

**Guidelines for the Chief Executive in
Handling Potential Cases of Conflict of Interest and
Acceptance of Advantages and Entertainment
Concerning Politically Appointed Officials**

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CHAPTER 1: INTRODUCTION

1.1 Chapter 5 of the Code for Officials under the Political Appointment System (the Code) sets out the provisions relating to the prevention of conflict of interest of PAOs.

1.2 As a general principle, in handling matters relating to conflict of interest of PAOs, including considering applications by PAOs for special permission to solicit or accept advantages¹ in accordance with the Code, the Chief Executive (CE) makes reference to the guidelines set out in the prevailing Civil Service Bureau circulars. This document sets out the general guidelines for reference purpose.

1.3 Reference to the CE in this document includes any delegated authority by the CE.

1.4 The blanket approval given by the CE in respect of acceptance of advantages by PAOs is set out in the Appendix for reference.

¹ As set out in paragraph 5.10 of the Code, the meaning of “advantage” in Chapter 5 of the Code is the same as that defined under the Prevention of Bribery Ordinance (Chapter 201) (POBO). “Advantage” is defined widely under the POBO (section 2(1)) to cover gifts (including gifts of money), loans (of money), passages, employment, contract, services, favours, etc., but exclude “entertainment” which is defined as the provision of food or drink (i.e. meals) and any accompanying entertainment.

CHAPTER 2: GUIDELINES FOR HANDLING POTENTIAL CASES OF CONFLICT OF INTERESTS CONCERNING PAOs

CONFLICT OF INTEREST SITUATIONS

2.1 A conflict of interest situation arises where the “private interests”² of a PAO compete or conflict with the interests of the Government or the officer’s official duties. Such “private interests” go beyond pecuniary interests, and include circumstances in which a tie of kinship or friendship, or some other association or loyalty which does not give rise to a financial interest, can influence the judgement of a PAO in discharging his official duties, or may reasonably be perceived as having such an influence.

2.2 PAOs shall report to the CE if such a situation may arise. If the PAO concerned is an under secretary or political assistant, he should make the report via the supervising principal official.

HANDLING POTENTIAL CASES OF CONFLICT OF INTERESTS CONCERNING PAOs

2.3 In handling a potential case of conflict of interest concerning a PAO, the CE should examine the facts of the case, taking into account:

- (a) the duties of the official concerned;
- (b) the relationship between the official and the person or persons with whom he has official dealings; and/or
- (c) whether the relationship could lead to embarrassment or loss of impartiality in the discharge of his duties.

2.4 Where necessary, the CE should seek from the PAO concerned further information on the matter and remind him of the

² “Private interests” include the financial and other interests of the officer himself; his family or other relations; his personal friends; the clubs and associations to which he belongs; any other groups of people with whom he has personal or social ties; or any person to whom he owes a favour or is obligated in any way.

consequences of a conflict of interest.

ACTION TO BE TAKEN WHERE A CONFLICT OF INTEREST MAY ARISE

2.5 Where a conflict of interest may arise, the CE should decide on the course of action to be taken, having regard, among other things, to:

- (a) the role of the PAO in the matter including the extent to which he is called upon to exercise discretion;
- (b) the sensitivity of the matter; and
- (c) the practicability of assigning the matter to another official.

2.6 The CE may relieve the PAO from the task which may give rise to the conflict.

2.7 The CE should advise the PAO of the action(s) to be taken. Any report of conflict of interest and any advice given and/or management action taken should be properly recorded.

2.8 If it appears to the CE at any time that there is or may be a conflict of interest between a PAO's investments or interests and his official duties, the CE may require the PAO to take any one or more of the following measures:

- (a) to divest himself of all or any of the investments or interests.
- (b) to refrain from further acquiring or disposing of the investments or interests.
- (c) to freeze any investment transaction for a specified period.
- (d) to place the investments or interests in a "blind trust".
- (e) to refrain from handling cases with actual or potential conflict of interest.
- (f) to take other actions as directed by the CE.

2.9 If there is a criminal element in an allegation against a PAO concerning conflict of interest, the CE should refer the case to the appropriate law enforcement agency.

CHAPTER 3: GUIDELINES FOR CONSIDERING APPLICATIONS FROM PAOs FOR SPECIAL PERMISSION TO SOLICIT OR ACCEPT ADVANTAGE IN THEIR PRIVATE CAPACITY

3.1 In considering an application from a PAO for special permission to solicit or accept in his private capacity advantage which is not covered by the general permission given by the CE³, the CE should take into account the following factors:

- (a) the value of the advantage;
- (b) the reputation and status of the offeror, and his relationship with the PAO;

³ Except for four specified types of “restricted” advantages (namely gifts, loans, discounts and passages), general permission is given by the CE under the Acceptance of Advantages (CE’s Permission) Notice 2010 (AAN) for all prescribed officers (including PAOs) to solicit or accept, without restrictions, all the other forms of advantage that are defined in the POBO.

For the four specified types of “restricted” advantages, general permission is given by the CE for PAOs, same as civil servants, to accept them subject to different conditions and/or monetary limits applicable to different types of advantages, categories of offerors, and/or occasions, including the following –

- (i) solicit and/or accept any of the four types of “restricted” advantages from a tradesman or company if the advantage is available on equal terms to other persons.
- (ii) solicit and/or accept loans from a close personal friend or any other person of not more than \$3,000 or \$1,500 respectively, subject to the loan being repaid within 30 days.
- (iii) accept but not solicit gifts from a close personal friend or any other person, of not more than \$3,000 or \$1,500 in value respectively on a special occasion, or of not more than \$500 or \$250 in value respectively on any other occasion;

Nevertheless, this general permission does not apply (that is, it is disapplied) in the following situations –

- (1) when the offeror has official dealings with the PAO concerned (in the case of a tradesman or company in (i) above) or with the department or organization in which the PAO works (in the case of close personal friend or any other person in (ii) and (iii) above);
- (2) when the offeror is a subordinate of the PAO working in the same department or organization; or
- (3) when the advantage is given to the PAO in his official capacity or by virtue of the official position he holds; and

General permission is also given by the CE for PAOs, same as civil servants, to solicit or accept the four specified types of “restricted” advantages from a “relation” which is defined to include specific family members and close relatives.

- (c) whether the offeror of the advantage has any official dealings with the PAO;
- (d) whether the PAO's acceptance of the advantage in his private capacity will adversely affect the image of his office or the Government or invite public criticism or give rise to a conflict of interest;
- (e) whether the acceptance of the advantage would place the PAO in an obligatory position towards the offeror and would therefore compromise the PAO's position in his official dealings with the offeror;
- (f) whether the advantage is also available on equal terms to persons who are not Government officers;
- (g) the frequency of similar permission being sought by the same PAO; and
- (h) the rank, post and portfolio of the PAO.

3.2 If the PAO concerned is an Under Secretary or Political Assistant, he should make the application for special permission via the supervising principal official.

CHAPTER 4: GUIDELINES FOR CONSIDERING APPLICATIONS FROM PAOs FOR SPECIAL PERMISSION TO SOLICIT OR ACCEPT ADVANTAGE IN THEIR OFFICIAL CAPACITY

4.1 As a general rule, PAOs should as far as possible decline to accept advantage 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 (e.g. a piece of handicraft made and presented to the PAO by from a member of public during an encounter in official capacity), the PAO should dispose the advantage as set out below.

4.2 Any advantage received by a PAO or his spouse from any organization, person or government (other than the HKSAR Government) which in any way relates to his office as PAO, i.e. in his official capacity, belongs to the Government, unless general or special permission is given for the PAO to accept or retain the advantage personally. An advantage which belongs to the Government would be dealt with or disposed of by the Controlling Officers concerned in accordance with established procedures.

4.3 If the PAO wishes to retain personally the advantage and:

- (a) if the advantage falls into one of the categories for which general permission⁴ or blanket approval (see Appendix) has been given by the CE for personal retention, the PAO may retain the advantage personally; or
- (b) if the advantage does not fall into one of the categories for which general permission or blanket approval has been given by the CE for personal retention, the PAO should seek special permission from the CE.

4.4 In considering an application from a PAO for special permission, the CE should take into account the following factors:

⁴ See footnote 3.

- (a) the nature and the value of the advantage;
- (b) the status and reputation of the offeror;
- (c) whether there is any conflict of interest or the extent of official dealings, if any, between the advantage and the PAO;
- (d) whether the retention of the advantage by the PAO will place the PAO, his office or the Government in an obligatory position towards the offeror or cause embarrassment to them or invite criticism;
- (e) whether it is inappropriate for the PAO to retain the advantage personally in view of prevailing Government policy (e.g. tobacco and product from endangered species);
- (f) whether the offer is also available on equal terms on the same occasion to persons who are not government officers ;
- (g) the number of occasions that the advantage have been offered by the same offeror previously;
- (h) whether the PAO has regulatory responsibility over the offeror (e.g. contractors);
- (i) whether such advantage should be disposed of in ways other than personal retention by the PAO to avoid actual or perceived conflict of interest; and
- (j) public perception.

4.5. If the PAO concerned is an Under Secretary or Political Assistant, he should make the application for special permission via the supervising principal official.

CHAPTER 5: GUIDELINES FOR DEALING WITH ACCEPTANCE OF ENTERTAINMENT

5.1 In giving guidance to PAOs on the acceptance of entertainment, the CE should have regard to the following main factors:

- (a) the circumstances surrounding the offer of entertainment;
- (b) the value, substance, frequency and nature of the entertainment offered (whether it offers the officer something he might not otherwise afford or have access to);
- (c) the relationship between the PAO and the offeror; and
- (d) whether or not an obligation or conflict of interest might be created.

5.2 If the PAO concerned is an Under Secretary or Political Assistant, he should seek the CE's guidance via the supervising principal official.

APPENDIX

BLANKET APPROVAL FOR ACCEPTANCE OF ADVANTAGES BY PAOs

Under paragraph 5.12 of the Code, PAOs, namely,

- (a) Secretaries of Department;
- (b) Directors of Bureau;
- (c) Director of the Chief Executive's Office;
- (d) Deputy Directors of Bureau; and
- (e) Political Assistants

are required to seek special permission from the CE to solicit or accept advantages in circumstances other than those for which general permission has been given.

2. In addition to the general permission given by the CE under the AAN, the CE has given blanket approval for PAOs to accept:

- (a) official gifts⁵ valued at \$400 or below each;
- (b) official gifts valued between \$401 and \$1,000 each, which are inscribed with the name of the PAO concerned, or are received by the PAO at an official function as the guest of honour or an officiating guest; and
- (c) invitations to functions and performances valued at \$2,000 or below per head for the PAO and accompanying spouse. This permission does not apply to Political Assistants.

⁵ "Official gift" means a gift offered to the PAO which in any way relates to his or her office as a PAO.