meet public interest and accountability standards and that ensure the continued confidence of stakeholders and the public;
- (b) Integrity and honesty - A member shall not at any time or in any respect do anything that may compromise or impair their integrity, impartiality or ability to perform Commission duties. A member shall ensure that their conduct will not bring the Commission into disrepute;
- (c) Compliance - A member shall adhere to the spirit and the letter of laws, regulations and procedures relevant to the business of the Commission.

3. Prevention of Bribery

3.1 The Commission is included in Schedule 1 to the Prevention of Bribery Ordinance (PBO, Cap. 201) as one of the “Public Bodies” governed by PBO. Hence, any member of the Commission is a “public servant” for the purpose of PBO. Under Section 4 of PBO, any public servant who solicits or accepts an advantage, without lawful authority or reasonable excuse, as a reward or inducement for performing/not performing, or expediting, delaying, hindering or preventing the performance of, any act in relation to the his/her public body’s business, commits an offence. The person offering the advantage also commits an offence.

(Sections 4 of PBO and the definition of “advantage” in Section 2 of the Ordinance are detailed at *Appendix 1*.)

4. Solicitation and Acceptance of Advantage

4.1 Acceptance of a gift or benefit is governed by the overriding provision that the acceptance of such must not influence the performance of the duties of the Commission. A member should decline an offer of advantage if the acceptance could in any way affect their objectivity in conducting the Commission’s business; or induce the Commission to act against the Commission’s interest or where the recipient believes the offeror has such an intention; or the acceptance will likely lead to perception or allegation of impropriety.

4.2 Any gift that is offered to the Commission or to any member by an applicant, or a complainant, or a person under investigation or enforcement actions under the Ordinance should be declined to prevent situations where the Commission may be put in a position of or a reasonable perception of conflict of interest.

4.3 It is the policy of the Commission to prohibit solicitation and acceptance of any advantage by a member in their capacity from any persons or companies having business dealings with the Commission (e.g. customers, suppliers, contractors), except that a member may accept, but not solicit, the following advantages when offered on a voluntary basis -

- (a) advertising or promotional gifts or souvenirs of a nominal value not exceeding HK\$50;

- (b) discount or other special offers given by any person or company as customers, on terms and conditions equally applicable to other customers in general; or
- (c) gifts or souvenirs of nominal value not exceeding HK\$400 presented to a member in their capacity as such in official functions. Such gifts or souvenirs are deemed as offered to the Commission. A member shall forward the gift/souvenir to the Commission Secretariat for disposal by completing the standard form at *Appendix 2*.

4.4 Members may be offered sponsorships in their capacity as such by other persons/organisations for official purposes (such as attending conferences). Such sponsorships should be regarded as sponsorships offered to the Commission and referred to the Finance and Administration Committee for consideration of acceptance. The Commission should consider whether it is appropriate to accept the offer based on the following general criteria –

- (a) acceptance of the sponsorship will benefit the Commission as a whole and not bring the Commission into any disrepute;
- (b) the sponsorship is not excessive in value or frequency;
- (c) the Commission will not feel obliged to do something in return for the offeror; and
- (d) acceptance will not give rise to any actual or perceived conflict of interest.

5. Offering of Advantage

5.1 Members are prohibited from offering advantages to any individual, director or staff of any company or organization, for the purpose of influencing such person or company in any dealings, or any public official, whether directly or indirectly through a third party, when conducting the business of the Commission.

6. Confidentiality of Information

6.1 Any person who is or was a member, employee or agent of the

Commission or its Committee, and any person appointed to assist the aforesaid person in the exercise of the powers of the Commission is defined as a specified person in Section 122 of the Ordinance. A specified person must preserve and aid in preserving the confidentiality of any confidential information; must not disclose confidential information to any other person; and must not suffer or permit any other person to have access to confidential information, unless the disclosure is to be regarded as made with lawful authority. Contravention of the obligation to preserve confidential information defined under section 123 of the Ordinance commits an offence and is liable to a fine and imprisonment.

6.2 Members must observe Part IV of the *Rules of Procedures of the Competition Commission* which sets out the duty to preserve confidential information, and the *Guidelines for Members of the Competition Commission in handling Classified Information*.

6.3 Members should not disclose any classified or proprietary information of the Commission without authorization or misuse such information. Those who have access to or in control of such information should at all times ensure its security and prevent any abuse, unauthorized disclosure or misuse of the information. Special care should be taken when handling any personal data including those of the Commission's employees, to ensure compliance with the Personal Data (Privacy) Ordinance (Cap. 486), the Ordinance and the Commission's data privacy policy.

7. Conflict of Interest

7.1 A conflict of interest arises when the work for the Commission could be affected by, compete or conflict with, a personal interest. Members are required to take appropriate steps to avoid an appearance of loss of impartiality in the performance of their duties.

7.2 Members are subject to Part 8 of Schedule 5 of the Ordinance. Members must also observe Paragraphs 5 and 6 of the *Rules of Procedures of the Competition Commission* which elaborate on the procedures to follow on disclosure of interests in any matter under discussion at a meeting of the Commission.

7.3 Members should avoid any conflict of interest situation or the perception of such conflicts. They should not misuse their position or authority in the Commission to pursue their own private interests.

Private interest includes both financial and personal interests of a member and those of their connections including family and other relations, personal friends, the clubs and societies to which they belong, and any person to whom they owe a favour or obligated in anyway.

7.4 As a matter of principle, a member (or a company associated with him/her) should avoid entering into any business contract with the Commission in their personal capacity to prevent the public perception of members' using their capacity to obtain financial gains. Where this is unavoidable, members shall adhere to the following guidelines –

- (a) when the need for a contract is discussed, a member should declare whether they or any company associated with them are interested in bidding for the contract;
- (b) the members who have declared an interest to bid should not take part or be present at any subsequent discussions or meetings concerning the proposed contract, and should be prohibited from access to any information in relation to the contract other than in the capacity of a bidder;
- (c) the members (or companies associated with them) who have not declared an interest to bid should not be allowed to bid subsequently;
- (d) when a member (or a company associated with him/her) has expressed an interest to bid, the Commission should ascertain whether any information relating to the contract has already come to the member's possession in the course of the member's duties as a member. If so, such information should be made available to other bidders as well to ensure a level playing field;
- (e) if a member (or a company associated with him/her) has put in a bid, care should be taken to ensure that they subsequently have no access to the submitted tender documents which may contain commercially sensitive information;
- (f) bidders' identity should be anonymised before the evaluation of bids if a member (or a company associated with him/her) is one of the bidders; and
- (g) if a member (or a company associated with him/her) is successful in bidding for the contract, they should withdraw

from all discussions relating to the contract, except when attending in the capacity of a supplier or a service-provider.

8. Use of Public Funds

8.1 Members shall ensure that all public funds are used in a prudent and responsible manner to safeguard public interest. They should only approve funds for any expenditure item which falls within the ambit of the funds and can achieve the purpose of the funds.

8.2 Members shall in particular ensure that an open, fair and competitive mechanism is adopted for the procurement of goods/services and recruitment of staff for the Commission.

9. Entertainment and Travel Expenses

9.1 Members should not accept invitations to meals or entertainment that are excessive in nature or frequency, or are inappropriate or are undesirable, so as to avoid being placed in a position of obligation or giving rise to the perception that impartiality might be compromised. Failure to do so may bring the Commission into disrepute.

9.2 When expenditure is incurred to the Commission on entertainment for making or maintaining contacts for the Commission or on official visits outside Hong Kong, members should avoid unnecessary expenses when choosing entertainment, and the class of travel and hotel, having taken into account the functional needs and the procurement rules of the Commission.

10. Use of Commission Assets

10.1 Members in charge of or having access to any assets of the Commission, including funds, property, information, and intellectual property should use them solely for the purpose of conducting the Commission's business. Unauthorized use to make personal gain is strictly prohibited.

11. Gambling and loans

11.1 Members must not engage in frequent gambling of any kind with persons having business dealings with the Commission. In social games of chance with service recipients, members must exercise judgment and withdraw from any high stake games.

11.2 Members must not accept a loan from or through the assistance of any person or organization having business dealings with the Commission. There is, however, no restriction on borrowing from a licensed bank or financial institution.

12. Review

12.1 This Code is subject to review and revision from time to time by the Commission.

**Prevention of Bribery Ordinance
(Chapter 201, Law of Hong Kong)**

Extract of Sections 4 and the definition of “advantage” in Section 2

Section 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 -
- (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,

shall be guilty of an offence.

- (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 –
- (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.

(2A) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to the Chief Executive as an inducement to or reward for or otherwise on account of the Chief Executive's

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as the Chief Executive;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by the Chief Executive in his capacity as the Chief Executive or by any public servant in his 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.

(2B) If the Chief Executive, 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-

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as the Chief Executive;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by the Chief Executive in his capacity as the Chief Executive or by any public servant in his 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,

he 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.

Section 2: the definition of “advantage”

"advantage" (利益) means-

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise or forbearance from the exercise of any right or any power or duty; and
- (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e),

but does not include an election donation within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), particulars of which are included in an election return in accordance with that Ordinance;

Appendix 2

Competition Commission Report on Gifts Received

To : Secretary-General, Competition Commission

I wish to report the following gift(s) presented to me in my official capacity–

Description of Offeror :

Name & Title of Offeror:	
Organization	

Occasion on which the gift was received (please specify the event & date) :

Details of the gift(s) –

<u>Description</u>	<u>(Assessed) value (\$)</u>

Suggested Method of Disposal (please tick) –

Remarks (if any)

- | | |
|---|-------|
| <input type="checkbox"/> Retain for display/as a souvenir in the Office | _____ |
| <input type="checkbox"/> Share among the Office | _____ |
| <input type="checkbox"/> Reserve as lucky draw prize at staff function | _____ |
| <input type="checkbox"/> Donate to a charitable organization | _____ |
| <input type="checkbox"/> Retain by the receiving member | _____ |
| <input type="checkbox"/> Return to the offeror. | _____ |
| <input type="checkbox"/> Other (please specify) | _____ |

Name of Member: _____ Signature: _____

Date: _____