

Principles and spirit of legislation

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, among other important issues, sets out the constitutional framework of Hong Kong's legal system. This invokes the essential nature of impartiality of the judiciary and its independence from the executive and administrative arms of the Government. Under the principle of 'One Country, Two Systems', the legal system of Hong Kong is based on the common law and supplemented by a number of local ordinances.

The *Prevention of Bribery Ordinance (Cap. 201) (PBO)* aims to keep a fair and corruption-free society, thus safeguarding legitimate interests of both employers and employees.

Summary of the law

Corruption and bribery constitute the same offence

The business sector, government departments and public bodies in Hong Kong are all subject to the PBO which clearly defines 'bribery'. Under the law, 'bribery' refers to the acts of both offering and/or accepting bribes.

In accordance with the PBO, accepting a bribe means that an 'agent' (usually an employee) corruptly accepts an advantage in relation to the business of his/her 'principal' (usually his/her employer) without permission. Offering a bribe occurs when an 'offeror' (individual offering an advantage) offers such an advantage to an agent in return for him/her performing favours in relation to his/her work duties.

The party accepting bribes can be any employee in the private sector, a government department or a public body, as well as any person acting for another, while the offeror can be any person.

Any agent who uses a false document with the intent to deceive or mislead his/her principal also contravenes the PBO.

'Customary practice' in any profession, trade, vocation or business is not a defence for offering and accepting an advantage. The principal's permission is the main factor to be considered by the court.

Both the offeror and the acceptor of a bribe are guilty of an offence once they have reached a verbal agreement, even if the purpose is not achieved.

Bribery involving private sector employees

In Hong Kong, any private sector employee who accepts an advantage in relation to his/her employer's business without obtaining his/her employer's permission is guilty of an offence. Therefore, before offering any advantage — such as a gift — to private sector employees, businesses should ensure that the recipient has obtained permission from his/her employer, or else the advantage should be directly given to and dealt with by the employer. Otherwise, the businessperson concerned may have committed the offence of offering a bribe.

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
<p>Private sector employees soliciting or accepting bribes Section 9(1)</p>	<ul style="list-style-type: none"> • Any agent • without the permission of his/her principal • solicits or accepts any advantage • to affect his/her doing or forbearing to do any act in relation to his/her principal's affairs 	<ul style="list-style-type: none"> • An employee should not solicit or accept any advantage relating to his/her work without the permission of his/her employer
<p>Offering bribes to private sector employees Section 9(2)</p>	<ul style="list-style-type: none"> • Any person • without the permission of an agent's principal • offers any advantage to the agent • as an inducement to or reward for the agent's doing or forbearing to do any act in relation to his/her principal's affairs 	<ul style="list-style-type: none"> • Before offering any advantage to a private sector employee, make sure the employee has the prior permission of his/her employer to receive the advantage, or the advantage can be directly given to and dealt with by the employer

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
<p>Using false documents to deceive an employer Section 9(3)</p>	<ul style="list-style-type: none"> • Any agent • with an intent to deceive his/her principal • in respect of which his/her principal is interested • uses any false, erroneous or defective receipt, account or other document to mislead his/her principal 	<ul style="list-style-type: none"> • An employee may also contravene the PBO if he/she uses false document to deceive his/her principal even though the employee has not received any advantage

Bribery involving public servants

Apart from trade partners, businesspersons may also have contact with government officers or employees of public bodies. It should be noted that those public servants are strictly governed by the PBO which prohibits them from accepting advantages in relation to their duties.

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
<p>Offering bribes to public servants Section 4(1)</p>	<ul style="list-style-type: none"> • Any person • in Hong Kong or elsewhere • without lawful authority or reasonable excuse • offers any advantage to any public servant • to affect the public servant to perform or not to perform his/her duties 	<ul style="list-style-type: none"> • Do not offer any advantage to public servants in return for their showing favours in relation to their duties • Public servants are also prohibited by law from soliciting any advantage in return for showing favours in relation to their duties

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
Offering bribes to public servants with a view to using influence in the procuring or execution of a contract Section 5(1)	<ul style="list-style-type: none"> Any person without lawful authority or reasonable excuse offers any advantage to any public servant as an inducement to or reward for the public servant's giving assistance or using influence in the procuring or execution of any contract with the government or a public body 	<ul style="list-style-type: none"> Do not offer any advantage to public servants as a reward for or inducement to their abuse of office for securing a contract
Offering advantages to public servants in the course of business Section 8(1) & (2)	<ul style="list-style-type: none"> Any person without lawful authority or reasonable excuse offers any advantage to a public servant while having dealings with the government or a public body 	<ul style="list-style-type: none"> Offering any advantage to any public servant while having dealings with the government or any public body is a criminal offence even though there is no intent to bribe and/or no special request has been made

Bribery in relation to tenders and auctions of government departments or public bodies

When taking part in any tender or auction conducted by a government department or public body, businesspersons must not offer any advantage to any person to induce them to: withdraw, not make a tender or not bid at an auction.

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
Offering bribes to induce another person to withdraw or not to make a tender Section 6(1)	<ul style="list-style-type: none"> Any person without lawful authority or reasonable excuse offers any advantage to any other person in return for the withdrawal of or refraining from the making of a tender, for any contract with the government or a public body 	<ul style="list-style-type: none"> Do not offer any advantage to any tenderer in return for his/her withdrawal of or refraining from the making of a tender

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
Offering bribes to induce another person not to bid at an auction Section 7(1)	<ul style="list-style-type: none"> • Any person • without lawful authority or reasonable excuse • offers any advantage to any other person • in return for his/her refraining from bidding at any auction conducted by the government or a public body 	<ul style="list-style-type: none"> • Do not offer any advantage to any person in return for his/her refraining from bidding at an auction

Legal requirements for upholding a high standard of integrity in the civil service

Businesspersons must not offer any public servant any advantage in relation to the latter's official capacity or authority. The greatest caution should be exercised when establishing close relationships with government officers even if such contacts are in no way related to their official capacity. This is because a government officer is not allowed to solicit or accept any advantage without the general or special permission of the Chief Executive of the Hong Kong, irrespective of whether the advantage is solicited or accepted in the officer's official or private capacity. Otherwise, the officer may be guilty of an offence under Section 3 of the PBO.

Section 3 of the PBO seeks to ensure that the civil service maintains a high standard of integrity. Such a high standard is necessary because government officers possess powers and influence which are not available to ordinary citizens. Moreover, the legislation aims to prevent government officers from falling prey to any sweetening-up processes in privately accepting advantages which may cause them to lose their objectivity in the course of their duties.

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
Government officers soliciting or accepting advantages Section 3	<ul style="list-style-type: none"> • Any government officer • without the general or special permission of the Chief Executive • solicits or accepts any advantage <p>* <i>The general permission is stipulated in the Acceptance of Advantages (Chief Executive's Permission) Notice (AAN). Except for 'restricted advantages', permission has been given by the Chief Executive to accept any advantages as long as they do not relate to any public matters. 'Restricted advantages' refer to gifts (money or in kind), discounts, passages and loans of money.</i></p>	<ul style="list-style-type: none"> • Even if it is not related to public matters, and there is no intention to bribe, businesspersons should not offer gifts, discounts, passages and loans of money to government officers

As far as 'restricted advantages' are concerned, government officers are not allowed to solicit/accept any gift, discount, passage or loan of money from any person or organisation with which they have official dealings. In accordance with the AAN, government officers may accept the following if there is no corrupt motive:

- gifts, discounts, passages or loans of money from relatives;
- gifts, discounts, passages or loans of money from traders, commercial establishments/associations on the same terms as if they are offered to non-government officers;
- on a special occasion where gifts are traditionally and normally given or exchanged, a gift/passage of value not exceeding HKD3,000 from a close personal friend or not exceeding HKD1,500 from any other person; on any other occasion, a gift/passage of value not exceeding HKD500 from a close personal friend or not exceeding HKD250 from any other person; and
- a loan of not more than HKD3,000 from a close personal friend, or not exceeding HKD1,500 from any other person, and which is repaid within 30 days.

If an advantage exceeds the limits stipulated above — even if the government officer solicits/accepts the advantage in a private capacity, or they accept the advantage without any corrupt intent — they may still have committed an offence under Section 3 of the PBO.

In addition to the legislation regulating the solicitation or acceptance of advantages, government officers are also bound by various provisions stipulated in the Civil Service Bureau Circulars, Civil Service Regulations and departmental instructions and guidelines on conduct and discipline. All these provisions apply to acceptance of entertainment, conflict of interest, investments, outside work and employment taken up after leaving the government. Such requirements help ensure that government officers consistently perform their duties with integrity and fairness and provide the public with excellent and professional service.

Terms and definitions

Agent

Generally an employee or entrusted party. If a company appoints a person or another company to act for it in the course of business, that person or company becomes the agent or entrusted party, regardless of whether the appointment is full-time or part-time and whether or not the entrusted party receives a fixed salary or a fee from the company. The term 'agent' also includes individual directors of a company.

Principal

Generally an employer. In the private sector, 'employer' generally means the owner or the board of directors of a company.

Principal's permission

The permission or agreement given by a principal (generally an employer) for an agent (generally an employee) to accept an advantage in the course of duty. Normally, such permission must be obtained before an advantage is offered, solicited or accepted. If any advantage is offered or accepted without prior permission, the employee must seek retrospective permission from his/her employer as soon as reasonably practicable.

Public servant

A public servant means a government officer or an employee of a public body; it also covers any permanent or temporary, paid or unpaid employees.

Public body

A public body means the government, the Executive Council, Legislative Council, District Councils and any committees or other body appointed by the Chief Executive in Council. It also covers major service providers given a franchise by the government, organisations spending or being given substantial public funds and those organisations specially appointed by the government. A list of public bodies is contained in Schedule 1 of the PBO.

Advantage

An advantage means money, gifts, loans, rewards, commissions, employment, contracts, service, favours and discharge of liability, whether in whole or in part, but excludes entertainment.

Entertainment

Entertainment means any food or drink for consumption on the occasion when it is provided and any other entertainment, for example, a singing or dancing performance, provided at the same time. Although the PBO does not prohibit the acceptance of entertainment, the government, public bodies and many companies nevertheless set out guidelines limiting the circumstances under which employees may accept entertainment.

Maximum penalties for committing bribery offences

Offence	Maximum penalty
Bribery involving the private sector Section 9 <ul style="list-style-type: none">• Private sector employees soliciting or accepting bribes• Offering bribes to private sector employees• Using false documents to deceive an employer	Imprisonment for 7 years and a fine of HKD500,000 In cases involving other serious crimes, the court may order the confiscation of the criminal proceeds subject to the legislation concerned
Bribery involving public servants Section 4 <ul style="list-style-type: none">• Offering bribes to public servants• Public servants soliciting or accepting bribes Section 8 <ul style="list-style-type: none">• Offering advantages to public servants in the course of business	
Bribery in relation to auctions of government departments or public bodies Section 7 <ul style="list-style-type: none">• Offering bribes to induce another person not to bid at an auction	

Offence	Maximum penalty
<p>Bribery in relation to contracts and tenders of government departments or public bodies</p> <p>Section 5</p> <ul style="list-style-type: none"> Offering bribes to public servants with a view to using influence in the procuring or execution of a contract <p>Section 6</p> <ul style="list-style-type: none"> Offering bribes to induce another person to withdraw or not to make a tender 	<p>Imprisonment for 10 years and a fine of HKD500,000</p>
<p>Legal requirements for upholding a high standard of integrity in the civil service</p> <p>Section 3</p> <ul style="list-style-type: none"> Government officers soliciting or accepting advantages 	<p>Imprisonment for 1 year and a fine of HKD100,000</p>

The above information is a summary of the PBO provisions. For extracts of the PBO, please refer to Appendix 1 or download the full text from the ICAC website: www.icac.org.hk.

Common law offence — misconduct in public office

Public officers are entrusted by the public with powers to perform duties which are closely related to the daily lives of members of the public. They are thus expected to exercise their powers with due care, in the best interests of the community, with integrity and fidelity, and in a manner completely free from corruption.

The common law has long recognised this expectation. Corrupt practices and cases of serious misconduct committed by a public officer may not be merely dealt with as a disciplinary matter. The officer concerned may also be criminally liable for misconduct in public office under the common law. As with 'accepting an advantage' under the PBO, 'misconduct in public office' is also a criminal offence which carries a maximum penalty of seven years' imprisonment. Businesspersons should exercise prudence to avoid possible involvement in such a case of misconduct in public office.

Law	Extracts from the judgement*	Points for businesspersons
<p>The offence of misconduct in public office under the common law</p>	<ul style="list-style-type: none"> • A public official • in the course of or in relation to his/her public office • wilfully misconducts himself/herself, by act or omission, for example, by wilfully neglecting or failing to perform his/her duty • without reasonable excuse or justification, and • where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities 	<ul style="list-style-type: none"> • Under no circumstances should businesspersons ask public officials for favours or assistance in relation to their official duties • Businesspersons should be cautious when a public servant proposes that they jointly or cooperatively bid for a contract offered by a government or a public body. They should clarify if the public servant concerned has declared this conflict of interest to his/her department/organisation.

* Extracted from the judgement handed down by the Court of Final Appeal of the Hong Kong Special Administrative Region ([2005] 8 HKCFAR 192).

Case studies

The following cases illustrate the major points of law under the PBO and related regulations. Businesspersons may draw lessons from these scenarios which have been adapted from real cases.

Case 1 In his early years, Mr Chow started a joint venture with three of his friends. They set up a chemical engineering company in Hong Kong and a chemical manufacturing factory in Guangdong. They were all directors of the company, each of them holding 25% of the company shares.

As Mr Chow had substantial experience in operating factories in mainland China and had developed an extensive business network in Hong Kong and mainland China — especially with mainland suppliers and government officials — he offered to manage the mainland factory. Besides being a shareholder, Mr Chow became the paid General Manager of the mainland factory and was in charge of the business there.

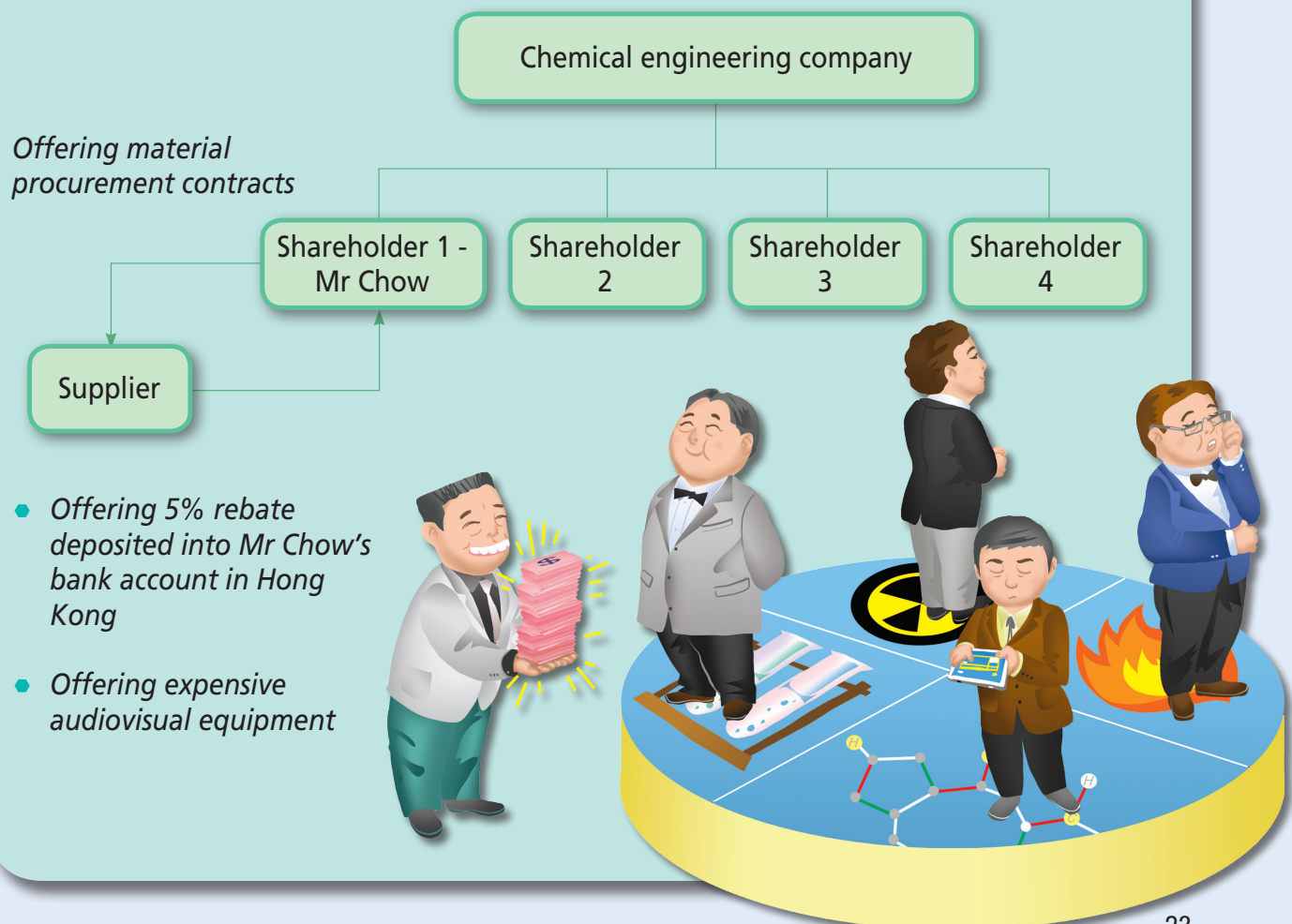
Mr Chow often boasted that the success of the mainland factory was due to his networking clout. At the same time, he kept grumbling that he had to cover the enormous entertainment expenses with his own money.

As the General Manager of the mainland factory, Mr Chow was entrusted with key procurement decisions. When one of his Hong Kong suppliers learned that Mr Chow had recently bought a property in mainland China, he presented Mr Chow with an expensive audiovisual set-up, hoping that this gift would secure a contract for the supply of chemical raw materials. This seemingly thoughtful present soon brought its reward in the form of a first order from Mr Chow. To secure future business, the supplier also offered 5% of the transaction amount as a rebate to Mr Chow at his request. Subsequently, the bribe money was deposited into Mr Chow's bank account in Hong Kong.

The case was brought to the attention of the ICAC. During an interview, Mr Chow claimed that as a shareholder and General Manager of the mainland factory, he had the right to receive rebates from suppliers. He also stressed that he had verbally notified two of the shareholders that the rebates were to help cover his entertainment expenses in mainland China. It was later found out that Mr Chow had casually mentioned his huge entertainment expenses to only two shareholders, while the third shareholder had been kept totally uninformed.

ICAC enquiries revealed that Mr Chow had received rebates of HKD50,000 within a few months. The judge ruled that there were insufficient grounds for arguing that the rebates received were for covering the entertainment costs, and that the defendant was merely using this contention to conceal his corrupt act. Mr Chow was found guilty of accepting bribes, contrary to Section 9 of the PBO, and the supplier was convicted of offering bribes.

Key features



Analysis and key legal points

Individual shareholders or directors of SMEs are also agents

Under the PBO, the principal of a company is the entire Board of Directors, while individual shareholders or directors are considered as agents. In this case, Mr Chow was an 'agent' as he was one of the shareholders and the paid General Manager of the factory. Prior to any solicitation or acceptance of any advantage in the course of business, Mr Chow should have obtained permission from the Board of Directors.

The principal's permission should be definite and given in advance

In accordance with Section 9 of the PBO, an agent must have obtained their principal's permission before soliciting or accepting any advantage. Otherwise, the agent has to apply for permission as soon as reasonably practicable after the acceptance. In addition for such permission to be lawful, the principal must have carefully considered the application before granting permission.

As Mr Chow's company had not stated clearly in advance whether or not its staff members could accept advantages in relation to their duties, Mr Chow was considered not to have obtained the company's permission to accept the rebate at the material time. Moreover, he had not applied for retrospective approval from his company, and his acceptance of the rebates was not known to and approved by all shareholders. In fact, one of the shareholders knew nothing about the matter until the ICAC's investigation, and he was actually opposed to Mr Chow's acceptance of the rebates. Thus Mr Chow accepted the rebates without the principal's permission.

During the investigation, Mr Chow claimed that he had notified other shareholders that the rebates concerned were used to cover the entertainment expenses incurred in mainland China. As noted earlier, he had, in fact, only casually brought this matter to the attention of just two of the shareholders. Furthermore, the arrangement had not been discussed at any board meeting or formally approved, and there was no record of the accepted rebates, nor how they were dealt with. The court ruled that there was no substantial grounds of defence for claiming that Mr Chow had obtained permission of the principal. As a result, Mr Chow was convicted of accepting bribes.

Takeaway advice:

- *Companies should take the initiative to formulate rules and regulations governing the acceptance of advantages by their board members and staff.*
- *Companies should also state clearly in writing the company's stance and policy on the nature and maximum amount of advantages, and on what conditions staff members are permitted to accept such advantages.*
- *The procedures for declaring acceptance of advantages and the channels for making enquiries should also be laid down and made known to all staff.*

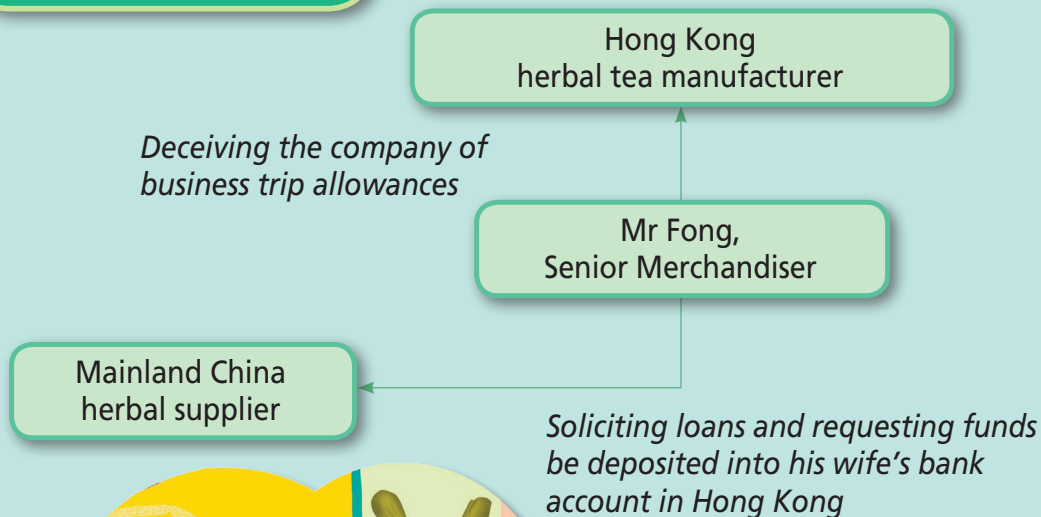
Case 2 A herbal tea manufacturing company sourced herbs and other materials from various mainland suppliers. Mr Fong, a senior merchandiser of the company, was responsible for purchasing herbal materials and inventory control.

Mr Fong had been experiencing financial difficulties and, as he was in desperate need of money, sent several text messages to a mainland herbal supplier to solicit a loan of RMB10,000. Mr Fong suggested to the supplier that more purchase orders would be placed if the supplier deposited the money into his wife's bank account in Hong Kong. The supplier made no response to the request. Shortly after, Mr Fong sent another text message to the supplier, asking for another loan of RMB20,000 and threatened to cut the purchase orders if it was not granted. The supplier did not agree to his request, as it amounted to solicitation of bribes. The supplier subsequently reported the matter to the management of the herbal tea manufacturer. In view of the severity of the matter and having no tolerance for solicitation of bribes by its staff, the management immediately reported the case to the ICAC.

Subsequent enquiries revealed that Mr Fong had inflated the expenses incurred in his business trips and furnished false receipts to deceive the manufacturer about overstated business trip allowances.

The evidence was substantial and Mr Fong was charged with bribery under Section 9 of the PBO and for using false receipts to intentionally deceive his employer with a view to claiming more business trip allowances, contrary to Section 9(3) of the PBO.

Key features



Analysis and key legal points

Soliciting bribes from overseas companies is also subject to prosecution

Though the company from which Mr Fong solicited bribes was outside Hong Kong, he still committed an offence of soliciting an advantage under Section 9 of the PBO as he sent text messages requesting for loans to be deposited into his wife's bank account in Hong Kong in return for placing more orders. Businesspersons should be aware that if any act of bribery — including promising, agreeing, soliciting or accepting advantages without permission — takes place in Hong Kong, the case can be pursued under the PBO.

Accepting bribes, whether directly or indirectly, is against the law

Accepting bribes regardless of whether the advantage is directly given to the acceptor or indirectly delivered to a third party is against the law. In this case, if the mainland China herbal supplier had agreed to deposit the loans into Mr Fong's wife's bank account in Hong Kong, as long as it was proven that the receiving account was controlled by Mr Fong, or that he was the ultimate beneficiary, Mr Fong would be considered as having accepted the advantage.

Using falsified documents to mislead a principal constitutes an offence under the PBO

In this case, Mr Fong, as an agent (an employee), used falsified receipts with intent to mislead his principal (an employer) with a view to obtaining business trip allowances dishonestly — this contravened Section 9(3) of the PBO.

Case 3 Mr Lee was the proprietor of a karaoke restaurant in Hong Kong. He, together with his friends, had recently opened a chain of several karaoke restaurants in Guangdong and purchased a considerable amount of related audiovisual equipment.

Though business was still in the early stages of development, Mr Lee rushed ahead with rapid business expansion. To cope with the cash flow problem, Mr Lee applied to Bank A in Hong Kong for a hire purchase loan for the audiovisual equipment. To secure a larger loan, he inflated the number and prices of the equipment in the application, and falsely represented that he had purchased some advanced brand new audiovisual equipment from an overseas supplier. The bank sent Mr Cheung, an officer of the loans department, to inspect Lee's karaoke restaurant in Guangdong. Mr Lee took the opportunity to play the good host to Mr Cheung. Claiming that it was a way to extend hospitality, Mr Lee also presented Mr Cheung with expensive dried seafood and spirits.

After returning to Hong Kong, Mr Lee once again hosted a lavish feast for Mr Cheung. During the meal, after learning that Mr Cheung had recently become a father, Mr Lee immediately gave him a 'red packet' containing several thousand Hong Kong dollars. Mr Lee explicitly expressed his hope that Mr Cheung could help him secure the loan. Mr Cheung initially refused the red packet, but upon Mr Lee's insistence finally accepted it.

Two weeks later, as the loan still had not been approved and the karaoke business showed no signs of improvement, Mr Lee started to worry and became agitated. Shortly after that, Ms Wong, a friend of Lee in mainland China, asked him to help her deal with a considerable sum of money using his company's bank account. Ms Wong requested Mr Lee to remit the money to several designated accounts. In return, Ms Wong promised to reward Mr Lee by helping him with his business in mainland China on the condition that he did not ask anything about the source of the money.

Subsequently, Mr Cheung reported to the bank that Mr Lee had offered him expensive dried seafood, spirits and the red packet containing several thousand dollars. The bank referred the incident to the ICAC. Eventually, Mr Lee was convicted of the offence of offering advantages, contrary to Section 9 of the PBO. Moreover, as the money Mr Lee handled on behalf of Ms Wong was actually criminal proceeds, he was also found guilty of money laundering under the *Organised and Serious Crimes Ordinance*.

Key features

Bank in Hong Kong

Declaring acceptance of advantages

Mr Cheung,
Loans Officer of
Bank A

Mr Lee,
proprietor of a
karaoke restaurant

Ms Wong,
Mr Lee's friend in
mainland China

Offering entertainment and advantages (expensive dried seafood, spirits and a red packet containing several thousand Hong Kong dollars)

Assisting in money laundering



Analysis and key legal points

Bribery still exists even if the purpose of the bribe is not achieved

According to Section 11 of the PBO, as long as the offeror of bribes intends to induce the acceptor to extend his/her favour(s), both parties commit bribery even if the acceptor claims that he/she 'did not actually have the power to do so', 'did not intend to do so' or 'did not, in fact, do so'. Hence, Mr Lee had committed the offence of offering bribes and could not claim in his defence that the purpose of the bribes had not been carried out. Similarly, if Mr Cheung had accepted the red packet without declaring it to the bank, he would also have committed an offence even if he had not ultimately helped Mr Lee.

'Customary trade practice' is no defence

Entertainment means the provision of food and drink for immediate consumption, whereas dried seafood, spirits or red packets are advantages. The offeror cannot offer bribes in excuse of 'an established custom in the trade' or 'trade practice'. According to Section 19 of the PBO, the court will not accept such defence on the part of either the offeror or the acceptor, but will only consider whether or not the acceptor has the permission of the principal.

Bank employees in Hong Kong are governed by industry regulations

According to the guidelines laid down in the Supervisory Policy Manual — Code of Conduct (the Code) issued by the Hong Kong Monetary Authority, a bank employee must declare any advantage received in the course of business. In this case, Mr Cheung made a declaration in compliance with the Code which eventually revealed Mr Lee's corrupt acts in the guise of gifts and a red packet.

Under the PBO, the provision of food and drink for immediate consumption may be construed as entertainment, but not an advantage. While the acceptance of mere entertainment does not constitute an offence, entertainment that is in any way luxurious is very likely a prelude to corruption or bribery. Hence, the Code further stipulates that a bank employee can only accept normal business entertainment such as an ordinary meal. Businesspersons should pay special attention to the above requirements when having business dealings with bank employees.

Assisting in money laundering is also an offence

In the above case, Mr Lee committed the offence of money laundering, contrary to Section 25(1) of the Organised and Serious Crimes Ordinance, as he agreed to use his account to assist in laundering Ms Wong's money which he knew had come from an unspecified source. In accordance with Section 25(A) of the same Ordinance, any person who fails to report to the Joint Financial Intelligence Unit knowing or suspecting that another person is involved with money laundering is liable upon conviction to a fine and imprisonment.

Case 4 Mr Fung came to know Mr Ho, Assistant Trade Controls Officer of the Customs and Excise Department (C&E), twenty years ago when they both joined C&E. Several years ago, Mr Fung left C&E to take over the running of a garment company and factory in mainland China from his father. On learning that Mr Ho was working in the C&E's Textiles Tactical Strike Unit, Mr Fung began to frequently ask Mr Ho out socially, and they subsequently became close friends.

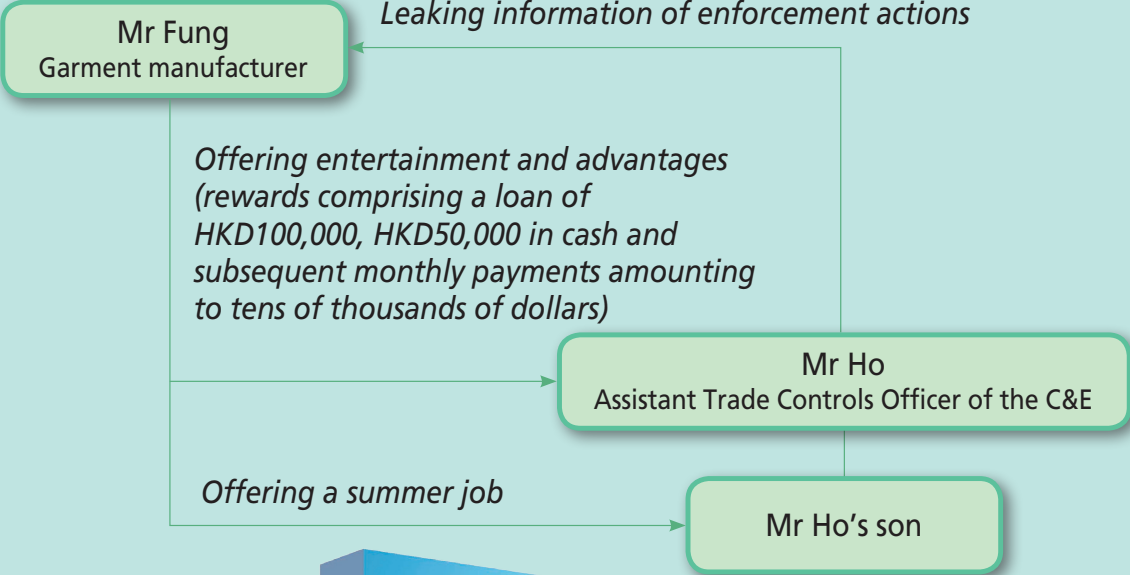
Mr Ho later divulged the financial difficulties he was experiencing to Mr Fung, after suffering heavy losses on the stock market, Mr Ho also let him know that he was having difficulty meeting his mortgage payments — as he had recently purchased a larger flat, in addition to having to pay overseas tuition fees for his son. Upon learning of his financial strife, Mr Fung wrote Mr Ho a cheque for HKD100,000 to help him out. Mr Ho was extremely grateful and promised to repay Mr Fung as soon as possible. From then on, Mr Fung started taking Mr Ho out for extravagant meals and drinks, in addition to paying for golf trips in mainland China — all under the pretext of cheering him up. Each time, it was Mr Fung who footed the huge bills.

Not long after, Ho's son returned to Hong Kong during his summer holidays in the hope of finding a summer job. Mr Fung said that he needed an intern for his factory in mainland China and offered Mr Ho's son an attractive benefits package that included generous travelling, housing and other allowances. Mr Ho's son jumped at the chance and immediately took up the job. Deeply grateful to Mr Fung for taking care of his son, Mr Ho promised to return him a favour one day.

Despite Mr Fung's continued assistance, Mr Ho was still under immense financial pressure and so Mr Fung offered him a chance to make some quick money. Mr Fung was planning to ship textiles and garments manufactured in mainland China through Hong Kong to overseas markets in order to pass them off as products made in Hong Kong. He offered Mr Ho HKD50,000 in cash and regular monthly payments — amounting to tens of thousands of Hong Kong dollars. In return, Mr Ho agreed to provide tip-offs on C&E enforcement actions at border checkpoints and help Mr Fung ship goods to Hong Kong which did not tally with their waybill descriptions. As he was up to his ears in debt, Mr Ho willingly accepted the money and provided intelligence to Mr Fung regularly.

Six months later, the scam was finally uncovered following an ICAC-intelligence-led investigation which ended with the conviction of Mr Fung and Mr Ho for offering and accepting bribes respectively.

Key features



Analysis and key legal points

Offering and accepting bribes are both offences in law

Mr Ho, Assistant Trade Controls Officer, was guilty of an offence as he had accepted advantages in return for abusing his authority and leaked intelligence about C&E enforcement actions. Mr Fung had also committed a crime by offering advantages in return for Ho's assistance. In accordance with Section 4 of the PBO, the person offering a bribe and the person accepting the bribe both commit an offence. The spirit of the legislation is to forbid public servants, including government officers and employees of public bodies, abusing their authority by accepting advantages.

Mr Fung used a variety of means to please Mr Ho who was a government officer. On the surface, Mr Fung was merely 'helping a friend in need', but in reality he offered advantages including financial loans and cash rewards to garner intelligence via corruption.

Even if Mr Fung had not offered the bribes, Mr Ho would still have been found guilty of accepting HKD100,000 from him as a loan — contrary to Section 3 of the PBO — as acceptance of such a loan violates the AAN. A government officer is permitted to accept a loan from a close personal friend, but only if it does not exceed HKD3,000 on any one occasion and is repaid within 30 days. More importantly, there must be no official dealings between the loan offeror and the department in which the government officer works.

Inappropriate handling of conflicts of interest may constitute the offence — misconduct in public office

Conflicts of interest arise where a public servant's 'private interests' contradict, or are in conflict with, the interests of his/her official duties. 'Private interests' include the financial and other interests of the public servant, his/her family, relatives, friends, any club or association of which he/she is a member, close associates, or persons to whom the public servant owes a favour or is obligated to in any way.

In this case, Mr Ho might easily have had official dealings with Mr Fung — as he was required to conduct random checks on textile products. He, however, failed to declare to his department his relationship with Mr Fung and allowed his son to take the summer job offered in Mr Fung's factory. At Fung's request, Mr Ho even went as far as to provide tip-offs on C&E enforcement actions. As his misconduct constituted a serious breach of trust placed in him by his department, he was convicted of the common law offence: misconduct in public office.

Businesspersons should be prudent when dealing with Hong Kong government officers

Mr Ho breached government regulations by accepting lavish and frequent entertainment from Mr Fung. Although entertainment, as defined in the PBO, is not classed as 'an advantage', government officers are still not allowed to accept 'lavish' or 'frequent' entertainment.

According to the Civil Service Bureau Circulars, the Civil Service Regulations and relevant departmental conduct and disciplinary guidelines, government officers should always consider carefully whether there is a genuine need to accept entertainment. They should also ensure that the acceptance of such entertainment would not impose any obligation on them to do the host a favour; bring them/their department into disrepute; or lead to any conflict of interest.

Businesspersons should ensure that business-related entertainment is kept to a minimum when dealing with government officers. They should also avoid offering to government officers 'excessively frequent' or 'lavish' entertainment and/or social activities that might make the government officer feel obligated. In cases where a government officer is seen to be soliciting free or lavish entertainment frequently, a report should be made to the government department concerned or the ICAC.