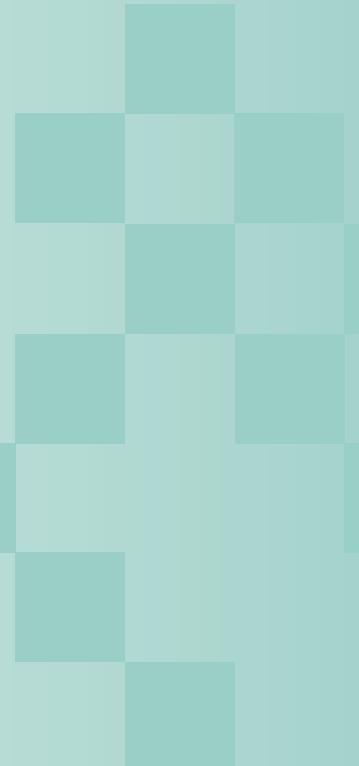


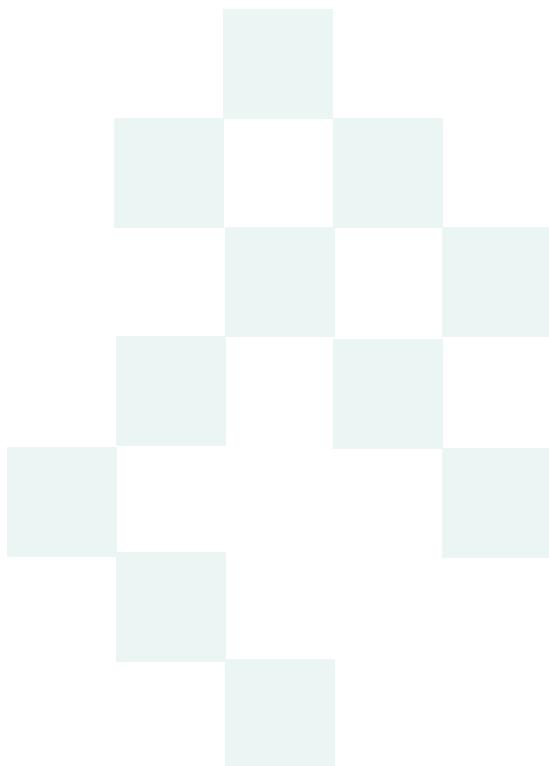
Ethics in Practice

A Practical Guide for Financial Practitioners



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This book is jointly published by the organizers of Professional Ethics Programme for the Securities, Futures and Investments Sectors



香港財務顧問學會
Hong Kong Association of Financial Advisors



香港交易及結算所有限公司
Hong Kong Exchanges and Clearing Limited



香港投資基金公會
Hong Kong Investment Funds Association



香港證券專業學會
Hong Kong Securities Institute



香港證券學會
Hong Kong Securities Professionals Association



香港證券經紀業協會有限公司
Hong Kong Stockbrokers Association Limited



香港特別行政區廉政公署
Independent Commission Against Corruption, HKSAR



證券及期貨事務監察委員會
Securities and Futures Commission

*October 1999 English Version - First Edition
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Message from Financial Secretary, HKSAR

I am very pleased to commend this important book.

A key goal of the SAR Government is to ensure Hong Kong remains one of the best places in the world for business and a premier international financial centre in the region. To achieve this goal, the Government must work in close partnership with industry and industry must distinguish itself not only by the quality of the service it provides but also by the honesty, integrity and propriety with which it acts.

Confidence in financial markets is hard won but easily lost. Hong Kong enjoys a high reputation for honesty, integrity and propriety which have been vital ingredients in our past success. The same attributes must also provide the foundation for our future growth and prosperity. They are part of our competitive advantage.

This book will help reinforce the culture of high ethical standards. It deserves to be read and the practices that it promotes should guide the financial practitioners of Hong Kong - respect for ethics in practice is vital to our continued success.

Donald TSANG

Financial Secretary, HKSAR

Message from Commissioner, Independent Commission Against Corruption, HKSAR

Hong Kong's success as a leading international financial centre is due in no small part to our clean business environment. For many years, the ICAC has worked closely with the financial services industry to promote a high standard of business ethics because we all believe in good corporate governance.

An integral element of the two-year Professional Ethics Programme, this publication is the fruit of the joint efforts between the ICAC and our partners in the financial services industry - market operators, regulators and professional bodies. It aims to bring the attention of financial practitioners to the importance of ethics in business practice and addresses many of the ethics related issues they face in their day-to-day operation.

Maintaining a high ethical standard in the financial services industry plays a crucial role in the further development of the industry and reinforcing Hong Kong's status as a leading financial centre. I therefore commend this publication to all financial practitioners.

Alan LAI

Commissioner
Independent Commission Against Corruption
HKSAR

Message from Chairman, Organizing Committee of Professional Ethics Programme for the Securities, Futures and Investments Sectors

I am very pleased to introduce this publication, *Ethics in Practice - A Practical Guide for Financial Practitioners*. It represents the commitment of the securities, futures and investment fund industries to the upholding of ethical standards in our markets. This is an important element of our two-year Professional Ethics Programme which was launched nearly a year ago.

I am sure everybody agrees that high ethical standards are essential in the financial services industry. Unfortunately some may not be familiar with what constitutes high ethical standards, and how to achieve them.

This booklet aims to promote the standards and to lay down in a practical way, guidelines to the achievement of high ethical standards. It is the result of a cooperative effort by many people, including market operators, regulators and professional organizations representing market participants.

As chairman of the Organizing Committee, I am happy to acknowledge with thanks the contributions of (in no particular order) the Independent Commission Against Corruption, the Securities and Futures Commission, Hong Kong Futures Exchange Limited, Hong Kong Securities Clearing Company Limited, Hong Kong Securities Institute, Corporate Finance Association, Hong Kong Association of Financial Advisors, Hong Kong Stockbrokers Association Limited, and Hong Kong Investment Funds Association, Hong Kong Securities Professionals Association, and The Stock Exchange of Hong Kong Limited.

All the organizations represented on the Organizing Committee firmly believe that the unwavering practice of good ethics is essential for Hong Kong's continued development as an international financial centre. We hope this booklet will provide assistance and guidance to everybody involved in the various components of the financial services industry.

Alec TSUI

Chairman

Organizing Committee

Organizing Committee of Professional Ethics Programme for the Securities, Futures and Investments Sectors

Chairman

Mr Alec TSUI, The Stock Exchange of Hong Kong Limited

Members

Ms Betty CHAN, Hong Kong Securities Clearing Company Limited

Ms Kathleen HO, J.P., Securities and Futures Commission

Mr Johnson LAM, Hong Kong Association of Financial Advisors

Mr Dennis LEE, Hong Kong Stockbrokers Association Limited

Mr Leo LEE, Securities and Futures Commission

Ms Julie MU, Independent Commission Against Corruption

Ms Lin Yoke SEETOH, Hong Kong Investment Funds Association

Mr Frank SLEVIN, Corporate Finance Association

Mr TONG Leung Sang, Hong Kong Securities Professionals Association

Ms Narcissus Y. CHIU, Hong Kong Futures Exchange Limited

Mr Thomas WONG, Hong Kong Securities Institute

Secretariat

Mr C.K. CHAN, Securities and Futures Commission

Mrs Helen LEE, Independent Commission Against Corruption

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Ms Joanne CHEUNG, Independent Commission Against Corruption

Ms Pamela CHEW, Securities and Futures Commission

Mrs Cindy FUNG, Securities and Futures Commission

Ms Doris FUNG, Hong Kong Securities Institute

Miss Yus LAI, Independent Commission Against Corruption

Mrs Helen LEE, Independent Commission Against Corruption

Mr Rupert LEUNG, Hong Kong Securities Institute

Mr Stephen LEUNG, Hong Kong Securities Clearing Company Limited

Ms Shermaine MING, Independent Commission Against Corruption

Mr Brandon NG, Securities and Futures Commission

Mr Frank SLEVIN, Corporate Finance Association

Mr Gerald TSUI, The Stock Exchange of Hong Kong Limited

Mr James WONG, Independent Commission Against Corruption

Miss Monica YU, Independent Commission Against Corruption

Definitions

Financial Practitioner - means, for the purpose of this publication, a person who acts for a financial intermediary in relation to the conduct of regulated activities. This person may be a licensed representative under the Securities and Futures Ordinance (Cap. 571) accredited to a licensed corporation or a relevant individual whose name is entered in the register maintained by the Hong Kong Monetary Authority under Section 20 of the Banking Ordinance (Cap. 155) with accredited to a registered institution.

Financial intermediary - means a licensed corporation or registered institution, which carries on regulated activities such as dealing in securities and futures contracts, advising on securities, futures contracts and corporate finance and asset management, under the Securities and Futures Ordinance, Cap.571.

Regulatory authorities - refers to the Securities and Futures Commission and the Hong Kong Exchanges and Clearing Limited.

Codes of Conduct - refers to the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, the Code of Conduct for Corporate Finance Adviser and the Fund Manager Code of Conduct.

Throughout this publication, the male pronoun is used to cover references to both the male and female. No gender preference is intended.

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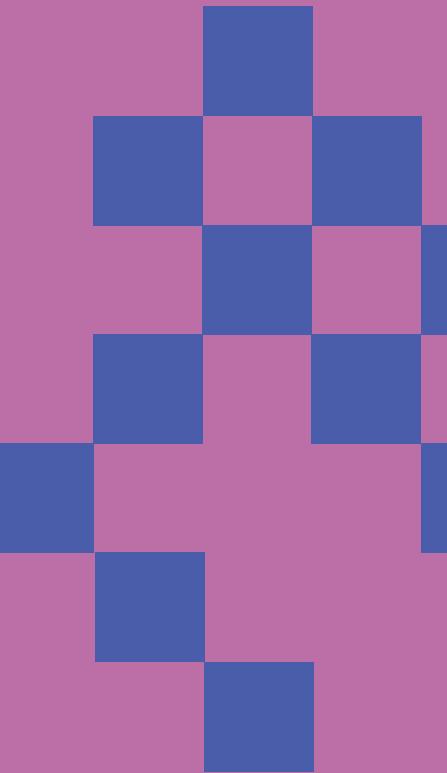
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PART 1

ETHICS IN PRACTICE - NOT OPTIONAL



Brief Notes

Business ethics is important to financial practitioners because it is:

- the key basis of the "fit and proper" guidelines for licensing or registration with the Securities and Futures Commission to conduct business.
- the preventive measure in avoiding the costs of non-compliance.
- the effective marketing tool in building up investors' trust and long-term business relationships.
- the crucial element in enhancing competitiveness of the financial markets and meeting the international standards.
- to the ultimate benefit of the profession by ensuring a transparent and fair business environment.
- the essential ingredient of professionalism.

1.1 Introduction

Hong Kong, being an international financial centre, has well developed financial markets. Fund management and corporate finance businesses have also grown increasingly sophisticated with a strong presence of international financial institutions. To maintain Hong Kong's leading position as an international financial centre in the Asia Pacific region, through upholding high ethical standards, is in the interests of every financial practitioner and investor. In short, ethics in financial practice is not an optional issue. It is a necessity.

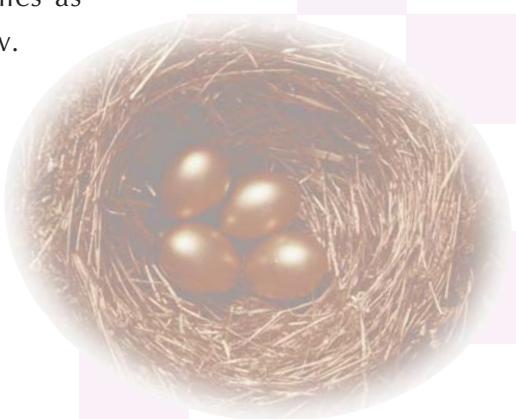
1.2 What is business ethics?

1.2.1 Ways of conducting business

Business ethics covers the whole spectrum of interactions between individuals, companies, industries and the society. It is about how we conduct our business affairs fairly and legally, irrespective of an individual's or a company's standing and size of operation in the market.

1.2.2 Above legal requirements

People often tend to define business ethics as meaning merely operating within the law. However, it means far more than that. Ethics, in business, is a set of standards above the legal minimal requirements, that clearly defines the approach to handling ethical issues in this mercurial business environment where there are few fixed rules, but many "grey" areas.



1.3 Why is business ethics important to financial practitioners?

1.3.1 Basic registration requirement

In most financial markets throughout the world, practitioners providing securities, futures and foreign exchange services are required to be authorized by a regulated authority. In Hong Kong, practitioners are required to be licensed by or registered with the Securities and Futures Commission (SFC) before conducting business. It is an offence to conduct such financial services business without the appropriate licence or registration.

In order to obtain or maintain such a licence or registration with the SFC, a person must satisfy and continue to satisfy the SFC that he is a "fit and proper person". That is to say, the onus is on the applicant to prove himself that he meets the necessary requirements for licensing or registration, whether he is an individual or a company.

The detailed guidelines are set out in the "Fit and Proper Guidelines" issued by the SFC. It places emphasis on the high standards of conduct for applicants apart from their educational, experiential and professional qualifications. They must conduct their business with integrity, fairness and diligence, and organize their internal affairs in a responsible manner. The SFC will inevitably impugn the fitness and propriety of those financial practitioners whose behaviour is unethical.

1.3.2 Prevention of non-compliance

The principles of business ethics underpin the "fit and proper" guidelines and related regulations in the financial industry. When such self discipline of practising above the legal minimal requirements becomes a state of mind, financial practitioners are guarded against regulatory sanctions and thus avoid the costs of non-compliance such as reprimand, suspension or revocation of licence, or being restricted and intervened.

Prevention is always better than cure. Spending effort up front in adhering to the ethical standards expected by the regulatory authorities is far better than rebuilding the hard-earned reputation of a financial intermediary that has been impaired by unethical practice. As such, adopting a high standard of business conduct is not an esoteric concept. It is a realistic one which ensures the future success of financial practitioners.

1.3.3 Effective marketing tool

A number of survey studies revealed that an average of 70% of consumers, including investors, considered the ethical conduct of an individual or a company a major bearing on their decision in selecting its products or services (1). The marketing equation is thus simple: Investors will seek business relationships with organizations that they can trust. The implementation of business ethics within a company creates an environment of confidence, familiarity and predictability which is crucial to customer loyalty and long-term business relationships with clients. In other words, business ethics and revenues are inextricably bound regardless of differences in the structure and size of companies.

1.4 Why is business ethics important to financial markets?

1.4.1 Enhancement of competitiveness

In the face of severe competition, especially in the Asia Pacific region, profit making or improvement of service quality is not the only element to maintaining the competitiveness of Hong Kong. Both local and overseas investors are less tolerant of unethical practices nowadays. In the course of

(1) *The percentage is quoted from "Hunting - Who cares about socially responsible business practices? Seventy percent of consumers, that's who." written by Gayle Sato Stodder, 1998.*

business dealing, they are seeking assurances about market integrity and fairness, a level playing field in competition and transparency. To this end, the commitment of all financial practitioners to observing the laws and practising business ethics is the key to building up the trust and confidence of investors and enhancing the competitive edge of the financial markets in Hong Kong.

1.4.2 Requirement of international standards

These days, people around the world are more aware of the notion of right and wrong. Sound business practice has reached new heights in market compliance and ethical literacy. The financial markets in Hong Kong have to move with the times and are in tandem with the international requirements of placing heavy emphasis on the market's transparency, accountability and the business conduct of financial practitioners themselves.

1.4.3 Ultimate benefit of the profession

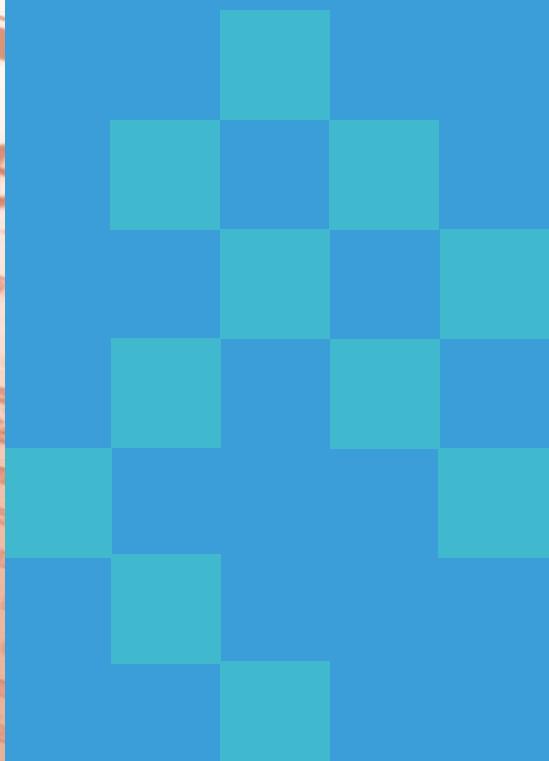
Few will risk their investments in an unethical and corrupt market. The prospect of the profession in the financial industry hinges on an environment regulated by ethics and professional discipline. When business ethics is adequately enforced in the financial markets, it ultimately benefits all practitioners. The reverse is equally true if business ethics is neglected. Unethical practitioners may find themselves in trouble when public opinion turns against them and the business opportunities are lost to competitors.

1.4.4 Essential ingredient of professionalism

The continuance of public confidence in the financial markets largely depends on the professional ethics of practitioners in protecting the interests of clients and stakeholders including employers, employees and the industry itself. Furthermore, the fulfilment of professional standards through ethical business practice is a social responsibility which should be borne by all financial practitioners.

PART 2

LEGAL AND ETHICAL ISSUES FACED BY FINANCIAL PRACTITIONERS



Brief Notes

- The obligations of fitness and propriety include, apart from the fulfilment of educational, experiential and professional qualifications, the requirement of sustaining high ethical standards in business practice.
- The standards of behaviour expected of financial practitioners are set out in the codes of conduct, rules and regulations developed by the regulatory authorities, namely the Securities and Futures Commission and the Hong Kong Exchanges and Clearing Limited.
- From the codes of conduct, financial practitioners can seek guidance on how to deal with legal and ethical issues commonly encountered at work, particularly in the areas of bribery, illegal gifts and commission, use of confidential information, conflicts of interest and professional competence.

2.1 Introduction

As mentioned in Part 1, under the Securities and Futures Ordinance, Cap. 571 (SFO), all financial practitioners dealing in securities and futures or providing investment advice are required to be licensed by or registered with the Securities and Futures Commission (SFC) before any business operation is undertaken in Hong Kong. Please refer to Appendix I on page 74 for the relevant provisions under the SFO. You may also refer to the Licensing Information Booklet issued by the SFC for further details. This requirement arises from the need for market participants generally, and investors in particular, to have confidence that financial practitioners with whom they deal are competent, honest, financially sound, and will treat them fairly.

2.2 Standards of behaviour

2.2.1 General principles

Summarized below are the general principles developed and recognized by the International Organization of Securities Commissions, and other principles SFC believes to be fundamental to the undertaking of a financial practitioner's business. These principles embrace the spirit of legislation and the basic ethical values of the entire financial industry in Hong Kong.

(a) Honesty and fairness

Financial practitioners should act honestly, fairly, and in the best interests of their clients and the integrity of the market while conducting business.

(b) Diligence

Financial practitioners should act with due skill, care and diligence, in the best interests of their clients and the integrity of the market in conducting business.

(c) Capabilities

Financial practitioners should possess and employ effectively the resources and procedures needed for the proper performance of their businesses.

(d) Information about clients

Financial practitioners should seek information from clients about their financial situation, investment experience and investment objectives relevant to the services to be provided.

(e) Information for clients

Financial practitioners should make adequate disclosure of relevant material information in their dealings with clients.

(f) Conflicts of interest

Financial practitioners should try to avoid conflicts of interest, and when such cannot be avoided, they should ensure their clients are fairly treated.

(g) Compliance

Financial practitioners should comply with all regulatory requirements applicable to the conduct of their businesses in order to promote the best interests of their clients and the integrity of the market.

(h) Client assets

Financial practitioners should ensure that client assets are promptly and properly accounted for and adequately safeguarded.

(i) Responsibility of senior management

The senior management of a licensed corporation or registered institution should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm.

2.2.2 Applying the principles into practice

The above-mentioned general principles only relate to a broad approach of business practice in the financial markets. In order to provide a more detailed guideline on its application, specifically in day-to-day business operations, the SFC has formulated a Code of Conduct for Persons Licensed by or Registered with the SFC, a Code of Conduct for Corporate Finance Adviser and a Fund Manager Code of Conduct based on these general principles. The standards of behaviour explained in the following sections are the major conduct requirements specified in these codes of conduct.

2.3 Guidelines to handle legal and ethical issues

2.3.1 The importance of understanding the codes of conduct

Due to the increasingly complex business transactions within the financial industry, the possibilities of financial practitioners being tempted by illegal advantages or facing other ethical issues are far greater. If a financial practitioner fails to understand the conduct requirements set out in the codes of conduct and does not meet the ethical standards expected of him, he is easily exposed to the risk of violating the relevant laws and regulations. This will also reflect adversely on the fitness and propriety of the financial practitioner, be it a company or an individual, to carry on business.

2.3.2 Major legal and ethical issues encountered at work

We will focus the discussion on the legal and ethical issues commonly faced by financial practitioners in the workplace. These are bribery, illegal gifts and commission, use of confidential information, conflicts of interest, and professional competence. Scenarios are used to highlight the related problems that are likely to occur or are usually found in the field of financial practice. These hypothetical cases seek to help you understand how illegal and unethical situations can develop, and how to apply the codes of conduct in daily practice in order to avoid breaching the laws and regulations.

The scenarios selected provide an insight into the many real life situations which are commonly encountered by financial practitioners in the course of business dealings. These are, however, by no means exhaustive. You should handle each and every case with due care.

2.4 Bribery, illegal gifts and commission

2.4.1 Conduct requirement

A financial practitioner should not solicit or accept an advantage from any person in connection with his company's business if the solicitation or acceptance of an advantage can impair his objectivity in exercising his duties or induce him to act against the interests of his employer and clients.

And a financial practitioner should not offer an advantage to any person as a reward for returning a favour unless he is sure that the recipient has obtained the consent from his employer and clients.

2.4.2 Maintaining integrity in business

The conduct requirement states that the responsibility of financial practitioners is to maintain integrity in business dealings. Its purpose is to ensure the financial practitioners' objectivity, in handling clients' business or making investment recommendations to clients, will not be compromised by any corrupt act, and their business practices must be in the best interests of clients.

The dishonesty in accepting illegal advantages results in a financial practitioner violating the Codes of Conduct and also committing a corruption offence under Section 9 of the Prevention of Bribery Ordinance (PBO). To comply with the requirement, you should thoroughly understand the related standard set in the Codes of Conduct and have knowledge of what constitutes a corruption offence under the PBO.

2.4.3 The Prevention of Bribery Ordinance (PBO) - Section 9

This provision deals with corruption crimes in the private sector. In essence, it is an offence for an agent to solicit or accept an advantage as an inducement to, or reward for, his doing or forbearing to do any act in relation to his principal's affairs without the permission of his principal. Any person who offers an advantage in this circumstance is also guilty of an offence.

The main points of Section 9 of the PBO are listed below for your ease of reference. For the text of the Ordinance, you may refer to Appendix II on page 78.

Prevention of Bribery Ordinance (Section 9)

A Gist of the Main Points

1. **Principal** - A principal generally refers to an employer. In a private organization, "employer" means the proprietor or the board of directors. For a financial practitioner, your principal is not confined to your employer, but includes your clients when you are doing an act in relation to their business.
2. **Agent** - An agent is a person acting for, or employed by, the principal. That is to say, when you work in a financial intermediary, irrespective of an employee or a director, you are the agent of the intermediary. At the same time, you are also the agent of your client if you are doing an act in relation to your client's business.
3. **Advantage** - Advantage refers to anything which is of value such as money, gift, employment, service, favour etc., but does not include entertainment such as food or drink which is provided for immediate consumption on the occasion.

- 4. Principal's permission** - It is lawful for an agent to accept an advantage in relation to his official duties with his principal's permission. The permission must be given by the recipient's principal, NOT the offeror's principal, before the advantage is offered, solicited or accepted; or, in any case where an advantage has been offered or accepted without prior permission, the agent must apply for his principal's approval as soon as reasonably possible. For a financial practitioner, you must also obtain the consent of your client, in addition to your employer's permission, to the acceptance of an advantage when you are handling your client's business.
- 5. Custom constitutes no defence** - It shall not be a defence to show that any advantage accepted or offered is customary in any profession, trade or festive season. The court shall make the judgement based on whether permission has been given by the recipient's principal.
- 6. Verbal agreement counts** - The offeror and the recipient of a bribe are liable to prosecution if a verbal agreement of corruption is reached. Both parties will be guilty irrespective of whether or not the purpose of bribery was carried out.
- 7. Penalty** - A person convicted of an offence under Section 9 of the PBO is subject to a maximum penalty of seven years' imprisonment and a fine of HK\$500,000. He may also be prohibited from taking up a management post of any corporation/public body or practising any profession for a period not exceeding seven years.

2.4.4 Application of the conduct requirement

Scenario 1 Offering and accepting an advantage both constituting an offence

Peter is a dealing director of a brokerage company. Due to the favourable performance in the local property market, the Hang Seng Index is driven up and many of his clients place orders to buy blue-chip stocks. In order to deal with the clients' orders expeditiously, Peter decides to direct a portion of the business to an external broker.

Without taking the service quality into consideration, Peter offers the business to his golfing partner, David. In fact, David charges a much higher brokerage rate than other brokers. One day, in a prestigious country club, David thanks Peter for giving him the business. He tells Peter that he is now on the executive committee of the country club and is able to secure for Peter one of the highly sought after memberships. David even implies that if Peter continues to provide him with business in the future, Peter will have more advantages. In response, Peter accepts the offer gratefully.

Analysis: *Peter violates the Codes of Conduct by abusing his official position to refer business to David in return for accepting an advantage in the form of a country club membership. Peter fails to fulfil his obligation to protect the interests of his employer and clients as David may not be the broker who provides the best service to his company, not to mention the excessive brokerage fee charged.*

If Peter does not obtain prior permission from his employer to accept the advantage, both Peter and David are in breach of Section 9 of the PBO. That is, Peter commits an offence of accepting a bribe and David commits an offence of offering a bribe. Even if Peter refers the business to David because the latter can offer the same quality of service at the same brokerage fee as other brokers, they still violate the PBO. In court, Peter cannot excuse himself by saying that his employer did not suffer any loss as a result of his act. Whether his act has caused damage to the employer is only one of the factors to be considered in mitigation by the judge.

Scenario 2 Unauthorized commission in custody of another person

Jimmy is a sales manager of a renowned securities firm. Recently his company is appointed as the sub-underwriter of a profit-making business named Blue Water which is to be listed on the stock exchange. Jimmy is assigned to allocate Blue Water shares to clients and quickly receives numerous requests for purchase from investors who anticipate its share price to rise once the stocks are traded in public.

Amy is one of Jimmy's favourite clients. One day, Jimmy invites Amy for lunch. Over the table, he explains that he can allocate 100 000 shares of Blue Water to her in exchange for a return of 10 000 shares back to him. Jimmy asks Amy to arrange the 10 000 shares to an account held by a woman named Wendy in a small brokerage company. Later Amy learns that Wendy is actually Jimmy's wife.

Analysis: *Jimmy violates the Codes of Conduct because he preferentially allocates the shares to Amy, thereby giving favour to her and putting other clients at a disadvantage. He has also breached Section 9 of the PBO by soliciting and accepting an advantage, i.e. 10 000 shares as a reward for allocating the Blue Water stocks to Amy despite the short supply. Although Jimmy asks Amy to place the stocks in the account of his wife, he is still guilty of a corruption offence. Under Section 9 of the PBO, a person is considered to have accepted an advantage even though another person acting on his behalf receives the advantage.*

Scenario 3 Excessive entertainment and gifts

Margaret, an account manager of a brokerage company, has maintained close relationships with her clients and always shares her investment views with them. One afternoon, a client, Daniel, calls Margaret. He is in a jovial mood and explains to Margaret that he has just earned a considerable sum of money from the recent rise in the stock market. He then

invites Margaret and her subordinates for dinner in a very luxurious restaurant. After a sumptuous feast, Daniel also presents Margaret with an antique watch.

Analysis: *If the advantage offered, i.e. the antique watch, is not a reward for Margaret in abusing her official position, Margaret may not have contravened the Codes of Conduct and the PBO. However, she should be mindful of situations which may lead to the violation of the Codes of Conduct and the law. Margaret should, in fact, decline the gift if she feels that the acceptance will put herself in a position of obligation to the offeror. In case of doubt, it would be prudent of her to consult her employer on whether she can accept the gift.*

Although entertainment is common in business practice and not an advantage under the PBO, Margaret should avoid accepting excessive levels of entertainment which may affect her objectivity in dealing with clients.

Scenario 4 Custom not to be a defence

Tommy is a dealing manager of a small commodity trading company. Jack is Tommy's old friend who currently has an account in his company to trade futures contracts. Due to the improving economic conditions in the Asian region, Jack anticipates a boost to the Hang Seng Index and thus places a purchase order with Tommy for 10 lots of contracts. He also asks Tommy for the best obtainable price for his contracts.

On the close of market, Tommy receives from the floor all the lots of contracts traded on the day. Without considering the timing of orders placed and the interests of other clients, Tommy allocates the best priced futures contracts to Jack's account. As a token of thanks, Jack invites Tommy and his family to spend the Christmas holidays in the Caribbean at his expense. Tommy accepts.

Analysis: *Tommy has breached Section 9 of the PBO by accepting an advantage, i.e. free travel from Jack as a reward for allocating the best priced futures contracts to him. Although the free vacation is accepted during Christmas, Tommy cannot excuse himself by explaining that the acceptance is due to the common practice because customs will not be accepted as a reason for defence under the PBO. Even if Tommy doesn't accept the free travel, he still violates the Codes of Conduct because he fails to confirm promptly with the clients after effecting each transaction and subsequently allocates the futures contracts unfairly to the clients' accounts.*

Scenario 5 An offence committed notwithstanding incomplete corrupt transaction

Alan is a senior portfolio manager of a pension fund in a large asset management corporation. He is also a member of the company's broker selection committee and has an influence on the proportion of business allocated to external brokers. Agnes is an account manager of a brokerage firm which, to Alan's knowledge, charges a higher brokerage rate but offers a poor level of service. On one occasion, Agnes invites Alan to join her for a drink and eventually explains to him that she is prepared to rebate him if he can persuade other members in the selection committee to direct business to her. To get things moving, she proposes placing \$100,000 into Alan's bank account. Succumbing to the temptation, Alan gives Agnes his account number. This "under-the-table" arrangement is finally exposed and reported to the ICAC by a colleague of Alan. Both Alan and Agnes are arrested even before they execute the corruption deal.

Analysis: *Alan breaks the Codes of Conduct and Section 9 of the PBO as he agrees to abuse his official position as a member of the broker selection committee by persuading other members to offer business to Agnes and accepts rebate in return without permission from his employer. Likewise, Agnes also breaches the Codes of Conduct and the PBO for offering an illegal advantage to Alan. Although Alan hasn't executed the "under-the-table" deal, both of them still commit a*

corruption offence. Under the law, a person will be found guilty even though the purpose of bribery has not been carried out.

2.4.5 How to handle issues of offering and acceptance of advantages

The above scenarios serve to illustrate some irregularities that may be encountered by financial practitioners with or without them knowingly being involved. The best solution is to understand the PBO so as to avoid accepting advantages that will lead to any loss of objectivity and integrity in business dealings. When you face situations that involve the offering or acceptance of an advantage, you should observe the following:

- (a) Follow the company policy** You should seek guidance on the company policy of acceptance of advantages. If your company does not have a written policy, you should clarify with your employer whether you can accept advantages from clients or business contacts in the course of business dealings.
- (b) Avoid being "sweetened up"** You should avoid a situation whereby the acceptance of advantages would place you in a position of obligation to reciprocate the offeror. An act of bribery may not be obvious in some circumstances. A person with intention to bribe may first attempt to build up a relationship with you by treating you frequently and lavishly or offering gifts during festive seasons. Although the advantages do not seem connected to your official duties at the time of the offer, this may lead you to an embarrassing or compromising situation when you are asked to return a favour. It is, therefore, a wise step for you to always be wary of such inducements. Whenever the offeror's motive is in doubt, the "sweetener" should be rejected.

(c) Ensure that the recipient of advantages has his employer's permission before offering When you provide advantages to business associates such as brokers or fund managers during the course of business dealings, you have the responsibility to clarify that the recipients have obtained permission from their employers to accept them. To protect yourself, you can either provide the advantage to the recipient's company directly or get the confirmation from the recipient's employer that he is permitted to accept the advantage.

2.5 Use of confidential information

2.5.1 Conduct requirement

A financial practitioner should not deal in any securities or futures contracts for himself or for any account in which he has an interest, based upon a prior knowledge which he possesses of pending transactions for, or with, clients or any price sensitive information which is not made public.

2.5.2 Preservation of confidentiality

This standard requires financial practitioners to preserve the confidentiality of information communicated to them by their employers and clients. Whether you hold a post of securities dealer, commodity dealer, financial adviser or fund manager, you are in a favourable position over other market participants in acquiring information which will impose a substantial effect on the price of stocks and the market trend. If such price or market sensitive information is leaked to the public before the official time and is used by someone improperly for personal gain, it will cause unfairness to other market participants.

The standard of confidentiality thus aims to ensure a level playing field in the financial markets which allows every participant to have an equal opportunity in accessing information on a fair basis.

2.5.3 Common forms of misconduct

- (a) Front running** implies the improper dealing in securities or futures by a person who makes use of any advance knowledge of pending transactions for or with clients.
- (b) Insider dealing** is the improper use of price sensitive information by a person in dealing in securities of a listed company. A person is also regarded as an insider dealer if he trades the stocks of a listed company based on the privileged information given by an insider of that company.

2.5.4 Legal liabilities of insider dealing

Any financial practitioner engaging in insider dealing will not only breach the Codes of Conduct but also the SFO. According to SFO, a person who commits an offence of insider dealing is liable to a fine of HK\$10,000,000 and imprisonment for 10 years. He may be ordered to pay an amount not exceeding the amount of any profit gained or loss avoided by him as a result of his insider dealing. He may also be banned by the court from taking part in the management of a listed company or any other specified company for a period up to five years. You may refer to Appendix III on page 81 for the relevant provisions of the Ordinance.

2.5.5 Application of the conduct requirement

Scenario 1 Profit gaining through front running

Ken is working for an international futures trading company as a dealing manager. His company often receives orders from fund managers whose moves can significantly affect the market. Taking this opportunity, Ken makes some secret arrangements with Anna, a dealer of another futures trading company, that whenever Ken receives "purchase" orders from his company, he will call Anna immediately to advise her to buy contracts. After Anna has completed her order, Ken executes his company's orders. Since his company's orders are usually in bulk, the price of the futures contract is driven up within a short time interval. Anna then sells the contracts and shares the profit with Ken. Similar arrangements are made when Ken receives "sell" orders from the company.

Analysis: *Ken should clearly know that the orders of his company's clients are non-public information which will have a substantial effect on the trend of the futures market. However, he still deliberately delays effecting transactions for clients and conspires with Anna to make use of this market-sensitive information for personal gain. Both of them have engaged in front running and thus violate the Codes of Conduct.*

Ken and Anna may be guilty of a corruption offence too. Under Section 9 of the PBO, Ken's sharing of the profit from the front running operation can be treated as accepting an advantage from Anna as a reward for his doing an act in relation to his principal's affairs, i.e. passing the information of his company orders to Anna.

Scenario 2 Conspiracy in insider dealing

Dominic is a sales manager of a brokerage company and he has a few corporate clients. One of his clients is a listed company named Treasure Hunt. During a cocktail reception, the financial controller of Treasure Hunt, Tony, talks to Dominic about his plan to make some short-term financial gains. According to Tony's knowledge, an international corporation is planning to inject capital into Treasure Hunt, and he foresees its share price will rocket up if the deal is made. Tony, therefore, suggests to collaborate with Dominic to buy Treasure Hunt shares in advance.

With keen interest, Dominic further proposes to purchase the stocks through an external broker in order to disguise their identities. A week later Treasure Hunt announces the capital injection arrangement and, as anticipated, its share price goes sky-high. Dominic and Tony, having made a good profit, immediately sell their shares.

Analysis: *Dominic violates the Codes of Conduct as well as the insider dealing provisions of the SFO. He commits an insider dealing offence because he has used non-public information, provided by an insider of Treasure Hunt, to purchase the company's stocks for financial gain. Tony is regarded as an insider under the law because he is a person who, being the financial controller of Treasure Hunt, has access to confidential information relating to the company.*

Tony and Dominic may also commit a corruption offence under Section 9 of the PBO because Tony accepts from Dominic a share of the profit from the insider dealing as a reward for leaking the confidential information of his company to Dominic. Tony may commit an offence of accepting a bribe while Dominic may commit an offence of offering a bribe.

Scenario 3 Taking advantage of official position for personal dealing

Robert is a fund manager of an international asset management company, who manages the provident funds for certain large corporations. One day, he receives a research report from an analyst stating that the profit margin of Hydroplane is expected to be high in the forthcoming three years.

Robert, therefore, plans to buy a substantial amount of Hydroplane's shares for his provident funds portfolios. Knowing that such a bulk purchase will likely boost its share price, he decides to place an order for himself through an external broker before sending out the purchase instruction to the dealing room for his provident funds portfolios.

Analysis: *Robert contravenes the Codes of Conduct by knowingly dealing in the same securities for himself before he executes transactions for the portfolios under his management. Moreover, he is also in breach of the Fund Manager Code of Conduct as it prohibits a fund manager from buying or selling any stocks on a day in which he or other fund managers in his company has a pending "buy" or "sell" order in the same stocks until such order is executed or withdrawn. Robert's action actually amounts to front running.*

Scenario 4 Access to insider information through official dealing

Benny is a manager of a financial corporation and undertakes a merger project for Interlock Company and Happy Diet Chain. Led by a director, he and his team members have held meetings with the management of these two companies, day and night, trying hard to work out the best terms for the exercise.

Benny knows full well that if such information is made public, it will affect the share prices of both companies. But Benny also has other things on his mind. Soon he is to get married and desperately needs to find the money for his wedding expenses. He finally decides to borrow some money from his

family to purchase a large quantity of the two stocks in advance. A week later, when the announcement of a merger between Interlock and Happy Diet is made public, the market prices of their shares rise spontaneously. Benny subsequently sells the stocks and makes substantial profits.

Analysis: *Benny occupies a position which has access to the sensitive information on the merger plan for Interlock and Happy Diet. His subsequent action in abusing the information to deal in their stocks for personal gain has not only violated the Codes of Conduct but also the insider dealing provisions of the SFO.*

2.5.6 How to handle confidential information

As a manager in your department, you have the duty to help your company in preventing the misuse and leakage of confidential information. The following preventive measures are important in ensuring compliance with the codes of conduct and the laws relating to preservation of confidentiality:

- (a) Comply with the "Chinese Walls" procedures** You should prevent the inter-departmental communication of confidential information. Staff are encouraged to consult the compliance officer if they doubt whether a particular situation of communicating information to other departments is appropriate.
- (b) Undertake information security management** You should adopt effective measures e.g. installation of an advanced password system to prevent unauthorized personnel from gaining access to computing resources. Besides, guidelines such as granting of access rights to confidential information on the basis of the "need to know" principle should be established for staff in maintaining information security.
- (c) Implement monitoring procedures** You should set up a monitoring system which imposes procedures to continuously track, identify and protect against any misuse of confidential information.

- (d) Communicate company policy to staff** You should keep your subordinates informed of the company policy on the handling of confidential information through internal memorandums and training.
- (e) Make it known to staff of the serious consequences of abusing confidential information** You should alert staff to the serious consequences of leaking or abusing confidential information, including disciplinary action or dismissal. You should also bring to their attention that if there is any breach of the law, the case will be reported to the company management and the regulatory authorities concerned immediately.

Tips on identifying non-public information

Useful questions to evaluate whether the information is non-public:

- (a) Has the information been disclosed to the market yet?**
- (b) Will the release of information affect the share price of certain stocks or the market trend substantially?**
- (c) Will investors treat the information relevant in determining whether to buy/sell the stocks of particular companies or futures contracts?**

As a manager, you should also advise your staff to bear the above questions in mind. If in doubt, you should consult your employer or a designated person in the company e.g. the compliance officer.

2.6 Conflicts of interest

2.6.1 Conduct requirement

A financial practitioner should refrain from advising or dealing in any transactions with, or for, clients or relationships in which he or his company has a material interest unless he has disclosed this interest to clients and has taken all reasonable steps to ensure their fair treatment.

2.6.2 Disclosure of conflicts to clients

A conflict of interest arises when the personal interest of financial practitioners or that of the financial intermediary conflicts with the interests of their clients. In these circumstances, their judgement in handling clients' business or making investment recommendations to clients may be adversely affected. Examples of conflicts of interest include:

- (a) a sales manager of a brokerage company dealing in securities and futures contracts for his own account;
- (b) a sales director of a brokerage company advising his clients to buy the stocks of a particular company in which he has a financial interest;
- (c) a director of a financial intermediary dealing in businesses of securities and futures, fund management and corporate finance at the same time;
- (d) a sales manager of a brokerage company preparing a research report subjectively in favour of a particular company in which he has an interest; or
- (e) a fund manager undertaking sale and purchase transactions between a client's account and a house account.

You should, therefore, refrain from taking part in those dealings in which you and/or your dependents have a direct/indirect material interest, and that interest is in conflict with your company interests. Similarly, you should not handle the transactions of clients and that of your company's house accounts at the same time when a conflict of interest between the two transactions arises. If avoidance of such dealings is not feasible, you should first fully disclose the actual or potential conflicts of interest to your clients.

2.6.3 Application of the conduct requirement

Scenario 1 Conflict with a client's interest

Billy is a sales manager of a securities company. On one occasion, he recommends his client, Joe, to purchase the stocks of Earth Bank at the price of \$10 per share because of its favourable development. Joe thus places an order with Billy to purchase 150 000 shares. As Billy also wants to buy the stocks of Earth Bank, he therefore aggregates his own order of 50 000 shares with that of Joe's.

Because of the huge demand of Earth Bank's stocks in the market, Billy can only acquire 150 000 shares. He then allocates the stocks in the proportion of Joe's order and his own. As a result, 37 500 shares are allocated into his own account and the remaining 112 500 shares into Joe's account.

Analysis: *There is an apparent conflict of interest as Billy deals in the same stocks with his client simultaneously. Although the company permits staff to aggregate their own orders with the orders of clients, the Codes of Conduct require that in this situation, financial practitioners must give priority to satisfying orders of clients in any subsequent allocation if all orders cannot be filled. Hence, even if Billy proportionally allocates the executed orders between Joe's account and his own account, which does not appear to be blatantly wrong, he still breaches the Codes of Conduct as he has not given priority to satisfying Joe's order in the subsequent allocation of the executed orders.*

Scenario 2 Company interests vs. client interests

Eddie is a director of a financial group which engages in businesses of securities and futures, asset management and corporate finance. Recently, his company is appointed as an underwriter of a placement deal for Small World Corporation.

Because the share price offered is not particularly attractive, Eddie is a little worried that the stocks of Small World Corporation cannot be fully subscribed by investors in the market and this will force his company to acquire the remaining portion. Therefore, he instructs Jacob, a fund manager in the asset management division, to purchase a substantial amount of the stocks for his discretionary clients.

Analysis: *On this issue, Eddie should refrain from influencing Jacob to subscribe for the shares of Small World Corporation or, alternatively, disclose to Jacob's clients the material interest of the company in this transaction. However, Eddie errs by aiming only to evade the final responsibility of his company in buying the portion of stocks which cannot be absorbed by the market. He has thus violated the Codes of Conduct. On the other hand, Jacob should not act in accordance with Eddie's instruction unless the subscription is in line with the investment objectives of his clients. He has breached the Fund Manager Code of Conduct in not performing his fiduciary duty.*

Scenario 3 Personal relationships taking a higher priority

Raymond is a fund manager who manages the provident funds in a medium-sized asset management company. His wife, Jenny, is an account executive in a brokerage firm. Recently, Jenny has been under pressure from her employer to generate more business. Due to the keen competition within the industry, she is unable to meet the quota for finding new clients. In order to help his wife, Raymond makes use of his official position to place business with her without observing his company policy on the selection of external brokers.

Analysis: *Being a fund manager, Raymond violates the Codes of Conduct as he places personal relationships as his priority for allocating business with an external broker. The Fund Manager Code of Conduct stipulates that a fund manager should not carry out any transaction on behalf of a client with a company which is a connected person unless such transaction is carried out on arm's length terms. To protect the interests of clients, service quality should be taken as the top priority in the selection of external brokers. Even when Raymond is confident that the service provided by Jenny's company is as good as those of other brokers, he should disclose the interests to his employer.*

Scenario 4 Personal interest prevailing

Jackson is a corporate financier. On one occasion, he leads a team to arrange the takeover of Good Industrial by Frontline Group through the acquisition of 50% of its shares. Although Jackson is holding a substantial quantity of stocks of Good Industrial, he does not disclose the situation to his company. Finally, Jackson makes handsome gains from his own Good Industrial's stocks due to the success of the takeover.

Analysis: *Jackson breaks the Codes of Conduct by concealing his personal interest in Good Industrial and continuing to participate in the takeover project. It appears that his advice to Frontline Group is not entirely objective as his interest in Good Industrial may affect his judgement. To comply with the standard, Jackson should disclose the situation to his company and let his employer decide whether he should withdraw from the project.*

2.6.4 How to prevent a conflict of interest

You need to make, at all times, conscious efforts to avoid any conflict between personal or company interests and your client's interests. The following suggestions are helpful in preventing a conflict of interest:

- (a) Declare an interest** You should declare to your employer and your clients any interests relating to your beneficial ownership of securities or other investments. Such interests should not, in any case, impair your objectivity in executing clients' orders in securities and futures contract dealings or providing investment recommendations.
- (b) Avoid being placed in a position of obligation** If you have been placed in a position of obligation to someone else, you may find yourself in an embarrassing position when being asked to return a favour. To prevent such a situation, you should not indulge in games of chance; e.g. mahjong or poker with high financial stakes with, or accept excessive amounts of entertainment from persons with whom you have business dealings.
- (c) Don't take up "outside" employment without authorization** You should not take up any paid or unpaid "outside" job which may give rise to any actual or potential conflict of interest with your official duties. If you find it necessary to do so, you should first obtain the consent of company management.
- (d) Treat all clients fairly** You should give no preference to particular clients, including your relatives and friends, by providing advice or assistance in any securities and futures contract dealings based on the confidential information communicated to you by your employer or clients. If there is such a request from your relatives or friends, you should explain to them that it is against the codes of conduct imposed by the regulatory authorities.
- (e) Observe client priority** You should always place clients' interests first. Orders of clients or transactions to be undertaken on behalf of clients should have, in any cases, priority over orders for the accounts in which you or your company have an interest.

Tips on maintaining objectivity at work

If you suspect there is a conflict of interest, you should declare to your company:

- (a) any private interest which may affect your judgement in performing your duties;
- (b) any investment held by yourself and your close relatives which may lead to a conflict of interest;
- (c) any decision made which may ultimately prejudice the interests of other clients; or
- (d) if you are asked to work in an area where you have already had a private interest.

2.7 Professional competence

2.7.1 Conduct requirement

A financial practitioner must, at all times, comply with the applicable laws and regulations and should exercise due care, diligence and thoroughness in handling his clients' transactions of securities and futures contracts, or making investment recommendations to clients. He should also ensure that the information provided is accurate and not misleading.

2.7.2 Fiduciary duties

The conduct requirement states that financial practitioners should act for the sole benefit of clients in the management of the clients' assets. Since they are in a position of trust from clients, they owe undivided loyalty to their clients and are obliged to assume the fiduciary duties which include:

- (a) placing clients' interests before their own;
- (b) acting with due care and diligence in providing complete and accurate information in investment recommendations;
- (c) giving advice and recommendations after thoroughly examining all applicable laws, regulations and client agreements; and
- (d) ensuring that the advice and recommendations given meet the objectives and expectations of clients.

2.7.3 Application of the conduct requirement

Scenario 1 Providing investment advice without thorough research and required registration

Donald is an account manager of a brokerage company and has been licensed by the SFC to deal in securities. Since his company is keen to develop the futures brokerage business and needs more manpower to handle client orders, Donald is instructed by his supervisor to apply for the related licence. In fact, his company never considers whether Donald possesses the required qualifications and experience to be so licensed.

One day, a regular customer, Gordon, seeks Donald's advice on index options. Although Donald has yet to obtain the licence, he is confident of providing advice to Gordon because, in preparing for the licence application, he obtains plenty of reference material from his colleagues in the futures brokerage division. He even accepts the order from Gordon to buy in index options contracts.

Analysis: Donald neither conducts the research himself nor considers his investment advice for Gordon in the light of his client's objectives. He has contravened the Codes of Conduct and also the SFO because he provides investment advice on futures options to clients and accepts clients' orders without being licensed. His reckless act can also cause damage to his company, which may be punished by the regulatory authorities since the company is responsible for the conduct of its employees. Moreover, the company violates the Codes of Conduct because it fails to ensure that Donald has the appropriate qualifications and experience to perform the new function.

Scenario 2 Research without in-depth quantitative analysis

Martin manages the research department of a securities company. On one business encounter, he meets Johnny who is the CEO of a listed company which engages in infrastructure development throughout Asia. Johnny tells Martin that his company is in the final stage of obtaining the bid for the building of a highway in a Southeast Asian country and the terms offered by the government concerned are very attractive. Johnny is optimistic that his company will make a huge profit from the project. Having arrived back at his office, Martin issues a research report stating that Johnny's company will obtain the profitable construction contract and he recommends the purchase of its stocks.

Analysis: Martin violates the Codes of Conduct by issuing a research report which is not based on thorough quantitative analysis. The information given in the report may prove to be false as Martin has recklessly turned Johnny's subjective optimism in obtaining the construction contract into a certainty. Such carelessness may easily cause financial loss to investors.

Scenario 3 Exercising duty without care and diligence

Doris is an account manager of a brokerage company. One day, a white-collar worker named Kelvin steps into her company with a request to open an account to deal in securities. He tells Doris that, as he plans to study abroad next year, he wants his savings of one hundred thousand dollars to have a good return so that he can have enough money to reach his goal early. He asks Doris in what products he should invest. Doris persuades Kelvin to open a margin account to buy second-line stocks. However, Doris doesn't try to explain to Kelvin the difference between margin accounts and cash accounts, nor the risks involved in the former.

Hearing that the Hang Seng Index is dropping rapidly soon after the opening of the stock market, Kelvin calls Doris and places the order to immediately sell all the shares in his account. Because Doris also receives many other "sell" orders from her large clients that morning, she sets aside Kelvin's order and busily handles their transactions. When Doris has time to eventually execute Kelvin's order, Kelvin has already suffered a great financial loss.

Analysis: *Doris breaches the Codes of Conduct because she hasn't exercised her duties with due care and diligence and fails to protect the interest of her client, Kelvin. Evidently Doris has not performed her function properly. She is obliged to ensure that her client understands the nature and risk of a margin account at the very beginning, and execute Kelvin's order promptly upon receiving his instruction.*

Scenario 4 Neglecting risk factors

William is a fund manager who manages a number of Asian unit trusts comprising of low stake portfolios. Given the keen competition with his fellow fund managers in the company, he sets out to make the unit trusts in his care the star performing funds within a short period of time.

Although his clients have clearly specified a low risk mandate, William still invests a large proportion of the funds of his discretionary clients in emerging Asian countries, ignoring any warning signs of an economic downturn within the region. He even explains to the trustees of the unit trusts that the financial hiccup in some of the countries will soon be over. However, the financial turmoil quickly spreads across Asia causing the collapse of several stock markets. The unit trusts under William's management suffer a tremendous loss.

Analysis: *William manages the portfolios of his clients without due consideration of their risk profiles. He violates the Codes of Conduct by ignoring the objectives of his clients' portfolios and placing their interests at stake. He fails in his fiduciary duty towards his clients.*

2.7.4 How to ensure the fulfilment of fiduciary duties

You can follow the checklist below to ensure that the procedures you take in business dealings fulfil the fiduciary criteria:

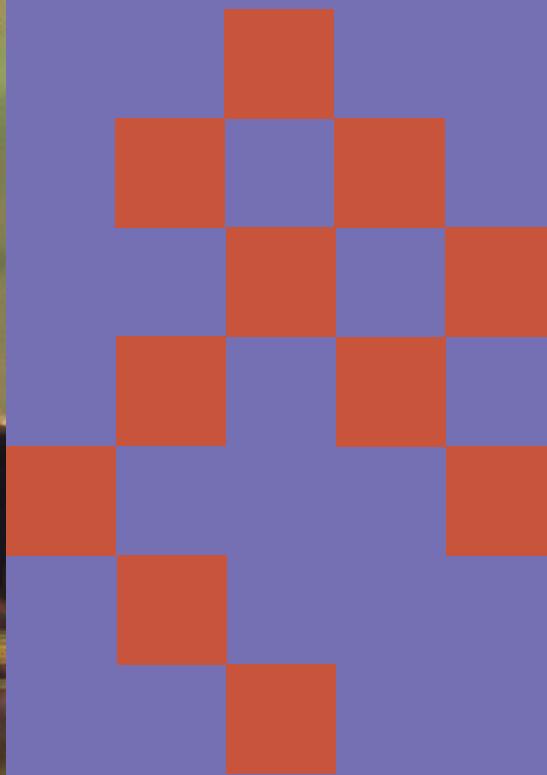
- (a) Abide by regulations** You should follow all applicable laws, rules and regulations when handling business for clients in relation to securities and futures, fund management and corporate finance.
- (b) Provide suitable and appropriate recommendations to clients** You are obliged to understand the needs of clients and to provide investment recommendations which meet the clients' objectives. This can be achieved by examining all related reference material thoroughly and matching these with clients' objectives before recommendations are made. All recommendations should also be properly documented.
- (c) Treat all clients fairly** You should not provide preference to particular clients over others.

- (d) Disclose any possibility of risks** You should notify clients, in full detail, of any potential risks which their investments may be exposed to and the arrangements for compensation, if any.
- (e) Avoid conflicts of interest** You should fully disclose to clients and employers any actual or potential conflicts of interest that you may have.
- (f) Prevent leakage of confidential information** You should endeavour to preserve the confidentiality of any information communicated to you by clients.

All names, characters and incidents portrayed in the scenarios are fictitious. No identification with actual persons, companies, places and products is intended or should be inferred.

PART 3

ETHICAL DECISION MAKING



Brief Notes

- The laws and the codes of conduct cannot provide guidance to every ethical concern. Financial practitioners are required to exercise personal judgement in dealing with the ethical issues which may put their decisions at stake.
- An ETHICS PLUS decision making model developed by the ICAC is a helpful tool for tackling and resolving ethical issues.
- The decision making model is a thinking process to help financial practitioners reach a chosen course of action in a structured and systematic way.

3.1 Introduction

In the scenarios discussed in the previous section, it is clear that financial practitioners are required to exercise their personal judgement in resolving ethical dilemmas which occur during the course of duty. How to make an ethical decision can be a difficult task. The need to build up skills related to sound judgement is, therefore, of paramount importance in handling ethical dilemmas properly at work.

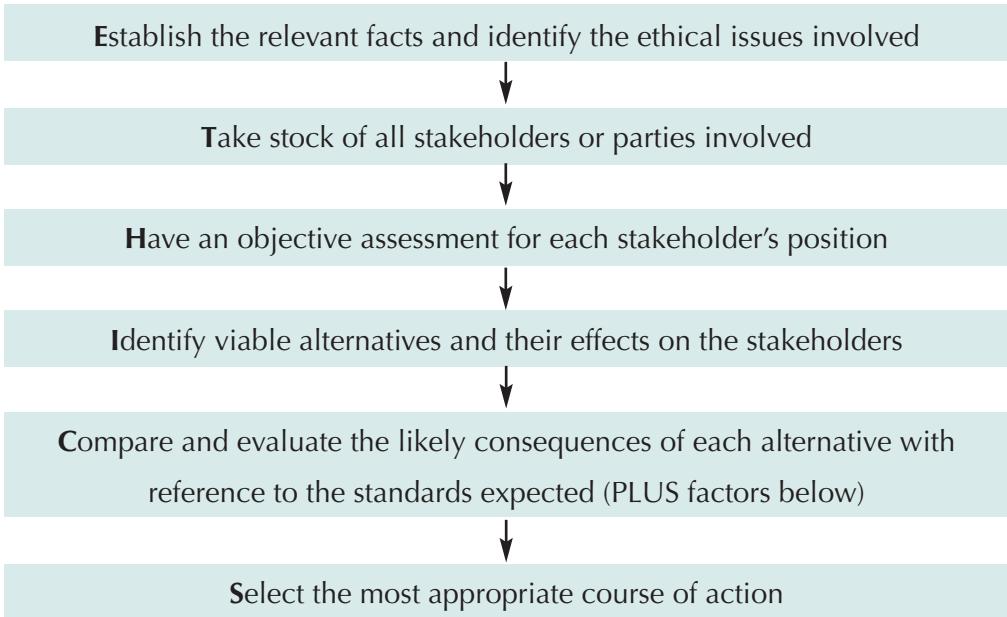
3.2 ETHICS PLUS decision making model

The Independent Commission Against Corruption (ICAC) has developed an ETHICS PLUS decision making model which is a helpful tool in resolving ethical issues. This decision making model delineates the thinking process and standards that can be used by financial practitioners in arriving at a sound decision in the face of an ethical dilemma.



ETHICS PLUS decision making model

1. The ETHICS process - Six major steps to follow



2. The PLUS standards - Four key factors to consider



3.3 How to apply the ETHICS PLUS decision making model

3.3.1 Case study - a conflict of interest

John is a fund manager of Surewin Asset Management Company and he manages a portfolio which comprises of mainly local securities. His brother-in-law, Michael, is a dealing manager in a brokerage company named Good Deal which, in fact, is an authorized stockbroker of Surewin Asset Management Company.

One day, Michael calls John saying that he has just completed a purchase transaction of Triangle Bank's stocks but the fund manager concerned has subsequently cancelled the trade. He explains that he may have misunderstood the fund manager's instruction over the phone because of busy transactions during the day. In order to conceal the incident from the company management, Michael requests John's assistance in taking over the purchased stocks and allocating them to his discretionary clients. In return Michael offers to waive the commission if John agrees to the deal. He also assures John that the stocks are purchased at a favourable market price and no financial loss will be incurred to his clients.

3.3.2 Should John accede to Michael's request by accepting the trade?

By using the ETHICS PLUS decision making model, the analysis is outlined below:

If I were John:

Step 1

Establish the facts and identify the ethical issue in question

Facts:

- ▲ Michael, my brother-in-law, requests for my assistance in accepting a trade of stocks which has just been cancelled by a fund manager.

	<ul style="list-style-type: none"> ▲ I can allocate the stocks to the discretionary clients of the portfolio managed by me. ▲ No one will know my action because I have the discretion in making the investment decision for my unit trust. ▲ The stocks of Triangle Bank are purchased at a favourable market price and my clients may not suffer from financial loss. <p>Ethical Issue:</p> <ul style="list-style-type: none"> ▲ Should I accept the trade from Michael?
<p>Step 2</p> <p>Take stock of all the stakeholders involved</p>	<ul style="list-style-type: none"> ▲ Myself ▲ Michael ▲ My company ▲ My clients
<p>Step 3</p> <p>Assess each stakeholder's position</p>	<p>Myself:</p> <ul style="list-style-type: none"> ▲ If I accept the trade, I do not fulfil my fiduciary responsibility of protecting my clients' interests. ▲ My reputation may be impaired if I am found to allocate the unwanted stocks to my clients. ▲ My career prospects may be affected if the action is exposed to the company management. ▲ If I don't accede to the request, my relationship with Michael, and perhaps my sister, may be jeopardized.

Michael:

- ▲ He is considered responsible for the cancellation of the "buy" order.
- ▲ He has not taken the responsibility of explaining to his company why the "buy" order was cancelled.

My company:

- ▲ My company's reputation may be tarnished if the act of allocating unwanted stocks to clients becomes known to the public.
- ▲ My company may suffer from financial loss, if demanded, for the payment of indemnities to the clients on this matter.

My clients:

- ▲ They may suffer from financial loss if the share price of Triangle Bank plummets.

Step 4

**Identify
alternatives and
assess the effects
on each
stakeholder**

- (a) Agree to accept the trade from Michael.
- (b) Refuse Michael's request.
- (c) Examine the portfolio of the unit trust thoroughly and see if the stocks of Triangle Bank are beneficial to my clients.
- (d) Help Michael find a fund manager who wants the stocks of Triangle Bank.
- (e) Obtain management's consent to accept the trade.
- (f) Any other alternatives.

Step 5

Compare and evaluate each alternative with reference to the four PLUS standards

Professional codes of conduct imposed by the regulatory authorities/company rules:

- ▲ The Code of Conduct for Persons Licensed by or Registered with the SFC Clause 10 states that where a licensed or registered person has a material interest in a transaction with or for a client or a relationship which gives rise to an actual or potential conflict of interest in relation to such transaction, he shall neither advise, nor deal in relation to the transaction unless he has disclosed that material interest or conflict to the client and has taken all reasonable steps to ensure fair treatment of the client.
- ▲ The Fund Manager Code of Conduct:
 - Clause 3.1 states that a Fund Manager should ensure that transactions carried out on behalf of a client are in accordance with the portfolio's stated objectives, investment restrictions and guidelines, whether in terms of asset class, geographical spread or risk profile;
 - Clause 3.2 requires that a Fund Manager should execute client orders on the best available terms, taking into account the relevant market at the time for transactions of the kind and size concerned; and
 - Clause 3.8 stipulates that a Fund Manager should not carry out any transaction on behalf of a client with a company which is a connected person unless such transaction is carried out on arm's length terms, consistent with best execution standards, and at a commission rate no higher than customary institutional rates.

- ▲ Are there any company rules which can guide me on how to handle situations relating to a conflict of interest?

Legal requirements:

- ▲ I shall not be in breach of the Prevention of Bribery Ordinance if I don't receive an advantage from Michael as a reward for accepting the stocks of Triangle Bank.

Uncompromising self values:

- ▲ Whether any particular alternative is commensurate with my personal values, such as loyalty to my clients and company, and honesty and fairness in conducting my fund management business.

Sunshine test:

- ▲ Can I disclose my decision to any parties, including my company, colleagues, friends and family members, without misgivings?

Step 6
Select the appropriate course of action

- ▲ After comparing and evaluating each alternative against the PLUS standards, select an appropriate course of action which can maximize the important values and the interests of all stakeholders.
- ▲ Make a commitment to the choice and implement it.

PART 4

ETHICS IN MANAGEMENT - THE COMPLETE SOLUTION



Brief Notes

- Senior management of financial intermediaries have a responsibility to build up an ethical culture where illegal and unethical practices will not take place.
- To facilitate the promotion of an ethical culture, senior management can consider adopting a comprehensive ethics programme which consists of formulating a corporate code of conduct, strengthening a system of controls, and organizing training for staff.
- Cost for implementing an ethics programme is justified when compared with benefits obtained from ethical practice which can enhance a company's competitive edge.
- Senior management can take further steps to encourage staff to report malpractices by using the channels of complaints established within the company.

4.1 Introduction

A responsible officer of a securities company had his licence suspended by the SFC and his company had to compensate the affected clients in full, following an incident whereby one staff member pledged clients' scrip for personal gain. The SFC considered that both the responsible officer and the company should assume collective responsibility for such malpractice and bear the consequences of their failure to administer the supervisory and control functions effectively.

Senior management of financial intermediaries, including CEOs, boards of directors and other senior operating management personnel have an obligation to ensure that the business is guarded against unethical practices and irregularities. In this respect, building up an ethical culture offers the complete solution.

4.2 How to build up an ethical culture

4.2.1 The importance of an ethical culture in a financial intermediary

An ethical culture is a set of ingrained values and beliefs shared by every staff member working within a company. It involves a common understanding of what is right and wrong in the course of business dealings and outlines the methods of resolving ethical problems encountered in the workplace.

If the compliance with regulatory requirements and the observance of high ethical standards become a state of mind of staff at all levels, the overriding concerns of regulation will always be addressed whenever an issue emerges. As such, an ethical culture forms the basis for staff to make business decisions. Profitability is thus enhanced as a result of nurturing clients' trust and securing their loyalty; as well as improving overall operational efficiency and promoting a sense of camaraderie amongst staff members.

4.2.2 Senior management as the role model

The values and attitudes held by senior management exert the single greatest influence on the company's overall culture. If they behave in an unethical manner or turn a blind eye to unethical practices, employees are likely to behave in the same way based on the simple perception that this is the way in which business is conducted. Therefore, senior management should encourage ethical consciousness within the company by serving as a role model in displaying consistency between ethical principles and ethical behaviour.

4.2.3 Compliance function facilitating ethical culture

Regulatory authorities place a substantial emphasis on whether good ethical culture exists within each financial business. In the context of developing an ethical culture, a good compliance system within the company should be created so as to impose the mechanism of quality control. However, the responsibility of compliance does not only fall on the few compliance officers. It should filter through to the rest of the company, from operational levels to supervisory rank.

4.2.4 Putting ethics in management

A company-wide commitment to integrating ethics into the business process can be honoured through a formal ethics programme. It consists of three main components: formulating a corporate code of conduct, strengthening a system of controls, and organizing training for staff.

The implementation of an ethics programme may entail costs in the form of time and resources. However, cost considerations can usually be controlled satisfactorily when compared with the benefits obtained from reduced risk of corruption and fraud within a company in the short run, and strengthened competitive edge and reputation in the long run, that can generate more business from gaining the trust of customers.

4.3 Formulating a corporate code of conduct

4.3.1 What is a corporate code of conduct?

A corporate code of conduct is a written statement of the standard of behaviour expected by a company of its management and employees.

4.3.2 Why does a company need its own code of conduct?

Although various codes of conduct have been formulated by the regulatory authorities to provide guidance for financial practitioners and intermediaries to conduct business, there is no single model code suitable for all business organizations in view of their differences in structure, size and business operations. Therefore, in parallel with the codes of conduct from the regulatory authorities, management of each company should consider implementing its own code which specifically dovetails with its business needs and aspirations.

4.3.3 What are the key areas of a corporate code of conduct?

A corporate code of conduct provides the foundation for a better business environment. For a comprehensive corporate code of conduct, the following key areas are important:

- Policy on acceptance of advantages
- Guidelines on handling conflicts of interest
- Regulations on using proprietary information
- Policy on maintaining accurate records
- Policy on staff dealing for their own accounts in securities and futures contracts
- Procedures for applying outside employment
- Rules on preventing the misuse of company assets
- Procedures for handling complaints

You may refer to a sample corporate code of conduct at Appendix IV on page 86 for reference.

4.3.4 Making the corporate code of conduct work

Implementing a corporate code of conduct requires understanding and active participation by everyone in the company. The final product should increase staff morale and enhance staff integrity. To ensure its effectiveness, the following principles are usually adhered to:

- (a) No double standards** Core values and principles embodied in the code should be consistently applied. Double standards will cause confusion to staff.
- (b) Open consultation** The process of formulating the code should be made open with wide consultation at all levels.
- (c) Good communication** The code should be communicated to all parties concerned, both within and outside the company. It is important to ensure that the communication is an on-going process that regularly reminds all concerned about the requirements of the code.
- (d) Fair and square** The code should be enforced under a transparent system of fair reward and punishment.
- (e) Constant review** The code should be reviewed regularly to keep abreast of changes in business environments, and changes imposed by the regulatory authorities.

4.4 Strengthening a system of controls

4.4.1 What is a system of controls?

A system of controls is a mechanism comprising a set of policies and internal control procedures for staff to follow in day-to-day business that aims

to detect or prevent illegal and unethical practices at all levels of operation within a company.

4.4.2 How does a system of controls work?

Various systems of operation, from sales and marketing in the front office to dealing, accounting and settlement in the back office, are in place in most financial intermediaries to allow business to be conducted in an orderly and efficient manner. By imposing a tight control over these systems helps build up an alarm mechanism that is capable of detecting irregularities at an early stage so that company management can take swift measures in dealing with malpractice and addressing violations.

4.4.3 Ten principles of a system of controls

The ten principles of a system of controls are essential elements which can be used by financial intermediaries as benchmarks to test the adequacy of their control measures:

- (a) Clear work procedures** Clear work procedures are needed to spell out the day-to-day operations within the company, including the processes of dealing with clients and handling of their accounts, the maintenance of audit trails on securities and futures contract transactions, and the measures of protecting the company's assets and those of its clients. These procedures should be adequately documented.
- (b) Clear job responsibility** Job responsibilities, at all levels, should be clearly defined and well communicated to all members of the company. The list of responsibilities should include information on the structure of the company and the chain of command, their respective roles, power and duties and the procedures involved in seeking authorizations and approvals.
- (c) Segregation of duties and functions** Key duties and functions should be appropriately segregated to prevent one person from

performing several duties and functions, which may be susceptible to abuse or may result in undetected errors. It is essential to separate the responsibility of the front and the back offices and, at the same time, to segregate each function of operations, compliance and internal audit.

(d) Effective management of risks Effective risk management procedures should be implemented to channel timely and adequate information to management so that prompt and appropriate action can be taken in minimizing any risks of loss as a result of client defaults or changing market conditions.

(e) Effective staff supervision Taking into consideration that the span of control is reasonable, staff at management level should exercise tight supervision of subordinates to ensure that all rules and procedures are followed properly in all circumstances. Company management may set the following policies to prevent any cover-up of irregularities:

- to undertake periodic job rotation;
- to require staff taking compulsory leave.

(f) Appropriate document and data management Information management systems, such as the handling of documentation and electronically stored data, should be established to protect any sensitive information. Company management may consider adopting the following measures:

- to operate the information management system by qualified and experienced staff in a secure environment;
- to implement procedures in preventing and detecting unauthorized access to sensitive information; and
- to establish procedures in properly maintaining accurate records.

- (g) **Appropriate checks and balances** An internal audit function should be established and paralleled with the employment of an external audit function to examine the effectiveness and efficiency of the company's system of controls. The internal auditor should operate independently and report to senior management directly. The responsibilities of both internal and external auditors and their working relationship should also be clearly defined.
- (h) **Independent compliance function** An independent compliance function should be established to ensure that the business operations comply with all the applicable legal and regulatory requirements as well as the company's own internal policies and procedures. The compliance officer should promptly report to senior management all incidents of non-compliance.
- (i) **Channels for complaints** Channels for complaints should be established and well publicized, providing easy and confidential access to employees and clients. Complaints should be handled effectively and remedial action be taken promptly.
- (j) **Periodic reviews** A company can minimize loopholes by regularly reviewing and improving the systems such as procedures on information management, record retention and risk management.

Company management may refer to the "Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission" for detailed guidelines on internal controls. Nevertheless, no single set of universally applicable policies and procedures will guarantee the adequacy of a company's system of controls. The system should be tailor-made based on a thorough analysis of each company's structure and business operations.



4.5 Organizing training for staff

4.5.1 Why is there a need of staff training?

A well planned training programme for staff is the long-term strategy in developing an ethical culture. Even though a comprehensive corporate code of conduct and an elaborate system of controls are in place, education and training are still essential to the ethical development of employees because it can help in:

- enhancing staff knowledge on legal and regulatory requirements;
- enabling staff to understand the ethical standards set by the company and the management's determination to include ethics as an integral part of the business practice;
- increasing the awareness of staff on ethical dilemmas commonly encountered at work, and better equipping them with skills to deal with these problems during the decision making process; and
- equipping staff at management level with skills to detect early warning signs of malpractices and develop measures to prevent them.

4.5.2 What should a training programme include?

As with the development of investment skills, the ability of financial practitioners to analyze an issue from an ethical perspective needs to be nurtured too. Management must exert a constant, thorough and pervasive emphasis when creating an appropriate training programme to allow a greater sense of ethics to permeate the company. A comprehensive training programme, in general, needs to cover the following areas:

- legal requirements which include the legislation governing corruption and fraud;
- professional standards according to the codes of conduct imposed by the regulatory authorities;

- conduct requirements as expected by a company of its staff and the guidelines from its own corporate code of conduct;
- skills in handling ethical dilemmas encountered at work and the appropriate channels for assistance; and
- measures to prevent unethical practices, such as formulating procedures to strengthen a system of controls and developing skills in managing staff integrity.

4.5.3 Training approach

The broad-based training that is not necessarily "function specific" plays an important role in promoting a shared sense of responsibility in upholding the company's integrity as a whole. Interactions often occur amongst internal departments in a company during the financial services process. This is particularly true of small or medium-sized financial intermediaries. The integration of broad-based training can help staff understand the gravity of good ethical practice and the need for it to be applied consistently to all departments. They should also be made aware of the more specific ethical perimeters faced by each department in order to help recognize and report aberrant behaviour should it occur.

4.6 Whistle blowing

4.6.1 What is whistle blowing?

Whistle blowing means the reporting of illegal activities, acts of misconduct or any threat of potential harm within an organization, with an interest in bringing the malpractices to an end.

4.6.2 Why should whistle blowing be encouraged?

In an ethics programme, senior management can provide guidance to employees on how to conduct business ethically through a corporate code of conduct and staff training, and plug the loopholes of malpractice through a system of controls. However, if a dishonest staff member is determined to commit a crime or other malpractices, senior management will find it difficult to stop him. In order to expose irregularities at an early stage, they should take further steps to urge staff to blow the whistle.

4.6.3 Where to report?

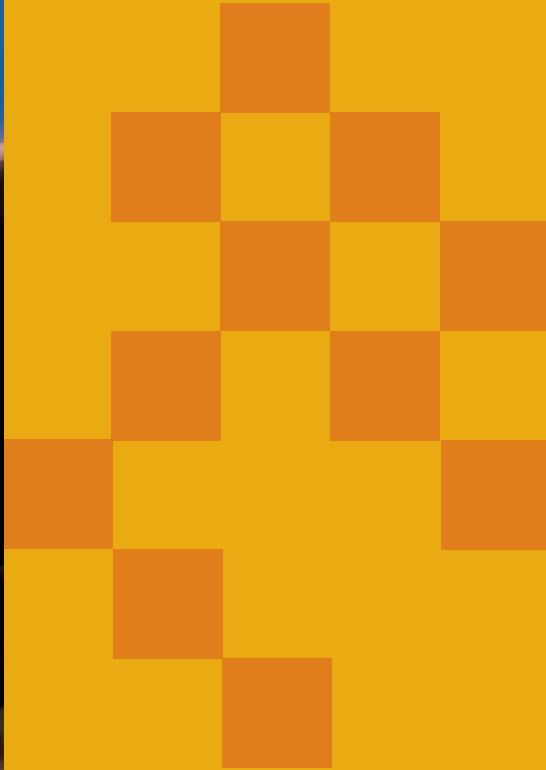
Staff should be encouraged to report malpractices to senior management or the compliance officer through the channels of complaints established within the company. Complaints should be dealt with expeditiously and disciplinary actions should be taken as necessary. In cases of suspected corruption, fraud or other forms of criminality, they should be reported by company management to the regulatory authorities or the law enforcement agencies such as the ICAC and the police.

Tips on blowing the whistle

- (a) Verify your evidence. Is it sufficient?**
- (b) Exhaust the company procedures for dealing with malpractice.**
- (c) Check any complaint channels both inside and outside the company.**
- (d) Document every action you take.**
- (e) Keep the complaint confined to those who need to deal with it.**
- (f) Understand that you would be considered part of it if you don't report the malpractice.**

PART 5

SERVICES AND ASSISTANCE



5.1 Introduction

The Independent Commission Against Corruption (ICAC), the regulatory authorities and the professional institutions provide a wide range of services to financial practitioners and intermediaries for promoting and maintaining a high standard of professional ethics in the financial industry.

5.2 Independent Commission Against Corruption

5.2.1 Developing ethics programmes

The ICAC is experienced in assisting individual companies in the private sector to develop ethics programmes which cater to their specific needs, that include:

- formulating or improving a corporate code of conduct and offering advice on how to implement the code effectively in a company;
- strengthening a system of controls and work procedures to prevent corruption, fraud and other malpractice; and
- providing training courses for various levels of staff within a company. Courses range from explaining the legislation which governs corruption and fraud in Hong Kong to providing measures to manage staff integrity and skills to handle ethical dilemmas at work.

The service of developing an ethics programme is provided free of charge and client's information is kept confidential. Interested companies may contact any regional office or the Hong Kong Ethics Development Centre under the ICAC's Community Relations Department for assistance.

5.2.2 Corruption prevention consultancy services

The Advisory Services Group of the Corruption Prevention Department provides free corruption prevention advice to private organizations on how to tighten up controls in the areas of weakness. Whether or how to implement the recommendations is at the discretion of the company. For details, please call 2526 6363, fax the request to 2522 0505, or email us at asgicac@netvigator.com.

5.2.3 Corruption reporting and enquiry services

The Operations Department is the investigative arm of the Commission which handles corruption complaints and enquiries in strict confidence. Any party may lodge a complaint or make an enquiry with the ICAC through the following channels:

By phone: **2526 6366** (24-hour service)

By mail: G.P.O. Box 1000, Hong Kong

In person:

- ICAC Report Centre (24-hour service)
G/F, Murray Road Carpark Building
2 Murray Road, Central
Hong Kong
- ICAC regional offices



5.2.4 Addresses and telephone numbers of ICAC regional offices and Hong Kong Ethics Development Centre

Hong Kong Island

Regional Office (Hong Kong West/Islands)

G/F, Harbour Commercial Building
124 Connaught Road Central
Sheung Wan
2543 0000
icachkw@hkstar.com

Regional Office (Hong Kong East)

G/F, Tung Wah Mansion
201 Hennessy Road
Wan Chai
2519 6555
icachke@hkstar.com

Hong Kong Ethics Development Centre

1/F, Tung Wah Mansion
199-203 Hennessy Road
Wan Chai
2587 9812
hkedc@hkstar.com

Kowloon

Regional Office (Kowloon West)

G/F, Nathan Commercial Building
434-436 Nathan Road
Yau Ma Tei
2780 8080
icackw@hkstar.com

Regional Office (Kowloon Central)

G/F, 21E Nga Tsin Wai Road
Kowloon City
2382 2922
icackc@hkstar.com

Regional Office (Kowloon East/Sai Kung)

Shop No. 4, G/F, Kai Tin Building
67 Kai Tin Road
Lam Tin
2756 3300
icackesk@hkstar.com

New Territories

Regional Office (New Territories South West)

G/F, Foo Yue Building
271-275 Castle Peak Road
Tsuen Wan
2493 7733
icacntsw@hkstar.com

Regional Office (New Territories North West)

No. 4-5, G/F, North Wing Trend Plaza
2 Tuen Shun Street
Tuen Mun
2459 0459
icacntnw@hkstar.com

Regional Office (New Territories East)

G06-G13, G/F, Shatin Government Offices
1 Sheung Wo Che Road
Shatin
2606 1144
icacnte@hkstar.com

5.2.5 Latest information on services

ICAC Website: <http://www.icac.org.hk>

Email: general@icac.org.hk

(For security reasons, you are not advised to report your suspicions of corruption through electronic means.)

5.3 Regulatory authorities

The Securities and Futures Commission and the Hong Kong Exchanges and Clearing Limited provide enquiry services to financial practitioners and intermediaries on how to enhance ethical standards. Interested parties can contact the respective organizations for details. Addresses and telephone numbers are listed below:

Securities and Futures Commission

8/F, Chater House
8 Connaught Road Central
Hong Kong
2840 9222
<http://www.hksfc.org.hk>

Hong Kong Exchanges and Clearing Limited

11/F, One International Finance Centre
1 Harbour View Street
Central, Hong Kong
2522 1122
<http://www.hkex.com.hk>

5.4 Professional institutions

The professional institutions in the financial industry are vigilant in the pursuit of professional excellence and endeavour to promote high ethical standards in financial practice among members. These organizations include:

Hong Kong Association of Financial Advisors

15/F, The Bank of East Asia Building
10 Des Voeux Road Central
Hong Kong
2521 3969

Hong Kong Investment Funds Association

1505, Tak Shing House
20 Des Voeux Road Central
Hong Kong
2537 9912
<http://www.hkifa.org.hk>

Hong Kong Securities Institute

Room 2403-08, Wing On Centre
111 Connaught Road Central
Hong Kong
3120 6100
<http://www.hksi.org>

Hong Kong Securities Professionals Association

G.P.O. Box 6022
Hong Kong
8207 9108
<http://www.hk-spa.org>

Hong Kong Stockbrokers Association Limited

Flat C, 6/F, Shing Lee Commercial Building

6-12 Wing Kut Street

Central, Hong Kong

2541 8832

<http://www.hksa.com.hk>

APPENDICES AND REFERENCES



Extracts of Securities and Futures Ordinance

Section 114 Restriction on carrying on business in regulated activities, etc.

- (1) Subject to subsections (2), (5) and (6), no person shall –
 - (a) carry on a business in a regulated activity; or
 - (b) hold himself out as carrying on a business in a regulated activity.
- (2) Subsection (1) shall not apply to –
 - (a) a corporation licensed under section 116 or 117 for the regulated activity;
 - (b) an authorized financial institution registered under section 119 for the regulated activity; or
 - (c) a person authorized under section 95(2) for the regulated activity.
- (3) Without prejudice to subsection (1) but subject to subsection (4), no person shall –
 - (a) perform any regulated function in relation to a regulated activity carried on as a business; or
 - (b) hold himself out as performing such function.
- (4) Subsection (3) shall not apply to –
 - (a) a licensed representative who carries on for his principal a regulated activity for which the representative is licensed;
 - (b) an individual –
 - (i) who carries on for a registered institution a regulated activity for which the registered institution is registered; and
 - (ii) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the registered institution in respect of the regulated activity; or
 - (c) an employee of a person authorized under section 95(2) for the regulated activity who performs any regulated function in relation to the regulated activity for which the person is so authorized.

- (5) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of carrying on one or more of the activities specified in Part 3 of Schedule 5.
- (6) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of providing financial accommodation if he reasonably believes that the financial accommodation is not to be used to facilitate –
- (a) the acquisition of securities listed on a stock market (whether a recognized stock market or any other stock market outside Hong Kong); or
 - (b) the continued holding of such securities.
- (7) For the purposes of subsection (6), where it is proved in any proceedings for a contravention of subsection (1) that the person had obtained, before providing the financial accommodation to a borrower, a written confirmation from the borrower that the financial accommodation was not to be used to facilitate such acquisition or continued holding as referred to in subsection (6)(a) and (b), that person shall be presumed, unless the contrary is proved, to have reasonably believed that the financial accommodation was not to be so used.
- (8) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable –
- (a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

- (9) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable –
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which offence continues.

Section 115 Application of section 114 in relation to conduct or activities outside Hong Kong

- (1) If –
- (a) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any services that he provides; and
 - (b) such services, if provided in Hong Kong, would constitute a regulated activity, then –
 - (i) the provision of such services so marketed shall be regarded for the purposes of section 114(1)(a) as carrying on a business in that regulated activity;
 - (ii) the person's marketing of such services as referred to in paragraph (a) shall be regarded for the purposes of section 114(1)(b) as holding himself out as carrying on a business in that regulated activity; and
 - (iii) to the extent that the provision of such services involves the performance by a person of a function that, if performed in Hong Kong in relation to a regulated activity, would constitute a regulated function, the performance of such function by that person shall be regarded for the purposes of section 114(3)(a) as performance of that regulated function in relation to that regulated activity.

(2) If –

- (a) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any function that he performs; and
- (b) such function, if performed in Hong Kong in relation to a regulated activity carried on as a business, would constitute a regulated function, then –
 - (i) the performance of such function so marketed shall be regarded for the purposes of section 114(3)(a) as performance of that regulated function in relation to that regulated activity; and
 - (ii) the person's marketing of such function as referred to in paragraph (a) shall be regarded for the purposes of section 114(3)(b) as holding himself out as performing that regulated function in relation to that regulated activity.

Extracts of the Prevention of Bribery Ordinance (Laws of Hong Kong Cap. 201)

Section 9 Corrupt transactions with agents

- (1) Any agent who, 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) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
 - (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,
- shall be guilty of an offence.
- (2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's –
- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
 - (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,
- shall be guilty of an offence.
- (3) Any agent who, with intent to deceive his principal, uses any receipt, account or other document –
- (a) in respect of which the principal is interested; and
 - (b) which contains any statement which is false or erroneous or defective in any material particular; and
 - (c) which to his knowledge is intended to mislead the principal,
- shall be guilty of an offence.

- (4) If an agent solicits or accepts an advantage with the permission of his principal, being permission which complies with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2).
- (5) For the purposes of subsection (4) permission shall –
- (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 (4), the principal shall, before giving such permission, have regard to the circumstances in which it is sought.

Section 11 Giver and acceptor of bribe to be guilty notwithstanding that purpose not carried out, etc.

- (1) If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do or having done or forborne to do, any act referred to in that section, it shall be no defence that –
- (a) he did not actually have the power, right or opportunity so to do or forbear;
 - (b) he accepted the advantage without intending so to do or forbear; or
 - (c) he did not in fact so do or forbear.
- (2) If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

Section 19 Custom not to be a defence

In any proceedings for an offence under this Ordinance, it shall not be a defence to show that any such advantage as is mentioned in this Ordinance is customary in any profession, trade, vocation or calling.

Section 2 Interpretation

"Advantage" 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.

"Entertainment" means –

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 provisions.

Extracts of Securities and Futures Ordinance

Section 270 Insider dealing

- (1) Insider dealing in relation to a listed corporation takes place –
 - (a) when a person connected with the corporation and having information which he knows is relevant information in relation to the corporation –
 - (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them ;
 - (b) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation –
 - (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over;
 - (c) when a person connected with the corporation and knowing that any information is relevant information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivative;

- (d) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;
- (e) when a person who has information which he knows is relevant information in relation to the corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation –
 - (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives; or
- (f) when a person having received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating making a take-over offer for the corporation, information to that effect which he knows is relevant information in relation to the corporation –
 - (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives.

- (2) Insider dealing in relation to a listed corporation also takes place when a person who knowingly has relevant information in relation to the corporation in any of the circumstances described in subsection (1) –
- (a) counsels or procures another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or
 - (b) discloses the relevant information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the relevant information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market.

291 Offence of insider dealing

- (1) A person connected with a listed corporation and having information which he knows is relevant information in relation to the corporation shall not –
- (a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
 - (b) counsel or procure another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them.
- (2) A person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for a listed corporation and who knows that the information that the offer is contemplated or is no longer

contemplated is relevant information in relation to the corporation shall not –

- (a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or
 - (b) counsel or procure another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over.
- (3) A person connected with a listed corporation and knowing that any information is relevant information in relation to the corporation shall not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives.
- (4) A person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for a listed corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation shall not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives.
- (5) A person who has information which he knows is relevant information in relation to a listed corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation shall not –

- (a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

- (b) counsel or procure another person to deal in such listed securities or derivatives.
- (6) A person who has received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating making a take-over offer for a listed corporation, information to that effect which he knows is relevant information in relation to the corporation shall not –
- (a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
 - (b) counsel or procure another person to deal in such listed securities or derivatives.
- (7) A person who knowingly has relevant information in relation to a listed corporation in any of the circumstances described in subsection (1), (2), (3), (4), (5) or (6) shall not –
- (a) counsel or procure another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or
 - (b) disclose the relevant information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the relevant information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market.
- (8) Subject to sections 292, 293 and 294, a person who contravenes subsection (1), (2), (3), (4), (5), (6) or (7) commits an offence.

Sample Code of Conduct

CODE OF CONDUCT (SAMPLE)

The Company believes that honesty, integrity and fair play are important company assets in business. It is therefore important for all directors and staff members to ensure that the Company's reputation is not tarnished by dishonesty, disloyalty or corruption. This Code of Conduct sets out the standards of behaviour expected from the Company and the guidelines on how to handle different situations in business dealings. Contents of this Code of Conduct are applicable both inside and outside Hong Kong.

LEGAL REQUIREMENTS

2. Under Section 9(1) of the Prevention of Bribery Ordinance, any director or staff member soliciting or accepting an advantage in connection with his work without the permission of the employer commits an offence. The term "advantage", as defined in the Ordinance, includes money, gift, loan, fee, reward, employment, contract, service and favour. The person who offers the advantage may also commit an offence under Section 9(2) of the Ordinance.

3. Any director or staff member who, with intent to deceive his employer, falsifies documents or furnishes false accounting records may be guilty of an offence under Section 9(3) of the Ordinance. The full text of Section 9 and other relevant provisions of the Ordinance are given in Appendix.

Soliciting or Accepting Advantages

4. It is the company policy that no director or staff member may solicit or accept any advantage from any person having business dealings with the Company (e.g. clients, suppliers, contractors). However, they are allowed to accept (but not solicit) the following gifts offered voluntarily:

- (a) advertising or promotional gifts of a nominal value; or
 - (b) gifts given on festive or special occasions subject to a maximum limit of \$_____ in value.
5. Directors and staff members should decline an offer of a gift if acceptance of it could affect their objectivity in conducting the Company's business, or induce them to act against the interest of the Company, or lead to allegations of impropriety. If a director or staff member wishes to accept a gift not covered in paragraph 4, he should seek permission in writing (via Form A) from (name and/or post of a senior staff).

Offering Advantages

6. Under no circumstances may a director or staff member offer an advantage to any person or company for the purpose of influencing such person or company in any business dealings. Any advantage given in the conduct of the Company's business should be in accordance with the Company's prevailing policies on such matters and prior written approval of the Company should be obtained. It is also illegal to offer an advantage to a public servant to influence any contract, tender or auction in relation to the public body concerned.

Observing Local Laws when Working in Another Jurisdiction

7. Paragraphs 4-6 above apply whether the solicitation, acceptance and offering of advantages are within or outside the boundary of Hong Kong. Any director or staff member who conducts business on behalf of the Company in another jurisdiction must abide by the laws of that jurisdiction, including laws and regulations on anti-corruption, and all other laws and regulations pertaining to ethical business conduct.

Entertainment

8. As defined in Section 2 of the Ordinance, "entertainment" refers to food or drink provided for immediate consumption on the occasion, and of any other entertainment provided at the same time. Although entertainment is an acceptable form of business and social behaviour, staff must not accept lavish or frequent entertainment from persons with whom the Company has business dealings (e.g. suppliers or contractors) to avoid placing themselves in a position of obligation to the offeror.
9. Directors and staff members should be particularly vigilant to entertainment offered to them outside Hong Kong, and turn down invitations to meals or entertainment that are excessive in nature or frequency. It should be noted that any free trips or travelling expenses are not included in the definition of "entertainment" but are considered as "advantages" under the Ordinance. Without prior consent of the company, acceptance of these advantages is strictly prohibited.

CONFLICTS OF INTEREST

10. A conflict of interest situation arises when the private interest of a director or staff member competes or conflicts with the interest of the Company. Private interest includes both the financial and personal interests of staff members and those of their connections. Connections include family members, relatives, and close personal friends.
11. Directors and staff members should avoid any situation which may lead to an actual or perceived conflict of interest, and should make a declaration in writing (via Form B) to (name and/or post of a senior staff) when such a situation arises. Failure to do so may give rise to criticism of favouritism, abuse of authority or even allegations of corruption.

12. Some common examples of conflicts of interest include:
- (a) A staff member involved in the procurement process is closely related to or has a beneficial interest in a company which is being considered by the Company in the selection of a supplier or service provider; or
 - (b) one of the candidates under consideration in a recruitment or promotion exercise is a family member, a relative or a close personal friend of the staff member responsible for the recruitment or promotion.

Gambling

13. Directors and staff members are advised not to engage in frequent and excessive gambling of any kind, including games of mahjong, with persons having business dealings with the Company. In social games of chance with clients, suppliers or business associates, they must exercise judgment and withdraw from any high stake games.

Loans

14. Directors and staff members or their immediate family members should not grant or guarantee a loan to, or accept a loan from or through the assistance of, any individual or organisation having business dealings with the Company. There is, however, no restriction on normal bank lending.

Outside Employment

15. If directors and staff members wish to take concurrent employment, either on a regular or consulting basis, they must seek the prior written approval of (name and/or rank of a nominated officer) before accepting the employment.

HANDLING CONFIDENTIAL INFORMATION / COMPANY PROPERTY

16. All directors and staff members are prohibited from disclosing any information classified by the Company to anybody without authorisation. Those who have access to or are in control of such information should at all times ensure its security and prevent any abuse or misuse of the information. Examples of misuse include disclosure of information in return for monetary rewards, or use of information for personal gain.
17. All directors and staff members are strictly prohibited from appropriating Company property for personal use or for resale. All Company property, including corporate mainframes, minicomputer systems, data networks, software packages or equipment shall be used only for conducting the Company's business or for purposes authorised by the management.
18. No director or staff member of the Company should alter equipment, facilities or install software without specific authorisation or develop his own applications without management approval. Security precautions should be exercised when using personal computers, and personal computer software should be obtained only from sources identified in the Company's relevant policy. All computer software should be used in strict compliance with the Copyright Ordinance.

USE OF INFORMATION AND COMMUNICATION SYSTEMS

19. Directors and staff members are not allowed to browse any unauthorised websites or to download, e-mail, store or print any materials that may be considered inappropriate, offensive or disrespectful to others. Besides, the e-mail system of the Company is to be used primarily for business purposes. The Company reserves the right to monitor all e-mail messages and internet usage.

20. Directors and staff members are responsible for protecting and keeping confidential their own passwords and all other network access information. Any attempt by an unauthorised person to obtain sensitive information or to gain access to secure corporate locations, computers and internal information systems should be reported at once to the management or security department.

COMPLIANCE WITH THE CODE

21. It is the duty of every director and staff member to understand and comply with the Code. Managers should also ensure that their subordinates understand well and comply with the standards and requirements stated in the Code.

22. Anyone who is in breach of the Code will be subject to disciplinary action, including termination of employment. In cases of suspected corruption or other criminal offences, a report will be made to the ICAC or the appropriate authorities.

23. Channels of complaint are open to all shareholders and potential shareholders, customers and consumers, suppliers and contractors and all directors and staff members of the Company. Any enquiries about the Code or complaints on possible breaches of this Code should be channelled to (name and/or rank of a nominated officer) for advice and action. The Company will consider all complaints impartially and efficiently. All information received will be kept confidential.

(Optional Sections)

RELATIONS WITH SUPPLIERS AND CONTRACTORS

Fair and Open Competition

The Company promotes fair and open competition and aims to develop and secure long-term relationships with suppliers and contractors based on mutual trust.

Meeting the Public Interest and Accountability Standards

The procurement of supplies or services should be conducted in a manner consistent with the highest ethical standards which assure a quality end product as well as the continued confidence of customers, suppliers and the public.

Procurement and Tendering Procedures

The contracting of services and the purchase of goods should be based solely upon price, quality and need.

Procurement and tendering actions should be conducted according to the following principles:

- The impartial selection of capable and responsible suppliers and contractors;
- The maximum use of competition;
- The selection of appropriate contract types according to need;
- Compliance with laws, relevant regulations and contractual obligations; and
- The adoption of an effective monitoring system and management controls to detect and prevent bribery, fraud or other malpractice in the procurement and tendering process.

Procurement and tendering processes implemented according to this policy will specifically include procedures and practices designed to detect and prevent fraudulent activity.

Bribery and Corrupt Practices

The Company prohibits bribery and corrupt practices. Directors and staff members should follow company policy on the acceptance of advantages. Those involved in the selection of and purchase from suppliers and contractors should avoid any misuse of authority or engage in situations which could affect or appear to affect their ability to make free and independent decisions regarding the purchase and procurement of goods and services.

Payment Procedures

The Company undertakes to pay suppliers and contractors on time and according to the agreed terms of trade.

RESPONSIBILITIES TO SHAREHOLDERS AND THE FINANCIAL COMMUNITY

Attractive Returns in Terms of Increased Earnings and Long-term Growth

The Company endeavours to achieve growth in earnings for shareholders over the long term. Shareholders and the financial community shall benefit from the productive, efficient and competitive operations of the Company.

Disclosure of Information

The Company respects the right of shareholders and potential shareholders to obtain all information necessary for evaluating how their investments are being managed.

True and accurate information regarding the management of the Company, its financial position and its general plans shall be available to anyone with an interest in the Company.

Keeping of Proper Books and Records

It is the policy of the Company to maintain complete and accurate records and accounts. All accounting records must be kept in compliance with all applicable laws.

The books and records of the Company should, in reasonable and accurate detail, reflect all the transactions entered into by the Company and the Company's assets and liabilities. Detailed guidelines as to accounting controls and financial reporting are available to the directors and staff members of the Company.

No false, incorrect or misleading statements or entries should be made in the Company's books, accounts, electronic records, documents or financial statements. Any director or staff member who has information regarding any hidden funds or false entries in the Company's records should report the matter promptly to the senior management of the Company.

Insider Trading

The Company will not tolerate the use of insider information by directors or staff members to secure a personal advantage at the expense of the Company or of those not in the Company. The use for personal gain of insider information that has not been made public is illegal, unethical and strictly prohibited.

Directors and staff members of the Company should not disclose any insider information to anyone of the Company who does not need to know this information for operational purposes or to anyone outside of the Company. They should not circumvent these guidelines by acting through another party or by giving insider information to others for their use even if the Company will derive a financial benefit from this.

RELATIONS WITH CUSTOMERS AND CONSUMERS

Service to Customers

The Company seeks to provide an efficient and courteous customer service in order to maintain customer satisfaction and co-operation with the Company. The Company shall keep its customers informed of the exact nature of the Company's capabilities and shall avoid making any misrepresentation, exaggeration or overstatement.

Commitment to Offering Quality and Fair-value Products

The Company shall always put customers first by providing them with good quality products at prices which represent good value for money.

Safety and Fitness for Use of Goods

It is the policy of the Company to offer to its customers products that meet high standards of safety, quality and reliability.

Prompt Product Recall and Related Practices

The Company will bear full responsibility for all products which do not meet the required standards of safety, quality and reliability. In cases where product recalls are required, they shall be implemented promptly and expediently.

Product Policies

The Company accepts its social responsibility to improve its products in order to promote a higher quality of life.

Pricing Policies

The Company believes in the economic system of the free market, in which price is determined by supply and demand. The Company also seeks to provide customers with the highest quality products at fair prices which allow the Company a reasonable profit in relation to the value provided.

Customer Information

All directors and staff members of the Company are committed to protecting the personal information of customers in strict compliance with the Personal Data (Privacy) Ordinance. The personal information of customers should be used in the proper context only for authorised business purposes and shall be accessible only to those who have a legitimate need to know.

(Name of Company)

Date :

REPORT ON GIFTS RECEIVED

Form A

Part A - Declaration (*To be completed by Receiving Staff*)

To : **(Approving Authority)**

Description of Offeror :

Name & title of offeror : _____

Company : _____

Relationship (business / personal) : _____

Occasion on which the gift was / is to be received : _____

Description & (assessed) value of the gift : _____

Suggested Method of Disposal :

Remark:

- Retained by the receiving staff _____
- Retained for display / as a souvenir in the office _____
- Share among the office _____
- Reserve as lucky draw prize at staff function _____
- Donate to a charitable organisation _____
- Return to offeror _____
- Others (please specify) : _____

Date

Name of Receiving Staff

Title / Department

Part B - Acknowledgement (*To be completed by Approving Authority*)

To : **(Receiving Staff)**

The recommended method of disposal is ***approved / not approved.**

The gift(s) concerned should be disposed of by way of :

Date

Name of Approving Authority

Title / Department

** Please delete as appropriate*

DECLARATION OF CONFLICT OF INTEREST

Form B

Part A - Declaration (*To be completed by Declaring Staff*)

To : **(Approving Authority)**

I would like to report the following *existing / potential conflict of interest situation arising during the discharge of my official duties :-

Persons/companies with whom/which I have official dealings and/or personal interests

--

Brief description of my duties which involve the persons/companies mentioned above

--

Date

Name of Declaring Staff

Title / Department

Part B - Acknowledgement (*To be completed by Approving Authority*)

To : **(Declaring Staff)**

The information contained in your declaration form of _____ is noted. It
(Date)
has been decided that :-

- You should refrain from performing or getting involved in performing the work, as described in Part A, which may give rise to a conflict.
- You may continue to handle the work as described in Part A, provided that there is no change in the information declared above.
- Others (please specify) : _____

Date

Name of Approving Authority

Title / Department

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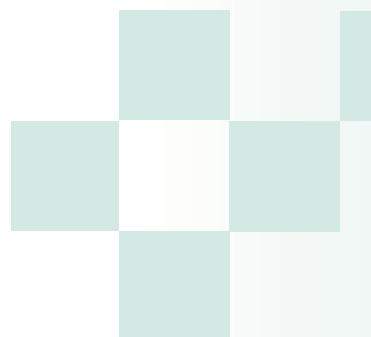
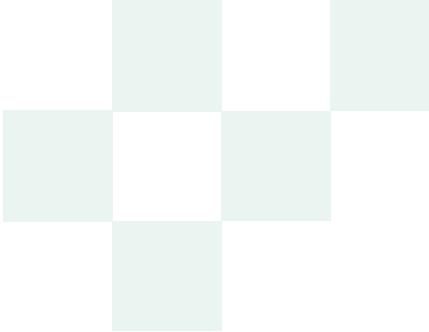
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